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Illicit trafficking in protected species of wild flora and fauna and illicit access to genetic resources

Report of the Secretary-General

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* E/CN.15/2003/1.



I. Introduction

1. In its resolution 2001/12 of 24 July 2001, entitled “Illicit trafficking in protected species of wild flora and fauna”, the Economic and Social Council requested the Secretary-General to prepare, within existing resources or drawing upon extrabudgetary contributions, in coordination with other competent entities of the United Nations system, a report analysing domestic, bilateral, regional and multilateral legal provisions and other relevant documents, resolutions and recommendations dealing with the prevention, combating and eradication of illicit trafficking in protected species of wild flora and fauna by organized criminal groups. The Council also requested the Secretary-General to prepare, within existing resources or drawing on extrabudgetary contributions, in coordination with other competent entities of the United Nations system, a report analysing domestic, bilateral, regional and multilateral legal provisions and other relevant documents, resolutions and recommendations dealing with illicit access to genetic resources, as well as dealing with the extent to which organized criminal groups are involved therein.
2. A progress report, entitled “Progress made in the implementation of Economic and Social Council resolution 2001/12 on illicit trafficking in protected species of wild flora and fauna” (E/CN.15/2002/7), submitted to the Commission at its eleventh session, provided a preliminary overview of the work of relevant organizations, including the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Customs Cooperation Council (also called the World Customs Organization), the International Criminal Police Organization (Interpol), the secretariat of the Convention on Biological Diversity and the Food and Agriculture Organization of the United Nations (FAO). The report also provided a brief assessment of the scope and nature of the type of crime and problems of enforcement in respect of trafficking and solutions currently under discussion in respect of access to genetic resources, as well as a short description of the involvement of organized criminal groups in those phenomena.
3. In its resolution 2002/18 of 24 July 2002, entitled “Illicit trafficking in protected species of wild flora and fauna”, the Economic and Social Council requested the Secretary-General to finalize his report. Pursuant to that request, in September 2002, the Secretariat of the United Nations sent a note verbale to Member States, seeking comments on the content of the progress report, as well as information on relevant national legislation, practical experience, statistics and measures taken.
4. The present report, which is based on the replies received from Member States and on more in-depth research, aims at completing the progress report. In order not to duplicate work undertaken by specialized organizations, the research has concentrated on the involvement of organized criminal groups in the trafficking phenomenon. Concerning illicit access to genetic resources, initiatives of the secretariat of the Convention on Biological Diversity and relevant organizations specializing in intellectual property rights have been taken into consideration.

II. Comments received from Member States

5. Comments were received from 19 countries (Bosnia and Herzegovina (Republika Srpska), Croatia, Finland, Germany, Madagascar, Mexico, Netherlands, New Zealand, Panama, Peru, Philippines, Republic of Korea, Slovakia, Sweden,¹ Turkey, Ukraine, United Arab Emirates, United States of America and Uruguay). In their replies, almost all countries focused on the trafficking phenomenon. Very few mentioned the issue of illicit access, although some briefly mentioned certain aspects.²

6. As far as the trafficking phenomenon is concerned, the replies confirmed that sanctions for violations of individual wildlife trade laws varied considerably among States. Several countries still considered illegal trade in wildlife as a purely administrative offence and penalties mostly remained relatively low. Furthermore, enforcement capacities were often limited. Numerous States, however, had tried to improve the situation with additional human resources, increased public awareness and continued education of enforcement staff, in order to enhance their expertise and intervention capacity. They often relied upon training assistance offered by counterparts in other States.

Bosnia and Herzegovina (Republika Srpska)

7. Bosnia and Herzegovina (Republika Srpska) noted that, apart from the administrative fines provided for individuals as well as legal persons under its Law on Hunting and its Law on Forests, sentences of up to three years' imprisonment existed under the Criminal Code for illegal exporting of specially protected plants and animals, as well as for the destruction of habitats, biotopes or rare species in protected green environments. Hunters had been warned of illicit trafficking in protected species of birds to Italy, via Croatia and Slovenia. Bosnia and Herzegovina (Republika Srpska) further expressed its interest in being linked to the network of the Trade Infraction and Global Enforcement Recording System (TIGERS) computerized system, maintained by the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as well as in receiving assistance from the World Customs Organization, which disseminated information and intelligence through its system of regional intelligence offices.

Croatia

8. Croatia mentioned that its Nature Protection Law (art. 33, in combination with art. 52) had been brought in line with the provisions of the Convention on International Trade in Endangered Species after Croatia had become a party to the Convention in June 2000. Croatia also reported that efforts were being made to improve public awareness activities, as well as in education of enforcement staff.

