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HOW TO ENFORCE EU LEGISLATION ON
BIODIVERSITY AND WILDLIFE TRAFFICKING

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Investigating and Prosecuting Wildlife Crime



John M. Sellar OBE FRGS

Anti-Smuggling, Fraud and Organized Crime Consultant
Senior Advisor, Global Initiative against Transnational Organized Crime
Environmental Crimes Committee, International Association of Chiefs of Police

This presentation is intended to address the subject of Investigating and Prosecuting Wildlife Crime. To do so effectively, it is necessary to consider why 'illicit trade' may actually involve something considerably more deliberate and sinister. We will address: what factors or pointers investigators should consider in determining how to tackle a particular incident; indicators of the involvement of organized crime; use of criminal law, rather than wildlife legislation; and ways in which investigations can be supported.

Why might this be *crime* and not illicit trade?

- The motivation is purely profit and not mere avoidance of wildlife legislation or regulatory provisions
- It exceeds what might be the anticipated behaviour of unscrupulous traders or dealers
- It goes beyond special-interest groups or desire for personal ownership
- It is not an inadvertent or innocent violation
- Those involved have previous convictions for other crimes
- *Mens Rea* can be demonstrated
- Indicators of organized crime involvement are present



These bullet points illustrate (not exhaustively) the circumstances and factors which may indicate that something which may, at first sight, appear to be simply be a violation of CITES or the EU Regulation ought to be considered as a 'crime' and responded to in those terms by investigators and prosecutors.

Risk-assessment and profiling

- Is deliberate or sophisticated avoidance of border or other controls present?
- Is the cargo or traveller routing suspicious?
- What is the shipper/traveller's history?
- Does the cargo/traveller match existing profiles?
- Has there been concealment or fraudulent use of documents?
- What is the travel profile? Does it match the individual's claim to be a tourist, student, etc. or is he/she a courier?
- Are the goods in illicit demand?
- Does potential profit outweigh claims of innocence?
- Is explanation reasonable?
- Is corruption present – at any stage?



These bullet points describe some of the circumstances which should be considered when, for instance, cargo or passenger baggage containing wildlife contraband is detected at a border.

Searching for indicators of Organized Crime involvement



It is often said that 'organized crime' is engaged in wildlife crime. We are now going to consider what is meant by those words and look at examples demonstrating its links with fauna and flora trafficking.

What is Organized Crime?

- (a) “Organized criminal group” shall mean 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;
- (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty

Article 2 of the United Nations Convention against Transnational Organized Crime

This is the wording of the definition used in the UN Convention against Transnational Organized Crime.

It is important to note its reference to ‘serious crime’ and what the Convention means by that phrase. This is significant because many countries around the world do not have the necessary length of imprisonment contained in their national wildlife-related law to satisfy the definition. But, as will be addressed later, this need not mean prosecutors and judges cannot respond effectively to wildlife crime.

“Intelligence quoted to the team appeared to more than justify suspicions that organized criminal gangs, including the Russian Mafia and Chinese Triads, may well be involved in wildlife crime. Although several enforcement agencies told the team of their concern over the existence of such organized trade and routes, little appears to have been done to research or infiltrate illicit criminal activity at that level.”

CITES Tiger Technical Missions Team report, 1999

Although the seriousness of wildlife trafficking has, to a large extent, only been recognized relatively recently, the involvement of organized crime was identified at least a decade and a half ago.

UN Security Council Briefing on Emerging Challenges to International Peace and Security

23 November 2011

“We are working closely with... DPKO, DPA, UNDP, UNAIDS, Interpol, CITES, and the World Bank, among others, to create a multi-disciplinary response in such areas as piracy and drugs, illegal trade in small arms, corruption, illicit money flows, human trafficking, *and wildlife crime.*”

Yury Fedotov, Executive Director, UN Office on Drugs and Crime

Wildlife crime has now been recognized as a serious matter at the highest political levels, as this quote shows. More recently, on 30 July 2015, the United Nations General Assembly adopted a Resolution on Tackling Illicit Trafficking in Wildlife – see

https://cites.org/sites/default/files/eng/news/pr/2015/UNGA_res_illicit_trade_wildlife.pdf

