

WILDLIFE TRAFFICKING : A CRIMINAL LAW PERSPECTIVE

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Abstract

Wildlife trafficking has evolved into one of the most lucrative forms of transnational organized crime, posing severe threats to biodiversity, national security, and the rule of law. This study examines wildlife trafficking through the lens of organized crime and criminal law, highlighting the complex, structured networks that facilitate the illegal trade in flora and fauna. By analyzing national and international legal frameworks—including the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), the *United Nations Convention against Transnational Organized Crime* (UNTOC), and domestic penal laws—this research underscores the gaps and limitations in current enforcement mechanisms. The paper also explores how existing criminal law tools, such as asset forfeiture, conspiracy provisions, and anti-money laundering laws, can be leveraged to dismantle criminal syndicates involved in wildlife trafficking. The study concludes with recommendations for strengthening legal responses, enhancing interagency cooperation, and promoting a paradigm shift that treats wildlife trafficking not merely as an environmental offense, but as a serious organized crime demanding robust legal intervention.

Introduction

Many ITW consequences covered in the last chapter are the result of a lopsided mechanical conception of wildlife laws. Species are seen as tradable 'commodities', sometimes with precaution in the case of listed species. Humans are perceived as perpetrators of the crime if the trade happens to be illegal. Such straightjacketed binaries are bound to fail if they are not supplied with more nuanced, socio-scientific principles. These principles and techniques of getting to the roots of any wrong crime are found in the discipline of criminology. For environmental issues (including ITW), a new sub-discipline has evolved which the scholars like to call 'green criminology'.

This emerging area cuts across other disciplines and explores the means and ends of the crime and criminals. Significant international literature has developed to become conversant with

operative techniques of TOS. But the legal treatment of actors in such syndicates requires a differential method of scholarly and policy engagement. On the victim's side, the voice to recognize nonhumans' rights is getting stronger and many interesting proposals are put forth by the leading people in the field.

Through critically discussing such proposals, the chapter tries to make a case for the inclusion of criminological studies in the legislative and policy responses to ITW.

3.2. Criminology: A Brief Note

Criminology is the scientific study of 'crime, criminals and criminal justice' based upon but not bound by various aspects regarding law.¹ Criminologists have evolved several theories of crime and all of them have some underlying truth. The classical school or the rational choice theory operates from the premise in which a

person committing a crime is assumed to possess the ability to follow or not follow the law.² To check their tendencies, punishments are provided for any such act of crime in a way that outweighs the pleasure derived from committing the offense.³ This is also the theory upon which most of our criminal justice systems are based. There are however theories critical of such an approach that believe in breaking down elements of the crime in more nuanced bits such as biological, environmental, psychological, sociological and historical factors.

As a discipline, criminology has a rich history that cannot be discussed over here at length. It will be nonetheless pertinent to appreciate that the 20th century criminologists attended to the crimes majorly in a national or federal context.⁴ But a much-required shift is apparently in place. In the case of transnational organized crime (TOC), one cannot be limited to a particular place with ancillary cultural, legal and sociological considerations. It will help little to understand reality and in developing deterrent countermeasures.⁴ The phenomena and changes in the globalized society and economy have travelled beyond the aspects of psychiatric disorders, free will or bad associations. They rather reflect powerful forces that at times may even appear positive in terms of overall wealth generation.

3.3. Application on Transnational Crimes

Fortunately, the increasing mobility and sophistication of criminal entrepreneurs have caught the attention of criminologists worldwide. It is however not to assert that transnational crimes are a new phenomenon. Smuggling, piracy, abduction and counterfeiting are age old crimes and so are the powerless laws in nations that failed in controlling such activities. According to scholars, the only difference in the former and current response lies in the manner in which domestic law enforcement and international agencies have identified TOC as a 'priority'. It is now seen as a 'global crime problem'

aggravated by the ease of information, transport technologies and deregulated global economy. In the process of opening up of state economies, criminals have joined the transition to establish front companies or quasi-legitimate businesses responsible for financial frauds, smuggling, piracy, identity theft and other illicit activities.

