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UPSURGE IN ORGANIZED CRIME: WAR AGAINST SOCIETY

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Abstract

One of the most complex challenges faced by today's interconnected and interdependent common village is organized crime, which essentially constitutes to be nothing less than a guerrilla war against society. Organized crime in itself has multiple branches within, including illegal wildlife trade, terrorism, money laundering and trafficking and its impact can deter the very core of human society- from human safety to institutionalizing evils of corruption to having an adverse impact on the environment. The authors of this paper endeavor to establish the spread of organized crime as a phenomenon of increasing globalization and its further facilitation by the use of technology. The paper focusses on the recent increase in the industry of illegal wildlife trade and terrorist financing as substantiated upon in the recent reports released by FATF, keeping in mind the international jurisprudence and the challenges faced by them in addressing these transnational crimes and attempt to make a case for stricter implementation of legal instruments and concerted and coordinated efforts amongst nations to address the same.

Keywords: Globalization, Organized Crime, FATF, Terrorism, Money-Laundering, Illegal Wildlife Trade

INTRODUCTION

As E.M. Forster¹ pointed out, "Only connect!", the process of a shift in international paradigm as well as world affairs began since the advent of 1980s. The decades hereafter, witnessed exponential growth due to global interconnectedness and interdependence- from the biggest superpowers to the smallest islands. The barriers of distance, development, culture, or any form of disaggregated collection of states faded towards an integrated whole, or "one world." A borderless world hence led to increased bilateral trade, defence cooperation, increased diaspora,

¹ E.M. Foster, English essayist and novelist, Oxford Dictionary of National Biography, <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-33208>

exchange of culture and increased regional alliances and organizations. However, it also led to the emergence of challenges faced by the collective humanity- climate change, illegal trade, illegal immigration and terrorism.

So much so, that the spread of the recent COVID 19 outbreak can be seen as an exemplary instance of the downhill of globalization- a global outbreak, impacting economies and health of people all across the globe. The outbreak has not only led to an increased pressure on challenges in the field of health, education, gender equality, global supply chains and almost every Sustainable development goal- but have also led to a shift towards digitization of economy, trade, international relations etc. Although the increasing use of technology leads to a resilient system in such times, it also envisages an increase in its misuse through digital crime, frauds, cyber terrorism and warfare.

The same was substantiated upon by the recent reports released by FATF- one focusing on the nexus between money laundering and terrorist financing² and the other focusing on the recent increase in wildlife trade via digital platforms.³ The report broadly states how the aforementioned issues generated 23 billion in a year, becoming global threats leading to a perpetual cycle of increase in crimes of modern slavery, drug trafficking and arms trade. This not only impacts the “Global commons⁴” in terms of security, health, environment and economy but deeply ingrains complex problems in the society which are used as a front to hide illegal proceeds in the forms of institutionalized corruption and economic crimes like frauds or tax evasion. The report also highlights how the increased use of online marketplace and social media has facilitated the same during the pandemic, hence stressing on the need of robust mechanisms and co-ordination between key stakeholders, tackling the common problem without hurdles and disputes over jurisdiction.

ORGANIZED CRIME AND INTERNATIONAL LAW

The transnational nature of organized crimes across borders led to its governance by International law as no single country can fight the gravity of this in isolation. The governing body for the same is UN Office on Drugs and Crime (UNODC), headquartered at Vienna, whose underlying function is to strengthen an effective criminal justice system promoting health, security, peace and sustainability for all.⁵ The leading convention for the same is the UN Convention against Transnational Organized Crime and the Protocols thereto 2003.⁶ Although the convention does not contain a precise definition of what constitutes to be an organized crime, it instead however defines both, the nature of criminal conduct and structure of an “organized criminal group,” using the following four criterias⁷-

² FATF, COVID-19-related Money Laundering and Terrorist Financing, Risks and Policy Responses, <http://www.fatf-gafi.org/media/fatf/documents/COVID-19-AML-CFT.pdf>

