

# Wildlife Trafficking: Criminological, International and Criminal Law Perspectives

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## 1. Introduction

Wildlife trafficking includes the taking, trading, importing, exporting, processing, possessing, obtaining, and consumption of wild animals and plants, their parts and derivatives, in contravention of international or national law. Wildlife trafficking accelerates the destruction of fauna, flora, forests, and other natural resources and contributes to environmental degradation.

Wildlife trafficking threatens the existence of many species. The more endangered a species becomes, the greater is the commercial value that is put on the remaining specimen, thereby increasing the incentive for further illegal activities. The fact that some trade in fauna and flora is regulated while some trade is prohibited provides opportunities for circumventing relevant laws and regulations. The loss of income from the legal trade in plants, plant material, wildlife, and animal parts erodes the

revenues of governments and undermines their ability to implement development programmes and strengthen the rule of law. Where it is linked to organised crime, violence, grand corruption, or armed conflict, trafficking in fauna and flora can destabilise national governments and threaten regional security.

## 2. Demand: What is driving the illegal trade in wildlife, animal parts, and plants?

Wildlife trafficking is, for the most part, driven by demand. The types of demand and the levels of consumption change over time, sometimes rapidly, as uses and commodities come in and out of fashion. Much of the demand involves luxury goods which means that consumption is driven by choice rather than necessity.

### 2.1 Medicinal use and healthcare

The use of plants and wild animals for traditional medicine dates back centuries and remains popular today, with about 80 percent of the world population relying on it for primary healthcare.<sup>1</sup> Trafficked flora and fauna feature in products used as industrial pharmaceuticals, treating specific illnesses and ailments, or as tonics and supplements, assisting in feelings of general wellbeing.

For example, rhinoceros horn has historically been used in traditional medicine in Asia to reduce fevers, rheumatism, gout, infections and similar illnesses.<sup>2</sup> More recently, the belief that rhino horn can treat other ailments, from hangovers to cancer, appears to have further increased demand.<sup>3</sup>

### 2.2 Food

Many people around the world rely on wild-sourced animals and plants for food, which can result in poaching and trafficking. For some, it forms part of a staple diet, particularly where alternative sources of protein are unaffordable or unavailable. For example, poaching for this purpose has halved Congo's gorilla population in the last twenty years.<sup>4</sup> In other markets, wild-sourced animals are consumed as luxury items, evoking feelings of importance or enhanced status.<sup>5</sup>

One example is the pangolin, a nocturnal and elusive animal covered in scales that it is often referred to as the world's most trafficked mammal.<sup>6</sup> Pangolin meat is considered a delicacy in restaurants, where its consumption is also a symbol of status.

### 2.3 Cosmetics and fragrance

Derivatives from wild animals and plants sometimes form the basis of cosmetics and fragrances, though this is less common today than it once was. Musk, a greasy, glandular secretion from animals, and ambergris, a waxy substance produced in the digestive system of sperm whales, for instance, were once used for perfumes but have since been replaced by synthetic alternatives.<sup>7</sup> Wild-sourced plants are still used widely in the cosmetics and fragrance industry, especially if cultivation is not practical or not cost-affective.

For example, the overharvesting of the aquilaria tree found in South and Southeast Asia is attributed to the exploitation of a product referred to as 'oud'. The complex scent of this unusual resin has been used in fragrances and incense across a wide range of cultures for thousands of years and has also been ascribed medicinal and cosmetic benefits used in both Chinese and Ayurvedic therapies.<sup>8</sup>

### 2.4 Curios and collections

Exotic and rare animals and plants are frequently sold as souvenirs, collectables, and curios. This sometimes involves whole animals that are stuffed or insects or small animals that are encased in plastic to put on display in private homes or collections. Many animal parts such as ivory, turtle and mollusc shells, reptile skins, bird feathers, and coral are frequently used for these purposes; often they are carved or otherwise altered for decorative purposes. The skin of many Asian big cats, including tigers, leopards, and Asiatic lions are used as throws or ornaments. Casques of the helmeted hornbill, for example, are valued by the same markets as elephant ivory. The helmeted hornbill is a forest-dependent bird confined to some parts of Myanmar, Thailand, Malaysia, Indonesia, and Brunei. Unlike other hornbills, its distinctive head casque is solid and used for carvings in China.<sup>9</sup>

