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The Crime of Financing the Proliferation of Weapons of Mass Destruction under Law 24-06 Amending the Algerian Penal Code

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Abstract:

The crime of financing the proliferation of weapons of mass destruction is one of the most serious crimes instituted into Algerian law under Law 24-06 amending and supplementing the Penal Code. It is also one of the most dangerous forms of transnational crime due to the grave risks it poses to both domestic and international security.

In response to international and regional commitments within the framework of combating terrorism and its financing, and to protect the national system from the risks of the illicit proliferation of these weapons, the legislature explicitly criminalizes all forms of financial or material support that contribute directly or indirectly to the production, development, possession, or transfer of weapons of mass destruction, through Articles 87 bis 15 to 87 bis 18.

Given the seriousness of the issues, the legislature even criminalizes their attempted commission, and subsequently stipulates strict principal and supplementary penalties commensurate with the criminal gravity. This embodies Algeria's preventive and deterrent criminal policy and confirms its international commitment to combating the most serious forms of financial crime.

***Keywords*:** *Crime; proliferation financing; weapons of mass destruction.*

Introduction:

In recent decades, the international community has witnessed a significant increase in the risks associated with weapons of mass destruction. These weapons, whether biological, chemical, or nuclear, are among the most dangerous, as they can be potentially harmful to both man in particular and the whole ecosystem on the whole.

While the proliferation of these weapons threatens global peace and security, the financing of their proliferation exacerbates this threat and constitutes one of the most dangerous forms of transnational crime.

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Private actors, whether natural persons or entities, seek, through illegal means, to commit acts of proliferation of weapons of mass destruction while aiming at undermining national and international stability and security.

In this context, the Security Council has issued several resolutions requiring states to criminalize illicit financing. These resolutions came as a supplement to the recommendations of the Financial Action Task Force (FATF) and its regional body (MENA FATF), which are meant to review legislative and regulatory systems so as to restrict the exploitation of financial systems for such crimes.

In the process of crystalizing the above, the Algerian legislator sought to provide clear provisions criminalizing the financing of the proliferation of weapons of mass destruction through Law 24-06, amending and supplementing the Penal Code, specifically in Articles 87 bis 15 to 87 bis 18. Thus, the importance of this topic lies in clarifying the gravity of the crime, on the one hand, and its prevention and combating, on the other.

Based on what has been mentioned, one question arises:

To what extent has the Algerian legislator criminalized the financing of the proliferation of weapons of mass destruction through Law 24-06?

The following sub-queries branch from the main query:

- Are the new texts sufficient to ensure effective protection of national and international security?

- What are the elements and penalties stipulated by the legislator, and to what extent are they consistent with international standards?

The descriptive analytical approach was adopted to clarify the legal texts and analyze their content.

Therefore, the topic was divided into two sections as follows:

- Chapter one: *The Conceptual and Legislative Framework for the Crime of Financing the Proliferation of Weapons of Mass Destruction*.

- Chapitre Two: *The Criminal Structure of the Crime of Financing the Proliferation of Weapons of Mass Destruction*.

Chapter 1*: *The Conceptual and Legislative Framework for the Crime of Financing the Proliferation of Weapons of Mass Destruction

The crime of financing the proliferation of weapons of mass destruction is a serious crime that has negative setbacks on both

national and international security. It has received international legal scrutiny in regard of its gravity. Algerian law has recently spelled out this crime in compliance with international recommendations while bridging the legislative gap. Accordingly, in this section, we will address the concept of weapons of mass destruction and the financing of their proliferation , followed by Algerian legislative developments in the field of criminalization.

Section1-1: ***The Concept of Weapons of Mass Destruction and the Financing of Their Proliferation***.

In this section, we will address the definition of weapons of mass destruction , followed by the types of weapons of mass destruction , and the pattern of financing related to the proliferation of weapons of mass destruction.

