

# Chapter Five

## International Law Relating to Wildlife Trafficking: An Overview

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This chapter provides an overview of international law relevant to wildlife trafficking. It explains that, while no single instrument comprehensively addresses such trafficking, a range of international treaties and other materials contain rules, obligations, and principles that relate to its prevention and suppression. These come from areas of law including environmental protection and conservation, international trade, organised crime and corruption, and animal welfare. This chapter addresses each of these areas in turn and highlights the growing attention given to wildlife trafficking at the international level.

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### I. Introduction

The international legal framework addresses wildlife trafficking in a fragmentary manner. No single instrument contains specific measures

aimed at the prevention and suppression of wildlife trafficking.<sup>1</sup> Instead, international obligations and principles relevant to wildlife trafficking come from several areas of international law, including international trade, environmental protection and conservation, animal welfare, and organised crime and corruption. These are the principal focus of this chapter.

Of the various relevant international instruments, the *Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)*<sup>2</sup> has assumed a central role. *CITES* provides a framework regulating the international trade in wild flora and fauna, creating rules for how such trade must be carried out and mandating suppression of trade that violates its provisions.<sup>3</sup> While *CITES* does not specifically address wildlife trafficking, and does not require States Parties to impose criminal sanctions on those breaching its provisions, it nonetheless exerts substantial influence on domestic laws targeting such trafficking.<sup>4</sup>

Several multilateral treaties concerning environmental protection and conservation are also important in combatting wildlife trafficking.<sup>5</sup> This includes the *Convention on Biological Diversity*,<sup>6</sup> the *Convention Concerning the Protection of the World Cultural and Natural Heritage*,<sup>7</sup> and the *Convention on the Conservation of Migratory Species of Wild Animals*.<sup>8</sup> Each of these treaties, through their administrative bodies, have sought to grow their cooperation with *CITES* to further efforts to combat wildlife trafficking.

*CITES*, together with the various environmental treaties, lacks mechanisms to criminalise wildlife trafficking. This deficit is addressed, albeit partially and indirectly, through the *United Nations Convention against Transnational Organized Crime (UNTOC)* and the *United Nations Convention against*

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1 Lorraine Elliott, 'Cooperation on Transnational Environmental Crime: Institutional Complexity Matters' (2017) 26(2) *Review of European Community and International Environmental Law* 107, 110; Lydia Slobodan, *Addressing Transnational Wildlife Crime through a Protocol to the UN Convention against Transnational Organized Crime: A Scoping Paper* (13 October 2014) 7.

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

3 *CITES*, art VIII(1).

4 UNODC, *World Wildlife Crime Report: Trafficking in Protected Species* (2016) 23.

5 Slobodan (n 1) 8–9.

6 Opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

7 Opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

8 Opened for signature 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983).

*Corruption (UNCAC)*.<sup>9</sup> These Conventions set out international frameworks to enhance cooperation between States Parties in combatting transnational organised crime and corruption. While neither Convention expressly addresses wildlife trafficking, each contains provisions to facilitate cooperation and criminalise certain conduct (such as obstruction of justice) that can be applied to offenders and organisations that traffic wildlife.

This chapter provides an overview of the international legal framework relevant to wildlife trafficking. It gives an overview of the scope and application of the treaty instruments identified above and places them in the context of combatting wildlife trafficking (Parts II through IV). The chapter further outlines some developing international principles concerning animal welfare and their potential contribution to this framework (Part V). It should be noted that there are many elements of international law potentially applicable to wildlife trafficking; it is beyond the scope of this Chapter to address all of them. In particular, regional and bilateral instruments and initiatives are not examined.

## II. Environmental protection and conservation

Since the early 1970s, international environmental law has gradually expanded with the creation of a wide range of multilateral agreements. While these deal with a plethora of issues relevant to environmental protection and conservation, including hazardous waste,<sup>10</sup> atmospheric policy,<sup>11</sup> and noise pollution,<sup>12</sup> a significant subset address, either specifically or incidentally, the protection of wildlife. Many endangered

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9 Opened for signature 15 December 2000, 2225 UNTS 209 (entered into force 29 September 2003); opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005).

10 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, opened for signature 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992).