Finland

9. Finland stated that its Nature Conservation Act (1096/1996, amended by 492/1997), apart from implementing obligations under the Convention on International Trade in Endangered Species, also contained provisions for the control of trade in and possession of species not covered under the Convention deriving from the European Union Directive on Birds and Directive on Habitats. The act further provided fines for offences defined as petty. More severe offences fell under

the Penal Code (chap. 48), which since 1995 had contained a separate section for environmental crimes (including nature conservation and natural resource offences), punishable with up to six years' imprisonment (and even up to 10 years in case of public danger). A National Monitoring Group on Environmental Offences had been founded in October 1997, which was connected with the National Bureau of Investigation. In November 2000, the Prosecution Service had appointed key prosecutors, to be trained and specialized in prosecuting environmental offences. Moreover, training sessions in matters relating to the Convention on International Trade in Endangered Species had been organized and were further planned for representatives of the National Bureau of Investigation and selected police departments, as well as for customs officers. Finland further provided the Secretariat with statistical information and factual summaries on the enforcement of wildlife trade controls in Finland, which had been prepared for the International Expert Workshop on the Enforcement of Wildlife Trade Controls in the European Union, organized in November 2001 by the Trade Records Analysis on Flora and Fauna in Commerce (TRAFFIC)³ and the World Conservation Union.

Germany

10. Germany mentioned that, pursuant to its Federal Statute for the Protection of Nature (para. 45), the competence for combating illicit trafficking in protected species of wild flora and fauna was held by the German Federal Customs Authority. The Criminal Unit of that Authority participated on a regular basis in the meetings of the European Union Wildlife Trade Enforcement Group and organized conferences on illicit trafficking of endangered species, which were also attended by the Federal Criminal Authority, federal executive authorities, the authorities of the Federal States, as well as by representatives of foreign customs authorities. Germany further drew attention to the permanent exchange of information between the Federal Ministry for the Environment, the Federal Authority for the Protection of Nature and the secretariat of the Convention on International Trade in Endangered Species (para. 44, No. 4, Federal Statute).

Madagascar

11. Madagascar explained that one of the priorities of its Ministry of Waters and Forests was the implementation of its revised Forest Law (Law No. 97/017 of 8 August 1997), as well as the development and endorsement of strategic action plans, which included intensified cooperation with customs officers, joint patrols and the creation of a National Observatorium for the forest sector, which aimed at improving the administration of the natural patrimony and the conservation of biodiversity. A closer collaboration between the Ministry of Waters and Forests and the Ministry of Defence was supposed to increase the level of control in coastal areas. Madagascar further made reference to illicit trafficking in endemic animals to the Comoros before final transportation to Japan or European countries.

Mexico

12. Mexico stressed that it would have liked to see the region of North America mentioned among the regions that were the main exporters of protected species. Despite major efforts made by the Mexican Federal Agency for Environmental Protection, unlawful shipments of endemic Mexican species, primarily cactaceae,

various types of parrot and some reptiles, had been seized. In Mexico, domestic legislation, such as the General Law on Wildlife, had been adapted in order to achieve full compliance with the provisions of the Convention on International Trade in Endangered Species, and amendments had accordingly been made to customs regulations and to agreements concluded with other countries for the effective control of the trade in national and exotic wildlife. Serious custodial sentences, up to 9 and even in some cases 10 years' imprisonment, with an additional penalty of a maximum of 3 years for aggravated circumstances, had been imposed for crimes against the environment in the Criminal Code (title 25), which also provided for precautionary measures such as disqualification of public servants. In cases where an accused voluntarily made good the loss (without any obligation to do so by administrative decision), the minimum and maximum sentencing limits were reduced by one half. Moreover, enforcement efforts to control the illegal cross-border transit of Mexican and non-Mexican wildlife included the installation of 65 permanent inspection posts.

Netherlands

13. The Netherlands stated in its biennial report on the Convention on International Trade in Endangered Species (1999-2000), attached to its reply, that a new flora and fauna act would probably be in force by the second half of 2001 and would replace existing acts, such as the Endangered Exotic Animal and Plant Species Act. Violations of the Endangered Species Act were punishable under the Economic Offences Act, with a maximum punishment of six years' imprisonment, together with a serious fine for private persons as well as companies. Seizure provisions were found in the Criminal Procedure Act, and those on confiscation in the Decree on Confiscated Goods. The Customs, the General Inspection Service of the Ministry of Agriculture, Nature Management and Fisheries and the police (including the Central Bureau of Criminal Investigations) were responsible for the enforcement of regulations under the Convention. An Enforcement Project Group for the Convention, comprised of representatives of the above-mentioned organizations and the Office of the Public Prosecutor, had coordinated enforcement and training. A report from the Project Group showed that important progress had been made and that investigation had become easier. It was also concluded, however, that enforcement must be developed further in view of the increasing professionalism in the illegal trade in endangered species and the complexity of the matter.

