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Shirin Ahmadi Dastjerdi
shirin.ahmadidastjerdi@mshdiau.ac.ir

Abbas Sheikholeslami
sheikholeslami@mshdiau.ac.ir

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The effect of globalization on the national criminal law systems

Shirin Ahmadi Dastjerdi, PhD Std.

Department of Criminal and Criminology, Faculty of Law, Islamic Azad University, Mashhad, Iran
shirin.ahmadidastjerdi@mshdiau.ac.ir, ORCID: 0000-0001-8951-7118

Abbas Sheikholeslami, PhD (Corresponding Author)

Professor, Department of Criminal and Criminology, Faculty of Law, Islamic Azad University, Mashhad, Iran
sheikholeslami@mshdiau.ac.ir, ORCID: 0000-0003-3975-6844

Abstract

Globalization has influenced many human life scopes with a variety of tools, which the cyberspace playing the most role. Although both cyberspace and globalization have had many benefits to human life, both as a tool and as a process, they have been able to assist offenders to bring crime into the cyberspace without any trouble. Therefore, today criminologists discuss the globalized world of crime. Although, the processes of homogenization and globalization have been precious to human beings, should not be overlooked. In this article, the author has tried to explain the cybercrime in the age of globalization, with an emphasis on globalized crime and its related examples. The effect of globalization on the national criminal law systems has also been investigated. The research method was descriptive-analytic.

Keywords: Crime, Cyberspace, Internet, Globalization

1. The definition of globalization

Concepts in the field of human science are the most fundamental element and the smallest component of the theories, and at the same time, the most destructive part, due to the possibility of misunderstandings and controversies. The concept of globalization also fits in this category, and there are difficulties toward scientists to provide a comprehensive definition for it. This concept, like other concepts in human science, is floating and empty. Therefore, there is no uniform definition of globalization. Malcolm Waters believes that the terms "globalize", "globalization" and "globalizing" became widespread since the 1960s. These words were imported in the culture in 1961 for the first time [1]. Some scientists have investigated the positive effects of globalization, while others have looked at their adverse effects. Globalization means developing social and economic relations around the world. At least five broad definitions of globalization can be distinguished from another. These concepts are related in some aspects and somewhat overlapping, but their emphases differ considerably [21].

1. One of the common perceptions of globalization is internationalization. From this point of view, the term "globalization" is just another word for describing extraterritorial relations between countries and globalization defines the development of international relations and interdependence.

2. In the second application, globalization is meant to be liberalization.

3. In the third perception, globalization refers to the process of eliminating the restrictions that governments impose on relations between countries and its goal is to create a free and unrestricted global economy. From this view, one of the analysts believes that globalization becomes a prominent slogan for describing the international economic integration process. In this application, globalization means the process of disseminating goals and experiences for people around the world [18].

4. The fourth definition considers globalization as westernization or modernization, especially in the form of Americanization. Hence, globalization is a kind of dynamism through which social structures of modernism (capitalism, rationalism, industrialism, bureaucracy, etc.) spread throughout the world and will spontaneously destroy previous cultures and local autonomy.

5. The fifth attitude considers globalization as a territory deletion. According to this interpretation, globalization involves geopolitical renewal; so that the social space is no longer fully identified in terms of territories, territorial distances, and territorial boundaries.

2. Globalization of criminal law

The effect of globalization on social phenomena has led this process is considered as huge social changes in societies. Today, many socio-economic issues, such as peace, crime, immigration, production, employment, technology development, environmental threats, income distribution, prosperity, social unity, and identity, are described as phenomena affected by globalization [25]. International law, trade law, international trade law, criminal law and other branches of law are also affected by globalization. Moving away from nearby and approaching the far has made the law as a global phenomenon. According to *Ezzat Fattah*, the question of whether we agree about the globalization of the law or don't is no longer the case. This is a fact; the law is globalizing, and often crises are the beginning of this process [10]. Globalization has influenced everything, such as crime, criminal, and the victim, the process of committing a crime, the trial method, reasons to prove a claim, criminalization and decriminalization and criminal policy. Globalization has created new challenges and sometimes has helped to settle the challenges. For example, crime has been historically a local and native phenomenon. Most of the murder victims are known, and most of the child abuse victims knew their abusers, and theft victims did not need to go beyond their neighborhood to find the burglar. The invention of computers and access to cyberspace, which are factors contributing to globalization are the cause of cybercrime and

