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National and International Criminalization of Organized Crime

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Abstract:

Organized crime has found fertile ground amidst the modern economic and technological advancements that have affected contemporary societies in all fields. It is a social phenomenon closely linked to society, and given its impact on various sectors, it has become imperative to seek means to eliminate its repercussions and remnants to curb and combat it. Organized crime represents a common concern for all nations, as it is considered one of the most dangerous threats to the security and stability of society.

Keywords: Organized crime; societies; states.

Introduction:

Interest in cross-border organized crime has increased significantly in recent years at both national and international levels. This is due to the expanding scope and diverse forms of activities undertaken by criminal organizations. Organized criminal activity is no longer confined to the territorial borders of a single state but has extended to other countries, with borders no longer acting as a barrier to these activities. Furthermore, these acts are no longer limited to traditional forms such as drug trafficking and human trafficking but have expanded to include modern patterns that align with technological advancements in various aspects of life. Examples include illicit trafficking in nuclear materials, money laundering operations, and computer and internet crimes, among others.

This situation has necessitated intervention and cooperation at national and international levels to find the necessary solutions and measures to combat and curb this phenomenon.

The objective of this study is to shed light on this type of crime and how it has been criminalized at both national and international levels.

Therefore, we pose the following problem statement: What is organized crime? And how has it been criminalized at both national and international levels?

Based on the above, this paper will address organized crime through two sections. The first section will be dedicated to the concept of organized crime, while the second section will explore the criminalization of organized crime in international conventions and Algerian law.

Section One :The Concept of Organized Crime :

Understanding organized crime and grasping all its facets necessitates first defining its essence to clarify its characteristics and identify its elements. This, in turn, will lead to finding the most effective means to combat it at both international and national levels. Therefore, in this section, we will discuss the definition of organized crime in the first sub-section, and the second sub-section will be dedicated to examining its characteristics.

Sub-section One: Defining Organized Crime:

Jurisprudential efforts have consistently sought an optimal formula for defining cross-border organized crime, leading to multiple definitions, each focusing on a specific legal element of the crime to facilitate matters for judicial authorities¹.

Among these definitions is: "Any prohibited act punishable by criminal law and characterized by great danger due to its blatant violation of public order within the borders of a specific state and in combined states." This definition is criticized

for not elaborating on the legal elements of cross-border organized crime and for broadening its scope to include "any prohibited act," regardless of its perpetrators. Another definition states: "...a crime committed by a group of individuals who engage in continuous prohibited activity, primarily aimed at achieving huge profits without regard for national borders."²

It is also defined as: "That serious crime committed by an organized criminal group with an international dimension, thus fulfilling the condition of multiple perpetrators in criminal participation," and as: "a group not randomly formed for the immediate commission of a crime, and participants are not required to have formally defined roles."

Organized crime not only affects the security and peace of individual states but extends beyond that to the international security and peace of the entire international community.

Perhaps the most important definition is that of the United Nations Convention, which states: "'Organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit." ³

Sub-section Two: Characteristics of Organized Crime:

The most prominent characteristics of organized crime are as follows:

- **Planning and Organization:** This is considered the most important factor in organized crime, distinguishing it from simple, impulsive crimes, which lack the meticulous planning that ensures success and continuity. In contrast, organized crime is characterized by a human and material structure that suits the dangerous nature of its criminal activity.⁴
- **Professionalism:** This involves knowledge, expertise, and the use of deception, in addition to dedication to criminal work and a willingness to sacrifice for the success of the criminal activity.
- **Complexity:** This is evident through high structuring and efficient utilization of material and human resources, as well as the wide scope for choosing methods that help avoid detection.
- **Adherence to the Group's Internal System:** This includes the necessity of unquestioning respect and the obligation to demonstrate absolute loyalty to the leader or head, the ability to involve others in illegal situations and then blackmail them, and to confront any obstacle with all means of harassment, defamation, and violence that may reach physical liquidation, based on blind obedience devoid of conscience.
- **High Profitability:** The gains are substantial and rapid in a record time compared to legitimate projects.

Furthermore, organized crime operates at an international level and always works, after obtaining its criminal proceeds, to launder those proceeds to disguise their illegality and re-engage with them.

The characteristics that distinguish organized crime from other crimes make it a threat to internal societies in general and the international community in

particular, as it has instilled terror and fear in individuals, governments, and states alike, giving it an international dimension and making it a subject of interest for both international and domestic law in terms of criminalization and punishment.

Section Two: Criminalization of Organized Crime in International Conventions and Algerian National Law:

We will discuss this in the following.

