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## The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade

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# The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade

## ABSTRACT

*Trade in endangered wildlife has been a concern in the global community since the dawn of international environmental law. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), one of the most successful international environmental treaties established, addresses the issue through regulation of international trade in certain wildlife species. However, the effectiveness of the treaty has been greatly undermined through illegal wildlife trading. Recently, the illegal wildlife trade has attracted the attention of organized criminal groups, whose participation in the trade have helped make the black market for wildlife the second largest in the world.*

*Providing stricter enforcement mechanisms for CITES and for prevention of organized criminal group activities in the illegal wildlife trade has become a primary focus for the CITES Secretariat. This Note considers some of the international mechanisms needed to achieve these goals, including enactment of legislation specifically aimed at wildlife crime, clearer definitions of culpability requirements, enforcement of stricter penalties for violators of wildlife laws, and extradition agreements between states. This Note also argues that the U.N. Convention against Transnational Organized Crime is currently the best mechanism for international enforcement of CITES.*

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## I. INTRODUCTION

In May of 1998, the U.S. Customs Service and the U.S. Fish and Wildlife Service completed Operation Jungle Trade, a three-year undercover operation that exposed a massive international exotic animal smuggling network.<sup>1</sup> The sophisticated smuggling ring had sold illegally obtained animals and birds in several states and in ten other countries throughout the world.<sup>2</sup> U.S. officials worked in coordination with foreign law enforcement agencies to investigate and expose the criminal organization involved.<sup>3</sup> Operation Jungle Trade resulted both in the seizure of 662 valuable endangered animals, of

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1. *Customs an'd Fish and Wildlife Agents Snare Huge Animal Smuggling Ring*, PR NEWSWIRE, May 29, 1998.

2. *Id.* The ten other countries included Australia, South Africa, New Zealand, Brazil, Ghana, Egypt, Panama, Honduras, Belize and Costa Rica. *Id.*

3. *Id.*

which the birds alone were worth over \$600,000, and the arrest and possible indictment of forty traffickers and distributors of wildlife.<sup>4</sup> The accused individuals were subject to fines, imprisonment, or both under multiple U.S. laws.<sup>5</sup>

Operation Jungle Trade provides an illustration of the extensive scope of illegal wildlife trafficking throughout the world.<sup>6</sup> Exotic animal traders were once viewed as small-time criminals "selling birds in fairs,"<sup>7</sup> but now the international community sees the extensive, powerful involvement of organized criminal rings in the illegal wildlife trade.<sup>8</sup> The black market in illegal wildlife is now the second largest in the world, ranking only behind trade in illegal drugs.<sup>9</sup> Bonni Tischler, Assistant Commissioner in the Office of Investigations for Customs, and a participant in Operation Jungle Trade, noted that "pound for pound, there is more profit for smugglers in exotic birds than there is in cocaine."<sup>10</sup> Though it is difficult to gather evidence on the precise value of the animals and plants traded, it has been estimated at approximately \$5 billion per year.<sup>11</sup> Given the high profit margins and low risk, it is not surprising that existing organized criminal rings have expanded their operations to include the trade in illegal wildlife.<sup>12</sup>

Many of the wild animals and plants in trade are protected under the Convention on International Trade in Endangered Species

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4. *Id.*

5. *Id.*

6. See Jiri Kunc, *Environment: Central Europe's Parrot Smuggling Scheme Booms*, INTER PRESS SERV., Nov. 21, 1996 (discussing the illegal trafficking of parrots by international smuggling rings); Sanjay Suri, *Environment: Organized Crime Muscles in on Wildlife Trade*, INTER PRESS SERV., June 17, 2002 (noting the involvement of Russian gangs that sell illegally obtained caviar to Western nations); *Kingpin of Parrot Smuggling Ring Sentenced to Nearly 7 Years Without Parole*, PR NEWSWIRE, Nov. 20, 1996 (noting the indictment of a U.S. citizen for leading an international parrot smuggling ring).

7. Robin Eveleigh, *Alarm Sounds on Animal Smuggling in Brazil*, ENVTL. NEWS NETWORK, Sept. 27, 2000.

8. *CITES Seeks Stronger Action Against Organized Wildlife Criminals*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, available at [http://www.cites.org/eng/news/press/021106\\_illegaltrade.shtml](http://www.cites.org/eng/news/press/021106_illegaltrade.shtml) (last visited Jan. 21, 2003).

9. Robert S. Anderson, *Investigation, Prosecution, and Sentencing of International Wildlife Trafficking Offenses in the U.S. Federal System*, 12 NAT'L ENVTL. ENFORCEMENT J. 14, June 1997, at 14.

10. *Customs and Fish and Wildlife Agents Snare Huge Animal Smuggling Ring*, *supra* note 1.

11. Anderson, *supra* note 9, at 14.

12. Dee Cook, Martin Roberts & Jason Lowther, *The International Wildlife Trade and Organised Crime: A Review of the Evidence and the Role of the UK*, at 4 (June 2002), available at <http://www.wwf.org.uk/filelibrary/pdf/organisedCrime.pdf> (last visited Mar. 11, 2003). The U.K. estimated that fifty percent of the individuals prosecuted for wildlife crimes over a period extending twelve months had previous convictions for serious offenses, including drugs and firearms. *Id.* at 4, 24.

of Wild Fauna and Flora (CITES).<sup>13</sup> CITES regulates the international trade of certain plant and animal species to protect them from exploitation and extinction resulting from excessive trading and use.<sup>14</sup> One hundred sixty-three countries are currently parties to the treaty.<sup>15</sup> Though CITES is one of the most successful wildlife conventions in the world in terms of support and comprehensiveness, enforcement problems have plagued the treaty from the beginning.<sup>16</sup> CITES was designed to provide a framework for countries to follow in implementing wildlife laws concerning trade; individual member countries are responsible for enacting the necessary legislation to implement the treaty.<sup>17</sup> The treaty itself neither designates wildlife trade in restricted species as a crime, nor does it prescribe sanctions for violations.<sup>18</sup> While this framework demonstrates a respect for national sovereignty, it does not allow for the effective prosecution of organized crime groups dealing in the illegal wildlife trade.

