

## Transitional Organized Crime in International Criminal Law: Call for Reform

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**Abstract:** This article, argues that the TOC, increasing in its scope and scale, but the international legal framework was not successful in stopping, nor reducing this phenomenon. This paper assesses the factors behind the growth of Transitional Organized Crime since 1990 and the threat that it poses to international security, and explaining the response of states to combat this non- tradition threat. In this study a comprehensive review has been conducted upon previous most relevant studies. To provide a better understanding of the phenomenon, this paper shines light upon various aspects of the subject matter. Our results present suggestions for new approaches towards TOC has been made and key aspects have been emphasized. In addition, gaps and flaws have been highlighted for further developments.

**Key words:** transitional; organized; crime; international; law

**JEL codes:** K14, K33

### 1. Introduction

As a result of the conflict between the superpowers during the Cold War, countries focused on politico-military security. However, with and the collapse of Soviet Union and the era of Cold war coming to its end, a new agenda of security imposed itself. The globalization process, the spread of technology, the increase in internal conflicts, flow of people, goods and money across borders faced rapid increasing, and the world's tendency towards free market economies and democracies raised drastically. These factors contributed to a significant growth in organized crime in terms of scale and scope, which became a series threatening national and international security, set aside, causing social, economic and political effects that undermine the stability of states and society (Alan Collins, 2010). Illegal activities of organized criminal groups varied and expanded to include a large number of countries. That was a new salient theme in international security.

Above mentioned illegal activities pose a major challenge to the world to exacerbate its social and economic risks, threaten the Security and the the stability of countries both internally and externally. This in turn requires concerted international action commensurate with the power of organized crime, as the legitimate activities become a profession, which have been practiced accurately and scientifically by criminal organizations/groups. This can differ and be diversified based on planning and implementation with a high level of technologies.

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Under that threat, no country, even the most powerful or in high level of progress, can face the transnational organized crimes on its own. The international community has convinced that It is necessary to unify efforts and mutual cooperation to combat organized crime in international ranks. Thus, the subject of combating and truckling the transitional organized crime has become a priority in international agenda. This has yielded in many international, bilateral and regional conventions to be adopted and ratified, which addresses TOC in several aspects, which can be namely, its criminalisation in national legislation, and implementation of law enforcement procedures associated with the accusation, trial, sanctions, jurisdiction, extraditions, and cooperation. This can be one of the main blue prints in international law, which the United Nations Convention Against transitional Organized (UNTOC) in 2000. This was with considering a land mark and the main legal instrument for signatory countries in term of cooperation and improvement of international legislation (Livey Fiona Rebecca, 2017). The signatories to the Convention are committed to taking crisis measures to combat organized crime in terms of criminalization in national law, accusation, trial, jurisdiction, sanctions and extradition, as well as legal cooperation and joint investigations (Paulo Pereira, 2013).

Moreover, the UNTOC, which comes into force 2003, contains 30 clauses providing for an elaborate and modern scheme for mutual assistance among state parties. However, there are many criticisms of the Convention in terms of scope and the definition of organized crime (Petrus van Duyne & Mark Nelemans, 2011). In addition, given the rapidly changing nature of TOC, UNTOC does not adequately explain the the growing activity of criminal organizations or the link between organized crime and other crimes such us, terrorism, corruption, conflict, modern technology , public health and global finance (Council on Foreign Relations, 2013).

Furthermore, a considerable amount of international conventions addressed TOC, and various measures adopted against transnational organised crime, which seem inadequate. They do not suffice to overcome the challenges and problems posed by TOC, regarding to its rapidly changing nature, horizontal structure of criminal syndicates, and its continuous growth. Another key aspect is sharing information, national interests, strategy of combating, and national law, which are composing serious challenges for the process of fighting transitional organized crime. It is therefore, important to strengthen international standards so as to respond effectively to criminal groups, combat cross-border criminal activities and “its ability to exacerbate conflicts, spoil peace processes and undermine state consolidation”.<sup>1</sup>

This article, argues that the TOC, increasing in its scope and scale, but the international legal framework was not successful in stopping, nor reducing this phenomenon. Thus, the international legal framework against transnational organized crime should be reviewed to meet the challenges posed by TOC, by adopting developed innovative strategies based on common worldwide goals.

TOC phenomena within international legal framework identifying the main challenges and weaknesses of the international system and how to strengthen them, addressing the gaps in international criminal law concern to the fight TOC are highlighted in the current paper, which can be namely, the relevant international conventions, achieving that part through a comparative analysis of academic research and studies applied in that regard. Furthermore, present study takes initiative in utilizing innovative, traditional and non-conventional measures that can enhance the international legal system that would/could activate the response to organized crime.

It is crucial to note the international legal cycle concern with fighting organized crime due to the ability of these groups to adapt and change according to the circumstances surrounding them-nationally and

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<sup>1</sup> <https://globalinitiative.net/wp-content/uploads/2015/02/ignoring-or-interfering-2015.pdf>.

internationally-and exploit the advantages of globalization to its maximum extent.

This paper assesses the factors behind the growth of Transitional Organized Crime since 1990; Its consideration as a threat to international security, and explaining the response of states to combat this non-tradition threat. As well as the identification and analysis of international legal instruments to combat that threat and its consequences in facing organized crime

This study takes several research models and methods that are in the light of previous analytical and interpretative measures and rules that are available through valid and accountable sources of law. In addition, a holistic review on the literature of matter at hand with regard to relevance and recentness was conducted for furthering the argument and better understanding various aspects of the phenomenon. Investigating the international framework on legality in facing transnational organized crime, in which the emphasis is on multinational, and regional conventions. In the light of studies conducted by experts of the field, this study takes a doctrine approach towards the phenomenon to understand primary and secondary mean and effects through socio-legal perspective.

The second part of this paper is to explain the concept of TOC with an operational detention, the reasons which stand behind the development of its main characteristics and its impacts. The highlighted Factors that have contributed to increase and spread of TOC, and the role of the weak states, that are the arena of activities of the criminal organizations. The third part analyses and presents the international conventions addressing TOC, and the international legal framework to fight TOC; the international mechanisms in fighting TOC and the states obligations under the international criminal law, and the challenges facing the international response.

The fourth part discusses the means that can enhance the international legal system, such as, international and mutual cooperation, law enforcement, improving investigative techniques, transnational criminal law, and transnational criminal court. The final part, concludes the gaps in the international legal system with the suggestions for a more effective response system.

## **2. The Nature of Transitional Organized Crime**

### **2.1 Defining Transitional Organized Crime**

So far, there is no single definition agreed upon organized crime. “Organized crime, it can be confidently asserted, is one of the most contested terms in academic criminology. This is at least partly due to “the range of organizational and structural variations on this admittedly ambiguous theme is immense” (Sheptycki J., 2003, p. 489).

Petrus C. van Duyne argued that “all definitions mirror a certain way of looking at this phenomenon. Some definitions stress the violent character of this form of crime while others focus on secret societies like the Mafia or the Yakuza, others stress the structural aspects of organized crime as line-organizations”.<sup>2</sup>

Jean Jirardo & Harold Trinkunas, argued “the term ‘Organized Crime’ was used to refer to hierarchical crime groups that were believed to monopolize the criminal market in a given area; to deploy violence and corruption systematically in pursuit of their illicit activities; and to preserved abnormally high profit level that allowed them to threaten political and economic structure” (Jirardo J. & Trinkunas, 2010, p. 431).