New Zealand

14. The reply from New Zealand stated that the Convention on International Trade in Endangered Species was implemented through the national Trade in Endangered Species Act 1989, which included all species listed in Appendices I, II and III to the Convention. Much of New Zealand's endemic and native fauna was also protected under the Wildlife Act 1953. The Customs and Excise Act 1996 and Biosecurity Act 1993 further controlled border operations. Legislative links existed among the Trade in Endangered Species, Wildlife, and Customs and Excise Acts, which allowed authorities to use search, seizure and detainment provisions, contained within the Customs Act, to enforce crimes involving flora and fauna. A special wildlife crime unit, the Wildlife Enforcement Group, had been set up to investigate wildlife crimes and had numerous formal network connections with counterparts in other countries.

The agency combined three government departments (customs, conservation and agriculture) and officers had multiple warrants of authority. That gave New Zealand the ability to bring a formal inter-agency approach to wildlife crime and to obtain a more accurate picture of the scope, nature and extent of wildlife crime occurring within its borders and in the Pacific area as a whole.

Panama

15. Panama stated that forestry legislation had been endorsed (Law No. 1 of 3 February 1994) and that the necessary mechanisms for preventing illicit trafficking in species of wild flora and fauna had been established. The National Environmental Authority had been created as an autonomous guiding state organ for questions of natural resources and the environment, in order to ensure compliance with and implementation of national policies, laws and regulations on the environment (Law No. 41 of 1 July 1998). Panama further stressed the need for judicial cooperation and technical assistance, as well as for awareness-raising activities.

Peru

16. Peru stated its position that paragraph 18 of the progress report presented to the Commission at its eleventh session should have reflected that Colombia and Peru were home to the favourite fauna of animal traffickers and that Peru was an important country because of its broad diversity of species, and, for that reason, illicit traffickers bought species such as iguanas, crocodiles, anacondas, macaws and cats from unscrupulous traders. Peru further noted its agreement with the position that effective implementation of and compliance with international instruments were dependent on each State party and stressed the necessity to strengthen the capacities of the judiciary, especially in particularly diverse countries, to tackle the involvement of organized crime, which destroyed opportunities for economic development and environmental services and benefits. Regarding illicit access to genetic resources, Peru mentioned the existence of gaps with regard to penalties in international agreements and emphasized the need for national efforts and international cooperation to achieve sustainable development and alleviate poverty through the just and equitable sharing of the benefits derived from the use of wildlife.

Philippines

17. The Philippines noted that a Wildlife Resources Conservation and Protection Act (Republic Act No. 9147) had been passed by Congress in July 2001 providing for stiffer fines and penalties, and that the Department of Environment and Natural Resources was drafting implementing rules and regulations for an effective implementation of the Convention on International Trade in Endangered Species, such as the confiscation of and/or return of species. Moreover, wildlife monitoring in all strategic air and seaports at the regional level had been strengthened through the creation of wildlife traffic monitoring units.

Republic of Korea

18. The Republic of Korea gave examples of several smugglers having been detained and numerous others having been accused of violating wildlife trafficking regulations during recent years.

Slovakia

19. Slovakia stated that trafficking in protected species of wild flora and fauna was punishable under the Criminal Code (chap. 4—as amended by Act No. 253/2001 Coll. and Act No. 237/2002 Coll.) with up to three years' imprisonment, or up to eight years' imprisonment in cases of aggravated circumstances and additional sanctions such as the forfeiture of the species.

Turkey

20. Turkey stated that several laws and by-laws relating to the protection of wild flora and fauna were in force, including a special by-law issued by the Ministry of Environment for the implementation of the Convention on International Trade in Endangered Species. Moreover, the Law on Prevention and Prosecution of Smuggling (Law No. 1918), which envisaged confiscation of proceeds obtained from and properties used in crime, was also applicable to crimes related to the protection of wild flora and fauna.

Ukraine

21. Ukraine indicated that offences related to illicit trafficking in protected species of wild flora and fauna were divided into administrative or criminal offences, depending on the type and degree of public danger. They might also fall under more general criminal offences included in the Penal Code, such as smuggling (art. 201), poaching (art. 248), illicit tree-cutting (art. 246), engagement in illegal commercial activities (art. 203) or violation of the established procedure for commercial activities (art. 202). Recent legislation (Decision No. 1822 of 13 December 2000) determined measures to implement obligations arising from the Convention on International Trade in Endangered Species, for which the Ministry of Ecology and Natural Resources was the monitoring authority. National Interpol officers participated in special training courses and the local Interpol office co-sponsored an International Eco-Crime Investigation Symposium.