Combating organized crime in the illegal wildlife trade is important to the global community because of the environmental and social problems resulting from organized criminal participation in the trade. Many of the plant and animal species covered by CITES are already disappearing at a high rate.<sup>19</sup> A study conducted by the U.N. Environment Programme estimated that up to twenty-five percent of tropical forest wildlife species may become extinct by 2020.<sup>20</sup> Another study estimated that the destruction of wildlife is occurring so rapidly that one-fifth of all existing species will be extinct by the same year.<sup>21</sup> Although this threat to wildlife species comes from multiple sources, such as pollution and destruction of natural habitats, illegal wildlife trading greatly contributes to the problem by harvesting significant quantities of already endangered species.<sup>22</sup> In Colombia, for example,

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13. GINETTE HEMLEY, *INTERNATIONAL WILDLIFE TRADE: A CITES SOURCEBOOK* 1 (1994).

14. *Id.*

15. *Member Countries*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, available at <http://www.cites.org/eng/parties/index.shtml> (last visited Mar. 11, 2003). The last party to join was Albania, in June 2003. *Id.*

16. See generally Laura H. Kosloff & Mark C. Trexler, *The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?*, 17 ENVTL. L. REP. 10222 (July 1987).

17. *Id.* at 10223-25.

18. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

19. ROSALIND REEVE, *POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE* 7-8 (2002).

20. *Id.* at 8.

21. EDWARD O. WILSON, *THE DIVERSITY OF LIFE* 346 (1992).

22. REEVE, *supra* note 19, at 8.

the illegal animal trade is considered the second biggest threat to biodiversity.<sup>23</sup>

In addition to their contribution to environmental degradation, organized crime groups also threaten legitimate governments and civil society because of their willingness to use violence to achieve their goals, their ability to undermine political stability, their burden on the legal economy, and their encouragement of corruption in developing democratic countries.<sup>24</sup> The serious economic, political, and social problems arising from the activity of these groups should make the combating of organized crime in the illegal trade of wildlife an objective shared both by the member states of CITES and by the world as a whole.

This Note explores organized crime in the illegal wildlife trade and suggests methods to combat its influence. Section II discusses the CITES treaty in general, including the history and purpose of the Convention, the permit system and the international institutions created by the treaty. Section II also examines the individual responsibility of member states in implementing the treaty, as well as the implementation problems that have arisen, the levels of implementation of different member states, and the response of the CITES Secretariat to these problems. Section III both examines the types of organized crime groups in the illegal wildlife trade and the geographical areas where wildlife crime is prevalent. It then discusses the attraction of the illegal wildlife trade to organized crime groups, the problems that specifically result from the participation of organized crime, and the dangerous links between the illegal wildlife trade and the narcotics trade. Section IV begins by analyzing methods of combating organized crime, examining the necessary legislation in member states, including punishments that are suitable to the scope of wildlife crime, and pointing out the needs for the recognition of the gravity of wildlife crime, for a culpability requirement, for extradition principles, and for additional resources for enforcement. Section IV then considers the role of the international community in combating transnational organized crime in the illegal wildlife trade and suggests that by linking wildlife crime to the U.N. Convention against Transnational Organized Crime, CITES member states will have a powerful international mechanism to combat transnational organized crime. Part IV also reviews other possible international mechanisms, such as amending the treaty and using international tribunals to try wildlife traffickers.

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23. Yadira Ferrer, *Colombia-Environment: Animal Smuggling Second Only to Drug Trade*, INTER PRESS SERV., July 21, 1995. Colombia is the second richest country in biodiversity in the world. *Id.*

24. CarrieLyn Donigan Guymon, *International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention*, 18 BERKELEY J. INT'L L. 53, 61-62, 64 (2000).

## II. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

### A. *The History, Purpose and Structure of CITES*

Until the 1960s, states viewed environmental problems as primarily domestic concerns.<sup>25</sup> States did not become aware of the need for international cooperation regarding environmental issues until the 1960s, when multiple international agreements were signed.<sup>26</sup> The early 1970s marked the dawn of international environmental law, and environmentalists viewed the signing of the CITES treaty as an important legal solution for an international environmental problem.<sup>27</sup> Although CITES originated as a 1963 resolution of the World Conservation Union, where the need for an international agreement on the cross-border trading of wildlife was first recognized, the actual text of the treaty was not agreed on until ten years later.<sup>28</sup> The treaty finally entered into force on July 1, 1975.<sup>29</sup> As one of the oldest international environmental agreements, CITES enjoys a high level of respect and has provided a foundation for subsequent wildlife agreements.<sup>30</sup>

The Convention's primary purpose is to "ensure that international trade in specimens of wild animals and plants does not threaten their survival."<sup>31</sup> In other words, CITES permits trade in wildlife but regulates that trade in order to prevent extinction of animal and plant species. The goal of CITES in regulating these traded species is to "ensure the sustainability of trade . . . in order to safeguard these resources for the future."<sup>32</sup> In this way, the treaty attempts to balance the interests of preserving wildlife with the interests of nations, mostly developing nations, in using their natural resources to further their economic development.<sup>33</sup>

Although CITES is sometimes regarded as the world's most comprehensive conservation treaty, the structure of the treaty is

25. Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 81 GEO. L.J. 675, 677 (1993).

26. *Id.* at 678.

27. *Id.*

28. REEVE, *supra* note 19, at 27-28.

29. *Id.* at 28.

30. *Id.* at 5. See generally Kosloff & Trexler, *supra* note 16.

31. *What is CITES?, Convention on International Trade in Endangered Species of Wild Fauna and Flora*, available at <http://www.cites.org/eng/disc/what.shtml> (last visited Jan. 21, 2003).