11 *Convention on Long-Range Transboundary Air Pollution*, opened for signature 13 November 1979, 18 ILM 1442 (entered into force 16 March 1983).

12 *Convention (No. 148) concerning the protection of workers against occupational hazards in the working environment due to air pollution, noise and vibration*, opened for signature 20 June 1977, 1141 UNTS 106 (entered into force 11 July 1979).

species are now covered by specific treaties, such as the *Convention for the Conservation of Antarctic Seals* and the *International Convention for the Regulation of Whaling*,<sup>13</sup> as are a range of discrete environments, ecosystems, and types of animals.<sup>14</sup> Many of these are regional instruments.<sup>15</sup> The three principle international instruments dealing with wildlife conservation and, indirectly, wildlife trafficking are (in addition to *CITES*), the *Convention on Biological Diversity*, which promotes sustainable use of natural resources and components, together with equitable sharing of the benefits of genetic resources, for the purpose of conserving biological diversity, the *Convention Concerning the Protection of the World Cultural and Natural Heritage*,<sup>16</sup> which protects cultural and natural heritage of 'outstanding value', and the *Convention on the Conservation of Migratory Species of Wild Animals*.<sup>17</sup>

## 1. World Heritage Convention

The *Convention Concerning the Protection of the World Cultural and Natural Heritage* (*World Heritage Convention*), which is discussed in much detail in Chapter Eight of this volume, was adopted within 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,

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13 Opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948).

14 See, for example, *Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975); *Convention on Fishing and Conservation of the Living Resources of the High Seas*, opened for signature 29 April 1958, 559 UNTS 285 (entered into force 20 March 1966).

15 See, for example, *Convention on the Conservation of European Wildlife and Natural Habitats*, opened for signature 19 September 1979, ETS No 104 (entered into force 1 June 1982); *African Convention on the Conservation of Nature and Natural Resources*, opened for signature 15 September 1968, 1001 UNTS 3 (entered into force 9 October 1969).

16 Opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993); opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

17 Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784, 785.

organized on a permanent basis and in accordance with modern scientific methods'.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> Where sites face 'serious and specific dangers', including disappearance, they may be placed on the separate List of World Heritage in Danger.<sup>21</sup> 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>22</sup> Indeed, 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's* Appendices, has prompted cooperation between the governing bodies of *CITES* and the *World Heritage Convention*.<sup>23</sup> Nonetheless, the Convention stops short of protecting species of plants and animals and does not mandate measures for protection and conservation, nor does it cover natural habitats that contain endangered species but are not of exceptional significance.<sup>24</sup> It only encourages

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18 *World Heritage Convention*, preamble.

19 See generally Michael Bowman, Peter Davies, and Catherine Redgwell, *Lyster's International Wildlife Law* (2<sup>nd</sup> ed, 2010) 458–460.

20 *World Heritage Convention*, arts 4 and 5.

21 *Ibid* arts 11.

22 Dalberg Global Development Advisors, *Not for Sale: Halting the Illegal Trade of CITES Species from World Heritage Sites* (2017) 10.

23 See, for example, CITES, Conference of the Parties, *Cooperation between CITES and the World Heritage Convention*, Document 15.6, 18<sup>th</sup> meeting of the Conference of the Parties, Colombo (23 May–3 June 2019); Dalberg Global Development Advisors (n 22) 11.

24 Bowman, Davies, and Redgwell (n 19) 454.

protection of cultural and natural heritage and identifies various general measures which may be taken towards this goal.<sup>25</sup>

## 2. Convention on Biological Diversity

As the principal treaty protecting biodiversity, the *Convention on Biological Diversity*, discussed further in Chapter Seven of this volume, 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>26</sup>

In the context of wildlife trafficking, the *Convention on Biological Diversity* emphasises conservation of natural habitats and ecosystems and the 'maintenance and recovery of viable populations of species in their natural surroundings'.<sup>27</sup> 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*. The Conference of the Parties to *CITES* has recommended that States strengthen their implementation of the *Convention of Biological Diversity* to enhance implementation of *CITES*.<sup>28</sup>

Despite its wide adoption, the *Convention of 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*

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25 *CITES*, art 5.