The rarer the species, the more such items may serve as status symbols. Tourists also frequently purchase souvenirs that are made from local wildlife and may thus, wittingly or unwittingly, acquire objects made from endangered species or from illegally wild-sourced animals or plants.<sup>10</sup>

1 Broad/Mulliken/Roe (2012), p. 3.

2 Broad/Mulliken/Roe (2012), p. 6.

3 Ayling (2015), p. 5; Crosta/Sutherland/Talerica (2017), pp. 16, 18.

4 Chausson *et al* (2019), pp. 179–180; Gluszek *et al* (2018), pp. 13–15.

5 UNODC (2016), pp. 65–66; Phillips (2015), p. 143.

6 Aisher (2016), p. 317.

7 UNODC (2016), p. 60.

8 UNODC (2016), p. 60.

9 EIA (2015), p. 2.

10 Broad/Mulliken/Roe (2012), p. 11; UNODC (2016), p. 51.

## 2.5 Fashion

Animal products, including furs, feathers, and fibres, have been used to make or decorate clothing for centuries, and their use continues today in the fashion industry.<sup>11</sup> While many companies have substituted wild-sourced material for captive-sourced or synthetic alternatives, expensive high fashion items continue to be produced from wild-sourced animals. This is especially true when captive breeding is not feasible or cost effective and if consumers are willing to pay high prices for wild-sourced material.<sup>12</sup>

Examples include shahtoosh shawls made from Tibetan antelope, an endangered species. Demand for these shawls eliminated 90 % of Tibetan antelope population in the 20<sup>th</sup> century, and even today consumers pay up to USD 20,000 per item.

## 2.6 Furniture and construction

Plants and plant material are widely used to manufacture furniture. This includes timber, rattan, bamboo, and plant products such as oils, gums, dyes, and latex.<sup>13</sup> Tropical hardwood is particularly valued by consumers even if it involves endangered tree species or comes from tropical rainforests or other areas that are protected and have fragile ecosystems.<sup>14</sup>

The popularity of rosewood to make furniture and artwork has a long history in Asia. Much of the timber is supplied from Cambodia, Laos, Myanmar, and Thailand, but also from African countries including Guinea Bissau, Mozambique, and Madagascar. The supply can have devastating effects on the rainforests of these source countries. While the trade in several rosewood species is restricted under international law, illegal logging and trade continue on a significant scale.<sup>15</sup>

## 2.7 Pets and zoos

If living animals are trafficked, this is usually done for the pet trade, or, in some cases, to add them to private collections or zoos. The international trade of living wild-sourced animals for use as pets is dominated by reptiles, birds, and ornamental fish.<sup>16</sup> It also includes invertebrate species such as scorpions and spiders, albeit less commonly.<sup>17</sup> The legal and illegal trade of living animals for use in zoos tends to

involve a lower number of larger animals, often selected precisely because they are endangered and have become rare in the wild.<sup>18</sup>

One of the most commonly trafficked type of exotic pets are parrots. Wildlife trade is thought to contribute to the fact that nearly 30 percent of the 355 species of parrots are currently threatened with extinction. The parrot species are commonly kept as pets including budgerigars, African grey parrots, macaws, and cockatoos. These birds are particularly valued for their vocalizations, cognitive abilities, and colourful appearance, and cockatoos for their erectile crest.<sup>19</sup>

## 2.8 Plants and gardens

Just as people purchase animals for use as pets, many plants are traded internationally for use in gardens, parks, and private homes.<sup>20</sup> The ornamental orchid trade, for instance, involves thousands of species that are traded between vendors and buyers all over the world. Some specialist collectors seek out wild plants deliberately while casual growers may purchase wild plants without realising the implications. Although all international movement of orchid species is regulated by the *Convention in International Trade in Endangered Species (CITES)*,<sup>21</sup> traffickers take advantage of the lack of monitoring of online sales, and use social-media to advertise wild-collected plants.<sup>22</sup>

## 2.9 Demand reduction

Although wildlife trafficking is mostly driven by demand, efforts to reduce wildlife trafficking have traditionally focused on the supply side: the poachers, who carry out the killing; the traffickers, who smuggle carcasses and animal derivatives to consumer markets; and the retailers, who profit from the sale of these products.