32. *Id.*

33. See generally Michael J. Glennon, *Has International Law Failed the Elephant?*, 84 AM. J. INT'L L. 17 (1990).

fairly simple.<sup>34</sup> It establishes a permit system for the exporting and importing of regulated wildlife.<sup>35</sup> Each state must designate at least one “management authority” to take responsibility for administering the permit system, and at least one “scientific authority” to advise on the effects of trade on the species.<sup>36</sup> CITES requires that permits should be granted only when the “scientific authority” of the exporting state has determined that the exportation of a particular specimen will not be detrimental to the survival of the species and when the “management authority” of the exporting state is satisfied that the specimen was not obtained in violation of national wildlife protection laws.<sup>37</sup> The “management authority” is also responsible for ensuring that any living specimen is prepared and shipped in a manner adequate to prevent harm to that specimen.<sup>38</sup>

The treaty divides regulated plant and animal species into three appendices, depending on the degree of protection a particular species needs.<sup>39</sup> To determine which of the appendices applies to a particular species, CITES requires a state to make a determination if trade in a particular species can continue without harm to the species, if trade must be closely regulated, or if it must stop in order to prevent extinction of that species.<sup>40</sup> Appendix I contains species that are in serious danger of extinction.<sup>41</sup> Trade is not normally permitted for species listed in Appendix I unless exceptional circumstances prevail.<sup>42</sup> The African elephant, which brought worldwide attention to CITES because of the controversy over ivory bans, is listed in Appendix I.<sup>43</sup> Appendix II lists species where trade of specimens must be carefully controlled both for purposes of sustainable development and to ensure that the species does not become threatened.<sup>44</sup> Appendix II also contains species that closely resemble Appendix I species.<sup>45</sup> These look-alike species need to be monitored to prevent trading of Appendix I species disguised as non-regulated wildlife.<sup>46</sup> For example, the American black bear, the brown bear, and the polar

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34. HEMLEY, *supra* note 13, at ix.

35. CITES, *supra* note 18, arts. III-VII.

36. *Id.* art. IX; see also *How CITES Works, Convention on International Trade in Endangered Species of Wild Fauna and Flora*, available at <http://www.cites.org/eng/disc/how.shtml> (last visited Feb. 1, 2003).

37. CITES, *supra* note 18, art. V, §§ 1-2.

38. *Id.* § 2(b).

39. REEVE, *supra* note 19, at 29-31.

40. *Id.*

41. *Id.* at 29.

42. *How CITES Works, supra* note 36.

43. Glennon, *supra* note 33, at 13-18.

44. REEVE, *supra* note 19, at 30.

45. Anderson, *supra* note 9, at 14.

46. *Id.*

bear are listed in Appendix II.<sup>47</sup> Appendix III contains species that are protected in at least one country that has requested assistance from the other member states in controlling trade of those particular species.<sup>48</sup> Appendix III listings are usually species that are not threatened with global extinction, but may be rare in certain member states and therefore need the protection of the international community.<sup>49</sup> Certain types of gazelles, the walrus, and the hippopotamus are examples of species listed under Appendix III.<sup>50</sup>

CITES and its amendments establish several international institutions, each responsible for various aspects of the treaty.<sup>51</sup> The Conference of the Parties (COP) is responsible for adopting amendments, making recommendations for improving the effectiveness of the Convention and reviewing national and international progress under the treaty.<sup>52</sup> COP meets every two and a half years to review the treaty.<sup>53</sup> The non-governmental organizations that supply a significant amount of funding for CITES, are usually active participants in COP meetings.<sup>54</sup> The Secretariat is responsible for the general coordination and administration of CITES.<sup>55</sup> Functions of the Secretariat include preparing annual reports, making recommendations on legislation, and undertaking scientific and technical studies.<sup>56</sup> COP established four permanent committees to perform particular functions between COP meetings.<sup>57</sup> The Standing Committee is primarily responsible for overseeing the Secretariat's budget and for providing policy advice on the implementation of CITES.<sup>58</sup> The Animals and Plants Committees consist of experts on species of animals and plants, and are responsible for reviewing categorization of species, drafting resolutions relating to animal and plant matters, and deciding when particular species are being exploited through trade.<sup>59</sup> Finally, the Nomenclature Committee ensures the standardization of names for animal and plant species listed in the three appendices.<sup>60</sup>

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47. *CITES: Appendix II*, available at [http://www.cites.org/eng/append/latest\\_append.shtml](http://www.cites.org/eng/append/latest_append.shtml) (last visited Mar. 12, 2003).

48. REEVE, *supra* note 19, at 31.

49. Anderson, *supra* note 9, at 14.

50. *CITES: Appendix III*, available at [http://www.cites.org/eng/append/latest\\_append.shtml](http://www.cites.org/eng/append/latest_append.shtml) (last visited Mar. 12, 2003).

51. REEVE, *supra* note 19, at 38.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *How CITES Works*, *supra* note 36.

58. REEVE, *supra* note 19, at 47.

59. *Id.* at 51.

60. *Id.* at 50-51.

### B. *The Responsibility of Member States in Implementing CITES*

The preamble to CITES states that "peoples and States are and should be the best protectors of their own wild fauna and flora."<sup>61</sup> This statement reflects the drafters' intent that individual member states take almost full responsibility for protection of their wildlife through national legislation that implements the specific provisions of CITES.<sup>62</sup> The effectiveness of CITES in a particular member country and as a whole is almost entirely dependent upon each country enacting legislation that is sufficient to implement at least the basic tenets of the treaty.<sup>63</sup> Even though member states are technically bound by the terms of CITES, specific implementation legislation is still needed for CITES to be effective.

Enactment of national legislation to implement CITES is necessary for a number of reasons. First, CITES is not a self-executing treaty, meaning that broad provisions stating that international treaties prevail over any existing national laws will not be effective in implementing CITES.<sup>64</sup> Second, specific implementation legislation is necessary to ensure consistency with existing laws, to clarify the effects of the treaty, and to allow for enforcement of the treaty through the judicial system in each country.<sup>65</sup> Because judges are more likely to enforce national legislation than international treaties, wildlife criminals can escape prosecution by finding national legislation in their favor if there are inconsistencies between national laws and an international treaty.<sup>66</sup> Finally, the CITES Secretariat notes that the implementation of the treaty is "impossible without a firm legislative basis covering, at a minimum, the granting of permits, the control of the validity of foreign permits and the imposition of penalties, including the confiscation of unlawfully traded specimens."<sup>67</sup> If national legislation does not provide for the basic implementation of the permit system, it becomes difficult both to prevent criminal groups from engaging in the illegal trade of wildlife species and to punish the perpetrators. The lack of national legislation implementing CITES greatly diminishes the effectiveness of the treaty in specific member countries and throughout the world.

