



European Union Action to
Fight Environmental Crime

Organised Crime and Environmental Crime: Analysis of International Legal Instruments

WORK PACKAGE 2 ON “INSTRUMENTS, ACTORS, AND INSTITUTIONS”



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Abstract

Despite its global recognition, organized crime still lacks a consensual overall definition. However, this concept is still in the making since new fields are widening its scope. One such is the environment that has become a victim of organized crime in recent decades and has only now been covered by international agreements and domestic legislation, but mostly by soft law instruments. Unfortunately the narrow theoretical and legal boundaries of the concept of organised crime, both at the domestic and international level, do not deal adequately with the new activities against the environment. Moreover, organised environmental crime interfaces with other environmental crimes such as poaching or smuggling that at some point in the spectrum of criminality may come to fulfil the criteria of organised crime. The illegal trade in ivory, in rhino horns and in rich collector's items such as falcons, jaguars, tigers and rare species of orchids, are clear examples of this problem.

In this report, the international instruments on organised crime –binding as well as soft law instruments- are examined in order to address organised environmental crime, conceived as a global problem that transcends the domestic borders. The United Nations Convention on Transnational Organised Crime 2000 is the main legal instrument at international level. This convention as well as the reports and strategies developed by the United Nations Office on Drugs and Crime (UNODC) contribute greatly to shape organised environmental crime as a criminal offence at the international and domestic level.

The UNODC is characterized as the key actor in the architecture of networks coordinating actions and cooperation among international organizations, agencies and NGOs that despite their lack of operative competence and jurisdiction are offering their advice to State Parties in order to raise awareness of the importance of organised environmental crime and on the different ways it can be stopped. In the fight against organised environmental crime some of the main problems are related to the lack of enforcement by State Parties due to the weakness of the state governance and the judicial systems as well as the lack of resources. Most actors fighting against it are under-resourced, in clear contrast with the criminal environment where the smugglers, poachers, criminal groups and organizations have more financial resources than most local and international authorities.

The role played by INTERPOL to fight organised environmental crime will also be examined as well as the projects under its Environmental Crime Programme.

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LIST OF ABBREVIATIONS

CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CoP	Conference of the Parties
ECOSOC	Economic and Social Council of United Nations
EU	European Union
GA	General Assembly of the United Nations
ICWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Criminal Police Organization
PCWG	INTERPOL Pollution Crime Working Group
NGO	Non-governmental organisation
OAS	Organization of American States
UN	United Nations
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
WEEE	Waste Electrical and Electronic Equipment

Executive summary

In this report, the international instruments on organised crime –binding as well as soft law instruments- are examined in order to address organised environmental crime, conceived as a global problem that transcends the domestic borders. The United Nations Convention on Transnational Organised Crime 2000 is the main legal instrument at international level. This convention as well as the reports and strategies developed by the United Nations Office on Drugs and Crime (UNODC hereinafter) contribute greatly to shape organised environmental crime as a criminal offence at the international and domestic level.

The UNODC is characterized as the key actor in the architecture of networks coordinating actions and cooperation among international organizations, agencies and NGOs that despite their lack of operative competence and jurisdiction are offering their advice to States parties in order to raise awareness of the importance of organised environmental crime and on the different ways they can be stopped. In the fight against organised environmental crime some of the main problems are related to the lack of enforcement by State Parties due to the weakness of the state governance and the judicial systems as well as the lack of resources. Most actors fighting against it are under-resourced, in clear contrast with the criminal environment where the smugglers, poachers, criminal groups and organizations have more financial resources than most local and international authorities.

INTERPOL also plays an important role in the fight against organised environmental crime, supporting law enforcement agencies in combating environmental crime through its operational tools and services, facilitating cross border police operations and training, intelligence gathering and analyses, as well as through targeted partnerships with stakeholders.

1 Introduction

Despite its global recognition, organized crime still needs a consensual overall definition. However, this concept is still in the making since new fields are widening its scope. One such is the environment that has become a victim of organized crime in recent decades and has only now been covered by international agreements and domestic legislation, but mostly by soft law instruments. Unfortunately the narrow theoretical and legal boundaries of the concept of organised crime, both at the domestic and international level, do not deal adequately with the new activities against the environment. Moreover, organised environmental crime interfaces with other environmental crimes such as poaching or smuggling¹ that at some point in the spectrum of criminality may come to fulfil the criteria of organised crime. The illegal trade in ivory, in rhino horns and in rich collector's items such as falcons, jaguars, tigers and rare species of orchids, are clear examples of this problem.

In this report, we will examine the international instruments on organised crime –binding as well as soft law instruments- that address organised environmental crime, conceived as a global problem that transcends the domestic borders and for that reason requires the setting of collaborative networks, connecting states, international organizations and NGOs that can combine their efforts to fight against criminal and environmental threats. The United Nations Convention on Transnational Organised Crime (the Organised Crime Convention hereinafter) is the main legal instrument at the international level to be examined as well as the reports and strategies developed by the United Nations Office on Drugs and Crime (UNODC hereinafter) that are the soft law instruments that contribute greatly to shape organised environmental crime as a criminal offence at the international and domestic level.

We will address the way these international instruments are identifying and characterizing the criminal elements of this type of organised crime in order to trigger the domestic and international practice of the actors involved in the enforcement process. However this is the most problematic aspect since the States parties in the international agreements have trouble dealing with organised environmental crime due to the lack of legal and criminal policy tradition in this field². This is why the intervention of the international institutions is so relevant to raise awareness of the risk perception of these activities that increase steadily due in part to the perception of the high profits and the low prosecution rates that offenders enjoy³.