United Arab Emirates

22. The United Arab Emirates provided a copy of its new law on organization and control of the international trade in endangered animals and plants (Federal Law 11 of 2002), which provided for penalties of up to six months' imprisonment, depending on which Appendix of the Convention on International Trade in Endangered Species the species was listed in, as well as fines. Those penalties also applied to a judicial person, its representatives, directors and agents if the offence was committed on the account or in the name of the judicial person (art. 30). The law further provided for the seizure and confiscation of specimens, as well as for the confiscation of the cages, containers and other objects in which they had been placed or which had been used in the perpetration of the offence (art. 32). Designated officials of the administrative authority had the status of investigating officer and could request the assistance of the ports and customs authorities, the

Armed Forces, the Ministry of the Interior and any other enforcement agencies, which were obliged to provide assistance with all possible speed (art. 33).

United States of America

23. The United States of America mentioned that it enforced the Convention on International Trade in Endangered Species through laws that banned trafficking in protected animals and plants. Efforts had been made to investigate and prosecute illegal wildlife trafficking, to monitor wildlife imports entering the United States, as well as to provide training, forensic analyses and investigative and legal assistance to counterparts within the North American Wildlife Enforcement Group and to counterparts all over the world. Such efforts were generally led by the United States Fish and Wildlife Service, with assistance from the Department of Justice, the Treasury (Customs), the Department of Agriculture (which handled inspections and enforcement of regulations related to imported and exported plants and plant products) and the Department of Commerce. Enforcement of laws implementing the Convention on International Trade in Endangered Species, as well as customs, fraud and money-laundering laws, could result in longer prison sentences and larger monetary penalties. Examples were given of perpetrators of serious wildlife crimes having been sentenced to several years in prison. Efforts made in international and domestic capacity-building included access to additional computer forensics and video analysis capabilities for United States and international wildlife enforcement officers. Also, closer collaboration had been maintained with Interpol. Furthermore, a wildlife crimes intelligence unit had been established with a view to improving intelligence gathering and analysis and to addressing more effectively the global scope and growing sophistication of wildlife crime. Those efforts were complemented by numerous awareness-raising activities with non-profit conservation groups and industry representatives, as well as by the introduction of Internet-based posting of wildlife trade alerts.

Uruguay

24. Uruguay noted that it had been one of the first countries to ratify the Convention on International Trade in Endangered Species (Law No. 14.205 of 4 January 1974). In response to an evaluation by the secretariat of the Convention, new legislation had been recently adopted (Law No. 16.736 of 5 January 1996), which granted the Ministry of Livestock, Agriculture and Fisheries the right to sanction violations. Unlawful acts against wild flora and fauna were not considered as criminal offences under the Penal Code, but as purely administrative infractions, punishable with fines and confiscation measures (Act No. 9.481 of 4 July 1935), which were, however, considered to be inadequate in case of large-scale offences. The awareness of the need to enhance monitoring capabilities has also led to further legislation (Act No. 16.320 of 1 November 1992), making members of the police force, customs department and National Naval Prefecture, as well as inspectors of the Department of Fauna of the General Directorate of Renewable Natural Resources, responsible for monitoring and acting against wildlife offences. Uruguay further made reference to the creation of a South American Network for Combating the Trafficking of Wild Animals, which was agreed upon during a special South American conference held in Brasilia in 2001.

III. Illicit trafficking in protected species of wild fauna and flora

25. Drawing on the comments received and on the basis of more in-depth research, it appears that organized crime, while not involved in all forms of trafficking in protected species of fauna and flora, is strongly present in various sectors. Even when organized crime, as such, is not fully involved, much of the trafficking is highly organized.

A. Involvement of organized criminal groups

26. Although most illegal markets share numerous broad characteristics, each market also has certain peculiarities depending on the nature of the products being trafficked. Concerning trafficking in wild flora and fauna, the fragile nature of many of the endangered species, for example, ensures a high degree of attrition during the trafficking process itself. Moreover, the more endangered a species becomes, the greater is the commercial value that is put on the remaining specimens, thereby increasing the price and the incentive for trafficking. The fact that some trade is regulated rather than prohibited provides opportunities for circumventing the regulations through false documents, especially because non-specialists have difficulties in differentiating species that can be legitimately traded from those which cannot.

