

## SYMPOSIUM ON GLOBAL ANIMAL LAW, PART II: THE CASE FOR GLOBAL LEGAL ANIMAL STUDIES

### CORRUPTION GONE WILD: TRANSNATIONAL CRIMINAL LAW AND THE INTERNATIONAL TRADE IN ENDANGERED SPECIES

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The goal of this essay is to sketch how, and with what effect, the problems of corruption and endangered animal trafficking have been linked in international law. To that end, I first compare and contrast the “hard law” legal frameworks on corruption and on animal trafficking. After that, I illustrate how those two regimes have been related in international reports, “soft” (nonbinding) international instruments, and UN Security Council resolutions. Finally, I caution against an automatic merger of these areas of law and agendas for global law reform. Like other transnational criminal laws, the anticorruption treaties have practical limitations, ideological biases, and potentials for unintended consequences. These features qualify their utility as “tools” in the fight for animal welfare. They may also mask the ways in which efforts to prevent and suppress wildlife trafficking are both anthropocentric and sources of human insecurity.

#### *Prohibiting Corruption and Wildlife Trafficking Through International Law*

Illegal wildlife trafficking and corruption are dealt with under different international agreements with different logics of regulation. The key global [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#) (CITES)<sup>1</sup> aims to regulate the trade in endangered animals and plants by establishing an international licensing system.<sup>2</sup> The CITES appends three lists of variously at-risk species. Before listed animals or their parts or products (“specimens”) can be lawfully traded, states must demand certain documentation. Those documents may only be issued when approvals have been obtained from national “Scientific” or “Management Authorities.” States have discretion as to how they enforce the CITES system within domestic law; however, they must penalize the illegal trade and/or possession of listed specimens and enable the confiscation or return of such specimens to export countries.<sup>3</sup>

The [international regime against corruption](#) contains more than a dozen overlapping instruments addressed to [offences](#) like [bribery](#), embezzlement, and money laundering.<sup>4</sup> These anticorruption treaties commit their state

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<sup>1</sup> [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#), Mar. 3, 1973, 993 UNTS 243; 12 ILM 1085.

<sup>2</sup> See generally MICHAEL BOWMAN ET AL., [LYSTER’S INTERNATIONAL WILDLIFE LAW](#) 14, ch. 15 (2010).

<sup>3</sup> CITES, [supra note 1](#), art. VIII(1).

<sup>4</sup> See [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#), Dec. 17, 1997, 37 ILM 1; [United Nations Convention against Corruption](#), Oct. 31, 2003, 2349 UNTS 41. See also RADHA IVORY, [CORRUPTION, ASSET RECOVERY, AND THE PROTECTION OF PROPERTY IN PUBLIC INTERNATIONAL LAW: THE HUMAN RIGHTS OF BAD GUYS](#) 1–3, 16 (Table 2.1) (2014).

parties to criminalizing abuses of power or trust for private gain, along with activities that enable offenders to avoid prosecution and/or enjoy ill-gotten wealth. States must meet these transgressions with criminal penalties and, as a rule, take steps to ensure that persons can be deprived of illicit wealth. Assuming that assets, offenders, and evidence may be located in different states, the treaties commit state parties to assisting each other in criminal matters.<sup>5</sup> In this way, the anticorruption treaties are examples of “suppression conventions,” which are said to constitute the hard core of a “[Transnational Criminal Law](#).”<sup>6</sup>

### *Linking the International Norms Against Corruption and Wildlife Trafficking*

The treaties on wildlife trafficking and corruption thus use different approaches to controlling acquisitive crimes of globalization. Textually they are connected only through oblique references to sustainable development in some anticorruption standards. The links between wildlife trafficking and corruption are drawn, rather, in international policy documents, soft laws, and Security Council resolutions, which I discuss below. Taken together, they paint a picture of corruption as enabling the illegal wildlife trade and the illegal wildlife trade as prompting official corruption. Both types of crime are tied, in turn, to inequality between countries and instability within them.