On the other hand, it is not yet decided either at the international, regional or domestic level whether organised environmental crime should be addressed as a specific criminal offence or just as an aggravating circumstance of other related environmental crimes. At the domestic level this question is dealt with in many different ways; the case of the European Union will be analysed in a further report, but at the international level there is no unanimous answer to this question.

One of the most important issues to examine is the lack of a definition of organised environmental crime that unfortunately cannot be solved by invoking the Organised Crime Convention since this only indirectly refers to organised environmental crime as one of those serious crimes that could be covered by the convention. However, this convention provides a legal framework for sanctioning organised environmental crime considered as a serious crime, and offering the legal tools to criminalise as offences those activities related with the environmental crime under a rich variety of forms, to investigate and to bring to justice those criminals involved in different roles in criminal groups and criminal organisations.

The UNODC is a key actor in the architecture of networks coordinating actions and cooperation among international organizations, agencies and NGOs, that despite their lack of operative competence and jurisdiction

¹ For instance, in the recent report of UNEP on Enforcement Strategies for Combating the Illegal Trade of HCFCs and Methyl bromide, 2013, there is no reference to organised environmental crime, instead it just addresses the problem of smuggling; available at <http://unep.org>

² See the UNODC and ICWC, *Wildlife and Forest Crime Analytic Toolkit*, Revised Edition, 2012, available at www.unodc.org/documents/Wildlife/Toolkit.pdf.

³ *Ibidem*.

are offering their advice to States parties in order to raise awareness of the importance of environmental crime and organised environmental crime and on the different ways they can be stopped.

Besides the problems of definition of organised environmental crime, the most important problems shown by reports of the UN institutions and international networks such as the International Consortium on Combating Wildlife Crime, are related to the lack of enforcement by States Parties due to the weakness of the state governance and the judicial systems as well as the lack of resources. One common problem is the fact that most actors fighting against organised environmental crime are under-resourced, in clear contrast with the criminal environment where the smugglers, poachers, criminal groups and organizations are provided with more financial resources than most local and international authorities.⁴ The Digest of Organised Crime Cases of UNODC will serve to present facts and data on the enforcement that will help to complete the interpretation of the provisions of the Organised Crime Convention.⁵

2 The UN Convention against Transnational Organised Crime and the Environment 2000

The United Nations started to study the role of criminal law in protecting the environment, mostly in the context of fighting organised crime⁶ coinciding with its efforts to fight this type of criminality in the early 90s⁷. Then, the UN Economic and Social Council recommended that ‘national and supranational authorities should be provided with a wide array of measures, remedies and sanctions, within their constitutional and legal frameworks and consistent with the fundamental principles of criminal law, in order to ensure compliance with environmental protection laws’⁸.

⁴ Ibidem, p. 77.

⁵ See UNODC, *Digest of Organised Crime Cases. A compilation of cases with commentaries and lessons learned*, prepared in cooperation with the governments of Colombia and Italy and INTERPOL, 2012, hereinafter quoted *Digest of Organised Crime*.

⁶ See Mégret, Frédéric (2010) “The Problem of an International Criminal Law of the Environment”, *Columbia Journal of Environmental Law*, vol. 35, p. 199.

⁷ In its Resolution 45/123 of 1990, the General Assembly invited Member States to make available to the Secretary-General their national legislation against organised crime and money laundering. Pursuant to General Assembly resolution 45/108 of 14 December 1990, the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme was held in Versailles from 21 to 23 November 1991. The General Assembly, by resolution 46/152 of 18 December 1991, adopted a proposed Statement of Principles and Programme of Action, which, *inter alia* established the Commission on Crime Prevention and Criminal Justice (a 40- member functional Commission of the Economic and Social Council). The Commission was established and held its first session in 1992. On its recommendation, the Economic and Social Council adopted resolution 1992/22, by which it determined that one of the priority themes that should guide the work of the Commission and the United Nations Crime Prevention and Criminal Justice Programme would be “national and transnational crime, organised crime, economic crime, including money laundering, and *the role of criminal law in the protection of the environment*”.

⁸ ECOSOC, Resolution 1994/15, “The role of criminal law in the protection of the environment”, 25 July 1994. This resolution recognized the work of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from December 7-10, 1993.

However, UN efforts have been criticised for never producing strong results and the Organised Crime Convention ultimately omitted all reference to the environment⁹. In comparison, trafficking in persons, smuggling of migrants, and illicit manufacturing and trafficking in firearms were all considered to be relevant global issues for the purposes of the Convention. They were subsequently made into protocols to the convention¹⁰.

The Organised Crime Convention, (also known as the Palermo Convention) was approved by the UN Member States in 2000, and entered into force in September 2003. The purpose of this Convention is “to promote cooperation to prevent and combat transnational organised crime more effectively”¹¹ setting a model to trigger the approximation of national legislations in order to make this cooperation possible. It contains a series of measures, among which are: the creation of criminal offences, the adoption of new frameworks on extradition, judicial assistance and law-enforcement cooperation, as well as the promotion of training and technical assistance for the establishment and the improvement of the skills of national authorities against organised crime. However, the UNODC’s Digest of Organised Crime Cases that assessed the practice of recent years has pointed out that one of its most important outcomes is to have been capable of developing a criminal policy that comprehends and inspires the different practices of its Parties, among them being the European Union and its Member States. The Director General of UNODC considered that the Digest confirms that:

“[The] criminal policy, underlined by the Palermo Convention to dismantle the criminal organizations and bring their leaders to justice is present in the national laws and practices of many countries. This policy is being successfully applied to a wide range of criminal offences, including new and emerging forms of crime. The Digest demonstrates that the Convention continues to be an essential tool for the implementation of this policy at all levels of the criminal justice system. The cases also testify to the increasing relevance of international law enforcement and judicial cooperation as essential pillars for the implementation of this policy.”¹²

The Organised Crime Convention also offers a mechanism for international cooperation in criminal matters by providing a flexible legal framework for cooperation on extradition, mutual legal assistance and international cooperation among States Parties with regard to all forms of serious crime.