Some of the criminologists have however reminded that while the expanse of TOC has enveloped many nations, its local connection remains intact. While referring to the UK, Hobbs argues that the new element in these problems (unlike the ones situated strictly locally) is the emergence of criminal networks or coalitions of criminal actors assembled for the purposes of particular jobs. Traditional crime families and their extended kinship relations have...disintegrated through the disturbance brought about by slum clearance housing policies and broader processes of urban renewal. From this perspective globalisation is important insofar as it accentuates the diverse and specifically local contexts of organised crime.⁵

Thus, TOC cannot be isolated from the 'local contexts'. Another criminological way of studying the TOC can be to analyze it as an internal or external threat. The European Union (EU) may think of it as an external threat that harms its economy and hence strict border measures are seen as an effective way to prevent its effects. A contrary perspective however sees TOC as a response to the demand in western societies in one sense and the result of the limited exercise of state sovereignty in checking the supply to that demand in another; the common theme being that the source of TOC is endogenous.¹³ As a subject matter of policy debates, criminologists are required to delve into certain questions (to arrive at the solution) like 'how is it that individuals become organised and embark upon organised criminal careers?' or 'what are the processes through which individuals are recruited into such careers?' or 'what are the

factors, other than incapacitation, that disrupt and/or curtail these careers?'

In order to check the criminal dispositions; they are expected to apply the 'situational crime prevention principles' so that opportunities for such crimes can be nipped in the bud. That would require investment in the identification of stratagems and mechanisms that criminal groups use to communicate, traffic illegal products and launder the proceeds of crime. Such situational methods should however be society sensitive, particularly towards the disadvantaged and vulnerable who may be unable to comprehend. Their application must therefore remain substantially 'localized' to get the best results.

3.3. Globalization of Social Control

In the work authored back in 1998, Manuel Castells identified six areas affected by the transnational crime— arms and weapons trafficking, trafficking of nuclear weapons, smuggling of illegal migrants, trafficking in women and children, trafficking in human body parts and money laundering.¹⁴ It is interesting that before we entered the 21st century, wildlife crimes were not even considered as important subsets of transnational crime. The focus was primarily on drugs, arms and human trafficking which rightly thought to have 'an extraordinary diversity of operations, making it an increasingly diversified, and interconnected, global industry'.⁶

With the advent of transnational crimes, what criminologists call 'the globalization of social control' also set in organically. To gauge the world's position on crime and 'trends in crime from both spatial and temporal perspective', the UN has been making efforts since 1972 by undertaking several periodic international crime surveys.¹⁷ The process reached its peak with the adoption of the UNTOC (a part of which was discussed in Chapter 2) that for the first time defined 'organized criminal group'. According to it, if the crime is committed in one or more states, involves actors who illegally

operate in cross border activities or is of such a nature that even if committed in one state it adversely affects another, then, it shall be considered a 'transnational crime'.¹⁸ It exhorted state Parties to adopt legislative measures so that crimes committed internationally can be established as criminal offences and be prosecuted and adjudicated with the seriousness that they deserve.¹⁹ Read with its protocols, UNTOC also defined human trafficking for the first time in the history of international law. But that is not the subject matter here. It is important to understand that UNTOC triggered the globalization of controlling organised crimes and gates were opened to the international social and institutional monitoring of such crimes.

In this transnationalism, however, there is a strong nexus between individuals, criminal organisations, 'fences' or middle person, unscrupulous collectors and legitimate traders, creating a symbiosis between legitimate and criminal activity.⁷ This was as true as in the case of theft of cultural or intellectual properties. In the case of trafficking, there was convincing evidence of the penetration of criminal groups in the political sphere and their connivance with the state agents in sustaining the trafficking. Experts have observed: *'even in a democratic political framework where institutionalized mechanisms for governing and distributing public goods, including justice, do exist, there is still a danger of penetration of those state institutions by organized crime, a phenomenon that is described as "state capture". The way in which organized crime usually "captures" the State is by co-opting public institutions'*.