#### *Policy Documents*

International and [nongovernmental organizations](#) (NGOs) present corruption and the trafficking of wild animal and plant specimens as [functionally interconnected](#).<sup>7</sup> The CITES appears, in these research publications, to be a valuable tool for animal protection but also a source of opportunities and incentives for bribery.

On the one hand, the CITES regime gives officials a monopoly on the right to authorize lucrative transactions. Officials may have broad discretion to use that power—sometimes without effective supervision via judicial or administrative review. Others within the government hierarchy may have reason to resist implementing the relevant laws or making reforms that would help combat corruption or improve the operation of the CITES system. They may profit as illicit “producers” or “[traders](#)” in their own right or as beneficiaries of bribes paid or raised by others in public service.<sup>8</sup>

On the other hand, traffickers have economic reasons to offer illegal premiums to authorities or to seek to have permission processes expedited, conditions eased, and/or paperwork falsified. Alternatively, officials could be bribed to “turn a blind eye” to illegal operations and/or to “tip off” traffickers about planned interception efforts or raids. Some traffickers could also operate with, or as, organized criminal groups. Finally, corruption and wildlife trafficking are seen to enable, and be enabled by, the same global disparities in economic and social development; hence, addressing one problem may contribute to efforts to ameliorate the other.

#### *Soft Law Statements*

States have called on each other to address the problems of wildlife-related corruption through nonbinding international decisions. At least since 2007, bodies within the [UN system](#) have called on countries to use the

<sup>5</sup> See generally IVORY, *supra* note 4, ch. 4.

<sup>6</sup> See, Neil Boister, “[Transnational Criminal Law](#)”, 14 EUR. J. INT’L L. 953 (2003).

<sup>7</sup> Tanya Wyatt & Anh Ngoc Cao, *Corruption and Wildlife Trafficking*, U4 ISSUE 7–11 (No. 11, May 2015); see, e.g., UN Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (2016); World Wildlife Fund & TRAFFIC Wildlife Crime Initiative, *Strategies for Fighting Corruption in Wildlife Conservation: A Primer* (Nov. 30, 2015).

<sup>8</sup> For an example from the illegal timber trade, albeit not with reference to the CITES, see Global Witness, *Cambodia’s Family Trees: Illegal Logging and the Stripping of Public Assets by Cambodia’s Elite* 10–11 (May 31, 2007).

UN Conventions against Corruption (UNCAC) and Organized Crime (UNCTOC) to combat animal trafficking.<sup>9</sup> Moreover, in 2010, the CITES Secretariat formed an [International Consortium on Combating Wildlife Crime](#) that includes the UN Office on Drugs and Crime and the World Bank;<sup>10</sup> the latter organizations are intimately engaged with worldwide anticorruption activity.

Three years later, in December 2013, the [General Assembly](#) “[e]mphasiz[ed] that coordinated action is critical to eliminate corruption and disrupt the illicit networks that drive and enable trafficking in wildlife, timber and timber products.”<sup>11</sup> Less than two years after that, it resolved, without a vote, to [call on](#) member states to “prohibit, prevent and counter any form of corruption that facilitates illicit trafficking in wildlife and wildlife products,” as well as to join and implement the UNCAC and UNTOC.<sup>12</sup>

Similar sentiments had been expressed in decisions of the [Economic and Social Council](#),<sup>13</sup> the [Environment Assembly of the UN Environment Programme](#),<sup>14</sup> and high-level meetings of [international leaders](#).<sup>15</sup> The Secretary General reiterated these recommendations as recently as [2016](#).<sup>16</sup>

### *Security Council Resolutions*

In parallel, the UN Security Council has been reconstructing wildlife trafficking as a danger to the peace. In a [significant development](#),<sup>17</sup> it has hardened the doctrinal connections between armed conflict, illegal trade in animal products, and other forms of transnational criminality.