According to UNCTOC, Transitional Crime is “any criminal activity that is conducted in more than one state, planned in one state but prepared in another, or committed in one state where there are spill-over effect into

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<sup>2</sup> <http://arno.uvt.nl/show.cgi?fid=69344>.

neighbouring jurisdictions” (Jiraldo J. & Trinkunas, 2010). In other words, the transitional crime involves more than one country; the planning would be in one country and its implementation in another, supply in one place matching the demand in another.

J. Arquilla and D. Ronfeldt (2010), pointed that “The organizational design in flat. Ideally, there is no single, central leadership, command, or headquarters that can be targeted. The network as a whole has little to no hierarchy; there may be multiple leaders. Decision-making and operations are decentralized, allowing for local initiative and autonomy”. The hierarchy form of these groups includes centralization in decision-making and is subject to more risk, more danger, while the network system has a wider basic and decentralization in decision making. Some scholars argue that transitional crimes should be seen as a marketplace side rather than as a Network group.

For the purpose of this paper, the United Nation Convention against Transitional Organized Crime (UNCTOC) definition will be the appropriate one, which is set that “Organized crime is defined as any 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 of offense....to obtain directly, or indirectly a financial or other material benefit”<sup>3</sup>.Based on that, “Profit” and “Continuity” are two main elements for organized crime.

## 2.2 Characteristics of Transitional Organized Crime

Organized crime is different from criminal gangs in two basic features; firstly, organized crime activity includes offenses with serious social repercussions. Perpetrators of organized crime are able to avoid the government and external agencies that threaten their illegal activities continuity. Fijnaut, noted “that those criminal groups are able to achieve such protection in two ways; on the one hand, intimidation through the actual use of violence or the threat of using it; on the other, corruption which blocks action by state institution or civil society entities” (Fijnaut C., 1996). Ruth supported this and claimed “fear has many forms and serves many purpose of organized crime...Organized criminal groups utilize many forms of fear for continuing systems of extortion, usurious loan, maintenance of unity within the criminal organization, discouragement of informants and witnesses, and the securing favorable action and inaction from public officials” (Ruth Jr. H. S., 1967, p. 115).

The question can be asked here is, what are the characteristics of organized crime? According to Jay Albanese there are five common features of organized crimes:

- The criminal activities are conducted in a planned manner for the purpose of profit.
- There is a continuing enterprise or conspiracy that is based on a pre-existing social, ethical, or business relationship, or around a particular illegal product or opportunity.
- Criminal intimidation, threat, and violence are used to obtain access to an illicit opportunity and to compete with the other groups.
- Bribery and extortion is often used to elude law enforcement and prosecution.
- The organized crime groups are always adaptable to changes, such as the trends in supply and demand, law enforcement and competition (Albanese, cited in Rohaimi B Md Isa :3).

The activities carried out by criminal groups vary and are changeable according to supply and demand. The Fourth United Nations Survey of Crime Trends and Operation of Criminal Justice System categorized 18 distinctive activities, which are “ money laundry, illicit drug trafficking, corruption of public officials, infiltration of legal business, fraudulent bankruptcy, insurance fraud, computer crime, theft of intellectual property, illicit

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<sup>3</sup> <http://www.unodc.org/documents/treaties/UNTOC/Publications>.

traffic in arms, terrorism, aircraft hijacking, piracy, hijacking on land, trafficking in persons, trade in human body parts, theft of art and cultural objects, environmental crime, and other illicit smuggling” (Williams P. & Vlassis V., 2001, p. 13).

### **2.3 The Development of Transitional Organized Crime in Post-Cold War**

As was mentioned earlier, organized crime is not new, but it has been occurring for decades or even centuries. It is arguable that TOC has grown rapidly and in widely after the Cold War, it has arising parallel to the economic development, protection, social support initiated by the modern state, and the development of international law (Letizia Paoli, 2002, p. 63). The qualitative and quantitative change in transitional organized crime is related to, according to observers, key reasons, as Jamieson argues , includes: (1)expansion of markets, in the absence of guarantees and legal protection; (2) the change in the political structure of States formerly dominated by protectionism. (3) Fragile states and lack of rules (4) Miss understanding of legitimacy by people (Alison Jamieson, 2001, p. 377). This, as a result of the globalization process and dual transitions that occurred after the end of the Cold War “criminogenic asymmetries’ between countries in terms of structural discrepancies, mismatches and inequalities in the realms of the economy, law, politics and culture” (Klaus von Lampe, 2012, pp. 179, 185) have expanded, on a degree to have given additional power to the criminal groups. Followed by the incident in 1990s that the international community ensured that TOC is not merely a legal criminal problem, but a serious threat to internal and international security because of its ability to adapt and transform (Liz Campbell, 2014, p. 220). This notion is more thoroughly explained in the following sections.

#### **2.3.1 Globalization**

After the Cold War, organized crime has risen rapidly. Scholars often attribute the cause to globalization. Globalization has both positive and negative aspects and consequences; it brought with it opportunities for the weak, poor, and disposed, however also for criminals. It has forced liberation, as well as enslavement. It can be measured by the flow of goods, services, and capital, in addition to humans and their organs. Organized crime has benefited from the increased degree of integration and interdependence between states across the world, as a result of globalization. Paul William highlighted the negative side of globalization when he argued “Indeed, globalization has had a disruptive impact on patterns of employment, on traditional cultures, and on the capacity of states to deal with problems facing citizens within their jurisdictions, as well as problems that span multiple jurisdictions wide.” (Williams P., 2007, p. 193). He further added, “globalization has acted as a facilitator for a whole set of illicit activities ranging from drugs and arms trafficking to the use of large-scale violence against innocent civilians. In the post-cold war world, democracy, peace, stability and order could easily be exported from the advanced post-industrialized states to areas of conflict and instability” (Williams P., 2007, p. 193).

Fraud on the internet is a clear outcome of developed communications technology that been exploited by criminal groups, further, due to the communication technology criminal organization have become more flexible and dynamic(e.g., e-mail, which has become an essential communication tool, regardless of time and distance). Law enforcement is often slower than criminals in using the technological advances, owing to the immense profit of criminal illicit activities (UNODC, 2005).

Political and economic reform was another opportunity that has been exploited by criminal groups, due to the reduction of restrictions on international movement. Similar to liberalization, and global market place where, illicit agents took advantage of business opportunities in any available place, for instance after the creation of the North American Free Trade Area, trade between US and Mexico faced an extreme uprising from 81.5 billion USD in 1993 to 247 billion USD in 2000, and to 347 billion USD in 2007. Meanwhile, that area became the main route

for the smuggling of illegal goods, and aliens into USA, giving opportunities for criminals to hide their activities within the flow of legal commerce (Jiraldo J. & Trinkunas, 2010, p. 433).

With those transformations occurring in that period, criminals groups' strategic thinking, as well, was changed to keep pace with the new openness. "One reason that criminal and terrorist organizations have been able to exploit these new resources and opportunities so effectively is that they are highly rational in their behaviour, and carefully design strategies to achieve certain objectives, the objectives themselves are considerably different" (Williams P., 2007, p. 193). More effectively, criminals can manage risks from ruthless competitors and law enforcement. "This process of risk management includes risk avoidance or risk prevention strategies, efforts to combat or control risk, and strategies of mitigation" (Williams P., 2007, p. 196).