criminals who are difficult, and sometimes impossible to detect their crimes in cyberspace. According to George Pica, the internationalization of the world and the removal of borders have created new opportunities for the criminals in profitable sections, such as economic crime in organized crime. The evolution of communication networks has also made it easy to transfer huge funds at a moment. This will make the offenders free from police and justice investigations. The diversification of the organized crimes in the profitable sections is accompanied by the most sophisticated methods of action that require new methods for the prevention of crime [5]. The main question is whether governments have acted simultaneously with the globalization trend in order to input the criminal titles to the criminal law and to remove the legislated crimes from this area. Are there any requirements or barriers to these actions? What are these requirements and how are they determined? There are two main obstacles to aligning the process of criminality and decriminalization with globalization. One is the principle of territorial sovereignty of criminal laws and other cultural relativism. The purpose of the principle of territorial sovereignty of criminal laws is that these laws are enforceable against all offenders within the territorial sovereignty of a country, and are not applicable outside of it. Nearly 190 countries in the world are actively trying to defend their sovereignty. Each country claims to have the most appropriate and most effective legal system than the others, and with this idea, no country wants to lose its sovereignty under the influence of globalization. Due to the fact that the principle of territorial sovereignty is not sufficient sometimes to resolve international criminal cases, the principle of personal jurisdiction has been represented. If the principle of territorial jurisdiction and personal jurisdiction are also not applicable, to settling the defect the principle of actual jurisdiction will be considered. Defendants of some of the crimes that arrested in each country are judged according to the criminal laws of that country [22]. If we do not distinguish between internationalization and globalization, as some people have said, it can be said that globalization of law has occurred in the crime of "piracy" for the first time. Then, other crimes, such as drug Smuggling and human Smuggling and sexual tourism, have been included in this process.

Piracy has been known as an international crime many years ago, and international law has allowed all countries to take immediate action against pirates. The 1982 convention on the sea laws, in provisions 100 to 107, has special rules for naval piracy [12]. Chasing in any of the maritime areas follows special rules in international law. But provision 105 of the 1982 convention has declared the general jurisdiction of all countries to chase arrest and punish pirates [4]. According to provision 105 of this law in high seas or in any other place outside of the jurisdiction of each country, any country could stop a pirate ship or plane, or a hijacked plane or robbed ship and arrest the thieves and seize the properties of the ship or airplane. The courts of that can decide on punishments, they can also determine the action taken on that ship, airplane or properties, with respect to the rights of third parties.

Perhaps the most important criminality influenced by the globalization is the criminality of dictatorial regimes. As is evident, a significant part of the history of the twentieth century

has been accompanied by beastliness, abuses, and numerous atrocities, and has been responding by international communities. Following the Holocaust and other crimes committed by agents of the Nazi Germany regime during World War II, the Allies created the international military court to punish the perpetrators. The devastations and massacres of World War II led to the formation of the United Nations, which instantly developed a comprehensive formula to protect individuals and communities from prohibiting repetition of what has happened in the past. These guarantees included "Universal Declaration of Human Rights", "Convention of Prevention and Punishment of the Crime of the Genocide" and "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" that predicted specific behaviors in international disputes. Despite the framework of these guarantees, the killing of a large number of people continued with the oppressive totalitarian regimes. Stalin killed millions of people in the former Soviet Union. In China during the communist and Cultural Revolution, also in Cambodia and various African countries, many people were killed. International institutions have repeatedly tried to improve the situation of the people around the world through covenanting secondary treaties and providing appropriate solutions [23]. These agreements include the "Covenant on Economic, Social and Cultural Rights" and the "International Covenant on Civil and Political Rights", " Convention against torture and other cruel, inhuman or degrading treatment or punishment, (Convention torture)", " International Convention on the Eliminating of all Forms of Racial Discrimination " and " International Convention on the Eliminating of all Forms of Discrimination Against Women " which in fact created the basis of modern human rights. These treaties include the "International Covenant on Economic, Social and Cultural Rights" and the "International Covenant on Civil and Political Rights", which in fact created the basis of modern human rights. Further, with the formation of the Yugoslav international court and the completion of this process by the establishment of the international court of Rome, which represents the starting point for the codification of international criminal offenses, the global credibility of international courts became known today. Genocide, war crimes, crimes against humanity and crimes about rape are in the jurisdiction of this court. In sum, other examples of the development and growth of institutions that monitor such documents, such as the European Court of Human Rights, the Inter-American Commission on Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Human Rights Committee, the European Court of Justice, have obligated governments more than ever to control over the general and global rules that play a major role in shaping global and pluralist rights [16]. With the development of the Council of Europe and the European Union, the continent has consolidated its position as the environment of forming European law and European laboratory. The liberation of borders in the globalization process through the use of modern computer technologies has created a lot of troubles for governments, which are not settled individually. Legal barriers arising from the sovereignty of governments and the ease of crossing borders for delinquents are two conflicting poles of the globalization of rights that a solution has to be found for these problems.