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61. CITES, *supra* note 18, pmb1.

62. See generally *How CITES Works*, *supra* note 36.

63. Anderson, *supra* note 9, at 14.

64. CYRILLE DE KLEMM, GUIDELINES FOR LEGISLATION TO IMPLEMENT CITES 6 (1993). Several countries have tried to implement CITES (and other treaties) by enacting legislation with these broad provisions stating that international treaties take precedence over national laws. As indicated later, these provisions are too ambiguous to allow for effective prosecution of wildlife criminals.

65. *Id.* at 8.

66. *Id.*

67. *Id.* at 10.

Because of the different legal systems of the individual member states, CITES is unable to provide model provisions that would properly implement the treaty.<sup>68</sup> The CITES Secretariat does provide elementary guidelines for enacting national implementation legislation.<sup>69</sup> At a minimum, there are four basic requirements needed for implementing CITES: (1) a Management Authority and a Scientific Authority; (2) prohibition of trade in violation of CITES; (3) penalties for such trade; and (4) confiscation of specimens illegally traded or possessed.<sup>70</sup> In 1993, the CITES Secretariat identified only thirteen countries, mostly developed nations, that had sufficiently comprehensive legislation to implement the treaty.<sup>71</sup> By March 2002, approximately fifty percent of CITES member states either had not provided for any of these basic requirements in their national laws or had enacted legislation that provided for only some of the basic requirements.<sup>72</sup> Such dismal compliance rates significantly reduce the effectiveness of CITES on a global level.

In recent years, the CITES Secretariat has attempted to pressure member states into enacting legislation necessary to enforce the treaty.<sup>73</sup> Although the treaty itself does not make illegal wildlife trading a crime or provide for criminal sanctions against violators, it provides limited measures against member states that repeatedly violate the treaty.<sup>74</sup> The CITES Secretariat has issued notifications informing member states that failure to implement the necessary legislation constitutes a violation of the treaty, and that repeated failure to enact such legislation will result in penalties, such as trade sanctions.<sup>75</sup>

Trade sanctions generally recommend that member states temporarily suspend wildlife trade with countries that are in noncompliance with CITES.<sup>76</sup> The sanctions have been used against the United Arab Emirates, for failure to prevent illegal trade in falcons; against Russia for failure to combat the illegal caviar trade; and against Fiji and Vietnam for failure to enact sufficient national wildlife trade legislation.<sup>77</sup> The imposition of trade sanctions was

68. *Id.* at 1.

69. *See generally* DE KLEMM, *supra* note 64.

70. REEVE, *supra* note 19, at 246.

71. DE KLEMM, *supra* note 64, at 5. The Countries were Australia, Austria, Belgium, Denmark, France, Germany, Malta, the Netherlands, New Zealand, Switzerland, the U.K., the U.S. and Zimbabwe. *Id.*

72. REEVE, *supra* note 19, at 246.

73. *See* Notification to the Parties No. 2001/059 (Aug. 10, 2001), available at <http://www.cites.org/eng/notifs/2001/059.shtml> (last visited Mar. 13, 2001).

74. *See generally* CITES, *supra* note 18.

75. *Id.*

76. Lisa Mastny & Hilary French, *Crimes of a Global Nature: Forging Environmental Treaties is Difficult. Enforcing Them is Even Tougher*, WORLD WATCH, Sept. 1, 2002, at 12.

77. *Id.*

successful in the sense that the governments of the aforementioned countries quickly reacted to implement and improve national legislation and enforcement.<sup>78</sup> However, the use of trade sanctions alone will not be effective in forcing substantial or full compliance with the treaty, or in combating the larger problem of transnational organized criminal operations in the illegal wildlife trade. CITES only provides for the seizure and return of illegally transported species.<sup>79</sup> It does not provide for criminal sanctions against those who are responsible for the violations.<sup>80</sup> Also, no part of the treaty binds member states to act on recommendations of the Secretariat.<sup>81</sup> As a result, there may be multiple states that refuse to comply with the trade sanctions recommendations for political or economic reasons. Because CITES itself does not have extensive power to force compliance with the treaty, the CITES Secretariat generally focuses on goals such as enhancing the ability of each party to implement the Convention, promoting a greater understanding of the Convention, encouraging global membership, securing more funding, and assisting in regional and international cooperation.<sup>82</sup> Member states may receive guidance and review from the Secretariat in enacting national legislation, but the ultimate responsibility for enforcing the treaty and targeting wildlife criminals lies with member states.<sup>83</sup>

### III. TRANSNATIONAL ORGANIZED CRIME IN THE ILLEGAL WILDLIFE TRADE

The definition of transnational organized crime has proved elusive to both international legal scholars and practitioners.<sup>84</sup> Almost all definitions share three central characteristics: continuity of operations, practice of corruption, and a tendency towards violence.<sup>85</sup> Other definitions mention one or more of the following elements: the involvement of multiple persons, the goal of committing a crime; operations that cross national boundaries in response to a

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78. *Id.*

79. CITES, *supra* note 18, art. VIII, § 1(b).

80. *See* DE KLEMM, *supra* note 64, at 7 (noting that in the majority of legal systems, criminal penalties have to be imposed by the national government). *See generally* CITES, *supra* note 1.

81. *See generally* CITES, *supra* note 18.

82. CITES: *Strategic Vision Through 2005*, available at <http://www.cites.org> (last visited Feb. 21, 2003).

83. In this way, CITES is no different from other international treaties. National sovereignty is typically respected in international law. Although this can be beneficial, it often results in states failing to implement international treaties.

