

The Reshaping of the Criteria for Defining the Criminal Organization of the Crimes of Cyber Mafia

Changchun Wu¹

¹ East China University of Political Science and law

Correspondence: Changchun Wu, East China University of Political Science and law.

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Abstract

Under the impact of the network society, some of the characteristics of the crimes of cyber mafia have undergone different degrees of transmutation, and the incompatibility between the original legal norms on the identification criteria of criminal organizations and judicial practice has become more and more obvious. After analyzing the substantive changes and regulatory dilemmas of the criminal organization of gangland and evil force under the threshold of the network based on the demarcation of the concept of network gangland and evil force, the reshaping of the definition criteria of criminal organization should emphasize the substantive side of organizational characteristics, while enhancing the systemic status of soft violence as the basis for crime identification, and increase the corresponding quantitative standard setting.

Keywords: the gangsters, crime of cyber mafia, the gangsters crimes

1. Introduction

In the context of the rapid development of Internet technology, the crime phenomenon that exists along with the emergence and development of human society has gradually emerged with different new characteristics, and the intertwining and integration of offline and online modes has pushed the traditional the crimes of mafia to evolve its own existence form, and with the change of Internet and big data and deep development, and then form the "Internet + gangland and evil force." The "Internet + gangland and evil force" is a high-order criminal situation. China has made many eye-catching achievements since the special struggle against gangland and evil force in 2018, and it can be said that in the real social environment, the space and breeding ground for

the crimes of cyber mafia to survive exist in name only. It cannot be denied that the high pressure of the state policy and the trend of progress of the times have to some extent stimulated the development of the original the crimes of mafia in the direction of information technology and technology, in order to seek a living space in the network. The consequence is that compared with the traditional the crimes of mafias, the network gangland and evil organizations have derived special elements of networking in addition to the traditional characteristics. In the relationship between computer and network, the network becomes the purpose itself, and the computer becomes a tool. This transformation also profoundly affects the field of crime,¹ which leads to the phenomenon of using the network as a "tool" to

commit crimes or crimes in cyberspace is gradually evolving into the mainstream form of Internet crime.² Compared with the traditional gangland and evil organizations, the network gangland and evil organizations have undergone changes that are difficult to ignore, while the existing normative documents and the basic position of judicial decisions still follow the traditional identification criteria, it is clear that the judicial strain is lagging behind in this regard. Then how to clarify the incompatibility between the existing legal norms and the changes in crime development, and based on the position of systemic thinking on the network of gangland and evil criminal organization standards to clarify and reshape the norms is the problem.

2. The Internal Boundary of Gangland and Evil Force Crimes in Cyberspace

2.1 Legalized Demarcation of the Concept of Organized Crime

Prior to the introduction of the Anti-Organized Crime Law in December 2021, the concept of organized crime had not been clearly and completely defined. Article 2 of the Anti-Organized Crime Law is one of the most noteworthy points of the entire law, and is unique in that it clearly and completely defines the meaning and scope of organized crime, in response to the confusion over the concept of crime caused by the inconsistency and imperfection between the norms. Paragraph 1 outlines the connotation of organized crime,³ thus clarifying the concept of organized crime in China by way of formal definition; paragraph 2 describes the substantive concept of malicious organizations,⁴ thus defining the concept of malicious organizations in China by way of substantive definition; and paragraph 3 supplements and extends paragraph 1, extending the scope of organized crime to acts of “triad organizations from outside the country that come to the territory of the People’s Republic of China to develop organizational members, commit crimes, and commit crimes against the state or citizens of the People’s Republic of China outside the country.” Article 2 of the Anti-Organized Crime Law makes up for the absence of the provisions of the Criminal Law on malignant forces and simultaneously expands the scope limitation of the Criminal Law on organized crime, thus making the provisions on organized crime in China present a complete development pattern including

crimes of malignant organizations, crimes of triad organizations and crimes of triad societies. This indicates that the combination of the Criminal Law and the Anti-Organized Crime Law at the legal normative level has made it possible to legally define both parts of organized crime, i.e., organized crime of a triad nature and organized crime of a malignant force.