26 Timothy Swanson, 'Why is There a Biodiversity Convention? The International Interest in Centralized Development Planning' (1999) 75(2) *International Affairs* 307, 308.

27 *Convention on Biological Diversity*, art 2.

28 *CITES*, Conference of the Parties, *Cooperation of CITES with other biodiversity-related conventions*, Resolution 16.4, 16<sup>th</sup> meeting of the Conference of the Parties, Bangkok (3 – 14 March 2013).

*Diversity* advocates the protection of natural habitats, it does not contain specific measures to achieve this end'.<sup>29</sup>

### 3. Convention on Migratory Species

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.<sup>30</sup> 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'.<sup>31</sup> 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'.<sup>32</sup>

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 cooperation.<sup>33</sup> 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.<sup>34</sup> Appendix I-listed species may only be taken for a limited number of purposes, including scientific purposes, enhancing

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29 UNODC, *Wildlife and Forest Crime Analytic Toolkit* (rev ed, 2012) 19.

30 CMS Secretariat, 'Parties and Range States' (Website, undated).

31 *Convention on Migratory Species*, art I(1)(a).

32 *Ibid* art I(1)(f).

33 *Ibid* art IV(1).

34 *Ibid* art III.

survival of the species, and for the needs of traditional subsistence users.<sup>35</sup> 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’.<sup>36</sup> 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*.<sup>37</sup> A number of memoranda of understanding have also been created in relation to certain species.<sup>38</sup>

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>39</sup> as well as the establishment of a Joint Work Programme 2015 – 2020 with *CITES*, are both examples in this respect.

### III. International trade

The *Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)*, which is discussed in detail in Chapter Six of this volume, entered into force in 1975. Hailed at its inception as the ‘Magana

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<sup>35</sup> Ibid art III(5).

<sup>36</sup> Ibid art IV(3).

<sup>37</sup> They include: the *Agreement on the Conservation of Albatrosses and Petrels*; *Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area*; *Agreement on the Conservation of African-Eurasian Migratory Waterbirds*; *Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas*; *Agreement on the Conservation of Populations of European Bats*; *Agreement on the Conservation of Gorillas and their Habitats*; and the *Agreement on the Conservation of Seals in the Wadden Sea*.

<sup>38</sup> See CMS Secretariat, ‘Agreements’ (Website, undated); CMS Secretariat, ‘Memoranda of Understanding’ (Website, undated).

<sup>39</sup> UNEP, Convention on Migratory Species, *The Prevention of Illegal Killing, Taking and Trade of Migratory Birds*, UNEP Doc UNEP/CMS/Resolution 11.16 (4 – 9 November 2014).

Carta for Wildlife',<sup>40</sup> the Convention 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>41</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>42</sup> Legislative inconsistencies between States, as well as inadequate enforcement, also frustrate efforts to protect trafficked species.<sup>43</sup> Despite these limitations, *CITES* remains the only international instrument mandating some form of penalisation of illegal trade in protected species.<sup>44</sup>

The administrative organs of *CITES*, particularly its Secretariat and the Conference of the Parties,<sup>45</sup> have focused significant attention on combatting wildlife trafficking and continue to direct increasing resources to the effort. This is reflected in resolutions by the Conference of the Parties,<sup>46</sup> as well as the current draft of *CITES Strategic Vision: 2021 – 2030*, which

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40 Peter H Sand, 'Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment' (1997) 1 *European Journal of International Law* 29, 34.

41 UNODC (n 4) 23.

42 Elliott (n 1) 112; Slobodan (n 1) 7.

43 Kimberley Graham, 'International Intent and Domestic Application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): The Case of the Ocelot (*Leopardus pardalis*)' (2017) 20(3–4) *Journal of International Wildlife Law & Policy* 253, 288.

44 Geoffrey Wandesforde-Smith, 'Looking for Law in All the Wrong Places? Dying Elephants, Evolving Treaties, and Empty Threats' (2016) 19(4) *Journal of International Wildlife Law & Policy* 365, 368.