The Conference of the Parties (CoP hereinafter) to the Convention as well as the UNODC have played a major role on the implementation and enforcement of the Convention, in particular, helping the States Parties to adapt the Convention to the new forms of transnational organised crime.

Because of its vagueness, the definition of organised crime of the Organised Crime Convention has been criticized by academia.¹³ However, the States Parties asked for this flexible approach, and in the CoP, they have praised it for taking into account the seriousness of the acts it covers, rather than limiting itself to a predetermined and rigid list of offences.¹⁴ The Convention applies to offences that are transnational in nature and involve

⁹ Mégret (2010), *loc. cit.*, p. 199.

¹⁰ This convention has three Protocols: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; The Protocol against the Smuggling of Migrants by Land, Sea and Air; The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. G.A. Res. 55/25, UN Doc. A/RES/55/25 (8 Jan., 2001); G.A. Res. 55/255, UN Doc. A/RES/55/255 (8 June, 2001).

¹¹ Article 1 of the Convention.

¹² Digest of Organised Crime Cases, p. VII.

¹³ See for instance, Mitsilegas, Valsamis (2003). “From National to global – from empirical to legal: the ambivalent concept of transnational organised crime”, in Margaret E. Beare (ed.), *Critical Reflections on the Concept of Transnational Organised Crime*, University of Toronto Press, Toronto.

¹⁴ Conference of the Parties to the Convention on Transnational Organised Crime of the 5 July 2012, *CTOC/COP/2012/7*, p. 2.

organized criminal groups. Pursuant to the Convention, States parties can cooperate on a wide range of offences related to transnational organized crime. The definition of “*serious crime*” in article 2, paragraph (b), as “*conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*” enables the CoP to identify new forms and dimensions of transnational organized crime, with a view to facilitating a more uniform approach at the global level, and considerably enhances the potential use of the Convention for the purposes of international cooperation.¹⁵ This has been the case with environmental crime and, in particular, of organised environmental crime. Thus in its session of 2012, the CoP acknowledged that:

“Criminal activities affecting the environment, once an emerging threat, have evolved to become a serious form of transnational organized crime with links to other crimes associated with high levels of violence and corruption”¹⁶.

The main concepts and definitions that the Organised Crime Convention introduces and that can be applied to organised environmental crime are:

2.1 Serious Crime

The Convention does not define organised crime but envisages a working and open definition of serious crime in Article 2.b just using as a reference the minimum penalty of 4 years’ imprisonment.

(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.

When determining the scope of application of the Convention, Article 3 b) specifies that serious crime is also “where the offence is transnational in nature and involves an organized criminal group”.

This wide concept of serious crime makes it possible to apply it to new transnational offences that may emerge in practice as has been the case of organised environmental crime. For the purpose of the Convention, an organised environmental crime is then environmental crime which is “transnational in nature and involves an organized criminal group” and is punishable with a penalty of a minimum of four years imprisonment in the States where the crime is committed. However, this requisite of a 4-years penalty may be a major obstacle for its application to environmental crimes since many States do not foresee penalties of imprisonment for environmental offences.¹⁷

The lack of agreement during the negotiation of the Convention made it impossible to adopt a list of offences. However the General Assembly referred to specific categories of offences when it strongly expressed the view, in the preamble to its resolution 55/25 of 15 November 2000, containing the adopted text of the Organized Crime Convention and of two of its Protocols, that the Convention would “constitute an effective tool and the necessary legal framework for international cooperation in combating inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes.”¹⁸

In deliberations during the fourth and fifth sessions of the CoP in 2008 and 2010, the delegates referred to a broad range of offences as new forms and dimensions of organised crime. This included among others, environmental crimes such as illegal logging, illegal fishing, illegal mining and illicit trafficking in wildlife. It should be noted

¹⁵ Ibidem.

¹⁶ Ibidem.

¹⁷ See Toolkit.

¹⁸ Note by the Secretariat of the CoP, The notion of serious crime in the United Nations Convention against Transnational Organised Crime, CTOC/COP/2012/CRP.4, pp. 5-6, available at <http://www.unodc.org/unodc/en/treaties/CTOC/CTOC-COP-session6.html>

however that those references during deliberations are not an indication of consensus on the status of those offences.¹⁹

The UNODC Digest on Organised Crime Cases presents some of the new or emerging crimes as including “cybercrime, environmental crime and crimes against cultural property.”²⁰

The notion of serious crime is also relevant in the establishment of the offence of participation in an organized criminal group, set forth in article 5 of the Organised Crime Convention, including organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2.2 Criminal Groups and Criminal Organisations

Article 2.a of the Organised Crime Convention defines organized criminal group but not criminal organisations.

“Organised 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”.

It has to be interpreted according to the concept of structured group given in Article 2 c) that envisages that “structured group” “shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure”. It does not incorporate the modus operandi criteria such as use of violence, hierarchy and adaptation to the environment, among others.

These definitions are open and focused on:

- the number of participants –at least three persons;
- the duration – a flexible requirement of existing for a period of time;
- the aim: to commit offences for the purpose of financial or other material benefits;
- the type of crime they commit, serious crime as defined by the Convention .