It is now accepted that efforts to prevent supply are vital, but in isolation, not enough. Such an approach should be combined with efforts to reduce demand, using targeted and evidence-based strategies to influence consumer behaviour and create greater awareness of laws prohibiting illegal trade in wildlife and associated penalties.<sup>23</sup>

11 Broad/Mulliken/Roe (2012), p. 11.

12 Broad/Mulliken/Roe (2012), p. 11.

13 Broad/Mulliken/Roe (2012), p. 11.

14 UNODC (2016), pp. 33–34.

15 Ayling (2015), p. 4.

16 UNODC (2016), p. 75.

17 Broad/Mulliken/Roe (2012), p. 11; UNODC (2016), p. 74.

18 UNODC (2016), p. 75.

19 Phillips (2015), p. 144; Tella/Hiraldo (2014), [s.p.].

20 Shirey/Lamberti (2011), p. 465; Broad/Mulliken/Roe (2012), p. 11.

21 Opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975).

22 Hinsley (2018), pp. 4, 14.

23 Ayling (2015), pp. 5–15; Burgess et al (2018), pp. 26–33.

### 3. Trafficking methods

#### 3.1 Locations and Activities relating to Wildlife Trafficking

Like other crimes, wildlife trafficking is concentrated in particular places, times, routes, and products. Data collected at seizures of illegal wildlife can reveal what the opportunistic factors are that cause these concentrations, and inform what interventions may be needed to prevent or reduce trafficking.

Wildlife crime is distributed across species in accordance with desirability and accessibility. Hence a mix of opportunity and demand variables inform how at-risk a species is. Analysis of seizures made at entry points to demand markets in North America, Asia, and Europe can reveal which species are poached most, and consequently which species need the most protection.<sup>24</sup> The so-called 'CRAVED model' can help explain why certain products such as parrots, fish, and crustaceans are more frequently poached and trafficked than others.<sup>25</sup> CRAVED stands for: concealable, removable, available, valuable, enjoyable, and disposable.

In addition to concentrations of in-demand species, there are common locations and times in which poaching and trafficking occurs. One example is that elephants are poached mainly in Africa, which has been the case over a 20-year period.<sup>26</sup> This type of research may be much more specific: one study found that elephants were very frequently poached in one particular national park in Kenya, and in particular during the dry season.<sup>27</sup> Other concentrations in space and time have been identified for deer and rhino, and both are linked to accessibility and the abundance of targets.<sup>28</sup>

Related to time and location are the routes often used by traffickers. A study by the US Fish and Wildlife Services suggests that a small number of export countries and reciprocal entry points account for the majority of seizures of trafficked wildlife.<sup>29</sup> Related to this are so-called 'risky facilities', which refer to entry or exit points that attract wildlife traffickers due to, among other things, lax procedures and high volumes of shipments.<sup>30</sup>

<sup>24</sup> See, for example, *Kurland/Pires* (2017), pp. 375–391.

<sup>25</sup> *Pires/Clarke* (2012), p. 122; *Petrossian/Clarke* (2014), pp. 73–90; *Petrossian et al* (2015), pp. 29–34.

<sup>26</sup> *Lemieux/Clarke* (2009), pp. 451–471.

<sup>27</sup> *Mainigi et al* (2012), pp. 234–249.

<sup>28</sup> *Kurland et al* (2017), pp. 1–15.

<sup>29</sup> *Kurland/Pires* (2017), pp. 375–391.

<sup>30</sup> *Eck et al* (2007), pp. 225–264.

#### 3.2 Collecting and Harvesting

Before wildlife can be trafficked, it must be collected, poached, or harvested. This is one facet where wildlife trafficking differs from trafficking in other contraband where the harm occurs when the product reaches the consumer. In the case of wildlife trafficking, most damage is already done when the wildlife is sourced.<sup>31</sup>

For example, trafficking in birds usually involves capturing living animals to be used as pets. Many methods used to trap live birds are cruel and harmful. So-called 'liming', for instance, involves coating a branch with a sticky substance that traps the bird when it lands. This can badly damage the bird or cause fatal stress. To compensate for deaths, up to four times more parrots are captured than actually make it to market.<sup>32</sup>

#### 3.3 Smuggling

After the initial collection, the animal, part or plant needs to be transferred to the buyer. Depending on the products and type of use, it may first be processed, modified, or altered. Methods used to bring the contraband from source to destination depend on a number of factors such as distance, border controls, and documentation. Smugglers further have to consider whether the goods are fragile or solid, small or large, living or inanimate, et cetera. Smuggling may involve simply hiding the product, forging permits, misusing real permits, or bribing officials. For some wildlife species, parallel legal markets exist through which the illegally obtained products may be laundered.<sup>33</sup>