Notably, the 2003 United Nations Convention against Corruption (CAC) was agreed to deal with issues related to corruption. The genesis of this convention lies in the thought that corruption has transcended the local boundaries in the present era and has become a 'transnational phenomenon that affects all societies and economies'. CAC identifies itself as a complementary instrument to the UNTOC

and gives a detailed definition of who is a 'public official'. It calls upon states to (i) develop anti-corruption policies which promote 'participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability' (ii) establish anti-corruption bodies that help in implementing policies and disseminate knowledge about countering corruption (iii) strengthen the public sector (iv) apply code/s of conduct on the public officials for 'correct, honourable and proper' discharge of public functions (v) enhance public reporting and transparency (vi) take anti-corruption measures with regards to the judiciary and prosecution services (vii) take measures to prevent corruption in private sector

(viii) check money laundering⁸ (ix) ensure participation of the groups outside public sector such as civil society, NGOs and community based organizations in fight against corruption and (x) take legislative measures to penalize bribery (in any form), misappropriation, or any other such illegal conduct in the capacity of public/private official.

Hence, UNTOC and CAC emerged as legal spearheads in holistically neutralizing the issues attached to TOC. Both take care of all three components of criminology – crime, criminals and criminal justice.

Aurelijus Gutauskas J. from the Supreme Court of Lithuania identified two global strategies to solve the problem of transnational crimes. Firstly, he emphasized on building national and international capacity to resist and respond to the problem. Secondly, he advocated developing 'global strategies' to counter transnational organized crimes and included recognition of the global impact on 'criminological situation in all countries' as one of those strategies. UNTOC and CAC provided the starting point in that direction. For ITW also, a similar set of global rules have evolved through various UN backed resolutions and decisions. It shall be dealt with in subsequent sections.

3.4. Skeptic's View of the TOC Framing

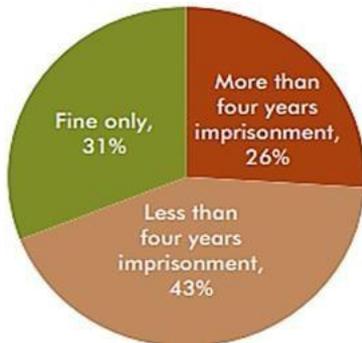
Skeptics argue that any TOC is, more often than not, a result of 'selective political representation of crime'. According to them, globalisation has ushered two basic transformations concerning criminology. First relates with the global convergence of criminal justice policies combining internationally set human rights standards, macro socio-economic developments and acceleration of policy transfer and diffusion. Much of it is 'symptomatic of a rapid homogenisation of criminal justice policies', sought to be achieved to attract international capital. Secondly, this homogenization is underpinned by a loss of 'the social' as evidenced by the influx of neo-liberal market forces encouraging the formulation of 'policies based less on principles of social inclusion and more on social inequality, deregulation, privatisation, penal expansionism and welfare residualism'.

As a corollary, it means, only when the potential danger of a criminal enterprise to the capital transfer, world market structures, international transport/communication and national security is realized, it is selected for collaborative action.⁹ If it does not pose a direct threat to these aspects, it is ignored. It is submitted that this skepticism holds some truth in its analysis.

If we look at texts of the UNTOC and the CAC, the emphasis on the economics of the crimes seems to overshadow the human costs of it. Money laundering, bribery and trafficking, all of these have a direct bearing upon the present formal market structure. Environmental crimes on the other hand are not given the same priority. ITW was inducted as a TOC in UNTOC. But was it done to check the depletion of endangered species? The UNODC Report (graphics below) points that at least 74 percent of Parties surveyed had a punishment of fewer than four years for illicit trade in wildlife.

Figure 4

Quantum of Punishments in Cases Related to ITW



Therefore, wildlife trade crimes in those jurisdictions are not covered by UNTOC because it only considers those crimes as ‘serious’ which can result in more than four years of imprisonment.¹⁰

Originally, UNTOC did not engage with ITW. The recognition of ITW as an important subject of the UNTOC probably came from the realization of the political economy behind the crime. It was realized that movement of large quantities of illicit wildlife products across the borders requires ‘substantial resources, organization and financial means for funding operations and logistics’ including involvement of ‘interlocking webs of shell companies’.