84. Rensselaer W. Lee III, *Transnational Organized Crime: An Overview*, in *TRANSNATIONAL CRIME IN THE AMERICAS 1* (Tom Farer ed., 1999).

85. *Id.*

demand for illegal goods; the ability to gain and possess significant resources; and finally, the pursuit of large, quick profits.<sup>86</sup> The majority of international organized criminal groups operating in the illegal wildlife trade meet several or all of those definitional elements.<sup>87</sup> Organized criminal rings consist of multiple persons that repeatedly violate laws when smuggling exotic wildlife across national borders.<sup>88</sup> These groups are responding to a demand for illegal goods; they will often use violence and their considerable financial resources to achieve their goals; and they are in pursuit of large, quick profits.<sup>89</sup>

In the illegal wildlife trade, organized criminal groups generally fall into three categories.<sup>90</sup> At the bottom end of the scale, there are groups of local farmers that sell species illegally to supplement their incomes.<sup>91</sup> Next, there are larger, mafia-style groups that purchase species from impoverished peasants and sell them at a large profit.<sup>92</sup> These groups are especially common in developing nations. For example, in Colombia, a country with a seventy-year history of animal smuggling, families have been supplementing their incomes for generations by selling endangered animals such as lizards, monkeys, and parrots.<sup>93</sup> Finally, major international smuggling rings, many of which are also involved in other illegal trades also exist.<sup>94</sup> Because they tend to use violence, have resources, and be aware of smuggling routes, the major smuggling rings present the greatest threat in regulating the illegal wildlife trade.<sup>95</sup>

Although illegal wildlife trading is a worldwide problem, there are certain geographical regions where international organized

86. Guymon, *supra* note 24, at 55-56.

87. See *infra* Part II.A and accompanying notes.

88. See *Drug Smuggling, Organized Crime Links with Wildlife Trade Exposed in New Report to United Nations Agency*, U.S. NEWSWIRE, Nov. 2, 1994 (noting that existing criminal groups such as South American drug cartels, the Russian mafia, and smuggling operations in Africa all have been discovered to be illegally trading wildlife).

89. See *infra* Part II.A and accompanying notes. These groups are also the ones that meet the definitions of transnational organized crime, so they are the focus of this Note.

90. S. Lynne Walker, *Animal Smuggling*, SAN DIEGO UNION TRIB., Jan. 21, 1996, at A1.

91. *Id.*; see also Nicole Veash, *In Brazil, Web Weaves Illegal Trade; Animal Dealers Find a Home on the Internet*, BOSTON GLOBE, Oct. 31, 1999, at A28 (noting that traffickers rely on "poor local residents to capture the wildlife").

92. Veash, *supra* note 91, at A28; see also *CITES Seeks Stronger Action Against Organized Wildlife Criminals*, *supra* note 8.

93. Steven Ambrus, *Environment; Animal Subtraction; Colombia's Wildlife has Been Devastated by Smuggling of Endangered Species. Now Drug Traffickers have Entered the Lucrative Trade*, L.A. TIMES, July 25, 1995, at 3. The families are left with little choice; it is either selling wildlife or starvation. *Id.*

94. *Id.*

95. *Id.*

criminal involvement in the wildlife trade is especially problematic.<sup>96</sup> More often than not, the demand for wildlife and wildlife by-products stems from developed nations, while developing nations tend to supply the wildlife.<sup>97</sup> The United States, for example, is the largest importer of wildlife.<sup>98</sup> There is also a large demand in European Union nations for wildlife and wildlife products.<sup>99</sup> Major organized criminal groups participate in the illegal wildlife trade in two central areas: (1) in the former Soviet Union, especially in the illegal caviar trade, and (2) in central drug production and distribution states, which are often major wildlife suppliers.<sup>100</sup> Prosecutors of wildlife criminals must be acutely aware of these problematic areas in order effectively to target transnational organized crime.

#### A. *The Attraction of Illegal Wildlife Trade to Organized Criminal Groups*

Illegal wildlife trafficking is highly attractive to organized criminal rings for many reasons. First, the illegal wildlife trade is a notably profitable business as shown through the standard economic concepts of supply and demand.<sup>101</sup> Demand for certain wildlife species is extremely high, and the uses for wildlife plentiful, resulting in high profitability for the organized criminal groups.<sup>102</sup> Experts estimate that 200,000 of the 600,000 animals illegally exported from Colombia each year are primates destined for laboratories and research centers.<sup>103</sup> Many Colombian drug lords also keep private zoos of endangered species as status symbols, causing a substantial increase in the value of these exotic creatures.<sup>104</sup> Numerous protected animal and plant derivatives are used in traditional Asian medicine, and the difficulty of obtaining the needed specimens has significantly added to the profitability of the illegal wildlife trade.<sup>105</sup> Other uses of endangered wildlife for consumer products include gourmet foods, horticulture, clothing and ornamentation, and aphrodisiacs.<sup>106</sup> Finally, endangered animals have been used in "canned hunts," during which hunters pay large amounts of money, sometimes

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96. Cook et al., *supra* note 12, at 18, 23.

97. *Id.*

98. Anderson, *supra* note 9, at 14.

99. Cook et al., *supra* note 12, at 11, 17-18.

100. *Id.* at 23.

101. Ferrer, *supra* note 24.

102. *Id.*

103. *Id.*

104. *Id.*; John Reville, *Rare Animals Trade is New Sideline to Drugs*, BIRMINGHAM POST, Aug. 22, 2002, at 6.