3. Barriers to the globalization of criminal law

On the one hand, the general agreement of many countries to join such treaties and, on the other hand, its incorporation as human rights or the general rules of international law, which have not been violated, will lead the law to globalization. International treaties are the most important documents that reflect global values deserving criminal protection. The international blame expressed through these conventions reflects the recognition of the value and expediency that the international community has advocated, by knowing the violation of that as an offense [9]. Where violations of human rights are raised, even the strongest defenders of the sovereignty of governments bypass this concept. Therefore, members or non-members of the United Nations or other international organizations whether they have acceded to these treaties or not, are required to comply with its rules. Indeed, the harmonization of the rights of different countries, according to human rights standards, has contributed to the creation of global law. This harmony in the field of specific criminal law has faced challenges due to differences in the concepts of discipline and justice, which are the main sources of criminality in each country, as well as differences in supported values. This has led to differences in the quality of acceptance of global rules by the governments and the readiness of governments to criminalize acts that threatening their main benefits is more than their willingness to criminalize the threatening behaviors of their people. By accepting international treaties in the field of criminal law, governments restrict or abolish their absolute sovereignty in the field of criminality, punishment, prosecution, trial, etc. But by accepting the principles and institutions of the law in the international system of human rights, they revolutionize their criminal systems for the convergence, and in fact, they approach to each other [19].

The second obstacle is cultural relativism. Cultural relativism considers the determination of juridical principles as dependent on custom, tradition, environment and objective factors. The consideration of relativism by some countries has been an excuse for violating the general principles of human rights, which have common borders with criminal law, against those who actually insist on the universality of these rights [6]. The International Association of Penal Law's position emphasizes that criminal policy should always depart from the fullest knowledge of the reality of criminal phenomena (and of the personal and social factors that affect them) and, giving the priority to preventive lines, as proposed by the most solvent criminological perspectives, insists in noting the subsidiary nature of a penal intervention that should be always devoted to the service of a more and more humane and efficient justice peace, reinforcing the democratic profiles so that the rights and the most basic penal and procedural postulates can be fully guaranteed at all levels of the penal intervention [27]. The universality of human rights is a new achievement of human civilization. Those who place cultural relativism against the universality of human rights are confused in understanding the concept of culture and do not provide a vindicable understanding of morality and its relation to social behavior. In response to them, universal human rights standards do not belong to a specific culture, and in fact, legal translation is

the moral right that all human cultures in its environment can grow. The claim of relating these norms to a specific culture is, on the one hand, insulting other cultures, on the other hand, authenticating more than enough to that specific culture [15]. Therefore, pluralism, which contains the coexistence of different ideas, forms the common characteristic of human rights [3]. The obligation and defense of cultural diversity, along with the obligation of the universality of human rights is the ideas expressed at the UNESCO universal declaration on cultural diversity (2001). Given the fact that creators of the Declaration have been aware that cultural diversity and pluralism can be a source of human rights violation, the first part of the Declaration has been devoted to the issue of cultural diversity and human rights. In provision 4 has also been stipulated that no one can place cultural diversity as a reason to violate or restrict international human rights [15].

Criminal law is a system of worthiness that its requirements violation is a crime and punishment is a guarantee of its durability and survival. Even domestic systems in the globalization process, despite the desire of the governors, are forced to accept global norms. Criminology and decriminalization in a globalized value system are based on general standards of human rights, and the desire of dictatorial governors, political and religious ideologies, cultural relativism, etc. cannot prevent it. Condemnation, resolution, military attack, arrest and trial for violators of these rights are the other guarantees.