In practice, the concept of criminal group is one of the most demanding issues since it has been introduced in most legal instruments at international and domestic levels over the concepts of criminal organisation or organised crime because of the difficulties in meeting all the requisites to prove their existence. The Digest of Organised Crime Cases underscores that the examined cases “reveal a diverse array of organizational typologies of organized crime. The organized criminal groups involved in the commission of such offences range from groups formed on an ethnic and/or hierarchical basis to those with a looser and more flexible structure, from territorially based groups to business-centred ones. Furthermore, the links among various actors performing distinct roles also reveal diverse possibilities, with one group conducting the entire action, or a combination of numerous cells managed by a single coordinator, or a network of autonomous entities acting together on a transactional basis.”²¹

These problems can be seen when applied to the most active sectors of environmental crime such as waste electrical and electronic equipment where well structured criminal groups are involved, or those related with flora and fauna where local impoverished communities commit collective crimes, thus challenging the traditional view of organised crime.

Criminal Groups and Environmental Crime

¹⁹ Ibidem.

²⁰ Digest on Organised Crime Cases, p. XIII.

²¹ Ibidem.

Decades ago, the UN started to ask itself and its member states to what extent organized criminal groups are involved in crimes against the environment²². The UN identified that “the criminal networks involved in the illegal trade are varied and extremely specialized. Some networks deal in live animals, others in ivory, reptile skins and rhinoceros horns, and others in plants. To counteract the trade, cooperation between the law enforcement agencies of importing and exporting countries is vital.”²³

In 2006 the INTERPOL Pollution Crime Working Group (PCWG) completed a study of the links between organized crime and pollution crimes using information on 36 closed court cases from Sweden, Canada, Italy, the United States, Mexico, Japan, Germany and the UK. Based on the numbers of individuals and organisations involved and the period and nature of criminal activity (i.e. much of it involved smuggling and fraud), the PCWG concluded that organized crime groups are actively involved in pollution crimes. Rather than exhibiting the traditional hierarchical, centralised structure of organized crime, the involvement of organized criminality in pollution crimes is more loosely structured. Small groups organize for a period of time to commit crime to obtain financial or other benefits, but disperse under pressure to form new groups.²⁴

The phenomenon of growing criminality in the disposal of Waste Electrical and Electronic Equipment (WEEE) or e-waste has been the object of growing attention by United Nations, UNODC, INTERPOL, the EU and NGOs in the last years. They have established the links between e-waste and criminal organizations dealing with e-waste with different degrees of specialization and involvement. The criminal groups involved in this environmental crime pose a challenge in terms of identifying and conceptualising criminal groups and organised environmental crime.

UNODC has reported that the E-waste traffickers are certainly unscrupulous, but the question of whether they are best described as organized criminals has raised some controversy. Looking at what is known about the groups involved, some might well fit the Palermo Convention definition, if the predicate offences were deemed “serious” in the countries in question.

The UNODC reports gathered the opinion of law enforcement sources that described the groups dedicated to e-waste as generally small, composed of five or six persons. In the majority of cases, at least one member has ethnic ties with the destination country. The degree of professionalism varies and it seems that groups involved in e-waste trafficking to West Africa are less professional than, for example, those for trafficking to China. But legitimate companies

²² See the Draft discussion guide for the regional preparatory meetings for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, E/CN.15/1998/2/Add.1, 23 March 1998, p. 11.

²³ *Ibidem*, p. 9

²⁴ Electronic Waste and Organised Crime - Assessing the Link, Phase II Report for the INTERPOL Pollution Crime Working Group 2009, available at www.interpol.int/Public/ICPO/FactSheets/Wastereport.pdf.

may also be involved in toxic waste or e-waste trafficking, in order to avoid disposal costs, which can be high in developed countries.²⁵

2.3 Criminalisation of participation in a criminal organised group.

Article 5 of the Convention requires States Parties to foresee the introduction into their criminal law systems of a number of offences relating to participation in an organised criminal group that must be a common minimum standard for all States parties, without prejudice to the differences among their common law or continental law systems and the possibility of adopting stricter provisions.

5. 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

Paragraph 2 of Article 5 introduces a specification that may facilitate the burden of proof in courts: “The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances”.

The assessment of the practice derived from the implementation of this Article 5 that has been criticized by academia for keeping the two offence solutions, has shown positive results. The Digest of Organised Crime Cases “posits that the divergent legislative paths of common-law countries, which usually adopt the conspiracy form of the offence, and civil-law countries, which usually adopt the association form, are not necessarily an impediment to an effective global response to organized crime. In addition, the positive results of several cases further support the advantages of the cumulative approach suggested in the Palermo Convention, which consist in having both forms of offences, where this is not prohibited by the fundamental principles of the national legal system”. It also concludes that “it is necessary to reflect on the importance of criminalizing conspiracy and criminal association and on the need for a policy of dismantling the organized criminal group, and on whether there is a need to better tailor those offences to the characteristics of organized crime in each country and at the

²⁵ United Nations Office on Drugs and Crime, “Transnational trafficking and the rule of law in West Africa: a threat assessment, July 2009”, available at www.unodc.org/documents/data...analysis/.../West_Africa_Report_2009, also reproduced in Trends in Organized Crime, vol. 12, 2009, p. 321.

transnational level. The conspiracy/association offences are essential to expanding the scope of investigations and prosecution to the widest possible circle of facts and offenders.”²⁶

2.4 Legal Persons and organised crime.

Regarding legal persons, Article 10 of the Convention requires States to adopt measures to establish the liability of legal persons for participation in serious crimes involving an organised criminal group and for the offences defined in the Convention. Paragraph 2 states that, “subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative”, leaving the States Parties the possibility of choosing among these three possible liability regimes considering their legal systems and the prevalence of the principle “*societas delinquere non potest*”. However, States Parties must “ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.”²⁷

All EU instruments have followed this approach regarding the liability of legal persons, as in the case of the Directive 2008/99/EC on the protection of the environment through criminal law.