105. Nicole Swengley, *Buyer Beware: Your Holiday Souvenir Could Cost You Dear*, TIMES (London), July 6, 2002, at 6.

106. Mastny & French, *supra* note 76.

thousands of dollars, to have the opportunity to hunt and kill an exotic animal.<sup>107</sup> With the high demand for exotic wildlife, immense profits can be made on certain species. German and French collectors, for example, have paid \$65,000 for rare species of parrots that are sold for approximately thirty dollars in Latin America.<sup>108</sup> A tiger skin can be worth more than \$65,000, and an ounce of rhinoceros horn is currently worth more than an ounce of gold.<sup>109</sup> Rare orchids and certain ornamental plants also bring in handsome profits.<sup>110</sup>

In addition to the obvious profitability, organized criminal groups are attracted to illegal wildlife trading because of the ease and low risk with which smugglers can bring species into a country.<sup>111</sup> Protected animals and plants can be smuggled across borders through various methods, including concealment on a person and in luggage,<sup>112</sup> alteration of required CITES permits to reflect a different quantity, origin or type of species, thereby creating an appearance of compliance with CITES<sup>113</sup> and modification of the smuggled items themselves.<sup>114</sup> Because environmental law enforcement is usually sparse or non-existent, organized criminal rings face few risks in smuggling protected wildlife across national borders.<sup>115</sup> In the United States, a nation with one of the most comprehensive environmental enforcement systems in the world, there are only ninety wildlife inspectors for the forty points of entry where wildlife can be imported or exported, resulting in only a small fraction of smuggled wildlife being discovered.<sup>116</sup> Certain geographical areas are well known for having permeable borders, making it easy to smuggle wildlife through customs; for example, the U.S.-Mexico border and the United Kingdom have such reputations.<sup>117</sup> Low risk plus high profit has

107. Donovan Webster, *The Looting and Smuggling and Fencing and Hoarding of Impossibly Precious, Feathered and Scaly Wild Things*, N.Y. TIMES, Feb. 16, 1997, § 6 (Magazine), at 27.

108. Kunc, *supra* note 6.

109. Anderson, *supra* note 9, at 14.

110. REEVE, *supra* note 19, at 10. It is important to remember that CITES protects both plants and animals, although the illegal trade in animals is often more highly publicized than that of plants.

111. Mastny & French, *supra* note 76, at 12.

112. *Id.* The fatality rate for species smuggled in such a manner is around 90 percent. *Id.*

113. *Id.* For example, in 2002, the CITES Secretariat and various governments uncovered a smuggling ring that was responsible for the exportation of four young protected gorillas. The smuggling ring had falsely altered the permits so that it appeared they were exchanging animals between zoos. *CITES Seeks Stronger Action Against Organized Wildlife Criminals*, *supra* note 8.

114. Mastny & French, *supra* note 76, at 12. In one case, a Cote d'Ivoire man was arrested by the U.S. Fish and Wildlife Service for carrying illegal elephant ivory carvings, many of which were painted to resemble ordinary stones.

115. *Id.*

116. Anderson, *supra* note 9, at 14.

117. *Id.*

resulted in a proliferation of organized crime groups in the illicit wildlife trade. In Brazil alone, there are approximately 300 gangs involved in stealing endangered species from Brazilian rain forests.<sup>118</sup>

Unlike the narcotics trade, which requires various degrees of concealment, illegal wildlife trading can be performed without significant fear of police retaliation. CITES only regulates international trade of wildlife, not domestic trade; it cannot make the sale of protected wildlife within a country illegal.<sup>119</sup> With endangered wildlife and derivatives thereof openly on sale, tourists are often lured into purchasing endangered species and endangered species products.<sup>120</sup> It follows that organized crime groups would have equal opportunity openly to sell and to purchase protected wildlife. Sometimes, organized crime syndicates themselves run markets in endangered species and products, which can result in tourists directly supporting organized crime through the purchase of products from these syndicates.<sup>121</sup>

Although tourists often purchase their souvenirs innocently only later to be stopped at customs and kept from importing them into their home countries, organized crime groups have much greater expertise in transporting illegal goods across borders.<sup>122</sup> The development of technology has facilitated organized criminal operations; instead of collectors traveling to meet traffickers, traffickers can simply use the internet for their transactions.<sup>123</sup> Police usually lack the resources to monitor traffickers on the world wide web.<sup>124</sup> In some cases, law enforcement officials are not even aware of the existence of organized crime groups dealing in illegal wildlife smuggling; there remains a persistent view that animal traders are only small time criminals, rather than members of highly sophisticated criminal organizations.<sup>125</sup> The ease of criminal operations significantly adds to the attractiveness of the illegal wildlife trade for organized crime rings.

Finally, the illegal wildlife trade is highly attractive to organized criminal groups because of the ability to incorporate this type of trade with trade in other types of contraband. Organized criminal groups that deal in one type of contraband frequently seek to diversify their activities.<sup>126</sup> Illegal wildlife trading is most commonly connected with

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118. Veash, *supra* note 91, at A28.

119. Swengley, *supra* note 105, at 6.

120. *Id.* The most common items for tourists to buy are coral, ivory, animal skins and turtleshell products.

121. See Veash, *supra* note 91, at A28.

122. Swengley, *supra* note 105, at 6.

123. Veash, *supra* note 91, at A28.

124. *Id.*

125. Eveleigh, *supra* note 7.

126. Suri, *supra* note 6.

the narcotics trade through four specific channels.<sup>127</sup> First, live animals can be used physically to conceal drug shipments.<sup>128</sup> For example, criminals hide drug consignments among live, venomous snakes.<sup>129</sup> This functions to discourage customs officials from further examination.<sup>130</sup> Second, animals can be used as physical carriers for drugs much as human beings can function as drug mules.<sup>131</sup> Snakes have been stuffed with cocaine even though it often kills them, and live snails have been packed with heroin.<sup>132</sup> Third, organized criminals engaged in the illegal trade in wildlife often use pre-established narcotics smuggling routes to transmit species.<sup>133</sup> In Latin America, where drugs are frequently produced in areas where there is a great deal of wildlife, many drug cartels use existing distribution networks to trade both types of contraband.<sup>134</sup> Finally, wildlife products can be used as currency both to barter for narcotics and to launder drug money.<sup>135</sup> Because organized criminal rings can use the same resources for smuggling wildlife as they do for smuggling narcotics, the illegal wildlife trade is particularly attractive to them.