Indicators of Organized Crime

- Organized structure to poaching; use of gangs, supply of vehicles, weapons and ammunition
- Exploitation of local communities
- Provision of high-quality lawyers
- Corruption of judicial process
- Violence towards law enforcement personnel
- Corruption of law enforcement personnel
- Exploitation of civil unrest
- Financial investment in 'start-up' and technology needed for processing and marketing
- 'Inviolability' displayed by those involved
- Sophistication of smuggling techniques and routes
- Use of 'mules' and couriers

This slide, and the next, lists activities, acts or behaviour which demonstrate the involvement of organized crime. Subsequent slides will offer practical illustrations of a selection of the bullet points.

Indicators of Organized Crime cont.

- Payments to organized crime groups
- Use of persons of high political or social status
- Sophisticated forgery and counterfeiting of documents
- Use of sexual bribes or blackmail and other corruption of officials
- Use of fake or 'front' companies
- Fraudulent advertising of wildlife and widespread use of the Internet
- Previous convictions for other types of crime
- Organized crime group members use or ownership of wildlife
- Money-laundering
- Huge profits

The list of indicators is not intended to be exhaustive. Participants might be asked to suggest more.

**Organized structure to poaching; use of gangs,
supply of vehicles, weapons and ammunition**



The upper photograph shows a small group of Tibetan antelopes. This species lives at altitudes from 3,000 to over 5,000 metres in western China. Nature has equipped it with a coat of fine hairs which protect it from the often-freezing temperatures encountered there. Once processed, these hairs can be spun into the finest wool in the world and shawls can then be manufactured which may be sold at prices up to USD 35,000 each.

The lower image shows a small village at the foothills of the mountainous Tibetan Plateau. Many of the people who live in this part of the world are semi-nomadic yak herders and cannot afford the equipment needed to engage in poaching of the Tibetan antelope. However, organized crime networks provide what they need and pay them to engage in illegal hunting.

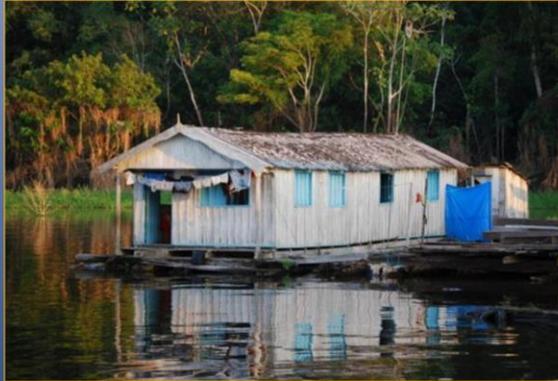


Most antelope poachers operate in gangs of up to 16 people (usually male). They roam across areas of the Tibetan Plateau, often at altitudes above 5,000m, for periods between two to six weeks; and have the necessary food, drink and fuel to enable them to do so. They conduct such expeditions in three to four 4X4 vehicles and will be equipped with both hunting rifles and the Chinese version of the fully-automatic AK-47.

The gangs consist of specialists and members devoted to particular tasks: overall gang and individual vehicle leaders; drivers and navigators; cooks; marksmen; and those who will skin the hides from the antelopes after they are shot. The upper photograph shows one such gang, after its arrest by the Forest Security Bureau (Forest Police).

The lower photograph shows the huge number of antelope hides that can be gathered by a gang in just one poaching expedition. It is thought that as many as one million antelopes may have roamed across the Plateau in the past. By the early 2000s, the total population was estimated to have been reduced, primarily because of poaching, to 35,000. However, numbers have started to rise again because of effective anti-poaching and international enforcement efforts. Shawls made from the animals' wool, called 'Shahtoosh', have been seized in several European countries.

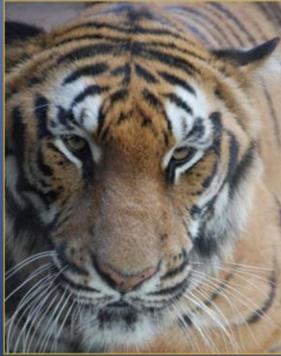
Exploitation of local communities



This slide shows the type of 'houseboat' which may be seen in many places along the River Amazon in Brazil. The families who live in such circumstances exist at, or below, the poverty-line. They, and their ancestors, have detailed knowledge of this habitat and what it contains.