The Digest of Organised Crime Cases points out that just a few cases were provided on the liability of legal persons and then it “is difficult to draw specific conclusions on whether the dearth of cases is due to the fact that this measure is rarely used or that it is irrelevant to the fight against organized crime. However, some experts have noted that measures on the liability of legal persons remain difficult to introduce and/or apply in legal systems where they are not already customary.”²⁸

2.5 Confiscation, Seizure and Disposal of Proceeds of Organised Crime and the International Cooperation for Confiscation.

Articles 12 and 13 deal with confiscation and seizure calling on State Parties to adopt legislation to enable them to carry out confiscation of both proceeds from crime and all instrumentalities used during the commission of the offences. Article 12 focuses on domestic measures and Article 13 with international cooperation agreements.

Some measures foreseen are quite ambitious and it would be desirable to invoke them when facing some of the problems arising when confiscation is foreseen in the framework of MEAs such as CITES. Proceeds transformed into or intermingled with property deriving from legitimate sources will also be subjected to confiscation up to the assessed value of the transformed or intermingled proceeds. These measures could be of application to organised environmental crime that uses legitimate production and sources as in the case of mahogany, where criminal groups have been involved.

Article 12.7 proposes that States Parties “may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings”. Taking into account the fact that the burden of proof usually rests with the prosecutor to demonstrate the unlawful origin of the alleged proceeds of crime, State Parties are invited to consider amending their procedural law, so that it would be up to the offender to prove the lawful origin of the proceeds.

Proceeds shall be disposed of by State Parties in accordance with their domestic laws and administrative procedures, as foreseen in Article 14 that also encourages State Parties to return the confiscated proceeds to the requesting State. CITES also follows this approach even though the practice of its States Parties varies as examined in the EFFACE Report on International Agreements.

²⁶ Digest of Organised Crime Cases, p. XIV.

²⁷ Art. 10.4.

²⁸ UNODC Digest on Organised Crime Cases, p. XIV.

In 2012, UNODC published a Manual on Cooperation Proceeds, which focuses on national efforts aimed at successfully preventing criminals from profiting from crime. Its primary purpose is to facilitate asset recovery in accordance with the provisions of the Convention. It is to be used in close conjunction with the companion Manual on Mutual Legal Assistance and Extradition.²⁹ There is no mention of environmental crime or organised environmental crime.

The UNODC Digest of Organised Crime Cases takes notice of an expansion of the powers to confiscate proceeds of crime in order to reduce the potential activities of organized crime structure developments in many national laws. Thus, several of its cases “refer to extended confiscation or other types of non-conviction based confiscation. These are confiscations or forfeitures that do not require a criminal conviction or cover not only the proceeds of the specific offence for which a conviction is obtained, but also all the other assets under the control of the offender that are proved, or assumed, to have been directly or indirectly obtained through previous criminal activities.”³⁰

2.6 Extradition

The Organised Crime Convention establishes a supple legal framework for extradition in its Article 16 that relies on the domestic law of State Parties for most of the conditions, procedures and requirements. However, in a limited number of areas the UN Convention establishes some principles and conditions to be respected by State Parties: the dual criminality principle, rules on provisional arrest, the extradition of nationals for fiscal offences and the obligation to consult with the requesting State before refusing extradition.

2.7 Mutual Legal Assistance and Joint Investigation.

One of the most important contributions of the Convention is its wide coverage of mutual legal assistance foreseen in its Article 18 that sets minimum standards for investigations, prosecutions and judicial proceedings and that are subsidiary to the previous agreements adopted by its State Parties. It extends the legal grounds for assistance to include administrative proceedings, where decisions taken by administrative authorities ‘may give rise to proceeding before a court having jurisdiction in particular in criminal matters’ in accordance with Article 3.1. of the Convention.

In 2012, UNODC prepared a *Manual on Legal Assistance and Extradition*, in response to the CoP Resolution 5/8 entitled "Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime". In that resolution, UNODC was directed to develop a practical guide to facilitate the drafting, transmission and execution of requests for extradition and mutual legal assistance. The manual is intended for by central and other competent national authorities, policy makers and criminal justice practitioners including lawyers, investigators, judges and magistrates who are involved in international legal assistance.³¹ There is no mention of environmental crime or organised environmental crime.

2.8 Implementation of the Convention through Economic Development and Technical Assistance.

The Convention foresees in its Article 30 that State Parties “shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation”. This Article “reflects a concern that, unless they receive adequate assistance, the developing countries are likely to encounter insurmountable obstacles in the implementation of its various provisions. Since the very goal of the drafters of the UN Convention was to obtain universal acceptance of minimum standards in the fight against organised crime, Article 30 represents a key provision, introducing an element of ‘solidarity’: the developed countries are

²⁹ Available at <https://www.unodc.org/unodc/en/organized-crime/tools-and-publications.html>

³⁰ UNODC Digest on Organised Crime Cases, p. XVII.

³¹ Available at <https://www.unodc.org/unodc/en/organized-crime/tools-and-publications.html>

expected to contribute financial, technical and material help to provide the poorest State Parties with the training, know-how, expertise and equipment necessary to turn the UN Convention into an effective tool.”³²

Article 30.2 envisages a wide array of measures of cooperation considered by developing countries during the signing conference as indispensable to implement the Convention:

States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

However, after a decade since its entry into force, the most important problem now for the Convention is the lack of enforcement, because of the failure to comply with this provision.