In the post-Cold War period, internal conflicts have increased, pushing economic migrants and displaced people to move across borders and resettle elsewhere. This provides another opportunity for criminal groups to attract new relative members and employ them for its favour (Jiraldo J. & Trinkunas, 2010, p. 435).

It could be argued, that the economic and political liberalization as a result of globalization, as well as dual transition or free movement in the period after the Cold War, mobilized people, money and goods around the world, meanwhile provided many opportunities for organized crime and its expansion and activation.

#### 2.3.2 A Fragile State

As mentioned above, one of the most important instruments, which helps criminal organizations to overcome the criminal law and protect themselves is corruption.

Fernando and Resa argued that "the organizations which played a major role during the Cold War and the set of institutions which were central actors in the confrontation between military industrial complexes, suddenly found themselves deprived by opposing superpowers and nuclear deterrence" (Fernando Reinales with Carlos Resa, 1999). Bear has stated "Much of the initial concern was generated by the military, intelligence and broader national security communities, which needed a new justification for their relevance and budget in post-cold war era" (Jiraldo & Trinkunas, 2010, p. 433).

States suffering from internal conflict are prey to organized crime. Political instability leads a state to lose its control over a specific area "called grey areas" that are then exploited by criminal groups to be their base. In some cases with extra power of those criminal groups "ungoverned areas" will be created. With the continuing tension, lack of peace and the increasing power of organized crime, politicians will become involved with criminal groups deeply which can continue even after the end of the conflict (Jiraldo & Trinkunas, 2010, p. 435). In this regard, Ivan Brisco argued:

Insofar as poorer, less-developed countries have begun to feature more prominently on the route maps of organized crime, the emphasis has also shifted from international collaboration towards strengthening these countries' institutional capacities to tackle globally networked criminality. Police and judicial reform, security training and specialisation, legislative initiatives, and targeted investment in hardware and infrastructure-building stand high on the menu for regions whose levels of economic deprivation and post-conflict institutional weaknesses have made them particularly vulnerable to global organized crime (Briscoe I., 2011).

Arguably, TOC affects individuals and societies negatively by crimes they commit for profit, such as spreading of AIDS because of drug trafficking and intravenous drug-users. Furthermore, TOC is considered as a strong threat to national security as some scholars argued "the perpetrators of transitional crime, are seen as the real threats to national security, increasingly wealthy and powerful criminals undermine the state, democracy and the economy through the use of corruption, violence and reinvestment of their profits in the licit economy"

(Jiraldo J. & Trinkunas, 2010, p. 439). Such strategies that mix or integrate deferent functions of police and military, pushed some observers to claim that the organized crime threat to national and international security has been exaggerated by the great powers to justify using military force to intervene and impose their hegemony. This will be discussed in the following section.

### 2.3.3 Exaggerating Transitional Organized Crime

The negative impact of organized crime on individuals, society and national as well security international security is undeniable and non-debatable. Combating TOC has become a priority of the states, the international community and non-profit organizations. In this regard, Naylor and Duyan argued that “critics point to misleading and sensationalized media coverage of ‘mafia-like’ organized crime group; political rhetoric based on grossly over-inflated official estimates of criminal profits and undifferentiated threat assessments by law enforcement based on ambiguous methodological and empirical ground to argue that the threat is exaggerated” (Naylor & Duyan, cited in Jiraldo & Trinkunas, 2010, p. 440). McCulloch argued that “Transitional crime is a pretext rather than a bona fide rationale for the expansion of the state coercive powers-power presented as putative countermeasures such as the “war on drugs”, the “war on organized crime”, and the declared war on terror (McCulloch J., 2007, p. 21).

This overestimation has encouraged the state, especially the super-powers, to involve the military in their alleged war on TOC. “The increase in concern over transitional crime in the past 30 years and the parallel rise in countermeasures has involved an incremental and progressive blending of military and policing functions” (McCulloch J., 2007, p. 21), “Transitional crime and the enemies it constructs are particularly productive in the state’s pursuit of expanded coercive capacities because it connotes an enemy that is at once close enough to evoke fear and distant enough to sustain a level of intense othering” (McCulloch, 2007, p. 26).

The same could be said for NATO’s intervention in former Yugoslavia. One of the reasons for intervention is the proliferation of criminal groups in that period in a period of internal conflict. In that regard, Livey says:

“In the 21 century, transnational organised crime appears increasingly on national and international security agendas. The securitisation of TOC may enhance international cooperation and result in the strengthening of the international legal framework to combat the threat. However, there is the potential risk that the legal measures and rules introduced to counter TOC may be misused to further political objectives and/or may result in individual rights being undermined” (Livey, 2017, p. 23).

## 3. International Legal Setting

### 3.1 Definition of Transnational Organised Crime in International Law

Transnational organized crime cannot be easily defined because it contains different crimes and essentially describes a social phenomenon. The first definition of organized crime was established in international law in the EU in 1998 Joint Action 733 (Francesco Calderoni, 2010), Article (1) defined a criminal organization as:

a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

This definition emphasizes on characteristics of the criminal groups as I the “structured group” stating for some time, thus it excluded the randomly criminal group or “on ad hoc basis” also the definition stated that the

crime have to be for benefit (Tom Obokata, 2010, p. 25), as not all organized crimes are motivated by material benefit (e.g., computer hacking, and distribution of child pornography) (Tom Obokata, 2010, p. 28) and as previously mentioned, the first part the UNTOC defines the TOC widely, adopting the double track approach, but still not been universal (Livey, 2017, p. 29).

Other terms are used that, with *inter alia*, carry the same meaning as organized crime, such as professional crime, criminal institutions, gangs or secret societies (Angela Veng Mei Leong, 2007). However, it is difficult to include all possible criminal activities associated exclusively with TOC (Dimitri Vlassis, 2002).

The terms “Transnational” and “crime” are easily defined in laws and conventions, but the word “organized” and its interpretation pose many challenges because they define “attributes of the criminal organizations that make the crimes they commit organized” (Felia Allum & Monica Den Boer, 2013, pp. 135, 137). Although, the definition of transnational organized crime enhances and increases international cooperation, and tends to increase its effectiveness. However, if the definition is not accurate, the TOC control measures may be ineffective or incompatible with the rules and principles of nation-states (Pierre Hauck & Sven Peterke, 2010, p. 407). Typically, the term of “organized”, refers to a group of actors, such as a group of three or more people working together, or a group of activities, such as drugs or human trafficking. Based on that difference in the interpretation, the legal treatment of affiliation with criminal group, as well as the activities associated with TOC, varies from state to state.

The definition of the term “organized crime” is considered to be challenging and difficult to implement. However, the definition of organized crime remains a highly important issue. Therefore it is difficult to reach consensus on one definition or agreed meaning of the term “organized crime”.

Arguably, there is no international consonant on a single comprehensive definition of organized crime, for many reasons, the most important is the changing nature of organized crime, the different interpretation of the term between States, and the legal position among States on such crimes.