*B. Specific Dangers Resulting From Organized Criminal Participation in the Illegal Wildlife Trade*

The participation of organized criminal groups in the illegal wildlife trade, has brought problems to governments, and parties striving to enforce CITES that are different than the sort of problems that would be posed by solitary wildlife criminals. For instance, organized criminal groups will often use collective violence to conduct their activities.<sup>136</sup> Poachers in Africa have exchanged gunfire with authorities during the collection and slaughtering of elephants.<sup>137</sup> Gangs that illegally fish for sturgeon in the Caspian Sea have more powerful boats than the local police and have even summoned helicopter gun ships to defend them from the police while fishing.<sup>138</sup>

127. *Id.*

128. *Id.*

129. *Id.*

130. *See id.*

131. *See* Mastny & French, *supra* note 76, at 12.

132. *Id.*; *see also* Suri, *supra* note 6.

133. Mastny & French, *supra* note 76, at 12; *see* Suri, *supra* note 6.

134. Suri, *supra* note 6.

135. *Id.*

136. *CITES Seeks Stronger Action Against Organized Wildlife Criminals*, *supra* note 7. Willem Wijnstekers, the Secretary-General of CITES, stated that "all too often, CITES enforcement personnel are exposed to a considerable risk of personal injury and to threats and harassment when they carry out their duties." *Id.*

137. Jerome Monahan, *Cruel Harvest*, *TIMES EDUC. SUPPLEMENT* (London), June 21, 2002, at 18-19.

138. *Id.* at 15.

The increased use of violence in the illegal wildlife trade not only makes it more difficult for authorities to enforce environmental legislation relating to CITES, but it can also discourage these authorities from pursuing and prosecuting individuals involved in organized crime groups.

Organized criminal rings often have more resources available to them than do solitary criminals.<sup>139</sup> In many countries, the authorities responsible for the wildlife protection lack resources for enforcement and thus the officials responsible for enforcement are often underpaid.<sup>140</sup> Meanwhile, the profits that can be made trafficking in contraband animals can double the amount of the average annual salary in many countries.<sup>141</sup> Criminal organizations are well able to afford to pass some of their profit on to officials, most of whom are extremely susceptible to bribery.<sup>142</sup> A vicious cycle is created: enforcement authorities are being bribed to let illegal wildlife shipments cross borders, which results in continuation of profits for an organized criminal ring, which can continue to bribe officials to overlook illegal wildlife shipments.

Organized criminal operations are also problematic because they affect the functioning of societies and governments, as well as raising environmental problems. Criminal organizations can funnel extensive profits received from the illegal wildlife trade into other illegal trades, such as human trafficking and drug trafficking.<sup>143</sup> Organized criminal rings threaten legitimate businesses in countries such as Russia, where illegal fishing, backed by the Russian mafia, is furthering the downfall of legitimate fisheries by removing billions of dollars worth of fish from the Bering Sea.<sup>144</sup> By obstructing the operations of legitimate businesses, organized criminal rings impede the development of free markets in developing countries.<sup>145</sup> The bribery tactics used by organized criminal groups further the corruption of government, undermine legitimate state structure and threaten national stability.<sup>146</sup> Criminal funds are often associated with corruption in central government institutions, judiciaries and political parties, all of which are essential to the effective functioning of a legal system.<sup>147</sup> Such blatant corruption in government also deters investment, thereby threatening that state's economic future.<sup>148</sup> Because organized criminal rings are often connected with

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139. Suri, *supra* note 6.

140. Monahan, *supra* note 137, at 15.

141. *Id.*

142. *Id.*

143. Guymon, *supra* note 86, at 65.

144. Mastny & French, *supra* note 106, at 12.

145. Lee, *supra* note 84, at 5.

146. Guymon, *supra* note 86, at 62.

147. *See* Lee, *supra* note 84, at 6-7.

148. *Id.* at 10.

international terrorism, the more money that these rings are able to obtain from illicit trades, the more support they are able to provide for terrorist activities.<sup>149</sup>

Finally, smuggling animals into other countries also raises environmental concerns. Not only do the transportation methods of smuggling live animals usually result in high fatality rates for the specimens involved, but the introduction of unfamiliar species into ecosystems can result in disease and the destruction of native species.<sup>150</sup> Because the operation of organized criminal rings affects multiple environmental, economic, political and social concerns, the issue demands international attention.

#### IV. COMBATING TRANSNATIONAL ORGANIZED CRIME

Combating transnational organized crime in any area is not easy. No single method will effectively eliminate organized criminal participation; nor will any method solve every facet of the problem. Instead, a combination of national and international measures are necessary to address the problem of organized crime in the illegal wildlife trade. In order to achieve effective international cooperation, legislation needs to be implemented at the national level first. National legislation should concentrate on implementing CITES, designing criminal sanctions for wildlife crime and directing resources toward solving the problem. International measures should include ensuring the compatibility of criminal wildlife legislation among CITES member states, recognizing wildlife crime as a serious crime, and utilizing international mechanisms, such as the U.N. Convention against Transnational Organized Crime, to combat organized crime.

##### A. *The Need for National Legislation Specifically Relating to Wildlife Crime*

National legislation that specifically targets wildlife crime is important for several reasons. First, CITES does not mandate criminal sanctions or provide enforcement mechanisms.<sup>151</sup> Article VIII simply states that parties should take appropriate actions that "shall include measures to penalize trade in, or possession of, such specimens [whose trade violates CITES]."<sup>152</sup> The enactment of penalties for violation of CITES is a basic obligation under the treaty,

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149. See Guymon, *supra* note 86, at 62.

150. Anderson, *supra* note 9, at 14.

151. See generally CITES, *supra* note 17.

152. CITES, *supra* note 17, art. VIII, § 1(a).

but CITES does not specify what form those penalties should take.<sup>153</sup> The Secretariat's guidelines for implementation concentrate mainly on the confiscation of illegally traded specimens.<sup>154</sup> Regarding penal sanctions, the CITES Secretariat notes only that "terms of imprisonment are in any event necessary in respect of offenses relating to large numbers of commercially valuable specimens or to punish multiple offenses."<sup>155</sup> The lack of international standards for wildlife crime and penalties means that national legislation is primarily responsible for determining the nature, scope and consequences of wildlife crime. Without comprehensive national legislation specifically directed at wildlife crime, it becomes difficult to eliminate wildlife organized criminal rings. Finally, without wildlife criminal legislation enacted at the national level, it is nearly impossible to combat crime on an international level.