The problems of enforcement were dealt with in the CoP in its Third Session held in Vienna in October 2006. The CoP acknowledged the problems of non-implementation and non-compliance of both the Convention and its protocols. The Executive Director of UNODC noted then that three factors had led to this situation:

1. The political will of governments had been weakening.
2. The lack of adequate resources and
3. The fact that governments do not provide complete and accurate information, stressing the need for exchange of information on patterns and trends in transnational organized crime and successful practices for combating organised crime.

2.9 Typology of Organised Environmental Crimes

There is a wide array of environmental crimes that can be orchestrated or executed under the form of organised crime such as flora and fauna illegal trafficking, illegal waste disposal, illegal shipment of hazardous waste, oil pollution, illegal fishing, etc. The UN instruments and reports dealing with organised crime have focused on wildlife crimes but there are aspects of organised crime not acknowledged in most environmental crimes..

The UNODC Digest of Organised Crime Cases acknowledges the various stages of the criminal justice response, rather than the specific categories of offences. However, the cases provide adequate starting points for observations on some of the specific features related to single categories of environmental crime that could be further examined in the second stage of this report.³³

³² European Parliament Working Paper, The European Union and the United Nations Convention against Transnational Organised Crime, Civil Liberties Series, LIBE 116 EN, 11-2001, PE 311.427, p. 91.

³³ Digest, p. Xviii.

3 Organised Environmental Crime as Envisaged in Non-Binding Instruments: Widening the Scope of the Concept of Organised crime

To apply the provisions and definitions of the Organised Crime Convention to organised environmental crime poses many challenges. One of them is to find working definitions for the practice of judiciary and police forces fighting environmental crime in countries with very different legal traditions. Organised environmental crime is usually examined by reference to traditional forms of organised crime, but it is not one of them. The organised environmental crime is a non-conventional form of organised crime, and mirrors some features of the traditional organised crimes, such as drug smuggling and people trafficking, it is the new aspects that require examination. Soft law instruments help to adapt the legal categories related with organised crime to environmental crimes and to propose to States flexible models and standards that can facilitate establishing a common ground of understanding for the criminalisation of activities related with the environment.

Some of the specific characteristics of organised environmental crime can be singularised considering the Reports of the UN institutions involved in the fight against this form of organised crimes³⁴:

- (a) The groups or networks involved in trafficking in fauna and flora make use of bribery and corruption to facilitate trans-shipment;
- (b) The groups involved have both the capacity and the propensity to use violence in support of their activities, either against rivals or against law enforcement agents who attempt to interfere with their activities;
- (c) The trafficking involves considerable sophistication either in methods of concealment or in methods of circumvention through false documentation;
- (d) There are multiple shipments of fauna or flora, using well-established routes, methods and facilitators;
- (e) The group deals in multiple commodities and fauna and flora are trafficked along with drugs, stolen cars, weapons or even human beings. In some cases, snakes, alligators and reptiles are not being used as commodities in themselves but simply as a form of concealment. In such cases, therefore, the animals are regarded not as an additional source of profit but as a means of ensuring that the drugs themselves are not seized and provide the profits envisaged. It is important, therefore, to distinguish between opportunistic use of wild animals as cover for drug trafficking and true parallel trafficking in drugs and wildlife. Where the latter does occur, however, it is a good indicator of the involvement of organized crime in the illicit animal trade;
- (f) The profits from the trafficking in and sale of fauna and flora are laundered through sophisticated schemes often involving multiple jurisdictions and offshore financial centres;
- (g) The trafficking is carried out through one or more front companies that provide an apparently legitimate cover for the criminal activities. In the case of organized crime there is less likely to be a track record of legal activity as the company is more likely to be created specifically as a cover for illegal trade.

In order to set a soft legal framework for organised environmental crime the following instruments of soft law regarding organised environmental law must be considered:

- Reports and Resolutions of the ECOSOC or the UN Secretary General which plays the role of Secretariat of the Palermo Convention.

³⁴ See the Report of the Secretary-General on Illicit trafficking in protected species of wild flora and fauna and illicit access to genetic resources, *E/CN.15/2003/8*, 4 March 2003, p. 10.

- Resolutions and Action Plans adopted by the CoP to the Organised Crime Convention may help to fill in gaps and contribute to approximate criminal policies and practice.
- UNODC reports and recommendations helping to establish the common ground for the States Parties to enforce the Organised Crime Convention as well as other multilateral environmental agreements (MEAs) closely related with environmental crime and organised environmental crime such as CITES. It is in this field of the environmental crime related with flora and fauna where a common understanding has been established by UN institutions as well as Consortiums such as the International Consortium on Combating Wildlife Crime, of which UNODC is a member together with the CITES Secretariat, Interpol, the World Bank and the Custom Organisation.

The Economic and Social Council, in its resolution 2011/36 of 28 July 2011, invited “Member States to consider making illicit trafficking in endangered species of wild fauna and flora a serious crime, in accordance with their national legislation and article 2, paragraph (b), of the United Nations Convention against Transnational Organized Crime, especially when organized criminal groups are involved”. One year later, its Resolution 2012/19 entitled “Strengthening international cooperation in combating transnational organized crime in all its forms and manifestations” urged its Member States “to consider, among other effective measures, in accordance with their national legal systems, addressing different forms and manifestations of transnational organized crime that have a significant impact on the environment, including illicit trafficking in endangered species of wild fauna and flora”.