##### 3.3.1 Concealment of contraband

Wildlife smugglers go to significant lengths to hide illicit products from law enforcement and customs inspections. The methods used to conceal illicit shipments of ivory, for instance, range from traffickers filling containers with pungent cover materials to disguise the smell from inspection dogs, to painting the ivory to look like wood, to modifying containers to create false compartments to hide the ivory.<sup>34</sup> For example, in 2013, customs authorities in Macau SAR intercepted two South African nationals attempting to smuggle 34kg of ivory disguised as chocolate bars in their hand luggage. The ivory had been cut up into small pieces, individually wrapped in fake packaging, and covered in a brown substance to disguise it.<sup>35</sup>

<sup>31</sup> *UNODC* (2017), p. 15.

<sup>32</sup> *Weston/Memon* (2009), p. 79; *Cantú Guzmán et al* (2007), pp. 22–23.

<sup>33</sup> *EIA* (2015), pp. 10–11.

<sup>34</sup> *Miller/Vira/Utermohlen* (2015), p. 13.

<sup>35</sup> *Miller/Vira/Utermohlen* (2015), p. 14.

In many locations, however, it is not actually necessary to conceal the contraband, especially if border controls are non-existent or ineffective.<sup>36</sup>

### 3.3.2 False declarations

Once the animal has been removed from its environment or processed into a product, it becomes hard for untrained officials to establish its species, location, or the method that was used to obtain it. In other words, it can become difficult or impossible to tell whether the sample is legal or not.<sup>37</sup>

Great advances have been made in the use of DNA to distinguish species and location, although this is not universally available and has a number of limitations in practise.<sup>38</sup> The same is true for methods of tracing origin such as carbon-dating. Either way, customs officials often do not have the means to verify declarations or documents.

### 3.3.3 Smuggling routes

Smuggling routes do not follow direct lines between source and destination countries; they often involve multiple transit stages. This serves to conceal the origin or destination of the shipment to take advantage of transit points with less developed legal frameworks or poor law enforcement.<sup>39</sup>

## 3.4 Selling

The range of places where wildlife contraband is sold ranges from stores and physical markets to persons selling goods in the street, to advertisements for private or commercial sales, to catalogues and restaurant menus. In some places, wildlife products are on public display for sale, even if they come from an illicit source or involve an endangered species. Elsewhere, they may only be shown if specifically asked for or after middlemen establish a connection between the seller and the buyer.

The internet is an important platform for legal and illegal wildlife trade, since it is convenient for traffickers to advertise and sell anonymously. It also enables direct sales to the buyer. For example, a 2018 study of internet-based sales of turtles in China and Hong Kong found that trafficking in protected turtles online is occurring in plain view, and that there is strong evidence that trade regulations in their current form are ineffective.<sup>40</sup>

<sup>36</sup> Rosen/Smith (2010), p. 2.

<sup>37</sup> Wiersema (2016), pp. 81–82.

<sup>38</sup> Iyengar (2014), pp. 197–199; Johnson/Wilson-Wilde/Linacre (2014), pp. 6–8.

<sup>39</sup> Symes et al (2018), p. 274.

<sup>40</sup> Sung/Fong (2018), p. 223.

## 4. Perpetrators and their networks

### 4.1 Typology of offenders

Wildlife trafficking can involve a range of actors who engage in poaching, trapping, harvesting, supplying, trading, selling, possessing, and consuming goods. These actors differ not only in the role they play along market chains, but also in their socioeconomic attributes, preferences, and motivations, in the scales of their operations and the intensity of their activity, the levels of technology and investment, their source of funding, level of economic reliance, and their skill and knowledge, including that of relevant laws and regulations. A study published in 2016 broadly separates the roles and activities involved in wildlife trafficking into three categories: harvesters, intermediaries, and consumers.<sup>41</sup>

### 4.2 Organised crime networks

Because of the skill and planning involved, trafficking poached animals often requires organisation. Where intermediaries are required, if sophisticated methods are needed to conceal or disguise goods, or if international borders need to be crossed, it may become necessary for perpetrators to partner with other individuals and entities.<sup>42</sup> In such circumstances, organised crime networks may emerge in which multiple offenders collaborate and sometimes set up complex schemes to acquire, move, and sell goods illegally, to hide their activities, and to launder the proceeds of their crimes.<sup>43</sup> In some instances, established organised criminal groups have become involved in wildlife trafficking to diversify their income. That said, there is still some debate about how extensive the involvement of organised crime groups in wildlife trafficking actually is.<sup>44</sup>