Sub-section One: Criminalization of Organized Crime in International Conventions:

The international community's desire to confront transnational organized crime and its intention to conclude international conventions to combat it became clearly evident. These conventions are considered effective tools for strengthening international cooperation on the one hand and for coordinating and unifying domestic legislations on the other. We will discuss the conventions that have been concluded to combat crimes that are considered forms of organized crime, and then we will address the comprehensive convention that covers all these forms, namely the United Nations Convention against Transnational Organized Crime, as follows.

Branch One: Conventions Related to Combating Certain Forms of Organized Crime:

Due to the seriousness of organized crime offenses, the international community has sought to combat them one by one through the conclusion of conventions that criminalize them. Among the most important of these are:

First: On the Crime of Trafficking in Persons and Exploiting the Prostitution of Others:

This is one of the oldest criminal phenomena that constitutes a violation of human rights and an affront to human dignity. Therefore, international legislative policy has taken advanced steps to combat it, and many international conventions have been concluded in this regard, including:

- The International Agreement for the Suppression of the White Slave Traffic, dated May 18, 1904, as well as the 1910 Convention and its amending Protocol of 1949.
- The International Agreement for the Suppression of the Traffic in Women and Children was concluded on September 30, 1921, and amended by the Protocol dated 1947.
- On October 11, 1933, an international convention criminalizing the trafficking of adult women was concluded. The most important convention in this regard is the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, concluded on December 2, 1949, which entered into force on July 20, 1951. In addition, the 1962 Convention on the Abolition of Slavery and the Slave Trade in Geneva was concluded. The Universal Declaration of Human Rights further affirmed the criminalization of slavery and human trafficking in its fourth article.⁵

Second: On Forms of Illicit Drug Trafficking:

Drug trafficking is a form of organized crime that generates huge profits for criminal organizations. Given the seriousness of this crime, the community has

moved quickly to criminalize it and take measures to curb it. This began in 1961 with the conclusion of the Single Convention on Narcotic Drugs, which was amended in 1972. It prohibited dealing in narcotic drugs except in medical and scientific fields according to the needs of states and under the supervision of the International Narcotics Control Board.

- The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psy
- chotropic Substances was concluded in Vienna in 1988 and entered into force in 1990. It stipulated a set of criminalized activities and the nature of the penalties and sanctions specified for them. Among the illicit acts it stipulated were:
 - Illicit production of drugs or psychotropic substances.
 - Illicit manufacture of narcotic drugs or psychotropic substances.
 - Extraction or preparation of narcotic substances.
 - Illicit dealing in drugs by offering them for sale, distributing them, delivering them, or brokering them.
 - Organizing, managing, or financing any of the aforementioned activities.
- It also criminalized the transport, concealment, and use of proceeds from drug trafficking.
- Attempting any of the aforementioned criminal activities or inciting their commission.

The Convention also provided guidance on how to achieve international cooperation in combating narcotic drugs and psychotropic substances through mutual legal assistance between states in investigations and prosecutions, and the extradition of fugitives to countries that request it.

States adopted the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances by incorporating its provisions into their domestic laws.

These were some of the specific international conventions aimed at combating crimes that are considered forms of organized crime. In addition to these conventions, there is a comprehensive convention for all these forms, which is the "Palermo Convention," which we will discuss next.

Branch Two: United Nations Convention against Transnational Organized Crime:

With the expansion of criminal group activities, the forms of organized crime multiplied, and it was no longer possible to rely on specific conventions to combat individual crimes falling under its umbrella due to their insufficiency and shortcomings. Furthermore, it was not feasible to conclude new conventions criminalizing all the activities encompassed by this crime due to the time and effort required for negotiating new or supplementary agreements. Therefore, the Polish delegation presented a draft United Nations Framework Convention against Organized Crime to the Commission on Crime Prevention and Criminal Justice at its sixth session held on May 9, 1997. The draft included 24 articles

inspired by the Naples Declaration and was discussed by states, facing several criticisms from international criminal jurisprudence.

Subsequently, the United States of America prepared a draft convention for the prevention of transnational organized crime.

This draft was discussed, and the task of preparing a revised draft convention was entrusted to an ad hoc committee named the Friends of the Chair Committee, composed of 28 states. This committee held several meetings, the first in "Rome" on June 18, 1998, the second in "Buenos Aires" on September 4, 1998, and the last in "Vienna" on April 18, 1999.