That knowledge, and their ready lack of income sources, is exploited by organized crime and they may be recruited to: hunt and kill species, such as caimans (a form of crocodile), snakes and other reptiles; capture live animals, such as exotic parrots or frogs for the pet trade; gather rare plants, for specialist collectors; or undertake illegal logging.

Provision of high-quality lawyers and payment of financial penalties



Instances have been encountered in India where persons from rural villages, living on the poverty-line like their counterparts in South America, have been arrested for poaching tigers. However, when brought to court, highly-qualified and experienced barristers from major cities such as New Delhi have appeared to defend them.

These individuals clearly cannot afford the cost of such legal representation and this illustrates that organized crime groups are 'looking after' their members or employees.

Another example of this type of background support is the way in which some poachers, having been penalized with substantial fines and sent to jail because they could not afford to pay them, have been liberated within days when the fine is paid on their behalf.

Corruption of law enforcement personnel

“There are few public agencies in which the classic preconditions for institutional corruption are so conveniently presented as in a Customs administration”

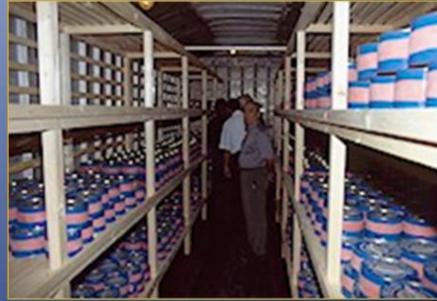
*Michel Danet
ex-Secretary General
World Customs Organization*

Corruption is associated with many forms of wildlife crime.

Game scouts, wardens or rangers may be paid to provide information as to the location of target species, such as elephants or rhinos. Border control agents may be bought-off to turn a blind eye to smuggling. Officials responsible for issuing licences and permits may also be bribed. It is not unknown for influence, intimidation or bribery to be directed towards prosecutors and judges.

This quote in this slide from a senior Customs official acknowledges this is a significant matter.

'Inviolability' displayed by those involved



The image on the right shows the interior of an old railway goods carriage, which had been converted into a refrigerated store for caviar. It was located within the premises of a major fishery company close to the Caspian Sea.

Despite a lack of security or anti-theft measures, it had never been broken into, despite its location within a region known to have major organized crime problems. Intelligence suggests the store, and company, is owned by the Russian Mafia or they are paid to ensure that no one steals from it.

Sophistication of smuggling techniques



The rear compartment of this vehicle had been reinforced, so that it could be used to transport illegally-logged timber from India to China, via Nepal. (Go to next slide.)