2.2 Dismantling the Distinction of the Concept of Gangland and Evil Force Crimes in Cyberspace

According to Professor Liu Yanhong, in the intersection of Internet technology and social science, “network + academic terminology” is often used to denote a specific topic of the times that is being focused on. The insertion of the expression “network” in front of the traditional term “crime” or “specific crime” forms a new legal concept.⁵ From the side of the form of cybercrime behavior, the current academic community mainly exists in the object, cyberspace, tools and other views.⁶ The author believes that these three views are not alone complete to encompass the form of the characteristics of the current network gangland and evil force crime, in fact, should be network gangland and evil force crime to the network as a criminal object, using the network as a criminal tool or in the network space breeding gangland and evil force criminal behavior. And from the side of the essence of the network criminal behavior, the nature of the gangland and evil criminal phenomenon in the Internet space and there are two views of alienation and evolution. The former emphasizes the dualistic distinction between the Internet space and the real world, and believes that the traditional crime in the cyberspace is a qualitative change⁷; while the latter believes that cybercrime is only the evolution of traditional offline crime in the cyberspace, and the quantitative change occurs.⁸ The author believes that the essence of the crimes of mafia does not change fundamentally because of the emergence of this element of the network, and that network the crimes of mafia still belongs to the basic category of organized crime. For the nature of the network gangland and evil force crime, there are two positions in the academic community: the first view that the network gangland and evil force crime is the traditional gangland and evil force crime in the means of upgrading, is the threat of attacking other people’s websites, so as to disguise the protection fee for hacker groups.⁹ The second view is that the network the crimes of mafias

should be confined within the cyberspace, which is the network alienation of the traditional the crimes of mafias.¹⁰In fact, these two positions are still motivated by a formal description of the crime rather than a substantive interpretation. As mentioned earlier, the triad nature of crime and evil crimes are components of the crimes of mafias, the two are not substituted or mixed with each other, the network the crimes of mafias simply described as the use of the network to commit crimes or crimes occurring in cyberspace confuse the boundaries of crime manifestations and the essence of crime, but also not a complete description of the scope of the establishment of this type of crime. The author believes that the network gangland and evil force crime at the same time with the network crime, traditional crime and gangland and evil force crime three apparent characteristics and behavior characteristics, is the result of the three coupled alienation. Network gangland and evil force crime has both the nature of organized crime in real space, while adding the characteristics of information network elements, the definition of its concept should take the concept of real space gangland and evil force crime as the fundamental, while considering the technical characteristics of network communication and cyberspace, and finally combined with the concept of network crime to define the concept of network gangland crime and network evil forces crime.¹¹Therefore the conceptual demarcation of cyber the crimes of mafias will be justified based on cyber triad nature crimes and cyber evil crimes to be elaborated separately.

First of all, the network triad crimes should refer to all the objective elements of the triad organizations to use the network and the sum of the behavior, including both the perpetrators through the control of network technology to form an illegal control of certain areas and the network as the object of the triad crimes, including the network as a tool for the implementation of crime and thus obtain improper benefits of the triad organizations. Crime, also includes in cyberspace and through certain technical means to form illegal control of the network order or cause illegal damage to the triad nature of the organization crime. Secondly, the crime of network evil forces should refer to the sum of all the acts committed by evil forces using the objective element of the network, and its types of acts include a series of criminal acts

of using the network to commit various criminal acts to obtain unjustified interests, using network technology to coerce others to meet the illegal demands of the organization, and forming certain forces in the network space and forming illegal control or causing illegal damage to the network order through technical means. Control or cause illegal damage through technical means. According to the aforementioned, we can make a general summary of the connotation of network gangland and evil force, that is: the triad nature of the organization and evil forces use the network to implement various types of criminal acts or coercion of others to meet the illegal requirements of the organization and in cyberspace to form a certain force and through technical means to form illegal control of the network order or cause illegal damage to the sum of a series of criminal acts.

3. The Transmutation of the Crimes of Mafias in the Network Perspective

With the development of the times, traditional criminal behavior in the impact of information network technology has gradually changed the original composition of the model, and in the soil of cyberspace constantly breeding, evolution, and then formed a series of new types of crime with new characteristics. The network the crimes of mafia is precisely in the network of virtual, hidden, open and efficient characteristics of the stimulation of the transmutation. From the substantive point of view, the organizational characteristics of network crime become more decentralized, no longer confined to the traditional stable and tight structure model; its means of behavior is also correspondingly more transformed to facilitate the implementation in cyberspace or the use of the network to implement the soft violence; but the social harm of network crime is not thus reduced, but increasingly shows an expanding trend. From the normative point of view, the use of information networks to commit crimes has more possibilities for change, and the existing legal norms are unable to match, thus causing some judicial judgment problems; soft violence is often difficult to form a concrete appearance, so the definition of it can not avoid certain bias; and the existing unsound norms can not provide a clear scope for the evaluation of the harmfulness of network the crimes of mafias. The existing norms are not sound enough to provide a clear scope for the evaluation of the

harmfulness of cyber criminality.

3.1 Substantive Perspective: The Alienation of the Characteristics of the Criminal Organization of the Network Gangland and Evil Force

3.1.1 Decentralized and Weakened Organizational Structure Features

The incorporation of network factors has prompted the networked triad crime to gradually have the representation and connotation of network crime, which is manifested in the level of organizational structure characteristics, i.e., the transformation from hierarchical and centralized to flat and decentralized. According to Article 294 of the Criminal Law, a sound triad organization usually has four characteristics, namely, organizational characteristics, economic characteristics, behavioral characteristics, and harmful characteristics.¹² One of the organizational characteristics is described as “the formation of a more stable criminal organization with a larger number of people, a clear organizer and leader, and basically fixed backbone members.” However, under the dissipation of the network society, the provisions of the Criminal Law have been unable to match the organizational characteristics of the network the crimes of mafias.