Its work was based on studies conducted by the Intergovernmental Expert Group on the draft framework convention submitted by "Poland" and the draft convention on the suppression of organized crime prepared by the United States of America, as well as drawing inspiration from the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs. Its work concluded with the preparation of a revised draft that was adopted by the United Nations General Assembly at its 55th session by its resolution dated November 15, 2000.

It was signed in "Palermo," Italy, by 124 participating states at the signing ceremony between December 12 and 15, 2000. In addition to the Convention, which contains 41 articles, two supplementary protocols were prepared: the first relating to combating irregular migration and the second relating to combating human trafficking. Since this Convention is binding on the signatory and ratifying states, these states have sought to fulfill their commitment by incorporating its provisions into their domestic legislations and adhering to its measures to combat this crime, especially regarding international cooperation and the extradition of criminals.

We will dedicate the second section of this chapter to studying the stance of domestic legislations.

Sub-section Two: Criminalization of Organized Crime in Algerian National Law:

Until the early 1980s, Algeria did not witness this scourge in its current concept and nature, except for some exceptional cases that could be classified within the framework of organized crime recorded at that time, particularly concerning embezzlement, bribery, and rare cases of trafficking in antiquities and hunting rifles.

Therefore, we will distinguish between two distinct phases regarding the combating of organized crime in Algerian law, as follows.

Branch One: The Pre-Palermo Convention Ratification Phase:

The Algerian legislator, like other legislations, criminalized criminal organizations and gangs under Articles 85, 86, 87, 87 bis 3, 176, and 177 of the Penal Code.⁶

These articles can be applied to organized crime that shares the characteristic of multiple perpetrators, i.e., participation in the commission of the crime. ⁷Article 41 of the Algerian Penal Code defines the perpetrator of a crime by stating:

"Anyone who directly participates in the execution of a crime or incites its commission by gift, promise, threat, abuse of authority or guardianship, fraud, or criminal deception shall be considered a perpetrator."

Furthermore, the issuance of Legislative Decree 92/03 dated September 30, 1992, concerning the combating of organized crime, by criminalizing any association, organization, or group whose purpose is to threaten state security and territorial integrity, or the stability of its institutions, or to obstruct the application of law, and punishing anyone who establishes, manages, or organizes these organizations, was significant.

However, despite the possibility of applying these texts to criminal organizations that commit crimes, as previously mentioned, the concept of a "gang of evildoers" stipulated in Articles 176 and 177 bis does not entirely correspond to the concept of an organized criminal group. Not every "gang of evildoers" is an organized criminal group, although the reverse is true. Moreover, the conspiracy and gangs stipulated in Articles 85 and 86 do not cover all activities that fall within organized crime but are limited to certain crimes against the state. The same applies to Legislative Decree 92/03, whose scope of application is limited to organized crimes in terms of hierarchical organization, secrecy in planning and execution, although they differ in nature and objectives.

Branch Two: The Post-Palermo Convention Ratification Phase:

The Algerian legislator's regulation of organized crime was not comprehensive and strict, unlike the period after Algeria's signing of the United Nations Convention against Transnational Organized Crime, which was signed in Palermo, Italy, between December 12 and 15, 2000⁸ and ratified by Algeria under Presidential Decree No. 22/55 dated February 5, 2002.⁹

At that time, Algeria sought to keep pace with international developments, expanding the scope of criminalization for establishing and joining criminal associations. Article 394 bis 5 of the Penal Code, newly introduced by Law No. 04/15 issued on November 10, 2004, criminalized¹⁰ agreements for the purpose of preparing for one or more computer fraud crimes. Subsequently, a series of laws aimed at combating organized crime were issued, including:

- Law No. 04-18 dated December 25, 2004, concerning the prevention of narcotic drugs and psychotropic substances and the suppression of their illicit use and trafficking, which stipulated in its Articles 17 and 18 the organized crime related to the import and export of drugs and the management or financing of drug production and psychotropic substances, or their manufacture, possession, shipment, or transit.¹¹
- Law No. 05/01 dated February 6, 2005, concerning the prevention of money laundering and the financing of terrorism, and its implementing regulations, included special provisions for the crime of money laundering stipulated in Section Six of the Penal Code, Articles 389 bis to 389 bis 7 of the Penal Code. As previously mentioned, this crime is considered one of the forms of organized crime as an auxiliary activity. The Algerian legislator dedicated a special law to this crime to integrate what came from international conventions ratified by Algeria, especially the International

Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly in 1999,¹² as well as the United Nations Convention against Transnational Organized Crime adopted by the United Nations General Assembly on November 15, 2000.¹³

Then, Order 05/06 dated August 23, 2005, concerning the combating of smuggling, was issued, which included references to transnational organized crime in Articles 14 and 15. The former stipulated the felony of arms smuggling, while the latter stipulated the felony of smuggling that poses a serious threat to national security, the national economy, or public health.¹⁴

Within the framework of combating organized crime, Law No. 06/01 concerning the prevention and combating of corruption, as amended and supplemented, was also issued.¹⁵

Since criminal organizations rely on corrupting public officials and bribing officials to achieve their goals, this law played a significant role in activating mechanisms for international cooperation.