27. In spite of the widespread tendency to attempt to estimate the size of such illegal markets, many of which are described as second only to drugs or, in some cases, to drugs and arms, there are few reliable statistics. Efforts to estimate the size of the illicit market in fauna and flora encounter enormous problems. There are several layers of uncertainty, which, in many respects, are irreducible: the number of animals or plants in the wild, the number that are illegally but successfully trafficked to customers, the percentage of those trafficked that are intercepted and the prices that are paid. Moreover, there are multiple sectors and multiple products and the dynamics of the market differ from sector to sector. Those uncertainties are compounded by inadequate reporting, the paucity of controlled deliveries and other undercover operations that are critical to the process of knowledge discovery in illegal markets and the over-reliance on anecdotal or specific cases without adequate consideration of their wider applicability, broader relevance or adequacy as a typical sample. The fact that the size of the illegal trade in endangered species cannot be precisely established does not, however, mean that the market is insignificant: it is a large and vibrant market with considerable demand and sufficient profit to attract both organized and other crime.

28. Several recent reports have suggested that organized criminal groups have diversified into the market in endangered species, attracted by the high profits and low risks. The United Kingdom of Great Britain and Northern Ireland has even created a wildlife crime unit attached to its National Criminal Intelligence Service, whose director has been quoted in the press as having observed that “wildlife crime is motivated by profits and greed and the perpetrators display other hallmarks of organized crime, including the use of violence, corruption and extortion to obtain and traffic the wildlife”. India also established a wildlife crime intelligence unit in 2002. Yet there are also those who claim that the role of organized crime in the illicit trade in fauna and flora is rather more limited than such claims suggest and is

generally focused on high-value, low-bulk products such as caviar, Asian medicines and reptile skins. The main reason for such divergent assessments, apart from the more general problems of data collection, arises from major conceptual difficulties in assessing the role of organized criminal groups in the illicit fauna and flora trade. There are few cases in which such criminal groups have been targeted for their involvement in trafficking in endangered species. Moreover, there is not always agreement on the use of the term “organized crime”, nor on the distinction between crime that is organized and organized criminal enterprises.⁴ The illicit market in fauna and flora has a diverse range of participants. Some of the networks that operate in the market consist of organized criminal enterprises and a myriad of subsidiary actors and associates, while others might be simply organized networks of experts or collectors who are prepared to break the law in pursuit of their passion. In considering the extent to which organized crime is involved in trafficking in endangered species, therefore, it is necessary to develop several indicators, which, if present in specific cases, strongly suggest the involvement of organized crime.

29. Where several of the following characteristics are present, there is a high probability that organized crime is involved:

(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.

B. Sector-related involvement of organized crime

30. Yet another reason for the divergent assessments is that there are various sectors within the fauna and flora market and the role of organized crime varies significantly from sector to sector. In any sector of the market it is necessary to look at the role of organized crime and smuggling networks, criminal companies that are simply set up as fronts, predominantly legitimate companies that sometimes stray across the line into illegality and amateur enthusiasts and collectors who in some cases develop what might be termed end-user, organized-crime supply chains. Market facilitators also have to be examined, with particular attention to collusion and corruption, and the links between law-abiding society and the underworld.

31. Perhaps no sector of the illegal fauna and flora trade has been criminalized to the extent of that of sturgeon and caviar. The caviar business exhibits most of the indicators of involvement of organized crime elucidated above. The level of violence and corruption are high, the trade is very well organized, there are numerous front companies, the schemes for circumventing restrictions are sophisticated and sometimes involve the use of intermediary jurisdictions, there are multiple shipments and the trade reaps large rewards that are either integrated with legitimate profits by front companies or used to acquire luxury goods.

32. Another area where organized crime is involved in poaching and transnational trafficking is abalone from South Africa, which involves the illegal export of up to 500 tons each year. Although on a much smaller scale than caviar trafficking, the illegal trade in abalone resembles the illegal caviar trade in several respects, such as domination by organized crime, in this case, Chinese criminal networks.

33. Organized crime appears also to be involved in the trade in tigers, which are killed both for their skins and for parts that are used in traditional Asian medicine. According to a team from the secretariat of the Convention on International Trade in Endangered Species:⁵

“There is sufficient justification to suspect that organized routes exist to dispose of illegally obtained tiger parts and that distinct routes may be used to smuggle particular parts of poached tigers. Whilst that may not apply to every illegally killed tiger, it seems likely that a significant number enter such criminal routes. 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.”

The exception to this appears to be in the Russian Far East, where law enforcement has had considerable success, in particular when working together with non-governmental organizations.

34. Although mostly organized by collectors or specialists, the illegal trade in plants is, in some cases, linked to organized crime. Perhaps the best example of the latter's involvement is in the Russian Far East, where the illegal trade in Siberian tiger skins mentioned above is accompanied by an illegal ginseng trade and an anti-poaching team has been specifically created to pursue the illegal ginseng traders.