³ FATF, FATF REPORT Money Laundering and the Illegal Wildlife Trade June 2020, <http://www.fatf-gafi.org/media/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf>

⁴ Garret Hardin’s theory of “Tragedy of commons”; available at: <http://faculty.wvu.edu/gmyers/esssa/Hardin.html>

⁵ CHARTER OF THE UNITED NATIONS, https://www.unodc.org/pdf/iaol/charter_un.pdf

⁶ UNODC, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

⁷ Article 2(a), UN Convention Against Transnational Organized Crime and the protocols thereto,

<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

- a structured group of three or more persons;
- existing for a period of time;
- acting in concert with the aim of committing at least one serious crime;
- obtain, directly or indirectly, a financial or other material benefit

Additionally, “serious crime” has been defined as an offence punishable by a maximum penalty of incarceration of at least four years⁸ (period selected on the basis of international consensus⁹). The inherent nature of organized crime primarily and broadly includes three categories – activities involving illicit services, illicit goods and infiltration of legitimate business or government (for instance, by extortionate threats¹⁰).

Although not a distinguished part of Customary International law, the convention has universal adherence due to overwhelming representation by maximum states.¹¹ The complexity with the enforcement of the Convention is usually witnessed in its scope of application and overlap of jurisdiction. Article 3(2)¹² defines the nature of an offence as “transnational” if it is committed in more than one state, or a substantial part of the preparation, planning or direction has taken place in another state, or if an organized criminal group is active in more than one state or the substantial effects of it are witnessed in more than one state.

Furthermore, the Convention also safeguards against loopholes of domestic legislations by specifying that the member states shall not endeavor to consider transnational elements and involvement of organized criminal groups as subjects of their domestic jurisdictions, requiring its modus operandi to be criminalized in all jurisdictions.¹³

However, despite the procedural safeguards provided herein, the recent year has seen an increase in facilitation of organized crime facilitated by increased use of digital space and media for potential customer base, payment facilitation and wider outreach of illegal traders. The spurt has particularly been witnessed against the gravest crimes impacting humanity- the deterioration of wildlife (and consequently environment) and terrorism.

1. **ILLEGAL WILDLIFE TRADE**

Wildlife trade is an ancient phenomenon, traceable from the time of ancient Egyptians (3500-500 BCE) for ivory, jewellery and carvings to fulfilling modern needs and transforming into a billion dollar industry worth 7- 23 billion per

⁸ Article 2(b)

⁹ *Supra* 6.

¹⁰ UNODC, The Doha Declaration: Promoting a culture of Lawfulness, <https://www.unodc.org/e4j/en/organized-crime/module-1/key-issues/summary.html>

¹¹ UNODC, Sharing Electronic Resources and Laws on Crime, <https://sherloc.unodc.org/cld/en/v3/sherloc/index.html>

¹² Article 3(2)(a-d)

¹³ Article 34(2)

year.¹⁴ Illegal wildlife trade however is the illicit procurement, transport, and distribution- of animals and parts and derivatives thereof, nationally and internationally- in contravention of laws, foreign and domestic, and treaties. The range can vary from being for a single item to commercial- sized consignments shipped all across. Additionally, wildlife contraband may also include live pets, hunting trophies, fashion accessories, cultural artifacts, ingredients for traditional medicines, wild meat for human consumption (or bushmeat), and other products.¹⁵ The authors of this paper endeavor upon the multifold impact of the trade on nature, human health and society; the role of technology in facilitation and the framework governing the same.

1.1. IMPACT ON ENVIRONMENT AND SOCIETY

The environment is the archetypal example of a global issue because of its intrinsic transnational character.¹⁶ The emerging issue of climate change impact has not only been an ideological issue but also a political debate- witnessing international cooperation amongst States since the spurt in the gravity of the problem which played a core role in criminalization of wildlife trade or green criminology. The rationale behind it is as simplified as it be- overexploitation by humans, disruption of ecosystems and consequent reduction of earth's resources. The same can be attributed to the growing demand, increased access due to man-animal conflict and a lack of deep ecology approach.