By reviewing Algerian legislation, it is clear that it has kept pace with international efforts aimed at criminalizing and combating organized crime, thus fulfilling its international obligations imposed by conventions, making it one of the pioneering legislations in this regard.

Taking into account the specificities that this crime enjoys over other crimes, it has been granted special punitive and procedural rules.

Conclusion:

Organized crime has proven to be a cross-border scourge, deeply embedded in the economic and social systems of states, threatening international security and stability. In this context, its criminalization at both international and national levels has become an urgent necessity to confront this growing challenge. International conventions, especially the United Nations Convention against Transnational Organized Crime (Palermo), formed the cornerstone in building a unified legal framework to combat this phenomenon by defining criminalized acts and unifying states' efforts in areas of judicial cooperation, information exchange, extradition, and asset recovery.

At the national level, Algerian law has followed the path of international conventions, criminalizing acts of organized crime and adapting its legal texts to comply with international obligations. Algeria has shown a clear commitment to combating these crimes by enacting special legislation, criminalizing a wide range of organized criminal activities, strengthening investigation and prosecution mechanisms, and providing protection for witnesses and victims.

However, challenges remain that require further efforts to ensure the effectiveness of these measures. The rapid evolution of organized crime methods and its exploitation of modern technologies necessitate continuous vigilance and constant adaptation of legal texts and executive mechanisms.

Results:

The efforts made to criminalize organized crime at both international and national levels have led to several important results:

- **Unification of Legal Concepts:** International conventions have contributed to unifying the definition of organized crime and related acts, which has facilitated international cooperation.
- **Enhanced International Cooperation:** International legal frameworks have enabled the activation of judicial cooperation mechanisms between states, leading to an increase in extradition operations, mutual legal assistance, and coordination of investigations.
- **Development of National Legislations:** Many countries, including Algeria, have updated and adapted their national legislations to comply with international obligations, leading to the criminalization of previously unpunished acts, strengthening penalties, and providing new mechanisms for combating crime.
- **Increased Awareness:** International and national efforts have contributed to raising awareness of the seriousness of organized crime and its negative impacts on societies.
- **Improved Combating Capabilities:** These efforts have led to building the capacities of security and judicial agencies in combating organized crime through training, exchange of experiences, and provision of necessary equipment.
- **Asset Recovery:** The legal frameworks have facilitated the freezing, confiscation, and recovery of funds and assets obtained from organized crime, representing a significant blow to criminal organizations.

Recommendations:

To ensure more effective combating of organized crime, the following is recommended:

1. **Continuous Review and Updating of Legislations:** Algerian law, and other national laws, must keep pace with the rapid evolution of organized crime methods, including cybercrimes, digital money laundering, and online human trafficking, by continuously reviewing and updating legal texts.
2. **Strengthening International and Regional Cooperation:** Algeria should continue to enhance its cooperation with other countries, both bilaterally and multilaterally, in areas of intelligence exchange, operational coordination, and effective implementation of international conventions.
3. **Developing the Capabilities of Law Enforcement and the Judiciary:** Continuous investment is required in training and equipping security and judicial agencies specialized in combating organized crime, with a focus on financial and cybercrimes and complex investigations.
4. **Activating Asset Recovery Mechanisms:** Greater emphasis should be placed on tracing, freezing, confiscating, and recovering assets obtained from organized crime as one of the most important means of striking at the infrastructure of criminal organizations.
5. **Protection of Witnesses and Victims:** It is essential to strengthen witness and victim protection programs to ensure their cooperation with law enforcement authorities without fear of retaliation.

6. **Community Awareness:** Public awareness campaigns about the dangers of organized crime and its negative impacts on society should be intensified, and citizens should be encouraged to report any suspicious activities.
7. **Combating Corruption:** Given the close relationship between organized crime and corruption, efforts to combat corruption in all sectors must be strengthened, as it provides fertile ground for the prosperity of organized criminal activities.
8. **Leveraging Technology:** Modern technologies, such as artificial intelligence and big data analytics, should be harnessed in efforts to combat organized crime to improve prediction, detection, and investigation capabilities.

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