First, unlike the traditional pyramidal organizational structure with strict organizational discipline and clear hierarchical relationships, the organizational structure of the network gangland and evil force tends to be flat and decentralized, and the relationship of members within the organization also develops from subordination to cooperation, assistance, and commission. Second, the fixed characteristics of the members of traditional the crimes of cyber mafia are no longer obvious, and the previous “blood type, geo type and business type”¹³ organization formation methods are gradually replaced by more novel and convenient ways such as network recruitment, and their members’ joining and withdrawal are no longer subject to various restrictions. At the same time, thanks to the virtual, open and hidden characteristics of the network, gangland and evil organizations are no longer confined to the restrictions of closely linked relationships, and even people who are not connected to each other or even complete strangers can participate in the crime together, and each participant can

independently choose to join or leave the organization, and choose to participate in part or the whole crime process. Furthermore, compared with the limited influence of traditional gangland and evil force offline, the network gangland and evil force criminal organization is more efficient, relying on the help of network platforms and instant messaging, a newborn network organization can quickly absorb many members in a very short period of time using very low costs, and spread its influence to various provinces and cities and even various countries and regions. Finally, compared with traditional the crimes of cyber mafia, the members of the network evil criminal organizations do not have to act with the same intention and criminal purpose, as long as the implementation of the corresponding behavior in the criminal organization can obtain certain economic benefits, and do not have to form a common organizational will among the members, as in the former.

3.1.2 Soft Violence Type Behavioral Tactics Feature Prominently

Traditional gangland crimes are mainly threatened by suffering physical pain and injury to the victim, and the direct violence can make the victim more easily produce psychological fear and pain, so as to yield to the perpetrator to meet their unlawful purposes and demands. In contrast, soft violence is more characterized by the diversity of means and the continuity of pain, and its use is less restricted by the scene and less costly to apply. Under the influence of China’s special struggle against gangland and evil activities and the limitations of the virtual characteristics of the network environment, the proportion of violent means, a typical behavior in the traditional the crimes of mafias, in the network the crimes of mafias has significantly reduced, replaced by soft violence means gradually become its main crime means, and even in some cases soft violence means has become the only way of behavior.¹⁴

In the form of expression, the combination of online and offline Gangland and evil force crimes in cyberspace in soft violence means mostly manifested as online lending and offline through intimidation, harassment, verbal abuse, threats and other forms to force the victim to repay the set of loans behavior model. The soft violence in the pure cyberspace Gangland and evil force crimes in cyberspace is mostly manifested in the fabrication of false information

to the victim to defame, slander, to reveal the privacy of others or expose the lives of others to threaten or to badly guide public opinion, illegal control of the network order and destroy the network order of the online water army behavior model.

In the way of realization, the criminal behavior of network gangland and evil force is mostly based on different interest-driven dismantling, splitting, and at the same time relatively closely linked together, and the previously integrated crime model is not gradually eliminated because of the re-suitability of the openness and interactivity of cyberspace. For example, in order to achieve the ultimate goal of the crimes of mafia, a complete network gangland and evil force crime process can be presented as a specialized behavior planning body planning crime blueprint, specialized organization body for the collection and leadership of personnel, specialized network fighters to implement specific behavior and supporting network service providers to provide criminal help behavior and other multiple crime components. The splitting of the criminal behavior of network gangland and evil force not only does not lead to the reduction of the harm of the crimes of mafias, but also makes the operation of the various parts of the crime more efficient and convenient, thus making it easier to achieve the purpose of the crime.

In terms of the nature of the act, the softening of the criminal act and the splitting of the criminal process of the network gangland and evil force make the quality of the crime of each independent criminal act diluted, which leads to the mitigation of the crime. The network makes the dependence between each participant in the gangland and evil organization or between the participant and the organization as a whole reduced, and at the same time the connectedness is increased. The result of the fine division of the crime is that each independent act may not reach the severity required by the criminal law norms, thus not constituting a crime or even not constituting a violation of the law, and only in the case of the overall evaluation of multiple acts can the crime be recognized. For example, in some typical “online gansterdom PR” and “online water army” cases, the participants generally only follow the instructions of the organizers to publish false news or verbal attacks, individually, these acts often constitute civil torts, but it is difficult to qualify. This

indicates that the dilution and blurring of the nature of the criminal behavior of the network gangland and evil force will make the judgment of judicial personnel have to change accordingly.