The process of illegal trade is the second biggest direct threat to species after habitat destruction¹⁷- causing direct harms such as further endangering highly endangered species on the IUCN list, to disrupting lives of local households dependent on wild animals for their survival and economic needs as well as harming the balance of nature. The indirect impact is equally grave in the interconnected world – from incidental killing of non- target species to exposing humans to zoonotic diseases causing pandemics.

1.2. FORMALIZATION AND USE OF TECHNOLOGY

The shift in the method of trading has now shifted to abuse of the formal financial sector, particularly digital economic platforms due to the advanced nature of malwares and systems leading to a higher chance of non-traceability. The

¹⁴ NEP–Interpol (2014 UNEP); World Bank, *Illegal Logging, Fishing, and Wildlife Trade: The Costs and How to Combat it*, (2019).

¹⁵ Horace O Williams and Viktor T Grante, *Illegal trade in wildlife*, NOVA SCIENCE PUBLISHERS 2009

¹⁶ Andrey Heywood, *global politics*, Palgrave foundations 2011

¹⁷ WWF, *Second-biggest direct threat to species after habitat destruction*, https://wwf.panda.org/our_work/our_focus/wildlife_practice/problems/illegal_trade/

FATF report¹⁸ also highlights the method of implementation of the same as by the use of shell companies conducting legitimate and illegitimate business at the same time, particularly in the import- export industry for justifying global movement. For example, Indonesia has seen a trade worth 9 million dollars for the trafficking of Pangolin¹⁹, a specie in the Red List of IUCN threatened species²⁰ using a network of intermediary bank accounts under pretense of legitimate animal and farm suppliers.

Additionally, technology facilitates encrypted communicative platforms and illegal wildlife marketplace- from customers to vendors to easier transactions with wide scope in public, private and non-profit sectors. Further, payment infrastructure evolution has led to increase in opportunities for money laundering while also assisting in detection of suspicious activities, hence being a double-edged sword.

1.3. AUTHORITIES AND ENFORCEMENT

The transnational nature of this has made it a worldwide environmental issue with global consequences and hence legal and illegal trade flow cannot be disassociated from globalization. However, the focus towards green crimes²¹ was only brought under light in the 1990s and it was only in 2013 that the UN Commission on Crime Prevention and Criminal Justice²² categorized wildlife trade as a serious crime. This led to the development of green criminology wherein the focus is on internal environment crimes leading to victimization of environment, animals and plants- ranging from forms of pollution to species decline or animal abuse, based on the determinant factor of “social harm.”

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) apart from UNODC has been instrumental in assessing the export and import of such crimes. Additionally, instruments like Global Wildlife program, International Consortium on Combating Wildlife crime, UNTOC etc²³ However, the multiplicity of various domestic legislations as well as broad international law frameworks have more or less been ineffective and weak due to existing lacunas often exploited by traders. Additionally, the gap between developing and developed countries often leads to flawed investigation in the not so “mainstream” or “victimless crime.”

International cooperation, involvement of key stakeholders (civil society, media) and an attempt towards generation of awareness vis-à-vis revisiting our relationship with nature apart from stricter enforcement can perhaps assist in dealing with the problem of “Global Commons.”

2. DIGITAL FINANCING AND TERRORISM

¹⁸ FATF, FATF REPORT Money Laundering and the Illegal Wildlife Trade June 2020, <http://www.fatf-gafi.org/media/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf>

¹⁹ PANGOLIN SEIZURES DATA REPORTED, https://www.pangolinsg.org/wp-content/uploads/sites/4/2018/06/Nijman_2016_Pangolin-seizures-data-reported-in-Indonesian-media.pdf

²⁰ *Ibid.*

²¹ Lynch (1990) proposed to include environmental issues within the discipline of criminology

²² UNODC, Commission on Crime Prevention and Criminal Justice, <https://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>

²³ TOOLS AND RESOURCES TO COMBAT ILLEGAL WILDLIFE TRADE, WORLD BANK GROUP; <http://pubdocs.worldbank.org/en/389851519769693304/24691-Wildlife-Law-Enforcement-002.pdf>