Subsection 1-1-1: ***Definition of Weapons of Mass Destruction***

The crime of financing the proliferation of weapons of mass destruction has acquired international definitions, and the Algerian legislator defined it in the Penal Code as follows:

Sub-subsection1-1-1-1: ***International Definition***[(1)] *Weapons of mass destruction "WMD" are among the most dangerous weapons used, due to the severe and grave damage they cause to all components of the ecosystem, both natural and man-made. The term "weapons of mass destruction" was first coined in 1937 to refer to new German bombing techniques during the Spanish Civil War. The Germans' use of chlorine gas during World War I at the beginning of the twentieth century against Allied forces, where the number of casualties reached ninety thousand, is considered the first systematic use of these weapons. In addition, more than one hundred thousand people were exterminated during World War II, when the United States dropped the atomic bomb on the cities of Hiroshima and Nagasaki in 1945. The effects of this use still sticks to the Japanese memory.*[(2)]

Sub-subsection 1-1-1-2: ***Definition under Law 24-06 amending the Algerian Penal Code***

Referring to Law 24-06 amending and supplementing the Algerian Penal Code.

We find out that the Algerian legislator has defined the financing of the proliferation of weapons of mass destruction without addressing the definition of weapons of mass destruction, as follows: *"The financing*

of the proliferation of weapons of mass destruction means any act undertaken by natural persons or entities through the provision or collection of funds with the intent of using them, wholly or partly, to induce, encourage, or induce any person, by any means, directly or indirectly, unlawfully or intentionally, to enhance the proliferation of weapons of mass destruction.(3)

Subsection 1-1-2*: *Types of Weapons of Mass Destruction

Weapons of mass destruction are classified into three categories: nuclear, biological, and chemical weapons.

Sub-subsection1-1-2-1*: *Nuclear Weapons: *Nuclear weapons are considered among the most dangerous types of weapons of mass destruction due to their destructive and lethal power(4). They are produced by thermal radiation explosions, whereby the energy generated by the explosion is converted into enormous amounts of heat, which may reach tens of millions of degrees Celsius, leaving behind radiation that has significant effects on humans and living organisms. There are five different types of radiation produced by nuclear explosions: alpha rays, beta rays, gamma rays, X-rays, and neutrons.(5)*

Sub-subsection1-1-2-2*: *Biological Weapons:

These are considered more dangerous and complex, as they rely on spreading infectious diseases such as plague or anthrax, using advanced technologies that enable their manufacture in small laboratories with limited resources. They are considered the most dangerous because they cause fatal diseases that are difficult to detect and control, and lead to widespread epidemics. They rely on infectious viruses or bacteria, developed using precise techniques from specialized laboratories, they are inexpensive and easy to carry, but they are extremely dangerous due to their rapid spread and difficulty in tracking.(6)

Biological warfare targets both military and civilian targets and is also used to destroy an adversary's agricultural and livestock resources.(7)

Sub-subsection1-1-2-3*: *Chemical Weapons:

A chemical agent is defined as a solid, liquid, or gaseous substance that causes death, damage, harm, or discomfort to humans, animals, plants, military materials and equipment, including vehicles, or other weapons(8). It can also be an intrusive, corrosive, or paralyzing substance to the mind and body.(9)

According to the traditional concept of a chemical weapon, it is a toxic chemical substance contained in a delivery vehicle, such as a bomb or artillery shell(10).

The widespread use of chemical weapons began during World War I, when poisonous gases such as chlorine and mustard gas were used, causing massive human losses amounting to approximately 100,000 deaths and millions of injuries. This brutal use sparked global outrage, leading to the signing of the Geneva Protocol in 1925, which prohibited the use of chemical weapons in warfare. However, it did not prohibit their production or stockpiling, which weakened their effectiveness. Despite the signing of the protocol, poison gases were used again during World War II, particularly in concentration camps. With the onset of the Cold War, the world witnessed a race to develop and stockpile chemical weapons, with more than 25 countries possessing advanced capabilities in this field. Although their use became rare after World War II, Iraq used them in the 1980s against Iran, marking the most prominent modern violation of this threat.