35. The illegal bird trade appears to be a sector characterized less by organized crime moving into trafficking in endangered species than by wildlife specialists moving into crime. This is not to claim a complete absence of involvement of organized crime in trafficking in exotic birds. Trafficking in falcons from the countries of Central Asia to the United Arab Emirates and elsewhere in the Middle East is almost certainly an area where individual entrepreneurship and organized crime overlap. Similarly, in Brazil, which is the source of a variety of parrots destined for private collectors, zoos and pet shops in Europe and the United States, there might be some involvement of transnational organized crime. The fact that traffic of endangered species frequently occurs in connection with the illegal trade of other products or substances such as drugs, weapons, alcohol and precious stones has led some observers to infer that transnational organized crime is involved.

36. In reptile trafficking, organized crime appears to be less important than either transnational networks formed explicitly for the purpose of trafficking in certain species, or key individuals who play a major role in the trade. At the same time, the business is generally very well organized and the scale of the trade is enormous.

37. Although there is no concrete evidence of involvement of organized crime in trafficking in bush meat, the trade certainly bears a resemblance to the drug trade in its use of couriers.

38. Finally, much of the trade in bear parts is done through ostensibly legitimate companies, while supplies also come from individuals. However, in some parts of the world, such as the Russian Far East and Canada, there is evidence that organized crime is also involved.

IV. Illicit access to genetic resources

39. There is little evidence that organized crime has sought or obtained illicit access to genetic materials. However, further research shows that organized crime could become involved in that area, as there are clearly profits to be made.

A. Relevant legal framework

40. As noted in the progress report, the issue of access to genetic resources is addressed in the Convention on Biological Diversity, which spells out the requirements for licit access (prior informed consent and mutually agreed terms including sharing of benefits), the implication being that any access that fails to meet those requirements is, by its very nature, illicit.

41. There is a potential if not an inherent tension between the Convention on Biological Diversity, calling for benefit-sharing, and the agreement on Trade-Related Aspects of Intellectual Property Rights (commonly known as TRIPS), developed under the World Trade Organization. The latter emphasizes the need to patent inventions, whether products or processes, in all fields of technology, and places the emphasis on new research rather than on the traditional knowledge that has helped to identify the direction for such research.

42. The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization,⁶ adopted by the Sixth

Conference of Parties to the Convention on Biological Diversity at The Hague in April 2002, should assist parties, Governments and other stakeholders to develop an overall access and benefit-sharing strategy, and to identify steps involved in the process of obtaining access to genetic resources and benefit-sharing. However, the Guidelines, which are intended to assist parties in the establishment of a system of prior informed consent, as well as with the development of mutually agreed terms, in accordance with article 15 of the Convention, are not mandatory.

43. The Bonn Guidelines state explicitly that they are without prejudice to the access and benefit-sharing provisions of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture,⁷ which parties agree to establish a Multilateral System of Access and Benefit-sharing for agricultural resources and exempts the world's principal food crops from intellectual property rights.

44. The Plan of Implementation of the World Summit on Sustainable Development⁸ held in Johannesburg, South Africa, refers in its paragraph 44 (o) to negotiation, bearing in mind the Bonn Guidelines, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. When implemented, that intention of the international community could have important consequences for the trade in and the fight against illicit trafficking in genetic resources.

45. Regional initiatives clarifying the conditions under which access to genetic resources is permitted, such as decision 391 of the Andean Community Commission approving a Common Regime on Access to Genetic Resources, the Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources adopted by the Organization of African Unity, and the draft framework agreement on access to biological and genetic resources of the Association of South-East Asian Nations, remain, as is the case with the Bonn Guidelines, rather optional in their formulation.

B. Possible involvement of organized criminal groups

46. The exploitative approach to bioprospecting, along with the patenting process itself, has drawn the ire of many critics. The critics see both easy and unauthorized access to botanical material and subsequent patents that might be granted as part of a system of biopiracy. They have successfully articulated legal objections and, in some important cases, have succeeded in having the patents revoked. Many bioprospectors rely upon the advice of indigenous communities to identify plants that may have specific uses. They then send those plants to laboratories where they are tested, screened and sometimes developed into marketable products. While the corporations from developed countries collect the profits from such products (estimated to be worth billions of dollars), the contributions of the countries of origin and of indigenous and local communities go unrecognized and uncompensated.

47. The argument of the pro-patent business lobby, especially in the pharmaceutical industry, is that the development of new medicines is a long, costly process and that the research and development efforts will not continue unless the company can expect to obtain a reasonable reward at the end of the process.

Intellectual property rights provide incentives for research and development in biotechnology.

48. Because of the difficulties of overt bioprospecting, during scientific expeditions or on the basis of joint research projects, access and acquisition are taking more covert forms, such as the exploitation of environmental tourism. As in the world of illicit trafficking in fauna and flora, where so-called conservationists and experts sometimes use their licit activities as a cover for illicit endeavours, environmental concerns can be a cover for the illicit acquisition of genetic resources and, in some cases, the local knowledge associated with it.