Thus, resolutions on the [Central Africa Republic](#) (CAR) and the [Democratic Republic of Congo](#) (DRC) attribute violence there, in part, to the ability of groups to fund their activities through the illegal sale of natural resources.<sup>18</sup> Travel bans and asset freezes are targeted at individuals and entities that, amongst other things, support the trade in elephant tusks.<sup>19</sup> In addition, there is an exception to an arms embargo to “defend against poach-

<sup>9</sup> [International Cooperation in Preventing and Combating Illicit International Trafficking in Forest Products, including Timber, Wildlife and other Forest Biological Resources](#), UN Commission on Crime Prevention and Criminal Justice, Res. 16/1, UN Doc. E/2007/30/Rev.1 & E/CN.15/2007/17/Rev.1 (Apr. 23–27, 2007).

<sup>10</sup> [The International Consortium on Combating Wildlife Crime](#), CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA.

<sup>11</sup> [Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its Technical Cooperation Capacity](#), GA Res. 68/193, preamble (Dec. 18, 2013).

<sup>12</sup> [Tackling Illicit Trafficking in Wildlife](#), GA Res. 69/314, at 9–11 (July 30, 2015).

<sup>13</sup> [Crime Prevention and Criminal Justice Responses to Illicit Trafficking in Protected Species of Wild Fauna and Flora](#), Economic and Social Council Res. 2013/40, UN Doc. E/RES/2013/40 (July 25, 2013).

<sup>14</sup> Report of the United Nations Environment Assembly of the United Nations Environment Programme 2(g) UN Doc. UNEP/EA.1/Res. 3 (June 23–27, 2014). *See also* [Illegal Trade in Wildlife and Wildlife Products](#), U.N. Environment Assembly of the U.N. Environment Programme 1(b), UN Doc. UNEP/EA.2/Res.14 (May 23–27, 2016).

<sup>15</sup> [London Conference on the Illegal Wildlife Trade](#) arts. IX–XII (Apr. 12–13, 2014); [East Asia Summit Declaration on Combating Wildlife Trafficking](#) art. 14 (Nov. 13, 2014).

<sup>16</sup> [Tackling Illicit Trafficking in Wildlife, Report of the Secretary-General to the U.N. General Assembly](#) esp. at 56, UN Doc. A/70/951 (Jun. 16, 2016).

<sup>17</sup> Anne Peters, [Novel Practice of the Security Council: Wildlife Poaching and Trafficking as a Threat to the Peace](#), EJILTALK! (Feb. 12, 2014).

<sup>18</sup> *See, e.g.*, the Preambles of [SC Res. 2339](#) (Jan. 27, 2017) (on CAR); [SC Res. 2293](#) (June 23, 2016) (on DRC).

<sup>19</sup> *See, e.g.*, [SC Res. 2339](#), at 17(e) (Jan. 27, 2017); [SC Res. 2293](#), at 7(g) (June 23, 2016).

ing [and] smuggling of ivory” from CAR,<sup>20</sup> and mention of the smuggling of Congolese ivory in the same breath as “the importance of neutralizing all armed groups,” in the DRC.<sup>21</sup>

Outside the scope of the CITES but still with relevance to animal products and biodiversity, Council [resolutions](#) on [Somalia](#) and [Guinea-Bissau](#) signal that illegal fishing and corruption are barriers to the consolidation of peace and sovereignty in those places, along with drug trafficking, money laundering, and piracy.<sup>22</sup>

### *Contesting the Connection between the Anticorruption and Anti-Wildlife-Trafficking Agendas*

Hence, there would seem to be an emerging international consensus that wildlife trafficking and corruption must be addressed together and that their respective regimes, whilst distinct, are complementary. But, just as some have questioned invoking anticorruption law to support the cause of human rights (and vice versa), so I see three reasons to pause before merging the international anticorruption and prowildlife agendas wholesale. My grounds are [pragmatic, normative, and epistemological](#).<sup>23</sup>