### 4.3 Corporate sector

In source countries, instances of corporations involved in illegal activities associated with wildlife trafficking often involve logging companies and fishing vessels. Logging companies may, for instance, operate without logging permits or illegally encroach on protected areas, harvest protected species, exceed their logging quotas, or bribe officials to unduly issue logging concessions.<sup>45</sup> Similarly, fishing companies or individual fishing vessels may venture unlawfully into protected areas, catch protected species, exceed set quotas, or use prohibited fishing methods.

<sup>41</sup> Phelps et al (2016), p. 481.

<sup>42</sup> Titeca (2019), pp. 28–29.

<sup>43</sup> Pires/Moreto (2016), [s.p.].

<sup>44</sup> See further, European Parliament, Directorate General for Internal Policies (2016), p. 67; van Uhm (2016), p. 5.

<sup>45</sup> See, for example, van Solinge (2016), pp. 84, 91.

Corporate sector involvement may occur at the transit stage if transportation companies carry, import, export, or launder contraband, forge documents, or fail to comply with documentation, certification, and reporting requirements. It may also involve collusion by airline staff and crews of cargo or cruise ships. At the destination, corporations may play a vital part in wildlife trafficking if they deliberately or negligently source or supply timber, plants, live animals or animal products that come from protected areas, involve protected species, et cetera.<sup>46</sup>

#### 4.4 Corruption and government involvement

Because wildlife trafficking involves high value natural resources that are often under government control or regulation, cases of corruption are rather common. Corruption enables wildlife trafficking to occur in the first place or to proceed unhindered.<sup>47</sup> It can involve low-ranking game wardens and forest officials who accept bribes and then ‘turn a blind eye’ to illegal activities;<sup>48</sup> it can also reach higher up, affecting policy decisions and law-making. This High-level or ‘grand’ corruption can be particularly damaging as it causes significant financial losses and also encourages petty corruption at the lower levels of government.<sup>49</sup>

In the context of wildlife trafficking, corruption may involve payment of bribes to government officials, financial extortion to artificially legalise illegal operations, official decisions that favour certain groups, and hunting companies evading national regulations with relative impunity, thanks to the protection of powerful patrons.<sup>50</sup>

## 5. International frameworks

### 5.1 Overview

International law addresses wildlife trafficking in a rather fragmentary manner. No single instrument contains specific measures aimed at the prevention and suppression of wildlife trafficking. Instead, international obligations and principles relevant to wildlife trafficking come from several areas of international law, including international trade, environmental protection and conservation, organised crime and corruption, and the emerging area of animal welfare.

In relation to conservation, environmental protection, trade, and endangered species, four treaties are of particular importance, though they pursue very different

goals. While the *CITES* regulates trade in particular endangered species, the *Convention Concerning the Protection of the World Cultural and Natural Heritage* is focused on the protection of particular place,<sup>51</sup> the *Convention on Biological Diversity* advocates the protection of natural habitats in general,<sup>52</sup> and the *Convention on the Conservation of Migratory Species of Wild Animals* only protects particular, namely migratory, species.<sup>53</sup>

### 5.2 Convention concerning the Protection of the World Cultural and Natural Heritage

The *Convention Concerning the Protection of the World Cultural and Natural Heritage* (*World Heritage Convention*) was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1972 and, as of 1 December 2019, has 193 Parties. The Convention aims to establish ‘an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods’ (preamble). In accordance with this goal, the World Heritage Committee (which consists of representatives from 21 States Parties, elected by the Convention’s General Assembly) considers cultural and natural properties of ‘outstanding universal value’, identified by States Parties, for protection through inclusion on the World Heritage List. The List contains all those properties decided to be World Heritage Sites by the Committee. Properties included on the List must be protected and preserved, though details of management are left to national legislation (arts 4, 5). Where sites face ‘serious and specific dangers’, including disappearance, they may be placed on the separate List of World Heritage in Danger (art 11). Inclusion on this list highlights the need for conservation operations and increases awareness of threats and the need for countermeasures.