Digital World has become a contemporary issue which essentially refers to the emergence and dominance of technologies and information system over the internet in the global economy. The accessibility and popularity of digital currencies and online payment processing systems has seen an enormous rise in the recent years.²⁴ Digital currencies function as an online exchange medium that allows transferring of money without involving hard currency or channels regulating electronic banking.²⁵ Some of these service providers are commonly used due to its simple process, requiring merely a valid email address to create an account with names and locations of the user which can be fictitious or sometimes unidentified. While these anonymous transfer money services have proved to be a boon for the businesses to connect with the customers across the globe, they can also deliver an awfully convenient means for terrorist organizations to transfer money without the near possibility of being detected and remain unnoticed.²⁶ They act as a substitute method of currency exchange for conducting transactions online with known or unknown parties. The common digital currencies in today's time includes PayPal, V-Cash, Cash-U and Gold Money. Thus, digital financing has increasingly been used as a gateway for terrorism and related activities as the tracing of sources channeled through digital currencies and exchangers of these currencies becomes extremely strenuous, if not impossible.

3. MONEY LAUNDERING AND TERRORIST FINANCING

Money Laundering is well-defined by the FATF as the “processing of these criminal proceeds to disguise their illegal origin” empowering the criminals to enjoy the profits without jeopardizing their source and to legitimize the ill-gotten gains of crime.²⁷ Further, it is also described as the conversion or transfer of property for the purpose of concealing or disguising the illicit origin of property or helping the person involved in the commission of offence to evade the legal consequences of his or her actions.²⁸

Money Laundering is done with the intention to convert illegally gained money into lawfully usable ones. The practice of Money Laundering does not limit itself to financial transactions involving criminal activities but also to any financial transaction that outcomes in the asset formation as consequences of illegal acts varying from corruption, tax evasion so on and so forth. Money Laundering has become a severe risk to the financial institutions leading to adverse effects on the economy. To avoid such a situation, actions must be taken to fight money laundering to be advantageous for the society.

²⁴ Catherine Holahan, Policing Online Money Laundering: The Financial Action Task Force Is Developing Recommendations for International Regulations to Combat Financial Cybercrime, BUS. WK., Nov. 6, 2006

²⁵ Robert F. Stankey, Internet Payment Systems: Legal Issues Facing Businesses, Consumers and Payment Service Providers, 6 COMMLAW CONCEPTUS 11, 22 (1998).

²⁶ William Hett, Digital Currencies and the Financing of Terrorism, XV RICH. J.L. & TECH. 4 (2008), <http://law.richmond.edu/jolt/v15i2/article4.pdf>

²⁷ FATF (2019), “Money laundering”, www.fatf-gafi.org/faq/moneylaundering/ (accessed 8 August 2020).

²⁸ Article 6, United Nations Convention against Transnational Organized Crime (2000).

The World Bank (2009) has detailed²⁹ that Money Laundering primarily consists of three stages – Placement Stage, Layering Stage and Integration Stage. In the Placement Stage, the currency obtained illegal are positioned into the financial institution. This can be done in the form of cash purchases of security or through an insurance contract. In the second stage, these contracts are transformed or transferred to other institutions extricating them from their criminal origin. In the third stage, these funds are turned into legal money through purchasing assets in the form of real estate and luxury goods.

The stages involved in Money Laundering are very similar to that of Terrorist Financing and hence it has gained tremendous status and various measures have been taken to combat the two. The only difference that lies in the stages is that under Terrorist Financing, the third stage involves the distribution of funds to terrorist organizations instead of real estate or luxury goods.

League of Nations Convention (1937) has defined terrorism as the “*criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.*” There are other various definitions that have been proposed³⁰ for ‘terrorism’ however they all broadly point at the use of violence by groups or individuals outside the framework of legitimate wars regardless of religion and nationality. The term ‘terrorist financing’ denotes any act of fund provision or of value to these individuals or groups intricated in terrorist activities or financial transactions with these groups expressively and illegitimately. However, these financial transactions are difficult to track mainly because of two reasons. *Firstly*, the amounts that are required and used by terrorist groups for attack are small in nature. *Secondly*, Financial funds that are dispensed for political groups and social activities are of large amounts and therefore override the lesser amounts used for attacks.