#### **4. Legal Framework to Fight TOC**

Having shown the concept of transnational organized crime, its causes, characteristics and effects in the previous section, the following chapter will discuss the obligations of States under international law in dealing with such a threat; and what legal instruments have been implemented so far to address TOC. This is followed by highlighting the most recent and relevant multi-national and regional conventions addressing the TOC and the challenges facing the international community in the fight against it.

##### **4.1 The States’ Commitments Under International Law**

International law imposes on the obligations that States have to respect under international treaties. However, these obligations merely focus on the outcomes (Joseph J. Lambert, 1990, p. 101). These obligations do not require states to enact laws for fulfilling their international obligations. Although, they provide guidelines, which state parties ought to follow. For achieving certain goals and obligations, states are to choose frameworks and means to obtain the set goals and commitments that it can require (Olympia Beku, 2009, p. 475). International law consists of a variety of international treaties and sovereign groups of domestic criminal norms with the distinctive legal authorities. Due to the complexity of international treaty standards, their conversion into domestic laws, facilitates the possibility to better assimilate domestic criminal laws into the international ban regime.

The increasing number and complexity of of international treaties and their conversion to domestic laws



makes it possible to better assimilate domestic criminal laws in the international prohibition regime (Neil Boister, 2015, p. 9). When States ratify a particular convention that criminalizes certain unlawful conduct, States Parties agree to criminalize unlawful behaviour set out in those conventions and to adopt mutual legal assistance and extradition provisions, which require cooperation with other States having jurisdiction over accused individuals (Neil Boister, 2015, p. 45).

In addition, conventions such as UNTOC, include indirect repression of crimes with actual or potential transnational effects or transitional moral impact. This is followed by states parties that are required to criminalize certain forms of conduct and provide legal assistance to other states parties. This is due to the fact that States parties are required to criminalize such criminal activities and to provide legal assistance to other States parties. Hence, the (transnational) element is the main in the definition of crime as an objective and jurisdictional element, because it implies that States parties should establish jurisdiction over activities beyond the territorial ((Neil Boister, 2015, p. 54). When a State ratifies the Convention, it is obliged to implement it, and to enforce it at the national level. As such, international treaties provide broad outlines and leave the mode of implementation to the State party (Livey, 2017, pp. 30-31). Here, the States Parties adopt two forms of transposition: “direct transposition” of the treaty formulation and what is to be criminalized, or “indirect transposition” of treaty provisions. Here, the substantive content of the treaty and its rules are interpreted to suit the structures and principles of the national legal system (Neil Boister, 2015, p. 20).

International law is broader than treaty law in terms of scope. Consent is the basis of international law and therefore constitutes the cornerstone of customary international law that arises of ‘state practice arising out of a sense of legal obligation (*opinio juris*)’ (Neil Boister, 2015, p. 1153).

Despite the previously mentioned facts, some researchers argue that customary international law is not clear, difficult to prove field of contradictory interpretations (Schreuer, 2000, p. 7).

Although these instruments provide greater legal certainty, obligating states to support and cooperate through the use of “strict law” sources restricts and limits the sovereignty of States parties. Therefore, researchers focus on quasi-legal instruments that do not have any binding force, or so-called “soft law” instruments, such as recommendations (Neil Boister, 2015, p. 54).

Soft law is considered easy to achieve and more flexible, and can be worked out with coercive name and shame tools. Although these instruments do not bind states legally, they encourage states to cooperate and coordinate (in-depth) than they would obliged by conventions and contract (Shaffer & Pollack, 2012, p. 1163). Soft law, with more flexibility, experience and deliberate dialogue, has the potential to become acceptable and customarily over time to be universally accepted. On the other hand, it has been able to expand, elaborate and continuously develop the strict law. In the other words, it represents a modern version of “binding law”, the spirit of law, which aims at the growth and progress of law (Shaffer & Pollack, 2012, p. 1158). States parties therefore expressly and voluntarily implement all obligations, which constitute international treaties, contrary to customary international law. Far from harmonisation and approximation of criminal law, each jurisdiction has the right to enforce judgments according to its political, cultural and social traditions. Moreover, an international treaty does not prohibit regional and bilateral agreements. “Instead, these three levels must work in an integrative, and complementary manner, creating a global” network to fight crimes (CarrieLyn Donigan Guymon, 2000, p. 99).

#### **4.2 International response to TOC threat**

Since TOC exit through “International Cooperation”, using sophisticated methods and high technology, it must be addressed on an international level and combat through Multinational cooperation (Rodrigo Paris-Steffens,

1990, p. 15).

International cooperation, are the joint efforts of a group of States and international organizations in the fight against organized crime through the adoption of bilateral and multilateral conventions aiming at unifying efforts to TOC, to identify it, monitor its causes and patterns, take legal actions, and to impose penalties on perpetrators, regardless of their nationality, and their positions or the countries committed in. Organized crime is an imposing threat towards societies, the independence level of governments, economic security of a state, and democracy, which subsequently effects human lives and national security on a global scale (Phil Williams & Ernesto U. Savona, 1996, p. 31). While there is a set of rules of international criminal law dealing with organized crime, it is not sufficient and does not correspond to the level of gravity and evolution of organized crime.

Carrielyn Dongan Guymon urges “While there is a growing body of international criminal law relating to the various activities of organized criminals, it is time for an integrated, universal approach that addresses all aspects of organized crime throughout the world. An international convention clearly codifying the illegality of the major activities of international organized crime under international law and providing for multilateral legal assistance in apprehending and prosecuting leading international organized criminals, would go further toward matching and surpassing the sophistication and cooperation of today’s criminal enterprises than any of the current national, bilateral, multilateral, regional, or piece-meal international approaches” (CarrieLyn Donigan Guymon, 2000, p. 99).

International coordination and cooperation is required to meet the same level of coordination and cooperation of criminal groups, which acts and treats as a formal state with its own rules, regulations, and laws ,holds conferences and summits of their own, conducts research and studies, recruiting agents in the largest international institutions (Claire Sterling , 1994, p. 113). Thus, the concept of “treaty crimes”, has appeared, which constitutes a main part of international criminal law, beside its strict sense (genocide, crimes against humanity, war crimes, aggression) (Neil Boister, 2003, pp. 953-954), so-called (core crimes). Henceforth, based on the theory of the division of international criminal law into strict sense (core crimes) and a broader concept (organized crime). The perpetrators of (core crimes) bear direct criminal responsibility under the international criminal law and are tried before the international criminal tribunals. Although these crimes are linked to the misuse of state power, they are committed by non-State actors with the capacity to engage in transnational organized crime. This is while they are still being fought horizontally between States (Clark R. S., 1988, p. 49). There is a gap that exists among organized crimes ranks within domestic laws and their adoption for treaties and judicial cooperation. This is in regard to states that have priority on arrest and/or prosecution of suspects and relatively forensic evidence data collection. This gap can be seen in between jurisdictions and the enforcement of law, specifically when international crimes have been committed and international courts must addressed the crimes (whether organized or not) through perspective of national law and its jurisdiction (Harmen van der Wilt, 2016, p. 2).