4. The effects of globalization on the domestic law system

4.1. The fortification due to the criminal law

One of the most important liberal criticisms of criminal law is the security and the fortification due to this part of the law [8]. In this case, people may feel more danger and insecurity. This aspect of criminal law isn't irrelevant to the crime of globalization, especially through cyberspace. This objection can also be raised in another way by liberalists and extreme advocates of human freedom because they are opposed to ways that restricted citizens without justification. In this way, the excessive use of barriers and restrictions leads to the creation of a constraint-oriented, executor-dependent and militaristic society, or in other words, a quasi-fortress society. While in a civilized society, it should be decreased the limits as much as possible and human beings are restricted within the law framework [11]. According to Belgian scholar Philippe Marie, this situation is the transition from a social state to a criminal state or a social security state. The emergence of the social state comes back to the late nineteenth century when the laws were passed to protect women and children [14].

Today, due to a large number of criminal titles related to the cyberspace has increased the fear of the crime among citizens. It should also be mentioned the issue of crime prevention and the effects of the enforcement of globalized crime that has given the security nature to criminal law. The reason is that criminal law has entered most areas of life. Crime prevention tools also play the same role today. The development of crime prevention has

created various branches of prevention that lead to the security space in societies. So, with the claim that global crime cybercrimes, such as cyber-terrorism, organized cybercrime, etc. are growing, and therefore requires an answer from the armed forces, the police have also entered the cyberspace. Although lawyers have got more importance for criminal trial rules in order to maintain community discipline and prevent crime [2], and they consider the police only responsible for detecting and prosecuting crimes, but it should be admitted that the police can be considered as the most important crime prevention factor, because their critical role requires to take steps ahead of time and get ready to face future insecurities. Undoubtedly, the massive anti-crime system adopted by the police, whether in the physical environment or in the cyberspace, is the same, and the police will have the same place in the prevention of cybercrime. Indeed, police actions are nothing more than a general political of confronting against other crimes, but what makes a difference in this area is the unique features of cybercrime, which requires its own implementation methods in order to realize this general policy. In Iran, the formation of the FATA police can be interpreted as a professionalization in the fight against crime and cybercrime. In this way, the globalization of cyberspace will bring new security opportunities to mankind, as well as new threats that target the existence of many political communities. In other words, globalization in cyberspace does not only give us the concept of global security in this space, but insecurity also emanates from within it. The globalization of cybercrime and high-risk communities in dealing with these crimes has intensified the policymakers' desire to prioritize security on justice even in this space, and as a result, it has been the control actions applied in this area and weakened civil liberties. For example, the use of massive crime prevention mechanisms after the terrorist incidents in the United States and European countries, which has added a terrible atmosphere.

This issue has also raised the confrontation between privacy and security in cyberspace. There is a lot of evidence that the government has violated the privacy of people in cyberspace because of national security. For example, after the September 11 attack in the United States, the government passed the Patriot Law to enhance the national security of the United States by allowing access to the "email" of American citizens. Although it can be said that "information is not supported if the public benefit achieved from national security is more than the benefit of confidential information," and " In general, national security is very important to courts so that they are ordered to disclose confidential information" . The common goal of all anti-terrorist policies is to extend the powers of the government, on the other hand, to reduce their accountability so that some cases of the quarrel between individual rights and freedoms and the actions of the government in European countries were surrendered to the European Court of Human Rights [24].

4.2. Criminal inflation and extreme criminality

It should be noted that the main duty of a lawyer, a legislator and, generally a criminal community, begins when a behavior is considered as a crime and a punishment is

determined by law. But let's take a step back and ask the basic question. The question is, according to what criterion the legislator, through the mechanism of criminality, allows himself to interfere in the rights and freedoms of the people of the community [14]. In each society, some of the actions and behaviors are considered as the values of that society. Some values are general and universal and they are supported by people and criminal legislators in every country, but some of the other values are different according to the customs, traditions, and culture of societies and the relativism of values is emerging here. In general, what is to be said is that the criminal law protection of value is selective and any value is not protected within the framework of criminal law.