Money laundering and the financing of terrorism can, and do, happen in any nation across the globe, particularly those with complex monetary frameworks. Nations with negligent, inadequate, or unethical AML and CFT frameworks are more focused for such exercises, but no nation as such is excluded. Since complex worldwide budgetary transactions can be pushed to encourage the laundering of money and terrorist financing, the various phases of money laundering and terrorist financing happen inside a large group of various nations. For instance, placement, layering, and integration may each happen in three separate nations, one or every one of them expelled from the first scene of the offence.

Despite the fact that the techniques to battle money laundering are not generally successful to battle financing of terrorism, in any case, to fight against these crimes the authors believe that a coalition is required between the government and jurisdictions to cease the criminals from changing data and other inputs about the two financial activities bearings that is from an unlawful to a lawful one and the other way around.

²⁹ Paul Allan Schott, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, Pg. no17, <http://documents1.worldbank.org/curated/pt/982541468340180508/pdf/634980WP0Refer00Box0361517B0PUBLIC0.pdf>

³⁰ UNODC, Definitions of Terrorism, <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html>

3.1. IMPACT ON THE ECONOMY

The efficacious money laundering system in place by perpetrators has serious adverse impacts on the economies, especially for developing nations. The consequence hence, is an increased rate of crime and corruption in these developing countries which further falls prey to criminals due to poor enforcement of Anti-Money Laundering and Combating Financing of Terrorism policies, leading to further propagation of crime. It also upsurges the custom of practices of enticement in the legislature and personnel of financial institutions, institutionalizing the evil of corruption. Further it may lead to impaired status and international consequences. Money launderers are known to use "front companies," i.e., business enterprises that appear genuine and engross in genuine business but are, in fact, controlled by perpetrators. This leads to a surge in the monetary and economic volatility due to the misallocation of resources from artificial distortions in asset and commodity prices.³¹ Money launderers hence drive away the efforts put forth by countries to reform their economy through privatization. Besides from the economic perspective, Money Laundering can cause a serious threat on other predicate crimes such as human trafficking³² and exploitation of workers; online child exploitation³³ and organized property crime.³⁴ Thereby, Money laundering possesses a number of consequences for countries and their citizens.

3.2. AUTHORITIES AND ENFORCEMENT

It is to be noted that there are several international organizations that are set up to take actions and preventive measures in safeguarding and combating the issues of money laundering and financing of terrorism. One of the major institutes formed was FIU (Fiscal International Unit). The main function of these units is to analyze and transmit information on apprehensive happenings of money laundering or terrorist financing to skilled authorities.³⁵ Additionally, The Egmont Group of Financial Intelligence Units was established in June, 1995 having a worldwide network of 164 financial intelligence units (as of August 2020)³⁶ to combat Money Laundering and terrorist financing. In the current times, it is of utmost importance to cut off the flow of resources and other financing approaches for terrorism to ensure a secure world and economy.

There are a number of inimitable international conventions that have come into existence for the cause of withstanding the issues of Money Laundering and Terrorism Financing. The most prominent ones include: International Convention for the Suppression of the Financing of Terrorism (1999) which entails the satisfying States to criminalize terrorism

³¹ John McDowell and Gary Novis. *Economic Perspectives*, U.S. State Department, May 2001

³² Human Trafficking, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

³³ *Fourteenth United Nations Congress on Crime Prevention and Criminal Justice*, 23 January 2020, https://www.unodc.org/documents/Cybercrime/IEG_Cyber_website/A_CONF.234_11_E.pdf

³⁴ Albanese, Jay (2012). "Deciphering The Linkages Between Organized Crime And Transnational Crime". *Journal of International Affairs*. Vol. 66, No. 1, Transnational Organized Crime (FALL/WINTER 2012), pp. 1-16

