

CHAPTER 1

ORGANIZED CRIME IN TUNISIA

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1. Introduction

Concept of International Organized Crime

“Any enterprise or group of persons engaged in a continuing illegal activity which has as its primary purpose the generation of profits irrespective of national boundaries”.

The above mentioned definition was the officially accepted by the Select Expert Working group Meeting on organized crime in Saint Cloud France on 26 and 27 January 1988.

The European Union Group “Drug and Organized crime” defined it as “a collaboration between more than two persons... for a long unlimited term... suspected of committing grave and serious penal infractions... acting for benefit and/or power”.

Generally it is a conscious, wilful and long term joint activity of several persons practicing a division of labour and intending to commit criminal offences, often making use of modern infrastructures with the goal of realizing large financial profits as fast as possible.

The settlement of a unanimous definition would make it easier the comprehension of the criminal activities and thus the determination of the best appropriate sanctions.

2. Nature and Extent of Organized Crime

A. Indicators of Organized Crime

- a** Preparation and planning of offences
 - accurate planning.
 - Adjustment to market needs by exploring and making use of market gaps.
 - High investment of revenues from undisclosed sources.
- b** Commission of offences
 - Professional, accurate and highly qualified.
 - Work done by specialists (comprising foreigners).
 - Joint effort with division of labour.
 - Use of scientific resources and information that are comparatively expensive, unknown or difficult to implement.
- c** Clandestine behaviour
 - Use of cover names.
 - Verbal and written communication using coded language.
 - Compartmentalization.
 - Counter surveillance.
- d** Connection between offender and offences
 - Supraregional.
 - Supranational.
 - International.
- e** Group structure
 - Hierarchical structure.
 - Unexplained relationship of dependence.
 - System of internal disciplinary measure.
- f** Assistance for group member
 - During escape.
 - High offers of bail.
 - Procurement of major amounts of cash and hiring of prominent defense counsel.
 - Parties to the trial are threatened and intimidated.
 - Witnesses can not be found.
 - Appearance of witnesses for the defense.
 - Care taken of detainees while in prison.
 - Support given to their relatives.
 - Readmission after release from prison.

Typical fearful silence on the part of persons involved.

g The disposing of loot

Highly profit oriented.

Feedback of proceeds into legal economic circulation.

Money "laundering".

h Corrupting others

Creation of relationships characterized by dependence (e.g : through loansharking, usury, sex, illegal gambling, etc.).

Bribery.

i Monopolization efforts

Control of certain sectors of night life (e.g : gambling casinos, brothels, etc...).

Imposing "protection" for a fee (money protection).

Forced business take-overs.

j Public relation

Contact with public figures.

Press reports which are controlled, tendentious or even calculated to divert from a certain suspicion.

The true criminal organizations as illustrated by the aforementioned indicators, are active in all branches of crime, and likely to expand their activities by all ways accessible to them. Perpetrators use all available means of communication (including international ones) for their activities and purposes. Thus they reduce their personal risk of being discovered. They also make use of all means of transportations (including international ones), air traffic being particularly important. Besides the firmly established hierarchially structured organization with firm leadership, there are persons instrumental to - but not members of - the organization and who are often unsuspecting of the role they are playing for instance migrant workers transporting goods, business people and bankers involved in money laundering operations.

B. Crime Areas Liable To Be Controlled by Organized Crime

The organized crime phenomena can be observed in particular in the following "subject areas" of crime :

a Narcotics trafficking and smuggling.

b Production and distribution of counterfeit currency.

c Arms trafficking and smuggling.

d Highly qualified property offences. e.g :

Theft of high value motor vehicles carrying high value loads.

Theft of valuable property.

e Extortion of “protection money” e.g :

Protection racket.

f Economic crimes

Fraudulently obtaining goods on credit and disposing of them.

Fraud involving credit and financing transactions.

Smuggling illegal immigrants and procuring employment to them.

Forgery of documents and cheques.

Illegal duplication of records (piracy).

Illegal fraudulent gambling.

g Crime related to night life, e.g :

Trafficking in human beings (prostitution, “white slavery”).

The forms of organized crime in the various areas of criminal activity can be highly diversified and are subject to constant change.