Smith J. M. and Schloenhardt, argues that this integration, and convergence of organized crime with political crimes makes law enforcement subject to constant criticism and is seen as outdated and obsolete (Smith J. M., 2009, p. 1112; Schloenhardt, 2005, p. 93). Some legal scholars criticize the theory of partition, as a rigid concept, because the boundary between political crime and transnational organized crime has become blurred and unclear. This becomes more vivid in cases which, terrorists are engaged in drug trafficking, human trafficking, kidnapping and extortion to finance their operations, while maintaining political and international relations. Informal alliances between transnational organized crime and terrorism have become a real challenge to law enforcement authorities around the world, benefiting from weak, fragile states and borders Open and advanced technologies (Shelley Li,

2014; Makarenko T., 2004, pp. 129, 133).

The international community has recognized that TOC is highly sophisticated and effective. The drug trade, for instance, is committed with highly professional, systematic order in term of production system, trafficking, distribution, communications, cash transaction systems and transportation systems (Godson R. & Williams P., 1998, pp. 66-68). At the same time, drug traffickers are in networks of links with arms dealers, terrorist organizations and national intelligence agencies in different ways. The members of these groups are different in their nationalities and skills.

In the light of the above, it can be concluded that international treaties, whether multilateral, regional, or bilateral, are the main mechanism in the fight against organized crime, in addition to international Interpol and domestic law (CarrieLyn Donigan Guymon, 2000, pp. 53-99). Arguably, Transitional Organized Crime exist with support and coordination in international level and it cannot be confronted and fought without international coordination and cooperation (CarrieLyn Donigan Guymon, 2000, pp. 53). The United Nations, for instance, has adopted three distinctive legal instruments for fighting drug trafficking, transnational organized crime and corruption “Each of these conventions sets forth mandatory obligations for the parties to criminalise offences, establish jurisdiction, provide fair treatment, and to implement law enforcement devices of *aut dedere aut judicare* and mutual legal assistance” (Usman Hameed, 2014, p. 7).

#### **4.3 The Main Challenges Facing International Response**

The fight against TOC is complex, and there are several factors, which strengthen the complexities. Those challenges in preventing, and controlling TOC come from various sources, which can be legal, cultural, financial, and/or political. The main challenges facing the International containment are presented below:

##### **4.3.1 Sharing Information**

The information-sharing system is the primary issue of containing transnational crime through international cooperation. This is while no country is immune from becoming a home country, host country, transshipment or service state to transitional criminal groups TOC (Godson R. & Williams, P., 1998, pp. 66-68). There is, however, a lack of detailed, valid, and reliable data (Peng Wang & Jingyi Wang, 2009, p. 28) about criminal groups and their activities, all of which, create obstacles for international agencies interested in fighting organized crime, including the United Nations (Cressey D. R., 1972). Each State should take the responsibility of the exchange of information to promote international cooperation.

##### **4.3.2 National Interests**

National security, internal corruption and criminal interests may exclude some states from international cooperation. Considering the interests of a particular state and if it is in contradiction with other states, it cannot achieve those interests through multinational cooperation. The state will flee from coordination and cooperation under the pretext of secrecy of information or subject matter to national security and sometimes lack of interest (Thayer G., 1969). In that regard Musto argued that “when a decision involves dealing effectively with a drug-producing or exporting nation while maintaining national security interests through friendly relations with that country, national security and good relations nearly always win out over the important but less crucial issue if drugs” (Musto D. F., 1987, p. 256). Furthermore, the state rejection of cooperation is not because of the protection of national security, but to protect particular official leaders identified from embarrassment and scandals, and possible charges of criminal behaviour (Martin J. M. & Romano A. T., 1992, p. 97). Thus, the rejection of multinational cooperation can protect each state from external reviewing. However, it simultaneously strengthens criminal groups and provide opportunities to avoid prosecution (Peng Wang & Jingyi Wang, 2009, p. 28).

#### 4.3.3 Strategy of Combating

Transnational organized crime is linked to the internal and international environment, as some crimes arise from special cultural or social circumstances and experiences that vary from country to country. A country's acceptable behaviour may be illegal in another country (James O. Finchenauer, 2000, p. 3). The differences between countries because of their unique cultures that support the Comparative Criminology Project are important, offering valuable insights on the similarities and differences between different criminal justice systems (Sheptycki J., 2005). On one hand, with the United Nations adopting a dominant strategy, that could help its agencies focus on the structures, activities, strategies and instruments of transnational criminal organizations and On the other hand, make it extremely difficult to reach agreement on that particular dominant strategy to contain the multinational crime. In addition, disregard of criminologists of Third World countries, Western countries' neglect of developing countries, treat them in a most theoretically primitive way (Cohen S., 1982, pp. 85-119), those countries lack of interest in criminal research has led to a significant imbalance in the production of crime-related knowledge (Agozino B., 2004, pp. 343-358). Thus, Godson and Williams suggested "A more incremental approach, if done carefully, could have significant positive results" (Godson & Williams, 1998, p. 74).

#### 4.3.4 The Power of Criminal Organizations

Countries with institutional systems, which have a uniform policy and culture, control over the army, fight corruption, control all of their territories, are considered strong and traditionally protected from crime (Lupsha P. A., 1981, pp. 95-115). On the contrary, the power of criminal organizations cannot be underestimated. Transnational crime organizations have involved a complex set of attitudes, values, behaviors, and norms, which in turn has turned into an "underground empire", with a mere objective of maximizing profit through all operations. Ergo, the fight against transnational crime is an unfair competition, as the TOC advances and copes with changes on a fast-paced basis, which challenges all nations in regard to multinational crimes as well as the required equipment to be possessed or acquired for addressing those crimes. Rosenau argues that transnational crime groups "enjoy their freedom and flexibility to engage in criminal activities", restricting governments' regulations on the matter (Rosenau J., 1991, p. 9).

It is noteworthy that, governments operate within the framework of international and regional norms and principles, while transnational crime groups are not restricted and operate outside the rules at the regional and global levels, are not responsible for their criminal behavior and do not enjoy sovereignty (Peng Wang & Jingyi Wang, 2009, p. 29).

#### 4.3.5 National Law

Challenges in meeting transnational crime arise from national approaches to law and law enforcement. Each country has its own laws and law enforcement system to deal with crime. The effectiveness of those laws is notably limited with crime and criminals crossing national borders. In this context Mark M. Reichard notes "the international community is not well positioned to respond to such issues, as foreign nationals committing a crime in the United States and escaping to their home country, because, extradition and other procedures are archaic, based upon 19th century standards, and of limited use today" .<sup>4</sup> However, it is important to note that even countries with strict laws to combat organized criminal activities face limitations. The competence of national law enforcement agencies is usually limited when criminal activity extends beyond national boundaries (Shoshannah V. Asnis, Note & Comment, 1996, p. 29).

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<sup>4</sup> Statement from a focus group conducted by NIJ's International Center, March 19, 1999.

#### 4.3.6 A Lack of Comprehensive Convention Against TOC

Criminal groups continue to find places beyond the control of governments to carry out their criminal activities with no respect for borders and sovereignty. “Ironically the transnational trafficking organizations are able in many respects to operate more extensively and freely than state actors that have more resources and legitimacy” (Paul Stares, 1996, p. 12). The large number of such international, bilateral conventions, non-coverage of all types of crimes, and absence of a single, comprehensive international convention against international organized crime, examining all categories of crimes (Carrielyn Donigan Guymon, 2000, p. 85), has led such criminal groups to exploit the international legal gaps. This in turn constitutes a real challenge that weakens the fighting TOC process.