#### *Effectiveness*

First, the enforcement of international anticorruption law is not a silver bullet for difficulties in enforcing international laws that aim to control the trade in endangered species. In fact, transnational measures against economic crime face their own critiques about effectiveness. To begin, there are problems with determining whether—and, if so, why—states comply with duties to implement international anticorruption treaties. If they do so out of self-interest or peer pressure, the treaties might not be such a successful [ethical check](#) on power-political calculations.<sup>24</sup>

Further, it is difficult to measure and prove the effectiveness of crime control measures on individual decisions to break the law. This challenge is especially acute when the standards are set at the international level and must then be implemented by states within their particular jurisdictions. Perhaps for this reason, intergovernmental assessments of antimoney laundering controls have tended to [focus](#) on the “[volume of activities undertaken by competent authorities](#),” even though these measures say little “about the real impact of such actions on the criminal problem itself.”<sup>25</sup>

Finally, even high-income countries would seem [reluctant to prosecute](#) foreign bribe payers and/or confiscate and return illicit wealth laundered through their financial centers.<sup>26</sup> This weakens any general deterrent effect of international anticorruption measures for it sends an inconsistent message to individuals (and corporations) about the likelihood that wrongdoing will be detected, investigated, and punished.

<sup>20</sup> [SC Res. 2339](#), at 1(f) (Jan. 27, 2017).

<sup>21</sup> [SC Res. 2293](#), preamble (June 23, 2016).

<sup>22</sup> See, e.g., [SC Res. 2343](#), preamble, 8 (Feb. 23, 2017) (on Guinea-Bissau); [SC Res. 2317](#), preamble, 17, 21 (Nov. 10, 2016); [SC Res. 2125](#), esp. preamble (Nov. 18, 2013) (on Somalia).

<sup>23</sup> See Radha Ivory, [Asset Recovery in Four Dimensions: Returning Wealth to Victim Countries as a Challenge for Global Governance](#), in CHASING CRIMINAL MONEY: CHALLENGES AND PERSPECTIVES ON ASSET RECOVERY IN THE EU 176 (Katalin Ligeti & Michele Simonato eds., 2017).

<sup>24</sup> See JASON SHARMAN, [THE DESPOT’S GUIDE TO WEALTH MANAGEMENT: ON THE INTERNATIONAL CAMPAIGN AGAINST GRAND CORRUPTION](#) 13–14 (2017).

<sup>25</sup> Barbara Vettori, [Evaluating Anti-Money Laundering Policies: Where Are We?](#), in RESEARCH HANDBOOK ON MONEY LAUNDERING 474 (Brigitte Unger & Daan van der Linde eds., 2013). See also Terrence C. Halliday et al., [Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money Laundering and Combat the Financing of Terrorism](#) 5 (Ctr. Law & Globalization, Jan. 30, 2014).

<sup>26</sup> Fritz Heimann et al., [Exporting Corruption: Progress Report 2015](#) at 12–13 TRANSPARENCY INTERNATIONAL (2015); Larissa Gray et al., [Fen and Far: The Hard Facts on Stolen Asset Recovery](#) (Stolen Asset Recovery Series, 2014).

### *Human Rights*

Second, increasing compliance with international law is not an absolute good for governance—it also generates costs. The international treaties against corruption commit states to standardizing their domestic responses to certain types of behaviors and to cooperating with each other in judicial and administrative matters. Both [Gless](#) and [Boister](#) discuss the risks to defendants when states pool their *ius piumendi*.<sup>27</sup> Focusing on the international campaign for asset recovery, I have shown elsewhere that states' efforts to cooperate in confiscation matters may raise issues under rights to fair trials and property. International judges permit such interferences as a means of realizing important law enforcement objectives; however, they insist on the conditions of lawfulness and proportionality.<sup>28</sup>

In the wildlife protection context, human rights considerations will have a particular collective dimension. Indigenous and tribal peoples have [collective rights to natural resources](#), including when that property is contained within nature reserves.<sup>29</sup> The Inter-American Court of Human Rights has found environmental protection and self-determination to be compatible policy objectives.<sup>30</sup> But the Court referred to international instruments that recognize both indigenous peoples' special interests in land and the global collective interest in biodiversity.<sup>31</sup> The CITES makes only general references to natural resource sovereignty and provides no traditional use exception and so is less amenable to harmonious interpretation. Hence, there is greater potential for conflict between collective rights that benefit indigenous and tribal peoples and norms that protect wildlife in international law.