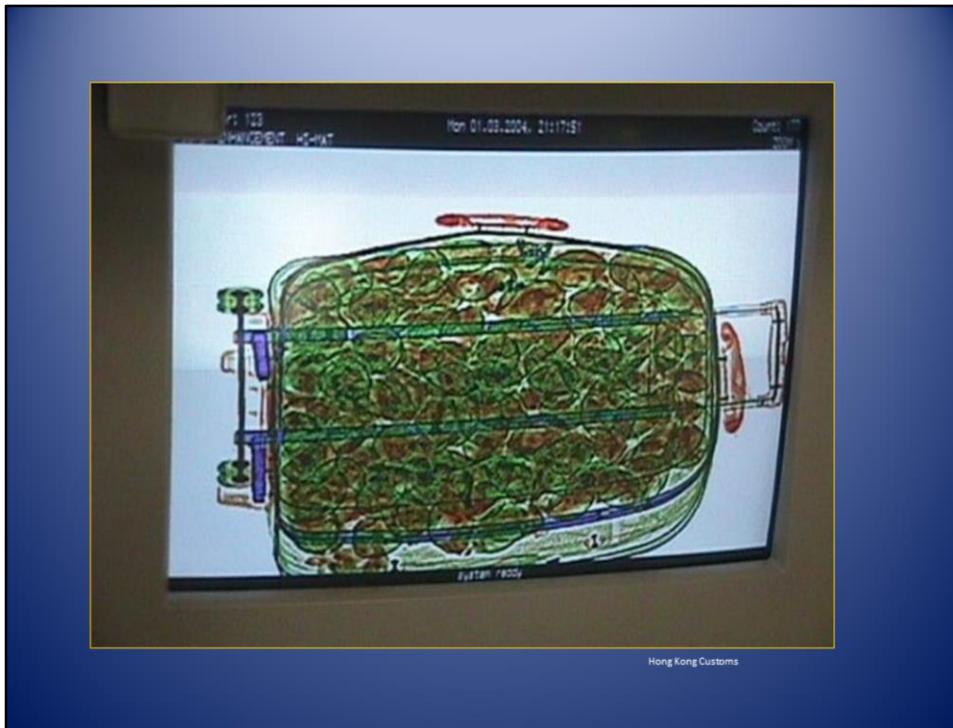


The car was stopped as it was being driven through Nepal.

Forest Department officials had been tipped-off about the smuggling. The vehicle was seen to be displaying a Nepalese number plate. However, the officials noted that a switch had been mounted on the car's dashboard and, when they flicked it, a surprising result occurred. (Go to next slide.)



When the switch was activated, the number plate revolved and a false diplomatic registration plate appeared. Officials admitted, had the car appeared at a routine checkpoint displaying the diplomatic plate, it would not have been stopped or inspected.



This illustrates an incident in Hong Kong, where airport security screened baggage in transit to mainland China. What do participants think the pull-along bag contained? (See next slide.)



Hong Kong Customs

The bag was packed with turtles. These were probably intended for the 'pet trade' but turtle meat is also widely consumed in China and the carapaces of the animals might be used for decorative purposes or for carving into a variety of items. How can we tell that the baggage was unattended? The label on the handle bears the word 'Rush'. Such labels are often used by airlines when a connection has been missed, luggage has become 'lost' at some stage, and is being forwarded for later collection at the final destination.

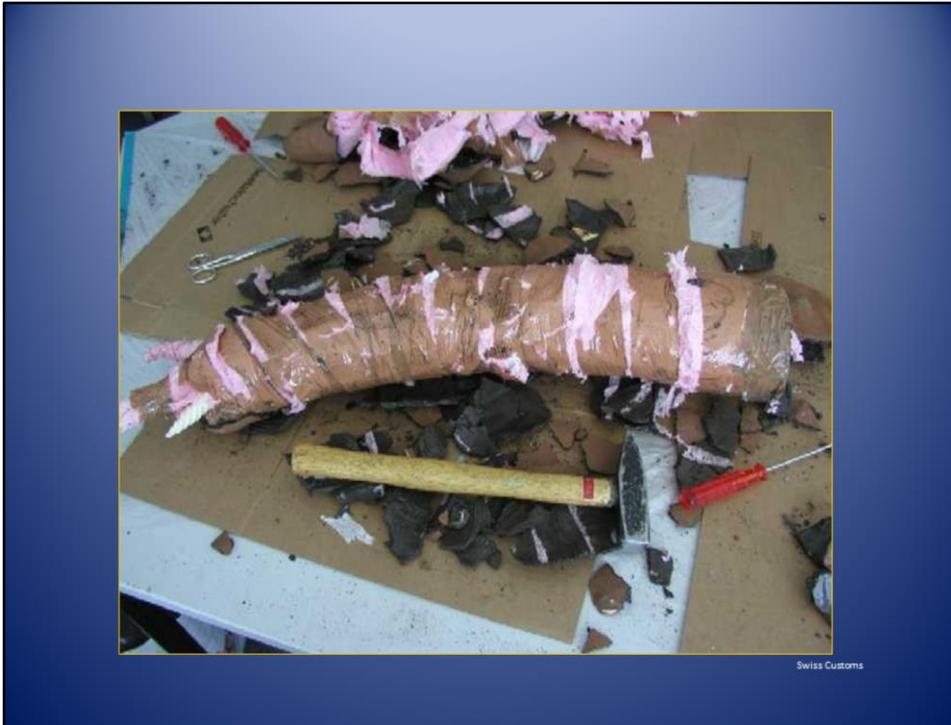


This Green monkey was found in the side pocket of a holdall. The holdall was carry-on baggage of a passenger arriving in Malta from Africa. As can be seen, the animal had been wrapped in duct-tape to prevent it from moving. It had also been drugged. However, the flight's departure from Africa had been delayed, the monkey regained full consciousness, and it began to wriggle around. Another passenger saw something moving inside the bag and alerted Customs officers.