3.1.3 Expanding Social Harm

Through the introduction of the previous article, the crimes of mafias under the network perspective are gradually moving away from the traditional tightness and stability characteristics in terms of organizational characteristics, and in terms of behavioral means, they are mostly transformed from traditional violent means to soft violence, but their social harm does not decrease as a result, but is constantly intensified and shows a trend of expansion due to the addition of network factors. In terms of crime volume, within one year from 2019 to 2020 alone, the Ministry of Public Security has cracked down on 1,759 criminal gangs through special rectification actions using information networks to commit the crimes of mafias, and arrested 17,000 suspects, detained 16,400 suspects, and seized 29.95 billion yuan of assets involved.¹⁵ This shows that the high yield and low cost of cybercrime has attracted more actors to participate in criminal activities, and the unrestricted nature of cyberspace has prompted the endless extension of the scale of crime, and the crime of gangland and evil force in the network environment is not only high, but the scope of influence it causes is even wider. In terms of social impact, the network began to serve as a criminal tool and hideout and thus be used by various criminal organizations, which makes its crime scale compared to offline to produce an exponential expansion and growth. And the low threshold and lack of supervision of the network is also seen by more and more potential criminal actors as an opportunity and window to commit crimes, and thus the potential for criminal acts to occur is greatly enhanced. In addition, the virtual and open nature of cyberspace creates infinite possibilities for the growth of crime, and more and more criminal organizations form specialized or even industrialized organizational models through the network, and the scope of their control and influence is no longer limited by the geographical blockage, and even the types of crimes and crimes involved in their behavior are no longer comparable to traditional offline crimes of mafias.

3.2 Normative Perspective: The Regulatory Dilemma of the Criminal Organization of Gangland and Evil

Force

3.2.1 Lack of Timeliness of Organizational Identity Criteria

In the judgment of the organizational characteristics, in practice, generally 10 people as the starting point for the number of triad nature organizations and 3 people as the starting point for the number of evil forces organizations.

¹⁶However, the reality of the change is that the gangland and evil force organization crime that occurs today relying on the network already has completely different characteristics from the past. As mentioned earlier, the structure of the network gangland and evil criminal organization is no longer tight and solid, and the personnel within the organization has considerable mobility, which means that the participants of the network gangland and evil criminal organization can completely use the network platform to hire members or seek cooperation with others, thus forming a single individual organization group or criminal group. In this way, according to the original legal norms and related interpretations of the organizational characteristics of the criteria for its application is inevitably difficult to adapt to the situation, in some cases the actual real organizational control does not reach the usual quantitative standards, but the extent and scope of the harm caused by the huge number of offline organizations is not at all small, so that artificially produced a regulatory blind spot.

Secondly, according to the existing norms such as “Guiding Opinions on Several Issues Concerning the Handling of the crimes of mafia Cases”, the crimes of cyber mafia need to have strong stability characteristics, i.e., “form a more stable criminal organization”. However, the changing nature of the realization and behavior of cyber the crimes of mafias determines that their organizations do not necessarily have strict internal and external discipline and control mechanisms, and the members of the organizations do not have to be confined to the traditional subordination and domination relationships, but are transformed into more equal employment and transaction relationships, and the integration of the behavior and ties of each participant is no longer a fixed “gang rules”. Instead of fixed “gang rules” or “rules and regulations”, it is a more flexible and commercialized operation mode. ¹⁷In addition, the addition of network factors makes the natural connection between participants in the

criminal organization weakened, the organization members do not have to have a familiar relationship with each other, but may be strangers from the north and south of the world, the constant change and uncertainty of personnel to a certain extent more weakened the stability characteristics of the organization. Therefore, the de-stabilization of the network gangland and evil force organization will bring great difficulties to the judicial practice regarding the identification of the stable characteristics of the gangland and evil criminal organization.

Moreover, the addition of network factors makes the difference between the organizational forms of triad organizations and evil forces more blurred, thus causing difficulties in combating and regulating them. In the traditional organizational model, the triad nature organization is the advanced form of evil forces, compared to the latter, the former has a more tightly organized structure, more members and a higher degree of specialization. However, the organizational structure of cyber criminal triads is more decentralized, flat and decentralized, and compared with traditional criminal triads, it is difficult to form strong control over the members of the organization, and the members are more flexible in their behavior and cannot reflect the characteristics of issuing orders and assigning execution similar to the traditional criminal model, so the judicial authorities are very easy to fall into the difficult decision between organized crime and common crime. The judicial authorities are therefore easily caught in the difficult choice between organized crime and general joint crime.

3.2.2 Bias in the Definition of Soft Violence

The “softening” of the means of behavior is an obvious trend in the development of the change of the crimes of mafias under the normalization of the fight against gangland and evil and the continuous suppression of judicial organs, and gradually becomes one of the most important ways of behavior of the crimes of mafias. However, it is worth noting that the soft violence of gangland and evil network the crimes of mafia is fundamentally different from the soft violence of traditional crimes of mafia, the soft violence of traditional offline crimes of mafia is mostly backed up by real violence and implemented in a “face-to-face” way. In fact, the traditional soft violence is only the auxiliary or pavement for the criminal organization to