C. A Brief Overview of Some Organized Criminal Groups

a The Italian Organized Crime

The preeminent Italian criminal organizations throughout the world include La Cost Rostra, the Sicilian Mafia, Camaro and ‘Ndragheta. These groups resulted from the historical events that occurred in southern Italy and Sicily. Mafia and L.C.N. had been constituted to face inefficient governments and their unjust laws considered as instruments of the reigning class. Most of their revenues come from their drug trafficking activities, loansharking and white-collar crime.

The activities of these highly structured and organized groups had gone beyond the Italian boundaries and ramified in the U.S.A. La Cost Rostra is the most famous organized criminal group in the U.S.A. The organization comprises more than 2000 members shared out among 25 families through the territory. With every member, there are at least ten others perpetrating illicit activities, and who are directed by L.C.N. The L.C.N. organization was revealed in 1963, by a repentant member named Joseph Vallachi, who decided to cooperate with the F.B.I.

b Asian Criminal Enterprises

Chinese Triads.

Chinese Tongs.

Asian Gangs.

Japanese Boryokudan. (Yakuza)

These groups operate in all areas of criminality : gambling extortion of money "money protection" theft, etc.

c Outlaw Motorcycle Gangs

Hells angels motorcycle gangs.

Outlaw motorcycle gangs.

Bandidos motorcycle gangs.

Pagan motorcycle gangs.

They operate in more than 11 states within the U.S.A. They also extended their activities in Canada, Western Europe, Australia and Japan...

These groups appeared after 1945, and it was in 1983 that the American Motorcycle Association (A.M.A.) pointed out that only 1% of motorcycle owners were involved in illegal activities.

d Colombian and South American Drug Traffickers

Cartels of Cali.

Cartels of Medellin.

Cartels of the Northern Coast.

They are the most important Colombian Cartels, which,, together, virtually control international trafficking of cocaine.

The organized criminal groups in Canada operate in almost all of large cities and particularly in Vancouver, Toronto and Montreal. The most prominent groups include :

e Out law Motorcycle Gangs

These groups operate in almost all provinces. They are involved in a wide variety of criminal endeavours, but their major activities are importing and trafficking in drugs, prostitution, theft and possession of restricted fire arms.

f Chinese Triads

The most prominent of the triads are : the 14 K, Kunglok - Ghost Shadow - Lotus and Red Eagles. They maintain strong ties with the large groups in Hong Kong and elsewhere in the world. They travel from city to city to commit their criminal acts and thus avoid arrest and prosecution.

g Vietnamese Organized Crime

They are comprised of immigrant refugee Vietnamese youth between

16 & 25 years old.

3. The Current Situation in Tunisia

Before presenting a general idea of the situation in Tunisia, and the measures taken to counter this type of criminality a brief outline will be given of the way the repressive authorities are organized in Tunisia.

A. Organization and Structure

The repressive forces are responsible for maintaining public order and providing assistance, as well as judicial duties. The national guard and national police come under the Ministry of Interior, and their scope of operations comprises the whole of the country, while the national Customs come under the Treasury. Their tasks include the control of drug, foreign currency, antiquarians and all illicit activities through the boundaries (contraband and smuggling).

The Tunisian judicial police authority which is considered as the biggest body in link with the repression of all types of criminality is divided into four main departments:

a) A specialized anti-crime brigade, investigating all kinds of crimes, and within which units have been set up to fight criminality, terrorism, and antiquarian theft and smuggling.

b) A brigade investigating economic and financial crimes: crimes against estate property, loansharking, forgery of documents and cheques, illegal duplication of records, and misappropriation of funds either in banks or any other economic institutions.

c) A specialized anti-drug brigade investigating all crimes related to narcotics, and concentrating efforts on the arrest of drug consumers.

d) The social prevention brigade which investigates all crimes related to child abuses, prostitution and vice.

The scope of operations of the abovementioned units, comprises the whole of the country. Besides, more than twenty regional criminal brigades had been appointed.

B. Can We Deal With Organized Crime in Tunisia?

Except for some accidental criminal cases, and a part from the Islamic terrorism, we can confirm that there is no organized crime in Tunisia.

What we find, generally, is a group of offenders who, frequently know or have knowledge of each other, commit individually or in various combi-

nations all types of crimes which seem to be perpetrated by criminal organizations. Certain indicators also apply to the activities of these groups, but in all cases, the intention required in the organized crime definition is not present, that is, no intention to work with each other consciously, wilfully, on a long term basis and with distributed responsibilities. Some crimes such as "hold-up" on banks and other financial institutions are very seldom. They are the result of foreign criminal influence. Offenders use stolen guns and cars, but no other sophisticated means as is the case in other developed countries, since arm possession in Tunisia is prohibited.