Among the practical usages of the use of chemical weapons, the vivid example would be the successive Israeli wars on the Gaza Strip and the brutal military operations perpetrated, especially in the wars of 2009 and 2012, where prohibited phosphorus bombs were used, as well as 825.I.M. shells.

Subsection1-1-3*: *The Aspect of Financing Related to the Proliferation of Weapons of Mass Destruction

Financing related to the proliferation of weapons of mass destruction is defined as: *"Any process of providing funds or financial services used, partially or entirely, in the manufacture, acquisition, development, transfer, or use of weapons of mass destruction." FATF(11), also known as the Financial Action Task Force, confirms that this financing also includes dual-use materials when they are diverted for illicit purposes.(12) Studies show that proliferation financing goes through three basic stages*: *raising funds, masking the source, and then purchasing sensitive materials. Financial indicators typically appear through networks of shell companies. (13)*

Section1-2: ***Algerian Legislative Developments in the Field of Criminalization***

The Algerian legislator, in the same line with other legislators, has proscribed acts of financing the proliferation of weapons of mass destruction, based on international references. Furthermore, the legislative background of Law 24-06 is also included.

subsection1-2-1: ***International Reference***

The international reference for proscribing the financing of the proliferation of weapons of mass destruction has emerged as a result of the growing non-traditional threats to global peace and security, as financing the proliferation of weapons of mass destruction is deemed among the most dangerous.

The security and legal challenges facing the international community in the twenty-first century. Security Council Resolution 1540 of 2004 is considered a basic turning point regarding this issue, as it compelled all states to draw legislative and regulatory measures so as to prevent the financing or support of weapons of mass destruction programs. The Financial Action Task Force (FATF) also supported the international reference through its binding recommendations to member states by establishing a practical framework for implementing financial sanctions and freezing proliferation-related funds.

subsection 1-2-2: ***The Legislative Background of Law 24-06***

Law 24-06 represents a national constitutional and legislative obligation, on the one hand, and a direct reflection of the international framework, on the other (UNSC, FATF treaties). Algeria seeks to protect its internal security while simultaneously acting in accordance with international law.

Law 24-06 supplements the Algerian Penal Code and aims to include the crime of financing the proliferation of weapons of mass destruction among crimes against state security. Therefore, incorporating crimes of an international nature into Algerian law is no longer an option, but rather a constitutional and legislative obligation dictated by Algeria's position in the international arena.

The international system, as Article 150 of the Constitution[(14)] rules supreme international treaties over national laws, which calls for the legislature to introduce continuous amendments to the Penal Code to ensure it copes with the requirements of international legitimacy.

Chapitre 2: ***The Criminal Structure of the Crime of Financing the Proliferation of Weapons of Mass Destruction***:

Under Law 24-06 as in any crime under the Penal Code, the crime of financing the proliferation of weapons of mass destruction is identified via a criminal structure represented by the legal and substantive elements, as well as the penalties ensued from committing acts of proliferation of weapons of mass destruction.

Section2-1: ***The Legal and objectives elements components of the Crime of Financing the Proliferation of Weapons of Mass Destruction***

In this section, we will debate the legal components of the crime of financing the proliferation of weapons of mass destruction,and the objectives elements…

Subsection 2-1-1: ***The Legal components of the Crime of Financing the Proliferation of Weapons of Mass Destruction (Legal and International)***

we will debate the legal components of the crime of financing the proliferation of weapons of mass destruction, defined by the legal and international spheres, as follows:

Sub-Section2-1-1-1: ***The National Legal Framework***

Law 24-06 amending the Penal Code introduced four new articles, 87 bis 15 to 87 bis 18, where Article 1 states:

Article 87 bis 15 criminalizes the financing of the proliferation of weapons of mass destruction, whether directly or indirectly, unlawfully or intentionally.