It is also necessary to reach broad international agreement even if bilateral or regional arrangements continue to increase. Accordingly, for the convention to be effective, it must include a number of fundamental elements, which has been listed by Carrielyn Donigan Guymon as bellow:

“(1) Recognition of the threat and need for cooperation, (2) A description and/or definition of the features and activities of international organized crime, (3) Required harmonization of national legislation in prohibiting the defined activities of organized crime, (4) Regulation of commercial and banking sectors that increases transparency, guards against money laundering, and eliminates tax havens; (5) Required adoption of the U.N. Model Treaties on Extradition, and Mutual Assistance in Criminal Matters; (6) Establishment of improved centralized information gathering and sharing; (7) Measures aimed at the upper echelons of criminal organizations, including required domestic criminalization of participation, conspiracy, etc.; (8) Freezing and forfeiture of the proceeds of organized crime” (Carrielyn Donigan Guymon, 2000, p. 89-90).

Finally, researchers believe that the main problems faced by actors in fighting TOC are:

The lack of equipment, budget, qualified personnel, technical capability, organizational structure, problems resulting from training, and problems resulting from legislation (Fatih Vursavas, 2015, p. 88).

## 5. Enhancement and Activation the International Legal System

Transnational organized crime is a growing threat to national and international security. Organized criminal groups expand. The international legal framework against organized transnational crime is no longer equipped to deal with these growing threats. Accordingly, coordinated action at the international level must be strengthened by enhancing the international legal framework by taking the necessary measures. This section summarizes paths to strengthen the international legal system to deal with TOC in an effective manner.

### 5.1 International and Mutual Cooperation

#### 5.1.1 International Cooperation

The growing problem of transnational organized criminal networks has forced States to adopt a cooperative approach. However, these mechanisms are no longer adequate and need reformation to meet these new challenges. The State itself needs to reformulate its institutions and the way it works both bilaterally and in a global context (Juan Carlos Gachúz, 2016, p. 3). “States and the communities of states are still bureaucratic, hierarchical, slow to operate, slow to respond to groups that are extremely agile, highly networked, intensively flexible, and able to respond quickly both to opportunities and dangers” (Phil Williams, 2012, p. 32). International cooperation is a focal point in the fight against TOC, but still there are flaws that prevent international cooperation from functioning effectively, for instance, there is “growing divergence between the jurisdictional needs of the international system and the conceptual structures provided for this purpose by international law” (Danielle

Ireland-Piper, 2012, pp. 122, 126). International cooperation must therefore be re-evaluated to increase its effectiveness. Thus, any concern the state can overcome by integration of international law and suppression conventions into internal laws, enables the state to achieve the collective interests as well as addressing domestic and international problems effectively, and the development of the local system (Livey, 2017, p. 86).

States should ensure the development of long-term strategies aimed at strategically defeating transnational organized crime through the standardization of “common terminology, definition, and conceptions of the conduct to be controlled” (Cockayne, 2007, p. 23). This should be followed with the introduction of appropriate sanctions and regulatory mechanisms, for instance, United Nations counter-terrorism strategy or the United Nations Millennium Development Goals. It is important to develop such strategies in collaboration with various stakeholders, such as member states, international organizations, civil society, as well as the private sector (ECOSOC, 2015). Cooperation must go beyond borders as it is necessary “for successful domestic trials as well as for the imination of safe havens” (ASEAN, 2010, p. 1) for organized criminal groups, and should be reviewed regularly to properly cope with evolving practices to allow for broad and urgent cooperation (Robert J Currie, 2000, p. 143).

#### 5.1.2 Mutual Cooperation

Mutual legal assistance treaties between States are of the utmost importance for obtaining assistance in the investigation or prosecution of transnational organized crime. For instance, Mini-mutual Legal Assistance Treaties (MLAT) have been integrated into suppression conventions, such as the UNTOC (Livey, 2017, p. 87).

Those MLAT treaties tend to rely on existing mutual legal assistance arrangements without prejudice to existing or future legal assistance agreements between the parties, and its procedural provisions apply only if the requested and requesting state are not already bound by the Legal Assistance Convention unless they decide to use mini MALT instead (Boister, 2011, p. 199). However, many scholars believe that mutual legal assistance agreements contain many flaws and have clear negative effects on human rights, such as the absence of grounds for refusal based on the said effects or limited rights of defense. Although MLAT is not considered “a direct and far-reaching interference in the personal liberty of the individual” (Sheedy J., 1998, p. 11), it raises human rights issues, as there is no dividing line between judicial cooperation and mutual administrative and legal assistance (John AE Vervaele, 2015). An example of such violation of human rights is the extradition of an accused of a crime to a State punishable by death for that crime and violating article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Relatively, reasons for rejecting MLAT applications should be provided. However, by imposing these grounds for refusal, the flexibility of mutual legal assistance can be restricted. It can be deemed that states parties must adopt a human rights-oriented approach to the development of the law on international cooperation in crime. The International law association supports this approach, provided that “there are substantial grounds for believing that the provision of such assistance could result in a serious violation of the rights of any person under customary international law or domestic law of the requested state (Robert J. Currie, 2000, p. 166). Additionally, “suspects and victims in particular” remain objects of MLA to gather evidence (Livey, 2017, p. 89).

Mutual legal assistance is essentially a model of sovereign cooperation between States, subject to the discretionary power of the executive. Moreover, coercive measures and special investigative techniques are rarely included, and if they do, they are subjected to strict rules and procedures in the domestic law of the implementing State (John AE Vervaele, 2015, p. 1359). Furthermore, to overcome practical and procedural problems, States Parties should obtain assistance in capacity-building to address problems that occur frequently through, for

instance, the “development and use of checklists of evidentiary requirements to be satisfied for a request to be accepted” and the “use of standardized forms and guidebooks” (Yvon Dandurand, Gherardo Colombo & Nikos Passas, 2007, pp. 261, 271). The use of these tools will facilitate the ability of institutions and bodies to deal with MLA content and can be used to train staff in relation to the legal requirements of MLAT. Liveit argues that “mutual legal assistance treaties ought to be modified as to be taken into account are human rights implications and the interests of the defence”. Within this context, MLATs should address changes in society, as well as practical and procedural problems” (Livey, 2017, p. 89).

### **5.2 Improving Investigative Techniques**

Dealing with organized criminal groups requires special investigation techniques, new technologies provided criminal groups with new means to commit and conceal their criminal activities, while introducing new investigative technology for law enforcement (Frank G. Madsen, 2016, p. 505). Therefore, UNTOC Article 20 contains a number of these techniques, where informants, surveillance and undercover operations are used. These techniques have an effective role in law enforcement and complex investigations. However, they are faced with obstacles due to various local laws governing the use of these techniques, which can be used to reduce the impact of the strategic surprise of changing criminal threats and environmental change (John W. Coyne & Peter Bell, 2011, pp. 60-61).