implement violence, its significance is to cause the reason to implement violence through soft violence, or immediately transform into violence when the threat of soft violence is not effective. Although the network and the evil forces of crime soft violence also has the role of threatening, intimidating and making the victim's heart fear or psychological coercion, but the soft violence in the network does not have the realistic basis and practical conditions for transforming into real violence offline, that is, the network gangland and evil force of crime soft violence in essence is independent and not backed by real violence. It can be said that, to a certain extent, the network the crimes of mafia has got rid of the behavior pattern of traditional the crimes of mafia and derived new characteristics and patterns, so we need to consider whether this kind of network soft violence that arises in cyberspace and lacks the support of real violence can be included in the "other means" required by the behavior characteristics of gangland and evil organizations. The problem of whether this kind of network soft violence, which arises in cyberspace and lacks the support of real violence, can be included in the "other means" required by the behavioral characteristics of the gangland and evil organization, and whether the network gangland and evil organization is established accordingly.

The increase in the proportion of soft violence in the means of criminal behavior of the network gangland and evil force makes the evaluation of the behavior of the network gangland and evil force organization more uncertain, and if it is still identified in accordance with the relevant norms of traditional crime, it will undoubtedly produce an inadequate evaluation of the behavior of the gangland and evil force organization, and the boundaries are not clear. According to the Opinions on Several Issues Concerning the Handling of Criminal Cases of Implementing Soft Violence issued by the two high and two ministries on April 9, 2019, soft violence means belong to the "characteristics of the behavior of triad organizations" in the third paragraph of Article 294, paragraph 5 of the Criminal Law and the "evil forces" in Article 14 of this opinion, "other means" in the provisions. Although the Opinions emphasize the legal status of soft violence in the crime of gangland and evil force similar to that of general violence, and make preliminary provisions on its concept,

manifestation, objective means of identification criteria and applicable crimes, it still cannot solve all the problems of the network gangland and evil force organization using soft violence as a means of committing crimes, and "other means." The statement of "other means" is more like a kind of underwriting clause or flexible provisions, which leads to the identification of soft violence in judicial practice still exists in a larger contingency. For example, as the main means to implement the network "soft violence" behavior may belong to both criminal behavior, may also belong to the general illegal behavior, which will make judicial practitioners in the evaluation of the nature of the behavior of the gangland and evil force organization confused, and for only exist in cyberspace and only through the network online to commit crimes of the network gangland and evil force Organization, in the nature of the entire organization to determine and behavior judgment also has a certain subjectivity, we must also pay attention to some originally belong to the general illegal and difficult to evaluate the criminal behavior, if at the same time has the nature of the evil forces, then whether it should be correspondingly upgraded to crime this situation occurs.¹⁸

3.2.3 Social Harm Still Needs to Be Regulated and Limited

According to the provisions of Article 294 of the Criminal Law and the 2018 Opinions on Several Issues Concerning the Handling of Criminal Cases of gangland and evil force, the harmfulness of both evil forces and triad organizations must be limited to "a certain area or industry", in which evil forces are the primary form of triad organizations, which need not have a significant impact on the area or industry or illegal control, only need to produce "disrupt the economy, social life order, resulting in a more severe social impact" effect can be. The network gangland and evil force in the determination of the harmful characteristics also require to meet the "certain region or industry" to form a "significant impact, illegal control or disruption of economic and social life order, resulting in a more severe social impact" and other conditions.¹⁹ Unlike traditional crime types, the network of gangland and evil criminal behavior caused by the infringement is not all occurring within the real space, the Internet has now developed into a fairly mature social characteristics, most of the final results of the

network crime is more reflective of a destruction of the network order, but this does not mean that the network society and the real society between the equivalent. As mentioned above, the harmful characteristics of the evil forces organization emphasizes the bad social impact, the triad nature organization emphasizes the formation of illegal control or significant influence, serious damage to the economy, life order, and these results are also limited by the industry and region. While the network of gangland and evil criminal behavior formed by the characteristics of the harm gradually break through the natural geographical and spatial and temporal restrictions and continue to show the expansion of the intensification of the trend. Compared with traditional society, the network has no boundary characteristics, how to define a certain area or an industry in the network society, the current theoretical and practical community still exists in disagreement, at the same time, gangland and evil criminal behavior caused by disorder if only exists or mainly exists in cyberspace can be in accordance with the existing provisions that “the formation of illegal control or cause significant impact. Serious disruption of economic and social life” or “disruption of social order, economic order” is also lack of a clear and unified opinion.²⁰ In other words, whether it is reasonable to limit the scope of the socially harmful characteristics of the network criminal organization based on the existing norms of the characterization of cyberspace and network order is a question that we must judge.

In addition, according to the basic principles of China’s traditional crime determination, the trial judge needs to consider the amount of crime, crime circumstances, harm results and other elements of crime quality. However, in the network crime model, it is difficult to assess the damage to order and harm results according to the aforementioned reference standards, for example, in the process of “online water army”, gangland and evil force crimes, the perpetrator manipulates a large number of accounts to make false comments on a certain business or platform, the judicial practice for the harm and impact caused by their behavior. It is difficult to accurately assess the number of crimes, personal damage, economic losses and the amount of illegal income, and it is also difficult to determine the degree of disorder in the network generated by their behavior. Therefore, it is

necessary to adjust and revise the traditional crime recognition standards in the original norms according to the virtual, hidden and blurred characteristics of the network to adapt to the new patterns and characteristics of the crimes of mafias in the network context.