Sub-Section2-1-1-2: ***The International Element***

The international element is the foundation upon which the domestic legal element is built. As a result of international commitments, legislators were obliged to criminalize these serious acts that threaten both national and international security. Therefore, the international element represents the basis that granted legitimacy to this criminalization. Hence, the domestic legal element derived its legitimacy through commitment to the following:

- Security Council resolutions: *Resolution 1540 (2004) compelled all states to enact legislation prohibiting the financing of the proliferation of weapons of mass destruction.*

- Subsequent resolutions that supported this effort through targeted

financial sanctions, such as Resolution 1718 (2006) on Korea and Resolution 2231 (2015) on Iran.

- Financial Action Task Force (FATF) Recommendations, Recommendation No. 7 (2012/Updated 2021), which forced states to stipulate and implement financial sanctions on the issue. Immediate.

- Algeria's regional and international obligations: *Algeria is a member of the MENAFATF, also known as the Middle East and North Africa Financial Action Task Force (MENAFATF).*[15] *Member states are subject to a mutual evaluation mechanism, which assesses the extent to which member states comply with international standards.*

In its 2023 report, the group concluded that Algeria lacked compliance with Recommendation No. 7 on the financing of the proliferation of weapons of mass destruction.[16] *This prompted the legislator to address this fundamental and very important issue by strengthening the legal arsenal through Law 24-06, which explicitly criminalized the financing of the proliferation of weapons of mass destruction.*

Subsection2-1-2: ***The Objective Elements of Financing "WMD" Proliferation***:

After addressing the legal components in the first section, we ought to debate the objective elements, represented by the material element , and the moral element.

Sub-Subsection2-1-2-1: ***The Material Element***:

The material element of the crime of financing the proliferation of weapons of mass destruction is established on three basic elements.

As follows:

A- Criminal conduct:

Criminal conduct consists of providing or collecting funds and akin with the intent of using them, partially or wholly, in acts of proliferation of weapons of mass destruction, in either a direct or indirect way. The conduct in this crime also consists of attempting to finance, in addition to enabling individuals or groups with financial resources to carry out terrorist acts or proliferation. [17]

B-The setting:

The premise of the crime or its conception is the funds, financial resources, or material means that are used for collection, provision, or enacting.

C-The Outcome:

The outcome is achieved in two cases:

In the case of utter acts, the outcome is achieved by actual financing of the proliferation of weapons of mass destruction. While in the event of a venture, the probable result is satisfactory, i.e., a mere threat to security and peace, even if there is no actual enacting or financing.

D-The Causal Relationship:

There is a causal relationship between the behavior and the outcome. Thus, the financing of proliferation is what enables individuals or entities to carry out an illegal activity. As for the probable result, i.e., in the case of a venture, the causal relationship is also probable, i.e., if the funds had reached their destination, they would have led to the financing of proliferation.

Sub-subsection2-1-2-2: ***The Moral factor***:

The moral factor of this crime could be seen in the elements of knowledge and will, general intent combined with the special intent, and these come as follows:

A- Overall intent:

Consisting of the elements of awareness and will

-Awareness: *This means that natural persons, entities, or perpetrators in general must be aware that the funds, financial materials, and material resources are specifically intended to support an activity related to the financing of the proliferation of weapons of mass destruction, a serious act that negatively jeopardizes both national and international security.*

-Intent: *The perpetrator's will is directed toward committing the criminal act of providing financing for the purpose of proliferation of weapons of mass destruction, despite his awareness of the illegal aspect of this act.*

B-The presumption of special intent, as stated in the provisions of the law (Articles 87 bis 15-18), i.e., the objective must be directed toward a specific purpose stipulated by law, and the perpetrator must have the intent to facilitate or initiate proliferation. Therefore, the crime cannot be established merely through error or negligence, as financing is often carried out in a deliberate and secret manner. The legislature also stipulated the concept of attempted financing, which restricts the scope of impunity.

Section 2-2*: *Penalties for the Crime of Financing the Proliferation of Weapons of Mass Destruction.