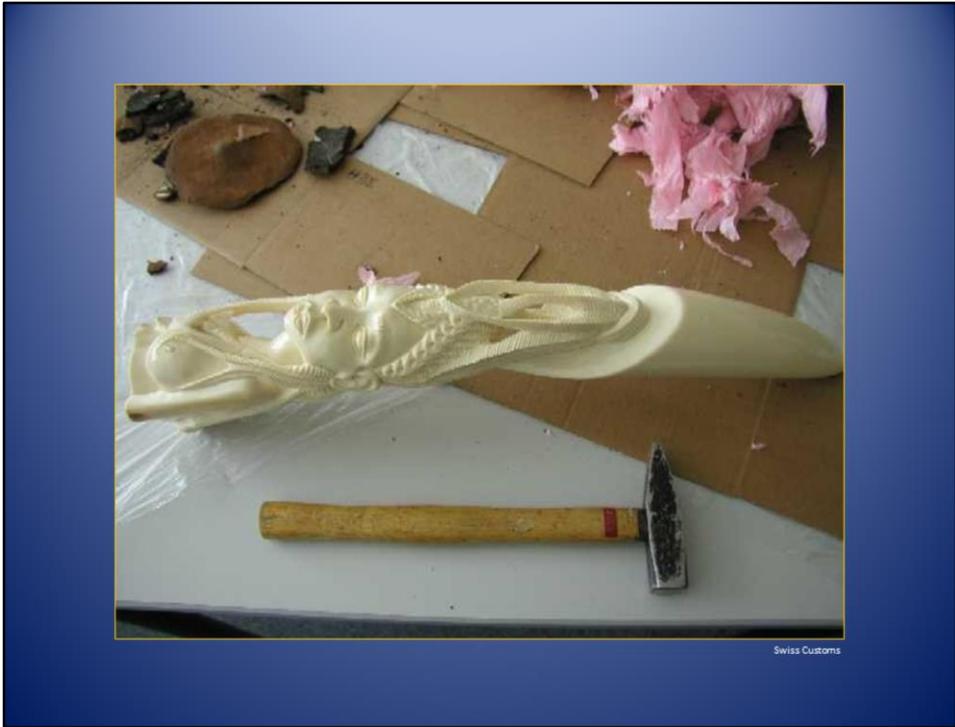


Swiss Customs

This oddly-shaped item appeared to be a large piece of 'baked' clay. There were several pieces of clay in a package which was in transit from Africa to China, via Zurich airport in Switzerland. Customs decided to break open the clay, to see if anything was concealed inside. (Go to next slide.)



Once the clay was removed, it was obvious that some object inside had been wrapped in toilet paper and duct-tape. These coverings were then removed. (Go to next slide.)



A high-quality elephant ivory carving was revealed. (Go to next slide.)



All of these ivory items had been concealed in clay and were contained in the box being transported by a courier service.



The photograph on the left shows a box full of plastic 35mm camera film cases. Since most people now use digital cameras, this seemed suspicious. The package was being sent, by air, from South America to Belgium. It was intercepted by French Customs officials. Each of the cases contained a 'Poison arrow frog'. This shipment, had it not been detected, would have resulted in many hundreds of Euros profit for those responsible.



Customs officials at Heathrow Airport in London were suspicious about the shape of this man's 'beer belly'. He was asked to open his shirt. He was wearing a cloth panel beneath, which had many small pockets sewn into it. Each pocket contained a bird's egg. The intention was to smuggle these to New Zealand for sale to persons wanting to own rare birds. As well as concealing the eggs, this technique also allowed them to be 'incubated' by the smuggler's body temperature during the flight. The smuggler was a retired police officer!