4. The Normative Reshaping of the Criteria for Determining the Criminal Organization of Network Gangland and Evil Force

As mentioned earlier, the substantive connotation of the transmutation of organized crime within cyberspace currently has distinctly different views in the academic community, respectively, the alienation theory that emphasizes the qualitative change of crime and the evolution theory that emphasizes the quantitative change of crime, but the fact that the traditional crime model inevitably changes under the impact of the network society is not controversial. The author believes that although the characteristics of the network gangland crimes has undergone some of the changes listed in the previous section, but its core connotation is still inherited, the network gangland crimes is still organized crime rather than the general network common crime.²¹ In other words, the provisions of the existing legal norms on the criteria for identifying network gangland and evil force organizations are not fully compatible with the new changes arising from the crimes of mafias in the network perspective, but still leave room for reference. Therefore, our basic idea for the network of the crimes of mafia organization criteria for the reshaping of norms should be in the affirmation of the substance of the inheritance of the basis at the same time pay attention to the new features derived from the network elements, based on the new model of network the crimes of mafia, adhere to the specific analysis of the attitude of the existing norms for the reshaping of the identification criteria.

4.1 Organizational Characteristics Should Be Defined with Emphasis on the Substantive Side

According to the foregoing, the gangland and evil force organization in the impact of the network society gradually presents the “decentralization” and “flattening” characteristics, the traditional gangland and evil force criminal organization signs of expression in a certain degree is dissolved and reconstructed, whether the subject of crime. The number of participating members can no longer

reflect the meaning of the previous context, and in the structure of the network, the network triad nature of the organization and the characteristics of the organization of evil forces no longer have obvious differences in the form of expression, which makes the judicial determination will lack a clear standard guidelines, and thus the occurrence of differences in the adjudication. According to the existing norms, the characteristics of the triad requires "the formation of a more stable criminal organization, a larger number of people, a clear organizer, leader, basic fixed backbone members", while constituting a malicious force requires the satisfaction of "generally more than three people, the entourage is relatively fixed" organizational characteristics. The legal norms are characterized by the emphasis on the formal side of the organizational characteristics of gangland and evil force, namely "stable organization", "more people" and "organizers and leaders" content description. The key to grasp things lies in the essence, not the phenomenon, and it is a basic philosophical cognition to see the essence through the phenomenon. Regardless of the changes in the organizational structure and mode of network crime, it is certain that it still reflects the same essence, that is, the criminal organization is a subject capable of achieving consistent action.²²From this point of view to examine the network of three or less gangland and evil force organization can be found, in a person or two people in the main crime, in addition to the continuous flow of other members, the entire criminal organization to carry out criminal acts, the scope of influence and the degree of harm compared to the traditional three or more than ten people organization group does not have a substantial difference, it still has the network gangland and evil force organization required to have. The "functional" requirements of the organizational characteristics of consistent action, and even in the assistance of the network may far exceed the latter, so the establishment of a one-person or two-person type of evil forces is not impossible. The essence of organized crime does not lie in the number of people, but in the substantive criteria of the organizational features of the crime process. The determination of the organizational features of the crime of gangland and evil force should not be limited to the formal criteria of organizational form, number of people and hierarchical structure. As

long as the members of the organization can participate in criminal activities under the domination of the leader or organizer, each participant's behavior is coordinated, consistent in purpose and can be condensed into the implementation of the crime as a whole should be found that the organization meets the composition of the elements of due diligence. In the setting of standards, the legislator should highlight the substantive aspects of the organization's characteristics, rather than overly restrictive on the formal manifestations; the judiciary should avoid making mechanical judgments or even reading from a book, and instead make judgments from the substantive level, so as to regulate the judicial determination of the criminal organization of network gangland and evil force.

4.2 Behavioral Characteristics Should Strengthen the Identification of "Soft Violence"

Violence and threats are undoubtedly the most direct and effective ways for gangland and evil organizations to achieve illegal control over society. In the traditional crime process, violence and threats are usually the most economical and effective choice to control victims and achieve criminal purposes, and they are also one of the most common methods. Therefore, in the traditional crime model, judicial practice based on the formal criteria to determine the crimes of mafia will be the violent characteristics of the act as a judgment of whether the gangland and evil organization is established elements of the practice has a certain degree of rationality. However, under the influence of the high-handed crackdown of judicial organs and network technology, the crime of gangland and evil force has been upgraded and evolved accordingly, and the violent crime model no longer fits the needs of criminal organizations, but gradually changes to the "soft violence" crime model.