There do not exist in Tunisia, groups with hierarchial structure, practicing a division of labour, and which are controlled from abroad.

C. Accidental Organized Criminal Cases

The security measures taken by the Tunisian police authorities against the high value motor vehicles theft and trafficking in the last recent years, ended up with the breaking up of these vehicle traffickers.

Modus operandi: The "Mercedes" vehicles were stolen in the early mornings from their parkings and were set on their ways towards Libya and Algeria.

Other involved members procured blank genuine registration licences, containing the seal of the Libyan traffic authorities, on which they mentioned the characteristics of the stolen cars. The perpetrators were Tunisians, Libyans, and Algerians. The band comprised about 25 members. The temporal aspect of this phenomenon was marked by the quickly performed arrest of some mastermind perpetrators, and the seizure of a limited number of vehicles in the Tunisian territory. In spite of the considerable efforts made with the cooperation of Interpol more than thirty vehicles have not been recuperated, and that was due to the lack of information about the still escaping members who might have used cover names.

Yet, the Tunisian authorities (police and customs) have helped a great deal the European countries in this field which is getting larger and larger and this via the I.C.P.O. "Interpol". For instance, an important number of vehicles were seized by the Tunisian Customs. They were imported to Tunisia especially from France and Italy with either forged documents or genuine but stolen ones. The investigations revealed that the importers (or the drivers) of the vehicles did not belong to the band.

D. Instance of Serious Cooperation

Recently, The criminal brigade arrested in Tunisia, two Tunisians who have perpetrated the murder of the Belgium vice Prime Minister, “André Cool in 1991” in Brussels, and this was through the cooperation between both authorities via Interpol.

The two Tunisians were teenagers at the time of the homicide, besides their situation as lost immigrants in needs: they were very easy to trap. The two perpetrators were misled, they were given false indications about the target. They were informed that the person against whom they were to commit their Criminal act was only a highly ranked police officer who caused too much annoyance to their activities as drug traffickers. The reward was a very negligible amount of money, and a promise to be later recruited and involved in much more important illegal activities in return for considerable allowances.

E. Tunisia: A Country of Transit

So many measures have been already taken to safeguard everyone coming to Tunisia. A large number of foreigners penetrate our seaports and airports.

Our government's intentions tend to make it impossible for any illegal activity to take place in the Tunisian unfortified territory. In spite of having the means to discover forged passports, and counterfeit currency, it seems impossible to control every new comer, especially from countries that underwent various political, social and economic transitions, and which became vulnerable to drug trafficking, drug abuses and organized crime. For the previous reasons, the Tunisian government recommends that cooperation be further strengthened with a view to exchanging information and expertise in order to maximize effectiveness in the common fight against the organized crime.

F. The Tunisian Experience in the Fight of Terrorism

It is evident that no one can speak of organized crime without evoking terrorism, for there are many common points between the two phenomena, even it seems for the common people that terrorism is generally for a political purpose.

Without being so long, the experience of the Tunisian government and people with Islamic integrity showed in many times that this group who under the cloak of religion, was preaching to be the bodyguard of Islam.

Their leaders availed themselves of all ways to reach their purposes: setting fire to some governmental buildings with people in, exploding buses carrying innocent people, and selling drugs to insure the investment of their programs. They also recruited innocent students in poor situation through paying their scholar fees, manipulated people with poor education but having originally a strong belief in religion.

Fortunately, the Tunisian government i.e : political, educational instances with media have together by the end of the 1980's faced this problem successfully by using all means: persuasion, prevention, then repression as a final step. By the way, apart from these who were convicted on a national level, about thirty members are till now searched on an international level by O.I.P.C. Interpol.

4. Measures Including Legislations to Combat Organized Crime

So many legislative measures are taken in Tunisia to combat organized crime on a national basis.

According to the Tunisian Penal Code:

1) (art 131 TPC) "Any formed band, whatever was its duration and the number of its members, any established agreement in order to prepare or to commit any offence against individuals or properties, are considered violations of public security".

2) (art 132 TPC) "A six year imprisonment penalty is inflicted on everyone affiliated in a band, or participated in an agreement of the abovementioned kind. The penalty is 12 years for the ringleaders".