The plastic-coated sack was spotted by Customs officials in Hai Phong seaport in northern Viet Nam. It was claimed to contain dog food and had arrived from Cote d'Ivoire in west Africa. It made no commercial sense for dog food to be shipped from Africa to Asia. Additionally, west Africa is not well-known as a producer region for dog food. The sack, and several others, was found to contain Pangolin scales. These are highly-prized for traditional medicine purposes, especially in neighbouring China. Had it not been intercepted, the shipment was intended to have continued its journey by road to China.

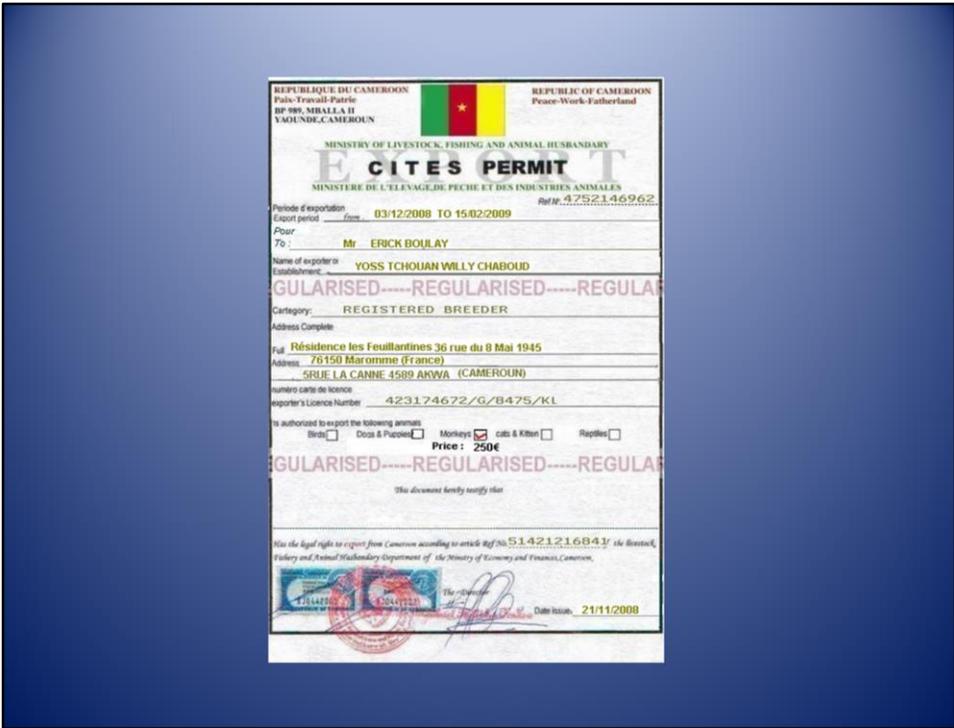
Pangolins have become very rare in many areas of their historical Asian habitats. Consequently, it is increasingly common for them to be harvested in Africa and their scales, and sometimes meat too, smuggled to far east Asia.

Fraud – Abuse of CITES Documents

- **Authentic document:**
 - Is a CITES document issued by a competent Management Authority and signed by an authorized person on the official permit form of the Party
- **False document**
 - Not issued by a Management Authority or use of a forged document
- **Falsified document**
 - Originally issued by a Management Authority on appropriate form but which has been altered, modified, or on which some information has been changed

Wildlife contraband is regularly moved around the world under the cover of fraudulent documents. Some of these will be permits and certificates issued to comply with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which regulates international trade in animals and plants.

This slide describes some of the types of document-related fraud.



This purports to be a CITES document and was used to try and smuggle wildlife from Africa to Europe. Although it may appear to be an official permit, it is a total forgery. Indeed, it is not in the format or style of permit specified by CITES.

Payments to organized crime groups



The upper left photo shows the port of Vladivostok in far east Russia. Parts of this region are strongholds of the Russian Mafia. Although the mafia does not appear to actively engage in wildlife crime in this part of the nation, intelligence suggests that it levies what amounts to a tax on, for example leopard skins or bear parts, being smuggled to neighbouring China.