Soft violence is the main manifestation of the networked means of criminal behavior of gangland and evil force. Unlike traditional forms of violence such as vandalism and robbery, networked soft violence has the characteristics of concealment and multilateralism. Soft violence is difficult to have the appearance of criminal behavior because it leaves behind the characteristics of causing physical harm to the victim, and it is difficult for the general social understanding to evaluate it accurately. According to the author's analysis of the ten

typical cases released by the Ministry of Public Security in 2020 to combat the use of information networks to commit the crimes of mafias, only three organizations used traditional violent crimes such as fraud, extortion, provocation, illegal detention, rape, etc. as means of implementation, while as many as seven organizations used soft violence as the main means through privacy theft, reputation defamation, water posting of control reviews, telephone harassment, etc.²³ It can be seen that the status of soft violence in the gangland and evil force crimes in cyberspace has shown a trend of replacing traditional violence, and it has been difficult for the judicial authorities not to pay corresponding attention to this. Regarding the nature of the behavior of soft violence committed by criminal organizations, some scholars believe that the threat it generates is based on non-violent means of behavior, which lacks the characteristics of violence guarantee required in traditional evil forces, and thus does not have characteristics that match the characteristics of the criminal behavior of gangland and evil force.²⁴ Some scholars also affirm that soft violence can also cause serious social harm, and the lack of violent characteristics should not exclude the possibility of identifying the crimes of cyber mafia, and it is necessary to break through the traditional criteria for identifying gangland and evil organizations and use "other means" or "threats generated by other means" as the behavior characteristics of the network gangland and evil force organization.²⁵ It should be noted that the network "soft violence" and the traditional offline "soft violence" in the nature of the difference, the previous article has explained, here will not repeat. However, regardless of whether it is independent online "soft violence" or traditional "soft violence" backed by real violence, it still has the same role and purpose, that is, it is to cause psychological pressure on others due to fear and terror. The "soft violence" can produce social harm is not necessarily second to the "soft violence" in reality.²⁶ This is precisely in line with the inner logic of the Criminal Law and the Anti-Organized Crime Law, which juxtapose "violence", "threat" and "other methods" in the elements of gangland and evil organization. Whether it is traditional offline "soft violence" or online "soft violence," its fundamental value as a basis for criminal determination does not lie in the form of the act,

but in the purpose of the act, that is, the same as "violence" and "threat." The "threat" is sufficient to cause psychological pressure or psychological coercion due to fear and dread of others.

The author believes that, although the network "soft violence" can not be transformed into real violence, but if it can achieve the aforementioned purpose, that should be found to be in line with the requirements of the behavior characteristics of the gangland and evil force crime, thus becoming the basis for the identification of gangland and evil force crime. Things have spiraling development characteristics, the reality reflects that soft violence in the implementation of network the crimes of mafia process has a fairly important position, while soft violence gradually replace the traditional violent crime model and play a role in the realization of network the crimes of mafia process is the emergence of new things under the conditions of crime model change is the inevitable result, so in the process of adapting to the normalization of the fight against gangland and evil governance is necessary to encourage. The existing norms break through the shackles of formal standards and accordingly enhance the status of the system of soft violence crime mode of conduct.

4.3 Hazardous Characteristics Should Focus on Scope Limitation and Quantitative Setting

The first question to evaluate the social harmfulness of cyber the crimes of mafias is whether the regional industry specified in the Criminal Law and the Opinions on Several Issues of Handling the crimes of mafia. Cases includes cyberspace, and whether the order includes the network order? Internet has become one of the indispensable elements in people's production life nowadays, and according to the 51st statistical report of China Internet Network Center (CNNIC), as of December 2022, the size of China's Internet users reached 1.067 billion, and the Internet penetration rate reached 75.6%.²⁷ This shows that, apart from the real society, the Internet has actually become the largest platform for group interaction, or we can directly call it the "network society". In fact, the provisions of Article 5 of the 2013 "Interpretation on Several Issues Concerning the Application of Law to Criminal Cases of Defamation Using Information Networks" indicate that cyberspace has been included in the scope of regulation of "public places" at the

normative level, and the network order has become part of the social order. In other words, the illegal control and disruption of order caused by the evaluation of illegal adverse effects on cyberspace obviously does not lack regulatory basis. However, the real world is intuitive, the boundaries of different regions and industries in the real world are distinguishable, while the network is not, the characteristics of the borderless cyberspace requires us to evaluate the harmfulness of the behavior must uphold the attitude of specific analysis of specific problems. In the case of infringement of legal interests does not have uniformity, if the determination of the harmful characteristics of the network gangland and evil organizations adhere to the uniform standards based on similar behavior in traditional gangland and evil organizations, will inevitably fall into the quagmire of analogical interpretation and violation of the principle of criminality.