Special techniques in investigation are numerous, diverse and constantly evolving. However implementing them may conflict with rights and freedoms. Therefore, those techniques must be used in accordance with the principles of legality, respect for human rights, utility, and proportionality of these means (Laurentiu Giurea, 2012, p. 137), “law enforcement (including the security services in many countries) has used these technologies without proper judicial supervision. Such use may or may not be illegal. Regardless, the point is not, one might argue, the legality but the lack of democratic accountability” (Frank G. Madsen, 2016, p. 505). An example can be when using cell phone imitating technology, cell phones are connected to it, allowing communication to be intercepted (Devlin Barrett, 2014). This is while, strong encryption makes it difficult and often impossible to access hard drives for individuals suspected of child pornography (District Attorney, 2015, p. 9).

To ensure that such techniques are used correctly and without breaches, common standards must be developed to enhance international cooperation in criminal matters related to investigating techniques. In addition, to minimize the harm that is caused to victims, there should be an emergency intervention plan in case the victim is harmed or is likely to be harmed (UNODC, 2008). This should be of concern whether the source of the damage is national legislation or instruments in the field of international cooperation.

Special investigative techniques are useful when dealing with organized criminal groups because of the inherent difficulties and risks involved in accessing information and collecting information about their operations, Legislation, and standards relevant with investigative techniques should be re-evaluated to reflect technological progress. It is imperative taking into account fundamental rights and freedoms, and enabling international cooperation (Livey, 2017, pp. 92-93).

### **5.3 Transnational Criminal Law**

Transnational Criminal Law (TCL) has emerged as a branch of transnational law that examines transnational criminal cases, and although there is no agreed definition of national boundaries of criminal law (Livey, 2017, pp. 92-93), it is based on the principle that “States may exercise cross-border authority in criminal law” (Sabine Gless, 2015, pp. 117-118). In 1950, Jessup defined TCL, as a law regulating acts or events that transcends local boundaries (Philip Jessup, 1956, p. 2). Boister, defined it as “crimes established through treaty obligations in

multilateral crime suppression conventions such as the 1988 Vienna Convention — the so-called “treaty crimes” or “crimes of international concern”. Accordingly, TCL only becomes apparent when analyzing domestic legal systems to distinguish their transnational characteristics (Neil Boister, 2015, p. 9). This definition appears to focus on a law enforcement approach, which includes emerging transnational crimes such as human trafficking through “governance of transnational criminal actions” by suppression conventions (Annika Suominen, 2014, pp. 3-6). Boister follows a top-down approach and excludes other areas of law, so this definition may be seen as narrow and exclusive. However, he argues that transnational crimes are evolving rapidly and by implementing the suppression treaties, such as UNTOC, created TCL as “probably the most significant existing mechanism for the globalization of substantive criminal norms” (Neil Boister, 2003, pp. 953, 956). Livey, stated that the importance of TCL lies in the fact that it clearly distinguishes between core crimes under international law and crimes that may meet a lesser number of universal values and interests, yet consist of fundamental importance nonetheless (Livey, 2017, p. 94).

Despite the aforementioned, emergence of multiple legal systems may be flexible in some terms of solving matters that occur in cross-border sections. This can lead to a vague, yet confusing situation for individuals to abide and follow the laws that govern such cases (Sabine Gless, 2015, p. 122). Moreover, individual interests may be marginalized because international treaties and many independent groups of domestic criminal standards dominate the TCL. Taking into account, that the latter should be seen as a cluster of all rules, procedures and practices (Livey, 2017, p. 94), and not a coherent legal framework, but a conglomeration of laws, devised from multiple subsystems of national *ius puniendi* (Neil Boister, 2003, p. 30). Boister stated that the transnational criminal law system is becoming increasingly important, while, it is not clear to what extent the regime differs fundamentally from the law treaties. Although, TCL includes the rules of national jurisdiction. Its core strength lies in providing guidelines for international cooperation against organized transnational crime in the field of international criminal law. Individual interests must go hand in hand with strengthening legal frameworks, which go beyond the internal boundaries of alleged criminals to become members of multiple normative communities, local, regional, extraterritorial and non-territorial in nature (Neil Boister in Sabine Gless, 2015, p. 140).

#### **5.4 Transnational Criminal Court**

Transitional Organized Crime has a different and special nature. One that international courts do not deal with it. The jurisdiction of the International Criminal Court (ICC) has been defined in Rome Statute, limited only to the consideration of core crimes, such as genocide and crimes against humanity (Robinson, & Trofymow, 1996; Prep Com Report, 1996; Von Hebel & Robinson 1999, p. 81). National courts are able to prosecute the TOC crimes if there is an effective system of international cooperation in the criminal field. International courts have a central role in counterbalance institutional deficiencies, protect subjective rights and ensure compliance with international law, and reinforcing domestic capacities (Simon Hentrei, 2013, p. 419). Thus, decisions of international courts affect individuals as well as public. It can be said that international and national courts have an integrative relationship. In this regard, Simon Hentrei stated that “the principle of complementary legitimates ‘the exercise of authority in which the relationship between domestic and international courts is at play’ and ‘serves as a normative yardstick to guide and evaluate the jurisprudence of international courts’” (Simon Hentrei, 2013, p. 421).

It could be argued, that the current international courts are not competent to consider cross-border crimes, despite the growing impact of TOC on the world at large. The question that arises here is how to overcome this legal crisis? It could be perhaps achievable by expanding the scope of the International Criminal Court or establishing a special international court to address TOC crime.



Under the Rome Statute, the aim of establishing ICC is to prosecute perpetrators of crimes already established in customary international law and to end impunity, preserve the rule of law, and act as a deterrent. This notion has another side that, the principle of complementarity makes the ICC the “last resort”. When national jurisdictions fail to punish the perpetrators of core crimes, the ICC is engaged in the prosecution and punishment of offenders. Moreover, despite its limited competence, allowing ICC to prosecute, could promote the global criminalization of TOC, “particularly in cases where national agencies do not have the capacity, nor the political will to prosecute or extradite alleged offenders” (Andreas Schloenhardt, 2004). This could push the concern of states to work more seriously on prevention and minimizing the effects of organized crime on their societies (Regina Menachery Paulose, 2012-2013, p. 77).

Some researchers believe that the current mandate of the ICC enables it to prosecute TOC crimes, in this regard M. Smith argues that “The Trial Chamber in *Prosecutor v. Kayishema* also found that the ICTR Statute covered actions by both state and non-state actors and did not require state involvement. and the ICTY Appeals Chamber in *Prosecutor v. Kunarac* explicitly held that a policy or plan is not even an element of crimes against humanity under customary international law.” (Jennifer M. Smith, 2018). However, the rigid beginning and requirements of the Rome Statute preclude the presentation of crimes before the International Criminal Court. Moreover, states may not consider TOC as grave as to request ICC intervention. Furthermore, it is difficult to include crimes to ICC law in the absence of a consensus among states regarding the definition of certain crimes, issues of ICC, and political influence on treaty crimes by powerful State (Regina Menachery Paulose, 2012-2013, p. 85). Therefore, the ICC should prosecute on TOC crimes that conform to its Statute and not add more crime to its law, and the alternative may be the establishment of a separate special court for the prosecution of TOC (Livey, 2017, p. 96).