The *World Heritage Convention* plays a role in combatting wildlife trafficking insofar as it urges protection of certain natural properties and the species that contribute to their value. Relevantly, one criterion for designating a site as having ‘outstanding universal value’ is whether the site contains important natural habitats for threatened species. Over 60 per cent of natural and mixed heritage sites are selected based on this criterion.<sup>54</sup> The fact that a significant number of sites contain endangered plant and animal species, many of which are affected by wildlife trafficking and listed in *CITES’* Appendices, has prompted cooperation between the governing bodies of *CITES* and the *World Heritage Convention*. Nonetheless, the Convention stops short of protecting species of plants and animals and does not mandate measures

<sup>46</sup> See further, *van Uhm* (2018), pp. 198–199.

<sup>47</sup> *Callister* (1999), p. 7.

<sup>48</sup> See further, *Kishor/Damania* (2007), pp. 98–99.

<sup>49</sup> See further, *Callister* (1999), pp. 10–11; *Kishor/Damania* (2007), pp. 95–97.

<sup>50</sup> *FAO/ITTO* (2005), p. 11; *Kishor/Damania* (2007), pp. 95–97.

<sup>51</sup> Opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

<sup>52</sup> Opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

<sup>53</sup> Opened for signature 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983).

<sup>54</sup> *Dalberg* (2017), p. 10.

for protection and conservation, nor does it cover natural habitats that contain endangered species but are not of exceptional significance.<sup>55</sup> It only encourages protection of cultural and natural heritage and identifies various general measures which may be taken towards this goal (art 5).

### 5.3 Convention on Biological Diversity

As the principal treaty protecting biodiversity, the *Convention on Biological Diversity*, addresses a wide range of subjects, including access to biotechnology, deforestation, and ecosystem management, among others. It was opened for signature in 1992 and, as of 1 December 2019, has 196 Parties. The Convention encourages the sustainable use of nature and equitable sharing of the benefits from use of genetic resources. It is 'concerned primarily with the management of national development choices that impact directly upon national resources'.<sup>56</sup>

In the context of wildlife trafficking, the *Convention on Biological Diversity* emphasises the conservation of natural habitats and ecosystems and the 'maintenance and recovery of viable populations of species in their natural surroundings' (art 2). Article 8 of the Convention requires States Parties to 'as far as possible and appropriate', inter alia, 'legislate for the protection of threatened species and populations' and 'regulate activities determined to have significant adverse effect on biodiversity'. These actions may include measures to prevent and combat the trafficking of wildlife, including implementation of *CITES*.

Despite its wide adoption, the *Convention on Biological Diversity* has received criticism for having little practical effect; unlike *CITES* it 'does not protect particular species and, unlike the [*World Heritage Convention*], it does not protect particular places or areas. While the *Convention on Biological Diversity* advocates the protection of natural habitats, it does not contain specific measures to achieve this end'.<sup>57</sup>

### 5.4 Convention on the Conservation of Migratory Species of Wild Animals

The *Convention on the Conservation of Migratory Species of Wild Animals* (*Convention on Migratory Species*) aims to conserve migratory animals and their habitats. It entered into force in November 1983 and, as of 1 December 2019, had 129 Parties. Article II of the Convention sets out its fundamental principles, which include action 'to avoid any migratory species becoming endangered'. Migratory species are defined as in Article I(1)(a) to mean 'the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant

proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries'. Species' range includes 'all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route' (art I(1)(f)).

The *Convention on Migratory Species* takes a similar approach to *CITES* insofar as it classifies the protection needs of species by listing them in one of two appendices. Appendix I includes species threatened with extinction throughout all or a substantial part of their migratory range. Appendix II, meanwhile, includes species that have an 'unfavourable conservation status and [...] require international agreements for their conservation and management', or would otherwise benefit from international co-operation (art IV(1)). For species listed in Appendix I, States Parties must adhere to various obligations, including conservation and restoration of habitats, prohibitions on the taking of such animals, and removal of barriers to their migration (art III). Appendix I-listed species may only be taken for a limited number of purposes, including scientific purposes, enhancing survival of the species, and for the needs of traditional subsistence users (art III(5)). Conversely, the Convention does not oblige States Parties to undertake any specific actions with regard to species listed in Appendix II. States Parties should, however, endeavour to conclude subsidiary agreements 'where these would benefit the species and should give priority to those species in an unfavourable conservation status' (art IV(3)). Such agreements stand separate to the Convention and, as such, may include non-party States. To date, there are seven agreements concluded under the *Convention on Migratory Species*. A number of memoranda of understanding have also been created in relation to certain species.