The meaning of criminal inflation is "the approval without the necessity for criminal regulations and inordinate increasing the number of criminal rules" [7]. Crime prevention policies for crime prevention should, instead of terrible, terrible classic punishments, on the one hand, seek medical treatment to prevent recurrence of crime, in the context of the reconciliation of the offender's social offense, and, on the other hand, prevention programs Collective delinquency, in order to prevent the commission of the first offense [28]. Criminal inflation occurs when criminal law goes beyond its legal functions and there is no clear boundary between criminal law and individual behavior.

The criminal justice system based on democracy and the sovereignty of law minimizes the restriction of the freedom of citizens and avoids unwanted intervention in the privacy and even the public environment. Hence, many people consider the realization of a democratic political system is dependent on the minimum use of criminal law tools by the government or minimal criminality and the decriminalization of unnecessary behaviors [26].

It seems that globalization of crime is one of the major factors of criminal inflation due to the advent of the negative effects of the development of industry and information technology in different systems of law, because in recent years, national and international legislation on transnational and organized crime, especially in cyberspace, has been contrary with the other legislation both in terms of quantity and quality. But what's important is that the fear of these crimes has led the legislators to extreme criminalization, and it's effective in reducing security and individual freedoms, because, whatever the list of crimes in the set of rules is longer, people feel more insecure. Cyberspace also seems to have a role in this issue. The creation of new criminalization, such as forgery, fraud, theft, etc. in the cyberspace, is related to this issue.

4.3. Human rights threat

Human rights include a set of fundamental rights for human beings. In other words, human rights are a set of principled provisions about the obligations that embrace all people on the basis of human dignity. These provisions have been widely accepted as international norms and have essentially emphasized human growth and ascendancy. These rights include the right to life, liberty and all the necessary elements for the human life. Human rights norms

create a relationship between the individual and other areas, especially governments, and create obligations [17]. The nature of human rights implies that every human being has unquestionable rights because of his humanity because the category of humanity is different from the moods, ranks and degrees and distinct social competencies of individuals. In fact, human rights are those rules and norms that are recognized through declarations, statements, treaties, and international conventions, and constitute the basis for the behavior of governments with their citizens. Indeed, despite the belief in the universality of human rights and the interdependence of those rights, there is no doubt that, among human rights norms, there are a number of indivisible and irrevocable rights that can properly be called "fundamental human rights." [20].

One of the threats of the globalization of cybercrime in criminal law systems is the threat of human rights or security-based regulation against privacy. Article 2 supporting of the privacy, which has not yet been approved by the Islamic Consultative Assembly, provides: "Privacy is the domain of every person's life that a person traditionally or with a previous declaration within the framework of law expects others to not enter or monitor or abuse without his consent or access information about it. The body, clothing, and objects with persons, private places and homes, workplaces, personal information and private communication with others are private. »

Indeed, in a democratic society, there must be the ability to create and preserve different forms of social relations between citizens and different people. The necessary tools for this category are that people have an independent life and what is considered to be important is the comfort of mind and physical relaxation. It is obvious to everyone that, in accordance with Articles 3, 12 and 22 of the Universal Declaration of Human Rights, everyone has the right to liberty, security, privacy, and social justice, and no one should be attacked intractably. As a result of the globalization of crime in cyberspace and in order to facilitate police activities, criminal laws have been rigorously enforced in the face of organized crime in cyberspace. Even in most countries that have an advanced legal system, it has been observed that the legislator explicitly preferred social interests to individual interests and limited individual rights and freedoms to other crimes.

4.4. The vulnerability of governments to global crime

One of the challenges facing governments for globalized crime is their vulnerability to these crimes. Of course, this vulnerability can be seen in terms of the conflict between countries' criminal policy in the field of crime at the judicial level. Also, the vulnerability can be discussed in the implementation phase. The controversy over the conflict of global crime with criminal policy can be debated to the fact that criminal policy at the national level is in conflict with the international level. However, the determination of the policy at the national level with international law, although these have similarities but is internationally different. Considering that in international law the views of particular countries or regions are not in priority [13].