One of the most remarkable soft law instruments is the Toolkit 2012 elaborated by the International Consortium Combating Wildlife Crime. It provides a conceptual map and the coordinates to deal with environmental crime, international and domestic laws and the problems related with their enforcement from the point of view of the practitioners. It was offered to assist government officials in wildlife and forestry administration, and customs and other relevant enforcement agencies to conduct a comprehensive analysis of possible means and measures related to the protection and monitoring of wildlife and forest products. It is an important reference to understand how organised environmental crime is comprehended in the wider concept of environmental crime.

4 The Conference of the Parties of the UN Convention on Transnational Organised Crime

The Organised Crime Convention foresees in its Article 32 the establishment of a Conference of the Parties in order “to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention”. Once established, the CoP should “agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

- (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
- (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
- (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
- (d) Reviewing periodically the implementation of this Convention;
- (e) Making recommendations to improve this Convention and its implementation.

The CoP held its first session in 2004 and since then met annually and from 2006 every two years.

The Secretary-General of the United Nations provides the necessary secretariat services to the CoP to the Convention³⁵, and with this condition it will:

- (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
- (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
- (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations³⁶.

5 The United Nations Office on Drugs and Crime (UNODC) and the Organised Environmental Crime

In order to enhance the knowledge base available for Member States to develop effective international responses to transnational organized crime threats, UNODC produces a series of regional and thematic transnational organized crime threat assessments, as well as one global report, the last being published in June 2010.³⁷ Even though this global report addressed organised environmental crime in a very limited way, in 2012, UNODC launched a new campaign, entitled *Transnational Organized Crime: Let's put them out of business*, which specifically includes environmental crime.³⁸

The mandate of the UNODC to fight against environmental crime and organised environmental crime was given in 2011, by the Economic and Social Council through its Resolution 2011/36 on crime prevention and criminal justice responses to trafficking in endangered species of wild fauna and flora. In the resolution, the Council requested UNODC to, inter alia, continue to provide technical assistance to States, upon request, particularly as regards the prevention, investigation and prosecution of trafficking in endangered species of wild fauna and flora, within its mandate and in cooperation with Member States, relevant international organizations and the private sector.

Previously to this ECOSOC Resolution 2011/36, the Commission on Crime Prevention and Criminal Justice³⁹ had also received a mandate from the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that adopted the 2010 Salvador Declaration that acknowledged “the significant impacts on the environment posed by emerging forms of crimes, encourages MS to strengthen their national crime prevention and criminal justice legislation as well as to enhance international cooperation, technical assistance and sharing of best practices in this area, and invites the Commission on Crime Prevention and Criminal Justice to study the nature of the challenge and ways to deal with it effectively.”⁴⁰ In its 22nd session held in Vienna in April 2013, the Commission addressed “the challenge posed by emerging forms of crime that have a significant impact on the

³⁵ Article 33.1 of the Palermo Convention.

³⁶ Article 33.2 of the Palermo Convention.

³⁷ See <http://www.unodc.org/unodc/en/data-and-analysis/TOC-threat-assessments.html>

³⁸ Organized Crime Fact Sheet, available at http://www.unodc.org/documents/toc/factsheets/TOC12_fs_general_EN_HIRES.pdf.

³⁹ The Commission on Crime Prevention and Criminal Justice (CCPCJ hereinafter) is a body within the United Nations, dealing with crime prevention and criminal justice policy.

⁴⁰ “Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,” doc. A/CONF.213/18, op. para. 14.

environment and ways to deal with it effectively". This Commission session has been considered as an opportunity to build on the UN's acknowledgement that wildlife and forest crime is serious transnational organised crime and to drive further action on criminal justice issues relating to illicit wildlife and timber trafficking.

Thanks to all these resolutions, the Commission on Crime Prevention and Criminal Justice can expand the work of UNODC to address illicit trafficking in protected species of wild fauna and flora.

Pursuant to those resolutions and declarations, a series of transnational organized crime threat assessments, addressing the scope and prevalence of trafficking in wild fauna and flora are currently being prepared, in consultation with Member States, partners and international organizations.

Some of the programmes and activities promoted by UNODC to fight environmental crime are:

UNODC Joint Activities in the Framework of the International Consortium to Fight Environmental Crime and Organised Environmental Crime⁴¹

A meeting of the Ivory and Rhinoceros Enforcement Task Force was held in Nairobi in May 2011, where law enforcement officers exchanged information and developed strategies for combating the illegal trade in ivory. The meeting was attended by 20 high-level law enforcement officers representing wildlife, customs and national park authorities, the police, and law enforcement agencies from 12 countries. Participants also considered intelligence supplied by Australia, Canada and the United States of America.

A workshop on establishing a network of controlled delivery units was held in Shanghai, China, from 7 to 9 December 2011. The workshop brought together 50 participants from 18 countries, including police, customs and judicial officials from Africa and Asia, as well as experts from organizations that are members of the International Consortium on Combating Wildlife Crime. The workshop covered law enforcement in China and efforts to counter forest and wildlife crime, the identification of global routes used for smuggling wildlife and timber, methods used to detect the smuggling of wildlife and timber, controlled delivery techniques (including their financial aspects) and prosecution. The workshop included group activities aimed at building a network of practitioners. Follow-up will include monitoring and reporting on participants' future collaboration and controlled delivery operations.

A seminar for senior-level police and customs officers of States that still have tigers living in the wild was organized under the auspices of the International Consortium in Bangkok on 13 and 14 February 2012. The seminar was attended by representatives from Bangladesh, Bhutan, Cambodia, China, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Nepal, the Russian Federation, Thailand and Viet Nam and representatives from all five International Consortium partners. The seminar was one of the initial collaborative efforts of the Consortium to provide to law enforcement officers technical assistance related to trafficking in wildlife.