3) (art 133 TPC) "A six year imprisonment penalty is inflicted on everyone who - on purpose - provided members of a criminal association a place for meeting, or made a pecuniary contribution, or helped them to benefit from the product of their misdeeds, or supplied them lodging or a locality for pension. The penalty is 12 years for ringleaders".

4) (art 134 TPC) "Those who have realized being guilty of the mentioned infractions are exempt from penalties, if, before any proceedings, informed the authorities about the established agreements or the existence of the association".

5) (art 260 TPC) "The robbery perpetrated with presence of the five following elements is punishable with a perpetual imprisonment:

Use of violence or threats against the victim or his close relatives.

By scaling a habitation or a dwelling place, house breaking or use of

skeleton keys.

At night

Several authors.

The offenders or one of them holding apparent or hidden arms”.

6) (art 261 TPC) “The penalty is 20 years confinement when the robbery is committed with the presence of the two first elements”.

7) (art 262 TPC) “The penalty is 12 years imprisonment when the robbery is perpetrated with the presence of the last three elements”.

The international situation in regard to drug abuses is becoming more and more worrying. In spite of the efforts made by various states and other international bodies, notably the United Nations’ Program of International Drug Control (U.N.P.I.D.C.), drug consumption is increasing, and drug trafficking still preserves its organized and international aspects.

As far as the situation in Tunisia is concerned, drug addiction does not represent a veritable problem. Nevertheless, no one can deny that it may constitute a potential risk. In fact, the large migratory flows, the social and economic evolution and the geographical position expose Tunisia to drug trafficking and illicit narcotic abuses. For the previous reasons, the Tunisian government developed an adequate judicial arsenal to meet the licit needs and face illegal trafficking, and therefore ratified many laws. The promulgated new laws aim at the fighting of unlawful use of drugs, safeguarding the Tunisian citizen against the misuse of stupefacients especially among infants. The laws contain also repressive measures to combat organized trafficking and money laundering, and favored the therapeutic taking charge of drug addict.

The penalties related to drugs as mentioned in the promulgated law of 1992, in Tunisia, became very severe. The condemnations differ according to the nature of the infraction. Drug holders with the intention of consumption are liable to imprisonment going from one till five years. Those who form, or rule, or join, or participate, even benevolently, in a band, either in Tunisia or abroad, with the intention of committing illicit drug activities are exposed to imprisonment penalties going from 20 years to a perpetual detention.

5. Proposed Measures Including Legislation to Fight Organized Crime

The organized criminal groups have considerable funds at their disposal, which they use for shares in companies and other businesses, or for

the establishment of new businesses. So, they create pseudo legal institutions for covering up criminal activities. That is why the common fight against organized crime comes through the cooperation at level of operational repression of "dirty money laundering".

As a result of the offenders' increasing mobility, it is necessary to intensify the exchange of information among police forces on the national and international levels. There is a great need for international cooperation and communication in combatting illicit trafficking of nuclear materials and other radioactive sources. The need for International cooperation to fight computer crimes.

The breaking down of organized crime social and economic power through the destruction of their abilities of infiltration in the economic life aiming at the laundering of criminal activity proceeds.

Centralization of all informations related to "organized criminality" which represents an immediate danger because of its ramifications, since the illegal activities are favored by the free circulation of persons and capitals within the new modernized economic system.

Harmonization of preventive policies and of fighting crime all over the world. The agreement on a unanimous opinion or definition of "organized crime" among criminal justice authorities with would make easier the determination of appropriate sanctions.

The reduction of the opportunities of proceed accumulation from illicit activities and the minimization of governments' and enterprises' vulnerability to prevent organized crime infiltration. The organized offenders benefit from a situation in which especially the principle of due process of law is one of the causes that immobilize the police and justice machinery, and give the offenders a considerable headstart. As a consequence, police and justice authorities should be given more prerogatives.

The dedication of criminal intelligence units in all countries, focusing mainly on established organized crime groups, rather than on specific criminal offences at the street level. The weakening of criminal organization through the serious and severe condemnations of its members and the seizure of the unlawfully accumulated proceeds, which will certainly result to their eradication from their roots. The control of some "honorable" individuals often well integrated in the social and economic life, who may benefit from their professional business to carry drugs.

6. Conclusion

International cooperation is very essential, we are constantly cooperating and in communication with Interpol, which is the best source for fast, efficient and accurate information, and that allows us to collect extensive intelligence.

We would be very interested in learning about the experiences and getting advice from the delegates of those countries who are already experienced in this area and have acquired special expertise on the subject.