45 See further Chapter Six of this volume.

46 *CITES*, Conference of the Parties, *CITES and livelihoods*, Resolution 16.6 (Rev. CoP18), 16<sup>th</sup> meeting of the Conference of the Parties, Bangkok (3–14 March 2013) (amended at the

recogni[s]es that effective enforcement is key to combatting the threat illegal and unsustainable trade poses to wild flora and fauna. Parties recognize the important role of CITES in global efforts to combat poaching and trafficking of species [...] to address both demand and supply of illegal wildlife products, and to tackle organized crime and poor governance, including corruption.<sup>47</sup>

There has been a considerable increase in cooperation between *CITES* and the administrative bodies of other treaties, UN agencies, and non-governmental organisations (NGOs) to improve and coordinate responses to wildlife trafficking.<sup>48</sup> This has included the creation, in 2010, of the International Consortium on Combating Wildlife Crime (ICWC), a collaboration between the *CITES* Secretariat, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank, and the World Customs Organization (WCO) that aims to support and strengthen criminal justice systems at national, regional, and international levels.<sup>49</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>50</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.

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17<sup>th</sup> and 18<sup>th</sup> meetings of the Conference of the Parties); *CITES*, Conference of the Parties, *Compliance and enforcement*, Resolution Conf. 11.3 (Rev. CoP18), 11<sup>th</sup> meeting of the Conference of the Parties, Gigiri (10 – 20 April 2000) (amended at the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> meetings of the Conference of the Parties).

47 *CITES*, Conference of the Parties, *CITES Strategic Vision: 2021 – 2030*, Resolution 18.3, 18<sup>th</sup> meeting of the Conference of the Parties, Geneva (17 – 28 August 2019) 5.

48 These efforts are noted by, inter alia, UN General Assembly, *Tackling Illicit Trafficking in Wildlife*, UN Doc A/RES/69/314 (19 August 2015); UN General Assembly, *Tackling Illicit Trafficking in Wildlife*, UN Doc A/RES/71/326 (28 September 2017).

49 See further John E Scanlon and Lisa Farroway, ‘Organisational Consortia: The International Consortium on Combating Wildlife Crime (ICWC)’, in Grant Pink and Rob White (eds), *Environmental Crime and Collaborative State Intervention* (2016) 77, 91.

50 UNODC (n 29) 15.

## IV. Animal welfare

Wildlife trafficking often has serious implications for the welfare for animals. In particular, methods used to kill and transport animals are often cruel and raise significant concerns. As a consequence, wildlife trafficking not only contravenes international rules on trade and the environment, it also commonly constitutes violations of animal welfare principles. These principles require the protection of animals from harm by traffickers and focus on the treatment and protection of individual animals.

Unlike the other areas of law discussed here, there is no specific international instrument creating obligations on States regarding animal welfare. Rather, general principles relevant to animal welfare have been proposed in non-binding instruments, such as the *UN Convention on Animal Health and Protection*.<sup>51</sup> Welfare is addressed more extensively by activities of NGOs, such as the International Fund for Animal Welfare (IFAW).<sup>52</sup>

There is some limited recognition of animal welfare in existing treaty law. This includes several provisions in the *Schedule to the International Convention for the Regulation of Whaling*<sup>53</sup> (which has a very limited scope) and *CITES*. In particular, rules in *CITES* deal with the welfare of animals and interactions with humans during the course of international trade.<sup>54</sup> Article 12(2)(c) of *CITES*, for example, mandates that the Secretariat prepare 'studies concerning standards for appropriate preparation and shipment of living specimens'. This requirement has led to the adoption of the *CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants* by the Conference of the Parties. Air transport of animals, meanwhile, is regulated by *Live Animals Regulations* of the International Air Transport Association (IATA).<sup>55</sup>

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51 See draft text at Global Animal Law Project, 'UN Convention on Animal Health and Protection (UNCAHP), First Pre-Draft of the Global Animal Law (GAL) Association' (Web page, 23 August 2018).

52 IFAW, 'About IFAW' (Web page, undated).

53 Opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948).

54 Stuart Harrop, 'Wild Animal Welfare in International Law: The Present Position and the Scope for Development' (2013) 4(4) *Global Policy* 381, 386.