The legislature stood against the crime of financing the proliferation of weapons of mass destruction through major and supplementary penalties, as follows:

Subsection2-2-1*:*Major Penalties:

The legislature stipulated major penalties, consisting of custodial sentences and financial fines, which it deemed consistent with the crime of financing the proliferation of weapons of mass destruction as a fully-fledged crime or as an attempt, as follows:

Sub-Subsection2-2-1-1*: *Penalties Depriving of Liberty:

The penalties depriving of liberty for this crime consist of temporary imprisonment from ten (10) to twenty (20) years[(18)]. This penalty is cut from the same cloth of the seriousness of the act committed, as it is an act that threatens national and international security. Accordingly, the legislature excluded the death penalty and life imprisonment, and instead stipulated the penalty of temporary imprisonment, setting its maximum limit at twenty years instead of thirty. The legislature also stipulated the concept of attempted financing. Therefore, anyone who attempts to commit this crime shall be doomed to the same penalty of custodial imprisonment[(19)].

Sub-Subsection2-2-1-2*: *Financial Fines

The legislator went beyond mere custodial penalties in his punishment of financiers of weapons of mass destruction. Rather, he stipulated a financial fine as a primary penalty complementary to the custodial penalty, not as an option. The fine for this crime ranges from 1,000,000 DZD to 2,000,000 DZD[(20)]. The same fine applies to anyone who attempts to commit the crime.

Subsection2-2-2: *Complementary Penalties[(21)] In order to enhance the effectiveness of primary penalties, the legislator usually resorts to complementary penalties, which are preventive and deterrent in nature. Confiscation is one of the complementary penalties stipulated by the legislator in the Penal Code. Pursuant to this, the law grants the competent judicial authority the right to seize funds and returns resulting from the crime. It is noteworthy that the legislator empowered the competent judicial authority to impose mandatory confiscation, meaning the confiscation of funds and proceeds resulting from the crime of financing the proliferation of weapons of mass destruction,*

even in the event of a ruling that the public lawsuit has expired due to the statute of limitations, the death of the accused, or any other reason for the expiration of the public lawsuit, or because the accused remains unknown. Accordingly, the legislator sought to establish an effective response and dry up sources of funding in line with Algeria's international commitments, particularly within the framework of FATF and MENAFATF recommendations and Security Council resolutions.

This format applies to all headers and subsections. The author presents the various stages of his research according to the methodological structure imposed by the topic and specialization.

Conclusion:

The conclusion of the article includes: *a summary of the research t Our study outlines the fact that the Algerian legislature has taken a significant step in criminalizing the financing of the proliferation of weapons of mass destruction by issuing Law 24-06 supplementing the Penal Code, thereby complying with the Security Council resolutions and the recommendations of both FATF and MENAFATF*

The scrutiny of such a crime brought about the following results:

- Results:

- The seriousness of weapons of mass destruction, including biological, chemical, and nuclear weapons.

- Emphasis on the danger entailed by financing of the proliferation of weapons of mass destruction, given the severe damage it causes to national security and international peace.

- The legislature has adopted strict principal and supplementary penalties commensurate with the seriousness of the crime.

- National texts are consistent with international obligations.

- the recommendations of the study:

- Activate the provision of Article 87 bis 15 of the penal code by focusing on prosecuting preparatory acts and forms of direct and indirect financing.

- Strictly enforce the provision of Article 87 bis 16concerning commercement (attempt), considering it a dangerous phase in its own right in WMD proliferation financing crim.

- Enhance penalties and define the criminal liability of natural persons and legal entities contributingto illicit financing, according to Articles 87 bis15-18 of law 24-06, to ensure deterrence.

- Adopt confiscation stipulated in Article87 bis 17 as a central and essential tool for drying up financing sources,including ahh founds and proceeds linked to the crim.

- Activate the role of specialized judicial poles and ensure institutional coordination for the integrated application of Articales 87bis 15to18.

- Strengthen international cooperation mechanisms and the exchange of hnformaionto counter transnational crimes.

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