The *Convention on Migratory Species* does not contain explicit provisions addressing wildlife trafficking. Nonetheless, many species covered by the Convention are affected by trafficking. For this reason, the administrative bodies of the Convention are devoting increasing attention to the issue. Resolutions of its Conference of the Parties, such as the *Resolution on the Prevention of Illegal Killing, Taking and Trade of Migratory Birds*,<sup>58</sup> as well as the establishment of a Joint Work Programme 2015–2020 with *CITES*, are examples in this respect.<sup>59</sup>

### 5.5 Convention on International Trade in Endangered Species of Wild Flora and Fauna

The *Convention on International Trade in Endangered Species of Wild Flora and Fauna* (*CITES*) entered into force in 1975. Hailed as the 'Magna Carta for Wild-

<sup>55</sup> Bowman/Davies/Redgwell (2010), p. 454.

<sup>56</sup> Swanson (1999), p. 308.

<sup>57</sup> UNODC (2012), p. 19.

<sup>58</sup> Resolution 11.16 (Rev. COP12).

<sup>59</sup> *CITES Secretariat* (undated).

life,<sup>60</sup> *CITES* is the principal international instrument regulating and restricting international trade in plant and animal species, with the aim of ensuring that their survival is not threatened by such trade. The Convention places various restrictions and requirements on legal international trade, primarily through a system of permits and certificates which correspond to three lists of protected species in the Convention's Appendices. In this way, *CITES* enables States Parties to 'reciprocally protect one another's species according to a common set of rules.'<sup>61</sup>

While *CITES* does not deal directly with illegal trade (and thus wildlife trafficking), it does require States Parties to prohibit trade that occurs in contravention of its rules. These prohibitions are not required to take the form of criminal offences, nor is there a requirement to make trade in violation of the Convention illegal, per se.<sup>62</sup> Legislative inconsistencies between States, as well as inadequate enforcement, also frustrate efforts to protect trafficked species.<sup>63</sup> Despite these limitations, *CITES* remains the only international instrument mandating some form of penalisation of illegal trade in protected species.<sup>64</sup>

The administrative organs of *CITES*, particularly its Secretariat and the Conference of the Parties, have focused significant attention on combatting wildlife trafficking and continue to direct increasing resources to the effort. There has been considerable increase in cooperation between *CITES* and other treaty bodies, UN agencies, and non-governmental organisations to improve and coordinate responses to wildlife trafficking. This has included the creation, in 2010, of the International Consortium on Combating Wildlife Crime.<sup>65</sup>

Notwithstanding these efforts, the role and effectiveness of *CITES* in combatting wildlife trafficking remains limited. As noted by UNODC, *CITES* 'cannot credibly be extended into an agreement to suppress and control every aspect of illegal trade in wild fauna and flora.'<sup>66</sup> The majority of the world's animal and plant species are not covered by the Convention. Furthermore, several widely traded species have become critically endangered or extinct despite their inclusion in *CITES*' Appendix system. As a trade instrument first and foremost, *CITES* will always have a limited ability to protect endangered species from criminal activity.

60 Sand (1997), p. 34.

61 UNODC (2016), p. 23.

62 Elliott (2017), p. 112.

63 Graham (2017), p. 253.

64 Wandesforde-Smith (2016), p. 368.

65 See further, Scanlon/Farroway (2016), p. 91.

66 UNODC (2012), p. 15.

## 6. Conclusion

Wildlife trafficking is a complex, global phenomenon that defies single and simplistic solutions. It is difficult, and sometimes not possible, to make generalisations about what drives this illegal trade, how it operates, what motivates offenders, and about the measures best suited to prevent and combat wildlife trafficking.

Research on wildlife trafficking is only in its infancy and many causes and circumstances have yet to be documented and explored thoroughly. Much of the available literature focusses on some high-profile species, such as elephants and rhinos, while the trafficking in many other species, plants in particular, remains under-researched.

Effective strategies to address wildlife trafficking require robust cooperation, support from international and non-governmental organisations, and implementation and enforcement of international obligations. In the face of increasing threats to species and their habitats, a holistic approach to trafficking must be adopted, incorporating stringent trade regulation, punishment of organised crime and corruption, along with demand reduction and concerted efforts to protect the environment and appropriate respect for animal welfare.

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