It is submitted however, despite the claim that environmental or particularly wildlife related TOCs are not supplied due seriousness and sensitivity, there has been a growing body of literature under the theme of ‘green criminology’, which seeks to recognize environmental crimes and develop them from the perspective of nonhumans victims of such crimes.

Green Criminology: Species Justice and Nonhuman Agency

Genesis of Green Criminology

In the 1990s, the modern criminology saw the emergence of a fulltime project under the title of green criminology in the US, Europe and Oceania; wherein efforts were made to focus specifically on the natural environment.

However, researches on its antecedents have shown that expressions of interest in environmental issues already existed in criminology and associated fields of sociology even in the non-Anglophonic literature.

One of the examples can be the work of the Slovenian criminologist Janez Pecar, who, in 1981 highlighted the need for a new environmental agenda that would examine the role of criminology in ‘environmentally-damaging forms of criminality’. According to Pecar, environmental crimes or similar deviances are the neglected ‘global issues’ in the field of criminology.¹¹ Therefore, it is now recognized that a ‘socio-legal understanding of the illegal exploitation and destruction of natural resources’ is crucial for successful prevention, detection and control of it.

The term ‘green criminology’ was first used by Lynch while proposing a distinct criminological agenda.¹² According to him, its objective was to respond to ‘class related injustices’ responsible for the destruction of human life, hunger, inequitable power distribution and ‘uprooting and poisoning the environment of all classes, peoples and animals’.¹³ Since then efforts have been made to define the term by various criminologists in their own respective way. Herbig and Joubert see it as a study of crime ‘impacting negatively on natural resources’, Heckenberg sees it dealing with ‘environmental harms and criminal behaviors which infringe upon environmental law and regulations’ and, Beirne and South find it concerning ‘harms against humanity, against the environment (space included) and against non-human animals committed both by powerful institutions and ordinary individuals’. Ngoc and Wyatt cite Carrabine in their work, who identified four core missions of green criminology:

1. Paying attention to the existence of all types of green crime and formulating their essential typologies and distinctions;
2. Drafting different directions in this domain and measuring the complexities and political influences;
3. Linking green crimes with social inequalities;
- 4.

Assessing the position of the green social movement in gaining social changes.¹⁴

As a concept, green criminology is expected to be 'an inter- and multi- disciplinary rendezvous point' involving various disciplines like economics, political science, organization theory as well as environmental and conservation sciences.⁵² Further, as suggested by White, green criminology as an approach differs from conventional criminology and ecological perspectives. While conventional criminology at its core concerns the legality and illegality within the framework of human made environmental laws, regulations and treaties; ecological perspectives are based on the premise of ecological sustainability, which prioritizes the 'holistic knowledge of the interrelationship between species and environment'.

White asserts that both these approaches are human centric in their fundamentals and have been largely unsuccessful in checking the degradation of the environment. According to her, green criminology is the only method to have investigated the 'notions of human, ecological and animal rights in an eco-justice framework'. At another place Ngoc and Wyatt apply green criminology principles on wildlife trafficking situation in Vietnam and conclude:

{H}uman-centered traditional approaches [corelating] to wildlife trafficking have not and will not tackle the loss in biodiversity and destruction of the environment. Tackling these issues requires new ways of thinking, which can come from taking on a green criminological perspective when creating strategies for combating the illegal wildlife trade and other green crimes.

Lynch and Stretesky have elaborated further stating that in green criminology, the victims include humans, nonhuman animals, flora, ecosystems and its constituent elements, insects, microbes and the chemical processes in the ecosystem. They propose a framework to study green science and criminology together through three integrative approaches

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- i. Eco-Approaches: considers the relationship of environment and nonhuman species.
- ii. Enviro-Approaches: addressing the human impact on the environment.
- iii. Policy-Approaches: addressing solutions to prevent environmental harms.