Therefore, the author's conclusion is that the scope of the social harm of the network gangland and evil organizations should be corrected and different quantitative standards should be set according to different types of criminal behavior in order to achieve the adaptation of crime and punishment. First of all, from the nature of things cyberspace is not the same as the real space, the identification of the two standards should reject the simple application of indiscriminate, but from the point of view of legal interests, even if the criminal acts only exist in cyberspace, its violation of the legal interests and the real legal interests are not different, because both violate the basic purpose of the law to ensure the stability of people's life order, while the law so. Therefore, it is not unreasonable to limit the scope of the harmful characteristics of the network gangland and evil criminal organization according to the provisions of the Opinions on Several Issues of Handling gangland and evil Criminal Cases. Secondly, the fact that the criminal means of the network the crimes of cyber mafia are constantly developing and changing reminds us that we should also pay attention to the differences in individual cases on the basis of the overall scope of application, in addition to the introduction of quantitative settings as criteria for the identification of different types of criminal acts of criminal organizations. For example, for organized "online water army" and other cyberspace-type criminal acts of evil forces can

be based on the number of posts, retweets, clicks and views of the network order to disrupt the level of harm set. In short, we should avoid relying too much on a universal standard in the evaluation of the harmful characteristics of the criminal organization of network gangland and evil force.

5. Concluding Remarks

Since the 21st century, the economy and society have entered a stage of rapid development, and the emergence of various new criminal behaviors has posed various challenges to the national governance and the improvement of legal norms. The promulgation of the Organized Crime Law has made the subdivision of organized crime clearer, and the two parts of organized crime, i.e., organized crime of triad nature and organized crime of evil forces, can be legally delineated, which provides the necessary basis for the state to regulate the criminal behavior of cyber gangland and evil force. Different from the traditional concept of organized crime, the network of gangland and evil force should be defined as: organizations of triad nature and evil forces use the network to implement various criminal acts or coerce others to meet the illegal requirements of the organization and in cyberspace to gather to form a certain force and through technical means to form illegal control of the network order or cause illegal damage to the sum of a series of criminal acts. From the substantive point of view, some of the characteristics of the criminal organization of gangland and evil force have undergone different degrees of transmutation, which are mainly reflected in the decentralization and weakening of the organizational structure, the prominence of soft violence and the continuous expansion of social harm; from the normative point of view, the dilemma of using the existing legal norms for regulation is mainly reflected in the lack of timeliness of the criteria of organizational characteristics, the existence of deviations in the definition of soft violence, and the fact that the social harm needs to be regulated. From the normative point of view, the dilemma of using the existing legal norms for regulation is mainly reflected in the lack of timeliness of organizational characteristics, the bias in the definition of soft violence and the need to regulate the social harm. Therefore, the incompatibility between the existing legal norms and judicial practice is obvious. However, in

essence, the network the crimes of mafias are still organized crimes rather than general network joint crimes, and the existing legal norms on the identification criteria of network gangland and evil organizations are not fully compatible with the new changes of the crimes of mafias under the network perspective, but there is still room for reference. Through the interpretation of the existing law, it should be achieved that the definition of the organization of the network gangland and evil force crime emphasizes the substantive side, rather than the simple application of the original norms, while the “soft violence” in the crime process plays an obvious role, should enhance its status as a system of crime determination basis, and finally do not ignore the evaluation of harm. Finally, we should not ignore the reasonable limitation of the scope of harm evaluation, so as to realize the reshaping of the criteria for determining the criminal organization of network gangland and evil force. It is believed that with the joint efforts of many scholars and legal workers, the legal regulation of organized crime such as gangland and evil force in China will become more and more perfect, the means of regulation will become more and more powerful, the breeding ground for crime will become weaker, and the construction of a society under the rule of law will become more and more sound.

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- ¹ See Yu Zhigang and Wu Shangcong. (2018). “A Historical Sorting Out of the Development of Cybercrime in China and Its Legislative, Judicial, and Theoretical Responses,” in *Politics and Law*, Vol. 1.
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- ³ Article 2, paragraph 1 of the Law of the People’s Republic of China Against Organized Crime provides that: The organized crime referred to in this Law refers to the crimes of organizing, leading or participating in organizations of a triad nature, as well as crimes committed by organizations of a triad nature and evil forces, as provided for in Article 294 of the Criminal Law of the People’s Republic of China.
- ⁴ Article 2, paragraph 2 of the Law of the People’s Republic of China Against Organized Crime provides that: the malignant organizations referred to in this law, is often gathered together, with violence, threats or other means, in a certain area or industry field repeatedly committed illegal and criminal activities, for the wrongdoing, oppression of the masses, disrupting the social order, economic order, resulting in a more severe social impact, but has not yet formed a criminal organization of triad nature Organization.
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²⁶ Id.

²⁷ China Internet Network Information Center (CNNIC) 51st Statistical Report on the Development Status of the Internet in China, in Sina.com, <https://f.sinaimg.cn/finance/3bfedf11/20230324/Di51CiZhongGuoHuLianWangLuoFaZhanZhuangKuangTongJiBaoGao.pdf>, accessed on March 29, 2023.