55 *CITES*, Conference of the Parties, *Transport of live specimen*, Resolution Conf. 10.21 (Rev. CoP16), 10<sup>th</sup> meeting of the Conference of the Parties, Harare (9 – 20 June 1997) (amended at the 14<sup>th</sup> and 16<sup>th</sup> meetings of the Conference of the Parties).

*CITES*' permit-granting requirements under Articles III, IV, and V also contain obligations relevant to welfare. Each of these Articles require States Parties to ensure that 'any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment'. Article VIII(4) further provides that illegally traded specimens that are confiscated are placed in rescue centres or other places appropriate or consistent with the Convention.<sup>56</sup> Nonetheless, *CITES* is not a vehicle for the advancement of general animal welfare; it is limited in scope to treatment during international trading activities.<sup>57</sup> Further, many States Parties to *CITES* fail to maintain effective records of proper treatment of specimens during transportation, including instances of mistreatment and mortality.<sup>58</sup>

It should be noted that the environmental treaties discussed above, such as the *Convention on Biological Diversity* and the *Convention on Migratory Species*, deal with human interactions with animals through conservation and biodiversity perspectives aimed at preserving animals at the species level. Conversely, approaches centred on animal welfare seek the protection of individual animals irrespective of conservation and endangered status.<sup>59</sup> Nonetheless, a trend of 'noticeable, if still tentative', inclusion of animal welfare and protection principles is observable within more well-developed and sophisticated international rules dealing with biodiversity and conservation.<sup>60</sup> These developments, combined with contemporary initiatives aimed at recognising animal rights, point to the growing international importance of the welfare of individual animals.

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56 *CITES*, Conference of the Parties, *Disposal of illegally traded and confiscated specimens of CITES-listed species*, Resolution Conf. 17.8, 17<sup>th</sup> meeting of the Conference of the Parties, Johannesburg (24 September–4 October 2016).

57 Michael Bowman, 'Conflict or Compatibility? The Trade, Conservation and Animal Welfare Dimensions of *CITES*' (1998) 1(1) *Journal of International Wildlife Law and Policy* 9, 28.

58 *Ibid* 60.

59 Harrop (n 54) 382.

60 Katie Sykes, 'The Appeal to Science and the Formation of Global Animal Law' (2016) 27(2) *European Journal of International Law* 497, 500–501.

## V. Organised crime and corruption

Wildlife trafficking is one of many crime types that may be carried out transnationally and by organised criminal groups. Despite the proliferation of wildlife trafficking and other forms of environmental crime, as well as their significant impacts on communities and the natural world, Neil Boister observes that such crimes have not ‘occasioned a proportionate or coherent global response. Although calls have been made since the early 1990s for the development of a global transnational environmental crime prohibition regime, these calls have largely gone unheeded by a society of states wary of coordinating their efforts in this regard’.<sup>61</sup> In the absence of specific instruments targeting wildlife trafficking specifically, the general frameworks set out in the *United Nations Convention against Transnational Organized Crime (UNTOC)* and the *United Nations Convention against Corruption (UNCAC)* concerning organised crime and corruption are of greatest application.

### 1. Convention against Transnational Organized Crime

*UNTOC*’s purpose, set out in Article 1, is to promote ‘cooperation to prevent and combat transnational organised crime more effectively’. It was opened for signature on 12 December 2000 and entered into force on 29 September 2003. Following the creation of the Convention, three additional and supplementary Protocols were drafted. Each of these Protocols addresses a specific crime-type, including trafficking in persons,<sup>62</sup> smuggling of migrants,<sup>63</sup> and illegal manufacture of and trafficking in firearms, their parts, an ammunition.<sup>64</sup> *UNTOC* has been widely accepted; 190 States are Party to the Convention as of 1 February 2020.

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61 Neil Boister, *An Introduction to Transnational Criminal Law* (2<sup>nd</sup> ed, 2018) 201.

62 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

63 *Protocol against the Smuggling of Migrants by Land, Sea, and Air*, opened for signature 12 December 2000, 2241 UNTS 507 (entered into force 28 January 2004).

64 *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, opened for signature 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005).