As we saw earlier, illicit wildlife traders may also have to pay 'protection money' to organized crime groups, either voluntarily or (more commonly) because of intimidation and threats of violence. Organized crime groups regularly insist that persons engaged in crime or illicit activities in their area of control, and not part of the group, pay some form of levy to be allowed to continue their activities. Rebel and terrorist networks also regularly impose similar 'taxes' upon those engaged in illicit endeavours.

Huge profits and money-laundering



The *raison d'être* of organized crime is to make money. The significant profits which can be made from illicit dealing in animals and plants make this very attractive to such groups and networks. It also offers them opportunities to launder money acquired through other types of crime.

**What do
we need?**



If investigators and prosecutors are to respond to the trafficking and organized crime that we have learned about, what do they need? What do judges need to determine appropriate responses and penalties?

Forensic science

- Forensic scientists can assist with:
 - Morphology
 - Chemistry
 - Pathology
 - Ballistics
 - Questioned document examination
 - Computer analysis
 - Fingerprints
 - DNA profiling



Investigators and prosecutors regularly use forensic science evidence with regard to 'mainstream' crime. It is equally relevant in relation to wildlife crime. Such expertise is often required in order to identify, and subsequently prove in court, which species has been the subject of a crime; for example by examining hair, fur, horns, blood, etc.

Forensic science cont.

- There are few laboratories solely dedicated to wildlife crime.
 - One is maintained by the U.S. Fish and Wildlife Service and offers its facilities free of charge to any CITES Party - <http://www.fws.gov/lab/>
 - The TRACE Wildlife Forensics Network can also provide advice - <http://www.tracenet.org/>
 - The Society for Wildlife Forensic Science is another potential source of help: <http://www.wildlifeforensicscience.org/>

This slide is self-explanatory.

Controlled deliveries...

- Seizures and interceptions are good news but...
 - they usually will not identify who was responsible for the illegal harvest or poaching
 - they usually will not identify who will be responsible for processing and eventual sale
 - they usually do not result in prosecutions of all the guilty persons
 - they may simply prompt more illegal harvest or poaching

The use of 'controlled deliveries' is an excellent investigation tool and these bullet points explain why.

Why use Controlled Deliveries?

- To identify the persons involved along the smuggling route, from beginning to end: the poacher, the middleman, the smuggler, the dealers and the customers;
- To ensure that the case may be dealt with in the most appropriate jurisdiction;
- To ensure the best-available penalties for those involved; and
- To ensure the availability of 'best evidence'



These bullet points describe the several positive results which controlled deliveries can produce. Most importantly, they help identify the links in the chain of criminality.

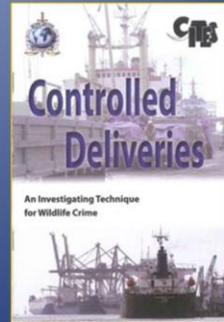
Points to bear in mind...

- Controlled delivery operations will be time-consuming and labour-intensive
- The coordination of many agencies, nationally and internationally, will inevitably be complex
- Does the shipment warrant such an operation? What is the conservation status of the specimens? What is the value of the specimens?
- Is there a legal basis for conducting a controlled delivery?

It is not the intention of this presentation to teach participants how to conduct a controlled delivery. However, these bullet points list some of the aspects which must be taken into consideration.

Where to get more guidance...

- The UN Office on Drugs and Crime has an online training course
- CITES and INTERPOL have published this manual:



Using criminal, not wildlife, law

- It may be more appropriate and relevant to consider criminal statutes and legislation, for greater investigatory powers and penalties:
 - Counterfeiting and forgery
 - Smuggling and Customs law violations
 - Tax, import/export duties and currency control evasion
 - Quarantine and human/animal/plant health regulations
 - Immigration law
 - Firearms legislation
 - Bribery and corruption
 - Fraud
 - Organized crime and racketeering
 - Conspiracy
 - Money-laundering and asset recovery and seizure legislation

The majority of these bullet points are self-explanatory. However, it may be useful to provide examples of how criminal conspiracies may occur. (Go to next slide.)

How might a poaching conspiracy occur?