49. There is concern that, as more and more States impose legal restrictions and develop greater capacity to monitor the more traditional forms of biopiracy, illicit activities will become more structured and sophisticated, with organized criminal groups becoming involved. Although there is little evidence that such groups have sought or obtained illicit access to genetic materials, this is not a possibility that can be dismissed. It is important to look both at the constraints on the involvement of organized crime, as well as at the reasons for which it might become a player.

50. The inherent disadvantages of such involvement in the area are significant; there is no large and obvious customer base for which the large-scale supply of illicit goods and services might be developed, the kind of expertise required is lacking and there are other areas of activity that provide more reward for far less effort.

51. There are, however, several considerations on the other side that also have to be considered:

(a) The development of an overly restrictive regime for controlling access to and exploitation of genetic materials could encourage an intensification of efforts to circumvent the rules, regulations and laws;

(b) Moreover, criminal networks and legitimate firms, which provide the market for genetic materials, might enter into collusion. Where the demand for acquisition is high and the supply is very low, pharmaceutical research and development companies are unlikely to exercise due diligence as regards their suppliers, in particular where the latter have a legitimate facade;

(c) Illicit acquisition of and trafficking in genetic materials is, in many respects, a natural extension of trafficking in endangered species, which, in a few instances at least, has enabled criminal networks to develop relations with local hunters with considerable knowledge and expertise;

(d) Many organized criminal groups and networks have the capacity to diversify their activities into new areas where the profits look attractive, as well as to migrate from high-risk products such as drugs where the penalties for trafficking are relatively severe to areas such as trafficking in women where the penalties are far less serious. There is often a time lag between the development of illicit markets and the development of appropriate laws, enforcement mechanisms and penalties designed to deter involvement in those markets. Moreover, even when laws are put in place, it is unlikely that this will be done in ways that standardize or harmonize the various approaches adopted by different nations. Criminal organizations are nothing if not entrepreneurial and generally seek to exploit such asymmetries.

52. There are other dimensions to access to genetic material by organized criminal groups that go beyond access to genetic resources in the wild. Organized crime has a long history of counterfeiting and of violating intellectual property through such activities as software piracy and it appears that pharmaceuticals are becoming another major target. Sophisticated and wealthy criminal organizations use the latest computer and printing technologies to produce counterfeit labels that are indistinguishable from genuine ones. Counterfeiting pharmaceuticals is a high-profit, low-risk activity. Violations are rarely investigated, rarely detected and rarely punished, and even when they are punished the sentences are nominal. Moreover, the pervasiveness of organized crime in many countries makes it relatively easy both to divert legal pharmaceuticals and to introduce counterfeits into the legal distribution chain. Apart from counterfeiting, as genetic materials such as tissue banks and stores of modified organisms become more widespread, organized criminal groups might see new opportunities for obtaining unauthorized access to such stores and exploiting that access for financial gain.

V. Concluding remarks and recommendations

A. Illicit trafficking in protected species of wild fauna and flora

53. As has been emphasized in relevant documents of the secretariat of the Convention on International Trade in Endangered Species,⁹ combating the trade in endangered species requires a comprehensive approach that builds on areas of success, remedies deficiencies and weaknesses in laws and enforcement efforts, and goes beyond law enforcement to include educational campaigns and awareness-raising. In addition, more extensive use needs to be made of forensic technologies and of public-private partnerships.

54. The effectiveness of the Convention on International Trade in Endangered Species at the implementation level depends mainly on the willingness of the parties to the Convention to provide adequate resources at the national level to ensure that illegal trade is prevented and that the provisions of the Convention are effectively enforced. In the present situation, regime compliance varies considerably and is manifested in the reporting of problems and violations. The reporting that does occur reflects different levels of both capability and diligence, thereby creating a false impression of the trade, making it appear that parties who report have a serious problem when, in fact, they might simply be more capable of interdiction and more rigorous in their willingness to report violations. Efforts must be made by parties to dispel the view that reporting of crime will be viewed as an indication of failure by staff to carry out their duties. It is only by acknowledging the existence of wildlife crime and illicit trade, and by trying to qualify the scale of the phenomenon, that the problem can be successfully tackled.

55. Accordingly, States might be encouraged to formulate and implement more comprehensive national policies, providing for more severe penalties. Related to this is the importance of using other measures that have been developed in the fight against organized crime. The use of asset seizure and asset forfeiture laws and procedures can be instrumental in reducing the profits from trafficking. Undercover operations and electronic surveillance can further enhance intelligence-led policing. Another best practice that can be applied is the use of task forces, preferably

multidisciplinary set up with a mandate to focus attention on a single problem or set of targets. Operations devoted to particular species such as reptiles, birds or plants can serve the additional purpose of raising the awareness of the illegal trade and revealing its scope and methods. The ultimate purpose of such action is to introduce a greater degree of risk into criminal markets and sectors that have all too often been characterized by low risk and high gain.