While *UNTOC* explicitly applies to certain offences, including those articulated in the three Protocols and four specific offences included in the Convention itself (corruption,<sup>65</sup> money-laundering,<sup>66</sup> obstruction of justice,<sup>67</sup> and participation in an organised criminal group<sup>68</sup>), it also applies more broadly to 'prevention, investigation and prosecution' of any 'serious crime'.<sup>69</sup> 'Serious crime' is defined in Article 2(b) as 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty'. This criterion is essential to the scope of the Convention. To enliven the full range of the Convention's provisions, the maximum penalty of the relevant offence must be at least four years. If this threshold is unmet, many provisions of the Convention will not apply.

Pursuant to Article 3, the application of *UNTOC* is limited to situations where offences are transnational in nature (defined in Article 3(2)) and involve an organised criminal group. 'Organised criminal group' is defined in Article 2(a) of the Convention to mean

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Despite the requirement of transnationality, States must legislate independently of the transnational nature of crimes to avoid loopholes in domestic legislation.<sup>70</sup>

*UNTOC* is designed to ensure flexibility and adaptability. Through its coverage of all 'serious crimes' (when transnational and involving an organised criminal group), the Convention ensures application to new and emerging forms of transnational criminal activity, in addition to those crimes specifically included in the Convention and its Protocols. Provided that crimes meet the definition of a 'serious crime' under Article 2(b), the provisions of the Convention apply. This is of particular importance in the

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65 *UNTOC*, art 8.

66 *Ibid* art 6.

67 *Ibid* art 23.

68 *Ibid* art 5.

69 *Ibid* art 3(1).

70 *Ibid* art 34(2).

context of wildlife trafficking, which is otherwise not explicitly covered in the Convention or its Protocols. As Hennie Strydom observes, given the characteristics and typology of wildlife and forest crime, such criminal activities will commonly fall within the definition of an ‘organised criminal group’.<sup>71</sup> Furthermore, ‘much of modern day wildlife crime is also transnational in nature and satisfies Article 3(2) of the Convention’.<sup>72</sup>

Of course, whether or not *UNTOC* applies to wildlife trafficking in particular jurisdictions depends on national offences and the penalties attaching to them. They must be defined in such a way as to equate to ‘serious crimes’ under the Convention. The desire to bring wildlife trafficking within the scope of *UNTOC* is reflected in comments of the UN Economic and Social Council (ECOSOC) urging States Parties to the Convention to treat wildlife trafficking as a serious crime.<sup>73</sup> This call has been repeated by the Conference of the Parties for *CITES*, which recommends that States Parties to *CITES* ‘make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime, in accordance with their national legislation and Article 2(b) of the United Nations Convention against Transnational Organized Crime’.<sup>74</sup>

Despite these calls, many States have yet to make wildlife trafficking a serious crime under *UNTOC*. In a review of 131 States conducted by UNODC in 2015, only 26 per cent punished violations of *CITES* with a penalty of four years or more, with 31 per cent of the States reviewed punished violations through use of fines only.<sup>75</sup>

In addition to *UNTOC*’s application to ‘serious crimes’, the offences set out in the Convention of corruption, money-laundering, obstruction of justice, and

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71 Hennie Strydom, ‘Transnational Organised Crime and the Illegal Trade in Endangered Species of Wild Fauna and Flora’, in Pierre Hauck and Sven Peterke (eds), *International Law and Transnational Organised Crime* (2016) 264, 278.

72 *Ibid.*

73 UN Economic and Social Council, *Crime Prevention and Criminal Justice Responses to Illicit Trafficking in Protected Species of Wild Fauna and Flora*, UN Doc E/RES/2013/40 (17 October 2013).

74 *CITES*, Conference of the Parties, *Compliance and enforcement*, Resolution Conf. 11.3 (Rev. CoP18), 11<sup>th</sup> meeting of the Conference of the Parties, Gigiri (10 – 20 April 2000) (amended at the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> meetings of the Conference of the Parties) 8.

