

A good deal of attention has been paid to the links between the illegal wildlife trade and professional criminal groups involved in drug trafficking, human trafficking, terrorism, or other transnational offences. While these links exist, this focus fails to capture the bulk of transnational organized wildlife trafficking. The United Nations Convention against Transnational Organized Crime defines an “organized criminal group” as:

... a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit...

The Convention goes on to explain that a “serious crime” is a crime punishable by four years or more in prison; that a “structured group” need not have “formally defined roles for its members, continuity of its membership or a developed structure.”

In other words, organized crime is not just about rigid mafia-type groups. Any pattern of profit-motivated, serious criminal activity is considered organized crime, and nearly all transnational wildlife trafficking fulfils these criteria, provided the penalties in the relevant countries are sufficiently high.

In contrast to markets on which there is a complete prohibition, wildlife trafficking involves goods that can be legal or illegal, depending on when, where, and how they were acquired. Like firearms, pharmaceuticals, or antiquities, the legality of this acquisition is demonstrated through paperwork. Since a piece of paper can transform millions of dollars of suspected contraband into millions of dollars of legitimate merchandise, much of the “trafficking” of these goods proceeds through the front door, with paperwork provided through fraud, forgery, and corruption.

Aside from evading interdiction, illegally-sourced goods laundered using fraudulent documents can be introduced into legitimate commercial channels, availing themselves of legal demand. In this way, illegally-sourced timber, fish, and other wildlife products find their way into mainstream retail outlets, and consumers who would never knowingly purchase contraband may nonetheless do so. Transnational trade has grown at a rate greater than our collective ability to regulate it, allowing a wide range of illicit merchandise to be laundered through a series of holding companies and offshore accounts. Wildlife products are no different, and the need for supply chain security is key to protecting threatened species.

What is wildlife crime?

Providing a global assessment of wildlife crime is challenging, because every country protects its animals, fish, timber, and other plant life in different ways. There are international instruments defining other forms of organized crime, including drug trafficking, human trafficking, firearms trafficking, and smuggling of migrants. But there is no equivalent agreement defining wildlife crime, so there is no universally accepted definition of the term.

This is not to say that wildlife is unprotected internationally. The *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, known as CITES, provides a framework to protect and regulate international trade in certain species. It does not define wildlife crime as such, but it strongly influences national legislation on wildlife crime, and provides a means for cooperation against trafficking. Parties to CITES are required to “penalise” illegal trade. It is an agreement of remarkable power and scope.

CITES is so important because most wildlife protection laws are situated

in broader national environmental legislation. As a result, these laws naturally focus on domestic species, and they do so in a wide variety of ways. Since wildlife populations are dynamic, most wildlife protection laws leave it to the executive branch of the government to issue regulations determining when and how wildlife can be harvested. Species can be added and removed from protected species lists, licenses issued allowing the legal taking of wildlife, and quotas established to ensure sustainability. As a result, the domestic legality of any given wildlife product is a matter of considerable complexity.

The real problem comes when wildlife, not listed under CITES, is taken illegally in one country and transported to another. The protected species lists of most countries are limited to domestic species, and there may be no basis in national law to challenge the import or sale of questionable wildlife products. Even if the law allows the seizure of wildlife taken or exported contrary to the laws and regulations of other countries, proving this illegality can be challenging. Few countries have the capacity to keep track of the complex and changing world of foreign wildlife regulation, or to gather evidence on offences committed on the other side of the world.

This is where CITES comes in. It allows countries to reciprocally protect one another’s species according to a common set of rules. The system works through a series of permits and certificates relating to three international protected species lists, the CITES appendices. International trade in CITES-listed wildlife without the appropriate permits and certificates appears to be the most commonly detected transnational wildlife crime.

CITES requires parties to “penalise” violations of the agreement, but it does not require these violations to be deemed a crime.¹ In some countries, CITES violations can only be

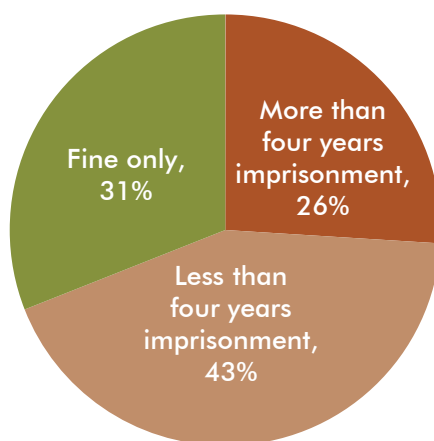


punished with a fine, while in others, offenders can be sentenced to more than four years in prison. There is considerable variety in CITES implementation laws, and some are ambiguous on the point of penalties, but of the 131 parties for which data were available (72% of all parties), 74% did not deem violations a serious crime, as per the Convention against Transnational Organized Crime (Fig. 1).