56. The success of efforts to contain the illicit trade in fauna and flora will furthermore depend on the capacity to combat corrupt practices of persons responsible for implementing the Convention of International Trade in Endangered Species, as well as to offer viable economic alternatives to subsistence poaching in developing economies.

57. More effective international cooperation is required, with public-private partnerships. Such partnerships can help to provide additional resources to government agencies to combat poaching and trafficking. In addition, key personnel from non-governmental organizations such as TRAFFIC, can work closely with local law enforcement resulting in major seizures and arrests.

58. Furthermore, science and technology should be used more extensively since forensic laboratories can assist in the identification of species and help to determine what crimes have actually been committed. Information technologies offer opportunities for better tracking of species and for developing databases that provide a fuller picture of the dynamic and evolving nature of the markets and trafficking routes. They can also facilitate the integration of data about criminal networks, including the companies, individuals and organizations involved in the illegal trade in fauna and flora.

59. On the demand side, awareness-raising should be promoted further. In some countries, campaigns have succeeded in raising awareness of endangered species among groups of users of traditional Asian medicine. Broadening such campaigns could be particularly beneficial, especially concerning bush meat and shahtoosh wool.

B. Illicit access to genetic resources

60. While organized crime does not yet seem to be involved in illicit access to genetic resources, it may well be that such involvement in the acquisition and subsequent sale of genetic resources is simply not being reported. One desirable development, therefore, would consist of greater efforts to detect and report cases of the involvement of organized crime in this area. Such reporting would provide the basis for the establishment of a repository of information and the creation of a database. Interpol, which already has an eco-crimes reporting system, seems to be best placed to accommodate cases involving organized criminal groups that obtain illicit access to genetic resources.

61. Biotechnology and pharmaceutical companies themselves carry some of the responsibility for ensuring that organized crime is not able to infiltrate and influence their industries. One key component of this would be the creation of a compliance system to ensure that those companies have no links with organized crime or with any other individuals or groups that engage in biopiracy. Such a system could

considerably reduce the chances of organized crime becoming involved in the acquisition of genetic resources.

Notes

- ¹ Sweden explained in its reply concerning Economic and Social Council resolutions 2002/10, 2002/11, 2002/12, 2002/14, 2002/15, 2002/18 and 2002/19 that, for the time being, it had no comments regarding resolution 2002/18 on illicit trafficking in protected species of wild flora and fauna.
- ² Madagascar mentioned implementation of the Convention on Biological Diversity as one of the priorities of its Ministry of Waters and Forests. Mexico stated that it would promote research on wild flora and fauna and genetic material in order to determine their scientific, environmental, economic and strategic value for the nation. Legislation provided for precautionary seizure of genetic material, in the event of an imminent risk of ecological imbalance or of serious impairment of or damage to natural resources or of contamination with harmful repercussions for ecosystems or their components or for public health, as well as for confiscation of the instruments, specimens, products or by-products directly connected with breaches relating to genetic resources. In Ukraine, measures were planned to implement the Cartagena Protocol on Biosafety of the Convention on Biological Diversity, such as development of a concept of biosafety, drafting of a bill on biosafety and amendments to certain national laws, creation of a national coordinating centre and a national competent authority on biosafety of foodstuffs containing living modified organisms. Uruguay explained that the Convention on Biological Diversity was handled by the Ministry of Housing, Regional Planning and the Environment
- ³ TRAFFIC, the wildlife trade monitoring programme of the World Wide Fund for Nature and the World Conservation Union, provided the Secretariat with the proceedings of the Workshop.
- ⁴ For a discussion on the distinction between organized crime and crime that is organized, see James O. Finckenauer and Elin J. Waring, *Russian Mafia in America: Immigration, Culture and Crime* (Boston, Northeastern University Press, 1998).
- ⁵ Issues relating to species: Tiger, Technical missions, p. 12, report presented at the Forty-second Meeting of the Standing Committee of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Lisbon, 28 September-1 October 1999. (www.cites.org/eng/cttee/standing/42/42-10-4.pdf).
- ⁶ Decision VI/24, annex (www.biodiv.org/decisions).
- ⁷ As stressed by the FAO Commission on Genetic Resources for Food and Agriculture and referred to in the progress report, crops and domestic animals are widely shared around the world, and the value of the resources lies in the intra-specific diversity, which is the basis of crop and animal improvement.
- ⁸ Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002 (United Nations publication, Sales No. E.03.II.A.1), chap. I, resolution 2, annex.
- ⁹ See www.cites.org/eng/cop/12/doc/E12-27.pdf.