### *Politics*

Third, measures to prevent animal trafficking and to control corruption may serve particular [political agendas](#). This is not simply a point about Western states and nonstate actors contributing to regimes that prohibit transnational crime.<sup>32</sup> Rather, the anticorruption and anti-wildlife-trafficking regimes may reflect and help maintain certain ideas about acceptable power relations between humans and animals, peoples and states.

Radical environmentalists may see the linking of anticorruption and wildlife trafficking discourses as potentially subjugating animals, for it may be read to suggest that animal products are legitimate commodities when traded in an uncorrupted global market. Likewise, this linkage may be taken to signal that criminal individuals have caused [mass animal endangerment](#), rather than the large-scale patterns of environmental change postindustrialization.<sup>33</sup>

Similarly, critical anticorruptionists or third-world scholars of international law may perceive a postcolonial downside to a twinned agenda. The discourses of anticorruption and anti-wildlife-trafficking could each serve

<sup>27</sup> Neil Boister, *Human Rights Protections in the Suppression Conventions*, 2 HUM. RTS. L. REV. 199 (2002); Sabine Gless, *Bird's-Eye View and Worm's Eye View: Towards a Defendant-Based Approach in Transnational Criminal Law*, 6 TRANSNAT'L LEGAL THEORY 117 (2015).

<sup>28</sup> IVORY, *supra* note 4, chs. 5 & 6.

<sup>29</sup> See, e.g., [Centre for Minority Rights Development \(Kenya\) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya](#), Communication 276/2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.] (Feb. 4, 2010); [The Case of the Kaliña and Lokono Peoples v. Suriname](#), Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309 (Nov. 25, 2015). See also [African Commission of Human and Peoples' Rights v. Kenya](#), No. 006/2012, Judgment, African Court on Human and Peoples' Rights (May 26, 2017).

<sup>30</sup> [Kaliña and Lokono Peoples v. Suriname](#), *supra* note 29, at 173, 181.

<sup>31</sup> *Id.* at 174–80.

<sup>32</sup> See, e.g., RACHELLE ADAM, [ELEPHANT TREATIES: THE COLONIAL LEGACY OF THE BIODIVERSITY CRISIS](#) (2014); PETER ANDREAS & ETHAN NADELMANN, [POLICING THE GLOBE](#) (2006).

<sup>33</sup> Stephen F. Pires & William D. Moreto, [The Illegal Wildlife Trade](#), OXFORD HANDBOOKS ONLINE (2016).

to demonize forms of conduct, like low-level bribery and poaching, that are more prevalent in the Global South. They may together distract from the possibilities for illicit investment and patterns of excessive consumption in the Global North, which enable and drive the crimes.

Finally, political ecologists might take the Security Council's efforts to protect elephants to be an example of the securitization of global environmental governance. Attempts by national authorities to establish and protect animal habitats have been described as "green grabbing," or the expropriation of space—particularly from marginalized peoples—for environmental reasons. This strategy has an additional [neoliberal economic dimension](#), when private entrepreneurs operate the parks that are supposed to protect animals.<sup>34</sup>

### *Conclusion*

There is thus a need for caution in accepting calls for more and stronger measures to combat wildlife trafficking and corruption. Punitive strategies may have unintended human consequences and undetected ideational or ideological constraints. A criminalized and securitized transnational animal law may fail to protect animals and might justify limitations on a range of other public goods.

<sup>34</sup> Francis Massé & Elizabeth Lunstrum, [Accumulation by Securitization: Commercial Poaching, Neoliberal Conservation, and the Creation of New Wildlife Frontiers](#), 69 GEOFORUM 227 (2016).