- Residents in suitable habitat will be recruited to hunt elephants and will be supplied with the necessary tools to kill the animal; firearms and ammunition, snares or poison.
- Once the animal has been killed, its tusks will be removed and delivered to the person responsible for organizing the poaching.
- Thereafter, the tusks will be moved to dealers, who will arrange for their delivery to couriers, and their concealment and subsequent smuggling out of the country, via land, sea or air.

This slide is self-explanatory.

A live animal conspiracy example...

- Residents in suitable habitat will be recruited to harvest birds or reptiles and will be supplied with the necessary tools to do so; nets, traps and cages.
- Thereafter, the live specimens will be delivered to dealers and arrangements made for their smuggling out of the country.
- Alternatively, this pre-exit phase may involve the corruption of officials to obtain the necessary CITES export permits, quarantine and health certificates, the acquisition of genuine permits to be fraudulently altered, or the counterfeiting of necessary documentation.

This slide is self-explanatory.

Timber-related conspiracy...

- Residents in suitable habitat will be recruited to conduct illegal timber harvesting, and supplied with the necessary chainsaws or axes.
- Other persons will be recruited to cut the timber into logs and drivers and vehicles will be hired to transport it to suitable exit points in the country.
- En route, some of the timber may be processed at illicit sawmills. Pre-export, and during transportation, certificates of origin, logging licences or export permits may be falsified or obtained through bribery.
- The drivers and operators of heavy-goods vehicles or container facilities may be hired to smuggle the processed or raw timber to other countries.

This slide is self-explanatory.

The international element...

- The three examples describe a national 'chain of criminality' involving separate points where many individual actors will undertake different, but linked, crimes; all assembling into a conspiracy.
- This in-country conspiracy will then connect, since the final consumer is likely to be in another country, to another conspiracy in a different nation, which will handle illegal import and the various illicit stages necessary for the contraband to pass through before delivery and sale to the final customer.
- The second conspiracy will also involve numerous actors.

This slide is self-explanatory. However, it is important to bear the following in mind:

Although the likelihood of each and every actor in each and every stage of the conspiracies being identified and brought to justice may be remote, opportunities to arrest several of them are likely to be present and the collection of evidence to demonstrate the existence of the conspiracy to a court ought to be perfectly achievable. In this way, it should be possible to prosecute each actor as a conspirator, rather than an individual engaged in some isolated or separate offence.

Demonstrating *Mens rea*

- Many wildlife and forest crimes involve the illegal acquisition of specimens for which there is no, or a very limited, domestic market
- Consequently subsequent smuggling or fraudulent exportation is required
- This element is well-known to those involved
- This is a further illustration of the need for persons to conspire together and helps show guilty intent

This slide is self-explanatory.

The relevance for judges...

- Since most conspiracy statutes provide an extensive range of penalties, judges should be in a position to allocate appropriate sentences to each accused, reflecting his or her involvement in, and contribution to, the overall conspiracy.

This slide is self-explanatory.

Sources of expertise and assistance – global level

- The International Consortium on Combating Wildlife Crime is a partnership of:
 - The CITES Secretariat
 - INTERPOL
 - UN Office on Drugs and Crime
 - The World Bank
 - World Customs Organization



Each of these agencies has personnel dedicated to wildlife or environmental crime. Several of them have offices spread around the world; some in all nations and some just in geographical regions. They have also published a wealth of reference, training and advisory materials. They may also be able to provide relevant persons to appear as expert witnesses in court.

INTERPOL and the World Customs Organization each have extensive seizure and intelligence databases and can provide real-time assistance in facilitating and coordinating international investigations.

Remember – it is not all bad news

The majority of CITES trade is legal and most shipments take place each year without any problems.



I'm happy!

Although the focus of this presentation has been wildlife crime, it is important to acknowledge that trade in fauna and flora takes place legally and sustainably throughout the world. Such trade is an important source of revenue for many rural communities, especially in the developing world. Many forms of wildlife trade also contribute significantly to conservation.

The purpose of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. However, the Convention is meaningless if its provisions are not enforced and if those responsible for violations are not prosecuted and penalized.



The final slide. It illustrates the cover of John M. Sellar's book on combating international wildlife crime.