75 UNODC (n 4) 24; Lorraine Elliott, ‘Fighting Transnational Environmental Crime’ (2012) 66(1) *Journal of International Affairs* 87, 95; see also an example in Slobodan (n 1) 15.

participation in an organised criminal group are pertinent to wildlife trafficking. The offence of participation in an organised criminal group is especially relevant, given that many actors in organised criminal groups may only be indirectly connected to the wildlife offences themselves. 'Those in leadership positions seldom get involved in the actual execution of the criminal act and many individuals, although contributing to the activities of the syndicate in some way or another, might not have specific knowledge about the individual crimes associated with the syndicate'.<sup>76</sup> Of note is that *UNTOC* requires criminalisation of corruption in all cases, notwithstanding the associated crime, as well as criminalisation of laundering of the proceeds of any predicate crime.

Where *UNTOC* applies to a particular crime, the Convention encourages various forms of cooperation between States Parties, all of which are potentially relevant to law enforcement action against wildlife trafficking. Inter alia, provisions on transfer of sentenced persons,<sup>77</sup> mutual legal assistance,<sup>78</sup> joint investigations,<sup>79</sup> transfer of criminal proceedings,<sup>80</sup> and confiscation and seizure are included in the Convention.<sup>81</sup> The Convention may also form the legal basis for extradition in the absence of a relevant agreement between States.

While *UNTOC* has been praised as an effective and necessary legal framework in the fight against wildlife crime,<sup>82</sup> some commentators have discussed the benefits of a new Protocol to the Convention covering wildlife crime or environmental crime more broadly.<sup>83</sup> Creating offences in a new Protocol would ensure that their implementation in national laws would fall within the scope of *UNTOC*, even if they did not meet the definition of serious

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76 Hennie Strydom, 'Transnational Organised Crime and the Illegal Trade in Endangered Species of Wild Fauna and Flora', in Pierre Hauck & Sven Peterke (eds), *International Law and Transnational Organised Crime* (2016) 264, 278.

77 *UNTOC*, art 17.

78 *UNTOC*, art 18.

79 *UNTOC*, art 19.

80 *UNTOC*, arts 12 and 13.

81 *UNTOC*, art 12.

82 UN General Assembly, *Tackling Illicit Trafficking in Wildlife*, UN Doc A/70/951 (16 June 2016) 1 [2].

83 Slobodan (n 1) 53–54; Global Initiative Against Transnational Organized Crime and WWF, *Tightening the Net: Toward a Global Legal Framework on Transnational Organized Environmental Crime* (2015) 34–36.

crime. Defining wildlife crime in a Protocol could also improve harmonization of national laws, facilitate cooperation, and increase attention to the phenomenon. Regardless of the potential benefits of an additional Protocol, the creation of such an instrument is unlikely in the foreseeable future.

## 2. Convention against Corruption

*UNCAC* is the principal, legally binding, international instrument dealing with corruption. The Convention builds on the example set by *UNTOC* and incorporates many measures similar to those in the earlier Convention. *UNCAC* was adopted on 31 October 2003 and entered into force on 14 December 2005. Like *UNTOC*, *UNCAC* enjoys significant acceptance by the international community; as of 1 September 2019, the Convention had 186 States Parties.

Corruption is a major enabler of wildlife crime.<sup>84</sup> Corruption can, for example, encompass 'government officials being bribed to overlook poaching or trafficking; to switch or alter *CITES* permits so that, through fraudulent paperwork, an illegal specimen seems legal; and to falsify certification at the point of processing or end-point of sale'.<sup>85</sup> *UNCAC*, which criminalises corruption and sets out various measures to combat it, is complementary to broader efforts to combat wildlife crime under the other international instruments discussed so far in this chapter.

*UNCAC* contains provisions on five areas concerning anti-corruption: criminalisation, prevention, cooperation, asset recovery, and technical assistance and information exchange. The Convention has been described

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84 UNODC (n 4) 20; Christian Nellemann et al (eds), *The Environment Crime Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources* (2014) 23; see further Chapter Three of this volume.