A workshop on electronic permit systems was organized by the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, with the support of China and the European Commission. The workshop, held in Guangzhou, China, from 9 to 11 May 2012, provided participants with an opportunity to express their needs, share knowledge, establish partnerships and develop funding strategies.

⁴¹ CoP to the Convention on Transnational Organised Crime, p. 10.

5.1 The International Consortium on Combating Wildlife Crime

The International Consortium on Combating Wildlife Crime is formed by *UNODC*, *INTERPOL*, *UNEP*, the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the World Customs Organization and the World Bank.

One of its most important outcomes is its “Wildlife and Forest Crime Analytic Toolkit” which has been used for pilot studies⁴². The toolkit aids Governments in identifying challenges and strengthening their criminal justice responses to wildlife and forest crime.

5.2 The Role of INTERPOL to Fight against Environmental Organized Crime

INTERPOL seeks to support law enforcement agencies in combating environmental crime through its operational tools and services, facilitating cross border police operations and training, intelligence gathering and analysis, as well as through targeted partnerships with stakeholders.

The Executive Director of Police Services of Interpol, Jean-Michel Louboutin has declared that “Environmental crime worldwide in all its forms represents a serious threat to the world’s global security, ecosystems and economy. It represents one of the fastest-growing crime areas, fanned by expanding crime networks, profits, and weak criminal penalties”. He has also pointed out that “the fight against environmental crime must involve collective efforts by law enforcement, governments, international organizations and the private sector. INTERPOL will continue to undertake operations in our member countries involving all stakeholders, so as to build capacity, support investigations and reinforce our collective ability to stem such crimes which have a global impact”.

The main INTERPOL projects under its Environmental Crime Programme are:

- *Project Predator* aims to enhance law enforcement capacity in the 13 countries where wild tigers still live and to improve intelligence sharing to develop a global picture of the criminal activity threatening tigers, and *Project Wisdom* seeks to conserve elephants and rhinoceros through international operations, enhanced communication and training of local police.
- *Project Leaf* is an initiative to combat illegal logging and other forest crime led by INTERPOL and the United Nations Environment Programme; it aims to support enforcement operations, provide training and tactical support, and improve intelligence gathering.
- *Project Clean Seas* delivers law enforcement training courses and is producing a manual on investigating pollution by sea-going vessels; tools to assist in the investigation of illegal discharge of waste from vessels are also in preparation.
- *Pollution Crime Forensics* aims at creating a network of environmental technical and forensic experts, promoting best practices in environmental forensics and compiling them in a manual for distribution.
- *Global E-Waste* is intended to design and execute an intelligence-led global analysis of the links between organized crime and the illegal export of e-waste.
- *Project Eden*, which aims to support countries as they tackle the illegal transnational trafficking of hazardous waste through multi-agency interventions and intelligence-led practices.

⁴² The “*Wildlife and Forest Crime Analytic Toolkit*” is available at www.unodc.org/documents/Wildlife/Toolkit.pdf

These projects and programmes are developed through operations in the field. INTERPOL has achieved important results in its operations in the field such as Operation Wendi, targeting criminal organizations behind the illegal trafficking of ivory in West and Central Africa. This operation led between January and May 2013 resulted in some 66 arrests and the seizure of nearly 4,000 ivory products and 50 elephant tusks – in addition to military grade weapons and cash.

INTERPOL has also achieved important results on electronic waste in its operation E-Waste Operation ENIGMA. This operation targeting the illegal trade of electronic waste saw the seizure of more than 240 tonnes of electronic equipment and electrical goods and the launch of criminal investigations against some 40 companies involved in all aspects of the illicit trade⁴³. Held in November and December 2012, Operation Enigma saw the participation of police, customs, port authorities and environmental and maritime law enforcement agencies in seven European and African countries. The operation aimed to identify and disrupt the illegal collection, recycling, export, import and shipping of discarded electronic products such as computers, televisions and other electronic devices, before they are dumped in landfills or other sites where they can cause severe environmental harm.

Operation Enigma also uncovered evidence of new concealment methods used by individuals and companies implicated in the illegal trade of electronic waste. This information will help the international law enforcement community work towards the elimination of these illegal activities.


6 Other Regional Initiatives

In the framework of the Organization of American States it has been adopted the Hemispheric Plan of Action against Transnational Organized Crime, adopted at the meeting of October 25, 2006 by the Permanent Council of the Organization of American States (OAS hereinafter). The primary concern of this Plan is the promotion of the United Nations Convention against Transnational Organized Crime (Palermo Convention) and its three Protocols. These instruments constitute the international legal framework for the fight against transnational organized crime.

The general objectives of the Plan of Action are to urge Member States to:

1. Prevent and combat transnational organized crime, in full observance of human rights, using as a frame of reference the Palermo Convention and the three additional Protocols thereto. This shall be done in accordance with the principles of sovereign equality and territorial integrity of states and of non-intervention in the internal affairs of other states;
2. Enhance cooperation in the areas of prevention, investigation, prosecution of, and judicial decisions related to, transnational organized crime;
3. Encourage coordination among OAS bodies responsible for issues related to combating transnational organized crime and cooperation among those bodies with the United Nations Office on Drugs and Crime (UNODC); and.

⁴³ See <http://www.interpol.int/en/News-and-media/News-media-releases/2013/N20130225/>



4. Strengthen national, subregional and regional capacities and capabilities to deal with transnational organized crime⁴⁴.

This instrument does not foresee the organised environmental crime.

⁴⁴ See the OAS Hemispheric Plan of Action against Transnational Organized Crime, available at http://www.oas.org/dsp/english/cpo_crimen_documentos.asp

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