Today, the restriction of national sovereignty following international crimes can be regarded as the most important threat to national sovereignty. The criminal policy at the national level is also rival and controversial with what the international law sovereignty, and in particular the United Nations, seeks to clarify the policy of this branch of the law. This issue can also be considered executively. Globalized crimes require confronting, explaining, and defining the policy for the fight, and hence executive policies impose unwanted costs on the framework of societies each year. These costs are either due to the administration of international criminal treaties that reflect the commitment of the governments to treaties or the result of multilateral and international cooperation through the process of globalization. For example, the costs that must be spent on health, social security and the welfare of citizens are spent on confronting and prevention of crime.

The 2001 Cybercrime Convention is based on the general principles of international cooperation that determines members to cooperate in accordance with the provisions of this convention and execution of documents of international cooperation on criminal subjects, in accordance with agreed arrangements for the same or bilateral legislation. They also should cooperate on domestic laws to achieve the widest area of judicial research or scrutiny of crimes related to computer systems and data or to collect electronic evidence of the crime.

In terms of legislation, restricting the legislature is also debatable. However, domestic and international criminalization and the globalization process are limitations to the rights of countries in the field of national legislation. In other words, the countries cannot be considered just as a follower of requirements and limitations of domestic law in the field of legislative and criminalization in globalized crime. As a brief of this topic, it can be said that globalized crime does not take into account the sovereignty and the boundaries of the states, which the demands of the rulers have been shaped to follow the desire of the people, and have a cross-border view of crime and punishment. The boundaries intertwined in the process of globalization will have such effects and consequences.

Conclusion

Criminal law is a system of the highest values and norms. In fact, when the criminal protection of legal values is raised in the form of criminal titles, the importance of these rules becomes increasingly apparent to everyone. The mission of criminal law becomes more important when linked with human values and global human rights because some of the values of the global human rights are also part of criminal law, and hence the protection of them, jointly in the age of globalization, has been assigned to both parts of the law. Part of these supports is the responsibility of criminal law and another part is the responsibility of human rights.

After the formation of the United Nations, from the middle of the last century, criminal law had also some changes. For example, it can be referred to as the changing of discourse and legal order governing this field. In fact, the impact of human rights discourse on this area is

one of the most important developments that should be mentioned, and the scholars of law and political sciences have called it the "humanization of legal rules." The necessity of supporting the human personality and originality and giving priority to him, the principle of being a human and to set human as the goal, condemned personal interpretations and the perception of man as a tool and emphasized his religious and non-religious significance with the theoretical foundations.

After the changes in internationalization and globalization and the positive and negative effects of both, one of the most important developments in the field of criminal law is the change occurred in the discourse of the system governing crimes and punishments in the age of globalization, influenced by cyberspace. In cyberspace, the emergence of some types of crime and victimization is more than the physical world, because it requires a calm and secure environment for both the criminal and the victim. Hence, many crimes committed with their traditional titles occur today in cyberspace. Fraud, forge, theft, and etc. are the same traditional titles that may have occurred in cyberspace.

Cyberspace has also created challenges for crime prevention, due to its specific nature. These challenges come not only from the cyberspace that may have committed crime but also from the physical world. In addition to the imperceptibility of the cyberspace which documentation is immaterial in it, cyberspace may include various forms of prevention of challenges such as shifting and targeting that can be much more than the physical world, human rights violations, violations privacy, providing an instrumental analysis of the delinquent and etc. So, in other words, the different nature of the space of crime can change the argument about the evidence and proof of the crime, and even the methods of preventing it.

The examples of globalized cybercrime, such as economic crime and money laundering, financial corruption, smuggling, terrorism, and spying, have exposed most of the governments to a new discipline in dealing with the criminal phenomenon. Accordingly, other crimes do not have internal and local nature and are not limited to a physical environment. Therefore, the universal nature of the crimes and the intangible or low sensitivity of committing it in an unrealistic environment make it quicker and easier for the perpetrators and organizing the criminality has become easier. For this reason, coping with a criminal phenomenon cannot be adjusted only by the help of domestic normative order, and global intention and transnational agreements must be created to deal with it. Common and bilateral criminalization, drawing up policies for confronting globalized cybercrime, setting unified punishments in the global sovereignty, adopting unified laws at the regional and global level, regulating unified rules for internet service providers, determining preventive unified policies for global cybercrime, adopting unified approaches to counteract the formation of organized groups in cyberspace, using censorship and filtering in essential cases are among the most important measures to be taken in this regard.

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