According to them, organizing green criminology in this way would allow the theory to develop in a multidisciplinary environment in the future 'where overlapping concerns are shared by green criminology and green sciences'.¹⁵

The discussion above helps in understanding the contours of green criminology along with allowing us to locate the place of 'nonhumans' in the same. After around three decades, it continues to 'extend, deepen, and refine its analysis of contemporary and emerging environmental issues',¹⁶ along with parallel growth in the international law and environmental consciousness. In simple terms, green criminology underscores the need to assess human behavior vis-à-vis the surrounding environment. It addresses questions regarding the *reasons* for committing the so-called environmental crimes, both socio-economic and political.

Green criminology goes beyond the nuances of human conduct and deals with nonhumans with equal seriousness. It offers rights to nonhumans not limited to the traditional conception of flora and fauna, but (as Lynch and Stretesky highlight) it also considers insects, microbes and even the chemical processes as important actors in the ecosystem. This ambitious extension of the scope of green criminology may seem exaggerated at first glance, but with the emergence of issues like bio-piracy and introduction of genetically modified crops, the claim does seem to hold some value. This work however, focuses on a traditional understanding of flora and fauna only and following discussions shall proceed along with

this caveat.

Humans, Green Criminology and Wildlife Trade

Green criminology can be a tool to understand and dissect layers of each wildlife crime and therefore can be useful in framing targeted policies by the national and international authorities. The following illustration substantiates this proposition further.

By the end of the 20th century, CITES banned the trade in most parrot species. Conventional wisdom in parrot conservation was that the most attractive, valuable and/or rare species will be at the highest risk of disproportionate poaching or trafficking. But a criminological study applying the 'theft variation model' in Latin American countries found that in reality the species lacking these characteristics were the ones most frequently subjected to illegal activities. 'Factors of opportunity' were the determining force, which means that species 'closer to illicit markets, have larger ranges, are more abundant, nest closer to the ground, and are more concealable' were found to be most vulnerable. Another study in Bolivia helped in understanding when and where the parrot poaching is occurring in the country. It revealed that seven municipalities or just 11 percent of the total departmental area in Bolivia accounted for over 80 percent of poaching, majority of occurring in the three months of summer.

It is natural, that the overall implications of these findings would be a more planned, focused and targeted allocation of resources to the enforcement agencies; also saving upon wastage of funds on not so critical spots of ITW.¹⁷

Apart from helping in determining the nature and location of a crime, criminology also focuses on the actors involved: humans as willing or non-willing perpetrators and nonhumans as helpless victims. Only green criminology can give scientific answers to complex questions like- Why humans indulge in ITW and what are their motivating factors? What is the effectiveness of conservation efforts in present forms? How should national and international

laws interact in order to check ITW? Do nonhumans have the same rights as humans? What can be done to make the situation better? Etc.

Conclusion

Wildlife trafficking has evolved into a sophisticated form of transnational organized crime, posing grave threats not only to biodiversity but also to national and global security, economic stability, and the rule of law. This study has established that wildlife crimes exhibit clear hallmarks of organized criminal activity—such as structured networks, corruption, and transboundary operations—yet are often inadequately addressed within traditional criminal justice frameworks.

From a criminal law perspective, the classification of wildlife trafficking as organized crime is imperative for effective legal and prosecutorial responses. Existing laws, both domestic and international, often fall short in scope, enforcement, and punitive capacity. Incorporating wildlife crime into national organized crime laws, enhancing inter-agency coordination, and leveraging tools such as anti-money laundering statutes and asset forfeiture can significantly bolster enforcement efforts.

To combat wildlife trafficking as organized crime, legal systems must move beyond environmental or administrative approaches and adopt a criminal law framework that reflects the gravity and complexity of the issue. This necessitates not only stronger legislation but also increased international cooperation, specialized enforcement mechanisms, and a holistic understanding of the socio-economic and geopolitical dimensions of wildlife crime.

Ultimately, addressing wildlife trafficking as organized crime is not merely a conservation issue but a matter of justice, governance, and global security.

END NOTES

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