CITES is a trade agreement, not a vehicle of international criminal law. But since the key criminal threat to wildlife is illicit trade, CITES defines the rules that wildlife traffickers seek to circumvent. While certain species may be afforded different levels of protection even within the borders of a single country, the CITES appendices contain a list of species that the international community has agreed to protect globally. CITES does not address all aspects of wildlife crime, but it is the single most coherent approach to a topic of considerable international complexity.

Furthermore, as a trade agreement, CITES has a powerful compliance mechanism: non-compliant parties may be excluded from the regime. Depending on the nature of the

Fig. 1 Share of CITES parties by maximum penalty possible for violation of CITES regulations, 2015



Source: UNODC SHERLOC data based on 131 out of 182 CITES Parties.

compliance measures agreed by the governing body of CITES, all other CITES parties agree not to trade with the non-compliant party, either in particular species, or in any CITES-listed species. Since many CITES listings are broad (to cover look-alike species), exclusion can have serious economic consequences.

CITES focuses on international trade, and purely domestic behaviour lies

beyond its purview. Parties are free to manage CITES-listed species within their borders as they see fit, so long as the product does not move internationally. This effectively means that poaching and illegal domestic trade are matters for national governments and fall outside of the mandate of the Convention. Because CITES addresses international trade, most CITES-related enforcement takes place at ports of entry, and not in domestic markets. In theory, the origin of non-indigenous wildlife sold domestically could be queried, but proving it was illegally imported would be difficult in most legal systems around the world. The upshot of all this is that most CITES enforcement occurs when the wildlife is moving between countries, which means that an important part of CITES enforcement is conducted by national customs agents.

Domestic wildlife law enforcement is conducted by a wider range of national and local agencies. The topics of logging and fishing in particular are often regulated by distinct bodies of law, with their own enforcement bodies. Environment, health, agriculture, development, and commerce ministries may be involved



The CITES appendices

"CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system. Each Party to the Convention must designate one or more Management Authorities in charge of administering that licensing system and one or more Scientific Authorities to advise them on the effects of trade on the status of the species.

The species covered by CITES are listed in three Appendices, according to the degree of protection they need.

Appendices I and II

Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.

The Conference of the Parties (CoP), which is the supreme decision-making body of the Convention and comprises all its member States, has agreed in Resolution Conf. 9.24 (Rev. CoP16) on a set of biological and trade criteria to help determine whether a species should be included in Appendices I or II. At each regular meeting of the CoP, Parties

submit proposals based on those criteria to amend these two Appendices. Those amendment proposals are discussed and then submitted to a vote. The Convention also allows for amendments by a postal procedure between meetings of the CoP (see Article XV, paragraph 2, of the Convention), but this procedure is rarely used.

Appendix III

This Appendix contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. Changes to Appendix III follow a distinct procedure from changes to Appendices I and II, as each Party is entitled to make unilateral amendments to it."²

in regulating use of land and the marketing of wild species products. Responsibility for many forms of environmental enforcement may be devolved to provincial or even municipal authorities. Even on a national basis, communication between these actors may be limited. Finally, many wildlife crimes may be prosecuted under non-specialised legislation, such as laws pertaining to fraud or perjury. Given the diverse ways that the crime can be approached and prosecuted, few countries have the capacity to comprehensively add up all detected wildlife offences.

Thus, CITES provides another useful function: it defines a meaningful sub-set of wildlife crimes for analytic purposes. It captures on a global list the species about which, based on international consensus, there is reason to be concerned. Without this agreement, it is impossible to reconcile the national categorisations of protected species.

For these reasons, this report focuses on CITES listed species, although other species are discussed where relevant. As will be explained below, the seminal data source on which it is based are the seizures of wildlife contraband officially reported in fulfillment of CITES obligations. Reference is made to other violations of domestic law in specific case studies where appropriate. Although this approach does not encompass all that could be defined as “wildlife crime”, it does highlight those aspects most likely to constitute transnational organized crime, and those areas where international cooperation is most vital.

Endnotes

- 1 See “How CITES Works” at the CITES website: <https://cites.org/eng/disc/how.php>
- 2 The CITES agreement requires (Article VIII, Section 1) “The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.”
<https://www.cites.org/eng/disc/text.php>