Boister, proposed the establishment of a Transitional criminal court (TCC), and Senator Arlen Specter suggested establishment of a court that “would have provided institutional support to states in their domestic prosecutions of transnational crimes or to which the state could refer the case for trial if it so wished”. Thus, states retain sovereign control over the criminal law and at the same time have the right to give extraterritorial jurisdiction to their jurisdiction without having to face the challenges of proving that the crime in question is a customary crime (Neil Boister, 2012, p. 295, 312). TCC, according to Boister, would be the prosecutor's court to which states could resort “if they felt that it would be a breach of their reciprocal obligations to other injured states to do nothing” (Neil Boister, 2012, p. 314). In addition, Boister adds that the TCC must be permanently available and will have to review the admissibility of the cases “based on criteria of gravity of the crime, transnationality of effect of the conduct, the involvement of an organized criminal group, and so forth” (Neil Boister, 2012, p. 315). On basis of the content of repressive agreements, and because of the severity of the transgression of transnational crimes, it is crucial to find a new instrument in the war on crime.

As a summary to what was shone light upon in the above, transnational organized crime cannot be effectively addressed given the limitations of the current system of investigation, prosecution, and conviction of organized criminal groups. These groups exploit the differences between criminal justice systems of states and legal gaps in their favour. International prosecution would provide an opportunity to overcome deficiencies in systems, complement domestic enforcement efforts, and clarify the fact that no one above the law would serve as reference points for stabilizing the failing national criminal justice system (Neil Boister, 1998, p. 37).

## 6. Conclusion

The phenomenon of organized crime is not new. It has developed and expanded aggressively and rapidly after 1980, and especially after the end of Cold War. There is no specific agreed definition for organized crime because of its changeable nature and diversity. However, they share the principle of committing crimes, confidentiality, and profit. Increased organized crime and its effectiveness in a post-Cold War era is the dark side of globalization. Political and economic globalization has opened new ways for the flow of people and money across state borders. In addition to this, globalization has provided an opportunity for development of criminal market besides facilitating the formation of new criminal organizations. Alongside globalization, poor countries and countries in which, internal conflicts are in existence, the focus of criminal organizations during the conflict and even after its cease is to take advantage of loss of control, instability and economic crises, which may be experienced by that region and is more likely to occur and surface. Organized crime threatens not only individuals but communities, especially those in transition to democracy and market liberalization. The adverse impact of organized crime on the individual, society and the state economically, socially and politically, has made the issue of fighting it an inevitable issue.

The fight against organized crime is one of the biggest challenges facing the world; its adaptable nature with its power and wealth weaken any attempt to control it. This extends to those countries that have appropriate legal systems and judicial powers are facing difficulties in dealing with these criminal groups. The threat posed by organized crime to national and international security provided a justification to some countries to enter army and intelligence in the process of fighting against this phenomenon, as a countermeasure to response the threat of TOC.

This was the subject of criticism by some researchers, who demonstrated that seriousness of organized crime is exaggerated, used by the great powers as a pretext for the survival of its army and in an attempt to impose its hegemony on the world. This was evident by occupation of Iraq by the U.S. in 2003 under the pretext of the war on terror and the existence of Weapons of Mass Destruction (WMD).

Organized crime is a complex phenomenon that carries out its activities with complete secrecy, stability, and continuity that increases its seriousness by using terror, terrorism, violence and bribery to profit by mixing legitimate and illegal activities, making it difficult and complicated to address.

Combating transnational organized crime is a difficult and thorny task. To this date, international cooperation in the fight against transnational organized crime has been characterized by a tacit definition and the inherent complexity of law enforcement and judicial cooperation at the international level. However, the 2000 Convention against Transnational Organized Crime (UNTOC) represents a major development in international cooperation in criminal matters. It is wide-ranging and provides a tool for international cooperation, allowing it to deal with a variety of transnational organized crime. In addition, the Convention provides a solid basis for mutual legal assistance and law enforcement cooperation. UNTOC can be used to prosecute and punish a wide range of criminal activities, from drug trafficking to identity-related crime, provided that such activities are carried out by an organized criminal group and dangerous in nature. However, their flexibility is also weak, as UNTOC imposes limited obligations on States parties. Moreover, mandatory obligations are often formulated in a manner appropriate to the means and needs of states parties.

Therefore, an integrated and comprehensive strategy must be developed that takes into account the difficult and global nature of criminal networks, as well as their complex tactics. In addition, UNTOC does not deal with

individual and private operations that are increasingly responsible for TOC today. UNCOC also ignores the growing horizontal structure of organized criminal groups, as well as the growing relationship between TOC, for example, terrorism and global finance.

The main aim of the current research is to define the transnational organized crime, its characteristics, the causes of its spread, and its most important effects, both internationally and nationally. Emphasizing on the international situation to combat and existing and used instruments, highlighting the challenges facing the international community in fighting these crimes and how to strengthen the legal framework in the face of organized crime. It can be drawn from the data presented in this paper that mutual legal assistance, in particular law enforcement cooperation, and its adaptation to (TOC) should be further developed to enable the effective exchange of intelligence and cross-border policing.

It is also important to note that law enforcement cooperation remains controversial, with joint investigative teams being undermined and judicial authorities and police authorities considered by states exclusive and sovereign powers. In a consensus manner, States Parties remain wary of using UNTOC because they do not provide a clear and detailed concept on which states can rely, legislate and/or train.

As a conclusion to what was previously mentioned, with regard to the implementation of the conventions, the main challenges are included, but are not limited to, “State capacity, national concern, institutional constraints at the local level, availability of the monitoring mechanism” as well as external and internal factors. For improving UNTOC's effectiveness and ensure its implementation, States Parties must support the implementation of an effective monitoring mechanism, rather than creating a new mechanism. Existing instruments should be strengthened with the support of the international community. All the States parties concerned must participate in a more dynamic monitoring mechanism, aimed at establishing a constructive dialogue. However, the Convention is a milestone in international criminal law, providing unprecedented opportunities for transnational cooperation in criminal justice. However, the framework could have been strengthened by including more mandatory obligations on states parties rather than merely as another case of inadequate law codifying international best practices in criminal justice.

Against this background, the following is proposed for future development:

A more efficient approach to combating transnational organized crime is needed. Organized criminal groups now benefit from legal gaps, and globalization. As a result, this prevents states from effectively suppressing organized transnational crimes. There is therefore, a need for a targeted and comprehensive approach at the international scale. Traditional procedures, such as international cooperation, should be reviewed regularly and more coordinated actions to be promoted. The human rights approach must be incorporated into mutual legal assistance treaties and international law enforcement agencies should be provided with the resources and expertise to be able to identify and control TOC. Regarding non-traditional measures, the cross-border criminal law system should be considered due to its provision of solid, and rigid foundational basis for cooperation and collaboration in criminal law on a global scale. Since transnational organized crime has risen to an un-negligible level of a security problem, it is worth considering whether the organized criminal groups associated with these crimes should be held liable under international humanitarian law as non-state armed actors or not. Finally, the mandate of peace operations must be expanded to include the Tactical Operations Center, as it may prove effective in its security, peace-building and State-building tasks.

International cooperation to combat organized crime requires in first instance, the establishment of new rules of jurisdiction beyond the borders, and secondly, the establishment of new rules for international cooperation at

the judicial and security levels. More importantly, the activation of the role of international cooperation with genuine cooperation among countries to counter this phenomenon.

However, to effectively address TOC, measures and aspects beyond the scope of this article must also be considered and noted. To summarize, cooperation with the private sector and the promotion of international cooperation through alternative road networks can be successful.

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