85 Angad Keith, 'Hunting for Efficacy: A Critical Evaluation of International Responses to Wildlife Trafficking in the African Great Lakes Region' (2018) 35 *Environmental and Planning Law Journal* 542, 555.

as ‘uniquely comprehensive’.<sup>86</sup> The Convention’s purposes, as stated in its Article 1, are

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

*UNCAC*’s scope extends to the ‘prevention, investigation and prosecution’ of all corruption.<sup>87</sup>

The Convention contains a number of criminalisation provisions, both mandatory and non-mandatory, all of which may be relevant to combatting wildlife crime. It requires criminalisation of bribery of national public officials (art 15), bribery of foreign public officials and officials of public international organisations (art 16), embezzlement (art 17), money-laundering (art 23), and obstruction of justice (art 25). It further encourages criminalisation of trading in influence (art 18), abuse of functions (art 19), and bribery in the private sector (art 21).

As with *UNTOC*, the link between wildlife crime and corruption is not made explicit in *UNCAC*. The role of the Convention in combatting wildlife crime is, however, emphasised in numerous international materials. The UN General Assembly, in December 2013,<sup>88</sup> stated that ‘coordinated action is critical to eliminate corruption and disrupt the illicit networks that drive and enable trafficking in wildlife’ and later, in July 2015, called on States to ‘prohibit, prevent and counter any form of corruption that facilitates illicit trafficking in wildlife and wildlife products’.<sup>89</sup> The United Nations Secretary-General also noted the important role of *UNCAC* in his report on

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86 Michael Kubiciel and Anna Cornelia Rink, ‘The United Nations Convention against Corruption and its Criminal Law Provisions’, in Pierre Hauck and Sven Peterke (eds), *International Law and Transnational Organised Crime* (2016) 219, 222.

87 *UNCAC* art 3.

88 UN General Assembly, *Resolution adopted by the General Assembly on 18 December 2013: Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity*, UN Doc A/RES/68/193 (14 February 2014) 5.

89 UN General Assembly, *Resolution adopted by the General Assembly on 30 July 2015: Tackling illicit trafficking in wildlife*, UN Doc A/RES/69/314 (19 August 2015) 4.

*Tackling Illicit Trafficking in Wildlife* in 2016.<sup>90</sup> The CITES Conference of the Parties promulgated a Resolution in 2016 concerning *Prohibiting, Preventing, Detecting and Countering Corruption, which Facilitates Activities Conducted in Violation of the Convention*, which reaffirmed

that the United Nations Convention against Corruption (UNCAC) constitutes an effective tool and an important part of the legal framework for international cooperation in fighting illicit trafficking in endangered species of wild flora and fauna.<sup>91</sup>

Radha Ivory observes that there is an ‘emerging international consensus that wildlife trafficking and corruption must be addressed together and that their respective regimes, whilst distinct, are complementary’.<sup>92</sup>

## VI. Conclusion

Although wildlife trafficking has long been overlooked or dealt with as a peripheral problem by the international community and national governments, this has changed in recent years. The topic is receiving increasing attention and recognition nationally and internationally. This is demonstrated by the passage of numerous resolutions on wildlife trafficking by the United Nations General Assembly, expressing serious concern over poaching and emphasising the adverse economic, social, and environmental impacts of trafficking in endangered species.<sup>93</sup>

Despite the lack of a single instrument concerning wildlife trafficking, principles and obligations relevant to combatting the crime can be drawn from a wide range of international treaties and other materials. Effective strategies to address wildlife trafficking require robust international cooperation, support from international organisations and NGOs, and implementation of States’ obligations in all the areas of law outlined in

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90 UN General Assembly (n 82).

91 CITES, Conference of the Parties, *Prohibiting, preventing, detecting and countering corruption, which facilitates activities in violation of the Convention*, Resolution Conf. 17.6, 17<sup>th</sup> meeting of the Conference of the Parties, Johannesburg (24 September–4 October 2016) 1.

92 Radha Ivory, ‘Corruption Gone Wild: Transnational Criminal Law and the International Trade in Endangered Species’ (2017) 111 *AJIL Unbound* 413, 416.

93 See, for example, UN General Assembly, *Tackling Illicit Trafficking in Wildlife*, UN Doc A/RES/71/326 (28 September 2017).

this Chapter. In the face of increasing threats to species and their habitats, a holistic approach to such trafficking must be adopted, incorporating stringent trade regulation, punishment of organised crime and corruption, concerted efforts to protect and conserve the environment, and appropriate respect for animal welfare.

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