³⁵ C. Mallada Fernández, *Money Laundering and Financing of Terrorism*, World Academy of Science, Engineering and Technology International Journal of Humanities and Social Sciences Vol:8, No:5, 2014

³⁶ The Egmont Group – Financial Intelligence Units of the world, <https://egmontgroup.org/en>

and cooperate with other State Parties regarding the role of financial institutions. The UN Convention against Transnational Organized Crime (2000) as discussed above, focusing on preventing transitional crimes and to criminalize laundering of proceeds of crime. UN Convention against Corruption (2003) applied to the prevention, investigation and prosecution of corruption that includes freezing, seizure, confiscation and return of proceeds of offences.³⁷

The role of FATF here is of an important nature. The main resolution is to advance and endorse policies at both national and international fronts to fight against Money Laundering and Terrorist Financing. As per the FATF report of 2020, new threats and vulnerabilities curtailing from Covid -19 related crime and impacts on ML and TF risks have been focused upon. An increased fraud has been noticed through the channelization of fundraising for fake charities; counterfeiting essential goods such as medical supplies; impersonation of officials and fraudulent investment scams.³⁸ This has been possible with the use of digital transactions generated online as government and businesses were engaged in remote work due the 'lockdown' worldwide.

Various other organizations such as International Monetary Fund (IMF) have also evaluated the competence of direction in financial centers across the globe and is furnishing technical support to reinforce their veracity. The Basel Committee on Banking Supervision, financial supervisors across the globe have wielded regulator on financial sectors to safeguard that they are not mistreated by terrorists.

CONCLUSION AND RECOMMENDATIONS

With increased globalization of international markets and development in the economic sector, apart from growth in FDI and technology etc, the same has also resulted in the emergence of new forms of crime such as money laundering, terrorist financing, illegal trade of wildlife facilitating in subverting and unfavorable economic systems posing a challenge to contemporary civilizations. To maintain peace, stability, security and harmonization between nations, a rigid regulatory and vigilant framework is of utmost importance. Technology is the new "global common" of a borderless world and its exploitation has to be prevented for reaping its benefits for the advancement of mankind.

The International Institutions across the globe must form tools to arraign the financial funds of the terrorists groups as well as traders exploiting digital space. Concerted measures must be adopted by nation states to identify and take effective actions and undertake domestic reviews of their companies dealing with global legal trade as well as Non-Profit Organization Sector and must have the knowledge on its core activities and other important criteria concerning organized crimes.

³⁷ Article 23,24 of UN Convention against Corruption (2003)

³⁸ FATF, COVID-19-related Money Laundering and Terrorist Financing Risks and Policy Responses,<https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-ml-tf.html>

Jurisdictions should create an obligation to produce a report to skilled authorities on judicious grounds of suspect that reserves to terrorist financing and wildlife trade. Jurisdictions must also have a basic understanding and agreement to permit exchange of information related to illegal wildlife trade and terrorist financing via legal mechanisms. Similarly, enforcement personnel must have access to the national and international communications and platforms where reviews of wildlife trade shall be conducted. However, the balance between data privacy and data sovereignty of states has to be maintained for a resilient and effective mechanism that is proactively followed by States. Hence, the legal mechanisms already in place must be aligned and inclusive of these issues and the enforcement must be rigid and stringent regarding the origin of the financial transaction and must ensure that information is retained with the financial institutions to combat both money laundering and illegal wildlife trade. Thereby, it is rightly stated by Rudy Giuliani, the former mayor of the New York City that it's about time the law enforcement must get as organized as organized crime!

Furthermore, for a lasting impact on cashing the strength of globalization, a deep ecology approach must be ingrained in the citizens for tackling and understanding the problems related with illegal wildlife trade. Additionally the spread of radicalization ideologies have to be tracked and controlled by spread of education amongst vigilant citizens. Further, awareness generation on data security, internet banking and payments must be propagated amongst users and banking facilities.

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