National legislation that targets wildlife crime needs to contain several elements to be effective. First, the legislation should reflect the fact that wildlife crime is a serious violation of the law. Second, the legislation needs clearly to define the culpability requirement in wildlife crime. Third, extradition clauses should be included so that it is possible to prosecute organized criminals operating across national borders. Finally, both the legislation and the national government should ensure that equal resources are directed toward wildlife crime as toward other types of illegal trading.

#### 1. Defining Wildlife Crime and Ensuring that the Punishment Fits the Crime

Legislation seeking to combat wildlife trafficking should reflect the same two central ideas that are paramount in combating transnational organized crime. First, legislation should send a clear message that wildlife crime is a serious crime in the view of the state. Second, the penalties for wildlife crime should reflect the gravity of the crime.

One of the basic provisions for implementation of CITES is the establishment of penalties for wildlife trade in violation of the treaty.<sup>156</sup> Since each party to CITES is responsible for implementing the provisions of the treaty, violations of CITES and of national legislation implementing CITES constitute wildlife crime.<sup>157</sup> Unfortunately, the majority of parties to CITES do not appear to view wildlife crime as a top priority, instead preferring to direct their

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153. *See id.*

154. DE KLEMM, *supra* note 64, at 66.

155. *Id.* at 103.

156. *See supra* Part II.B and accompanying notes.

157. REEVE, *supra* note 19, at 9.

resources toward other illegal activities.<sup>158</sup> Sometimes, national governments are not even aware of the extent of the problem.<sup>159</sup> Even when governments are aware of the scope of wildlife crime, and provide resources to prevent it, illegal wildlife trafficking rarely receives the same type of treatment as trade in other contraband. For example, in the United States, a federal judge convicted and sentenced an individual to 46 months in jail and a \$10,000 fine for smuggling animals worth more than \$250,000.<sup>160</sup> However, smuggling a similarly priced amount of cocaine would have resulted in 121 to 151 months prison time and potential fines of more than \$175,000.<sup>161</sup> For a first offense of animal smuggling in the United States, there is a strong possibility that a conviction will only result in a fine and not prison time, while exactly the opposite is true for drug smuggling.<sup>162</sup> Penalties in the United States mirror those found in other countries.<sup>163</sup>

Lenient or non-existent prosecution of wildlife crime results from the commonly held view that wildlife crime is victimless and, hence, less serious than other crimes.<sup>164</sup> However, evidence points to the opposite conclusion, particularly with the onslaught of transnational organized criminal participation in the illegal wildlife trade.<sup>165</sup> The participation of international organized criminal rings in the illegal wildlife trade results in multiple victims. For instance, individuals are often victims of crime rings dealing in illicit wildlife trading, either because they are exploited by the rings, as in the case of farmers and peasants in developing states, or victims of violence, like the CITES enforcement personnel.<sup>166</sup> Animals are often victims as the fatality rate of illegally-traded animals is extremely high.<sup>167</sup> Society as a whole can be a victim of organized criminal participation in the wildlife trade because the trade undermines governmental stability and causes environmental degradation.<sup>168</sup> These examples show that wildlife crime is not a victimless crime and should not be treated as such. Regarding wildlife crime as a light offense not only

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158. See *Wildlife Criminals Targeted*, BBC NEWS (U.K.), Apr. 22, 2002, available at <http://news.bbc.co.uk/1/hi/uk/1943062.stm> (last visited Feb. 7, 2003).

159. Eveleigh, *supra* note 7.

160. Jonathan P. Kazmar, *The International Illegal Plant and Wildlife Trade: Biological Genocide?*, 6 U.C. DAVIS J. INT'L L. & POL'Y 105, 108 (2000).

161. *Id.*

162. *Id.*

163. See Eveleigh, *supra* note 7 (describing two different scenarios: approaching customs carrying parrots and then carrying cocaine: "In Brazil, one gets you a slap on the wrist and the other lands you a long stretch in a flaky, third-world prison cell.")

164. *Wildlife Criminals Targeted*, *supra* note 158.

165. See *CITES Seeks Stronger Action Against Organized Wildlife Criminals*, *supra* note 8.

166. See *supra* Part III.B and accompanying notes.

167. Anderson, *supra* note 9, at 14.

168. See *id.*

greatly reduces the effectiveness of CITES, but also perpetuates the notion that wildlife crime is victimless, when the opposite is true.

National legislation must aim to reflect the seriousness of wildlife crime by providing penal sanctions that match the gravity and the profitability of wildlife crime. One method that would accomplish this goal is to model wildlife criminal legislation on existing narcotics legislation. Penal sanctions for wildlife criminals are not comparable in terms of severity with drug offenders.<sup>169</sup> The social stigma attached to being an animal smuggler is not the same as that attached to being a trafficker in drugs or humans.<sup>170</sup> For instance, in the U.S. smuggling conviction previously discussed, the \$10,000 fine imposed was only four percent of the total value of the smuggled items, \$250,000.<sup>171</sup> In contrast, the penalty for smuggling drugs of a similar value, \$175,000, is a fine of seventy percent of the total value of the smuggled contraband.

If legislation directed at wildlife crime is to reflect the gravity of wildlife crime, the penalties imposed for wildlife crime should be approximately equal to penalties imposed for other serious crimes. Seriousness would be shown if the percentage of the fine in relation to the total value of the contraband were approximately the same for each crime. Individual member states could set percentages based on a number of variables, including the type of wildlife smuggled, the value of the animal, and what the amount of the fine would be if the trade were in drugs or weapons. Alternatively, member states could also set fines based on a staircase of flat values; for example, if the value of the smuggled wildlife was \$75,000, the government could set the minimum financial penalty at a certain amount and increase that penalty as the value of the smuggled wildlife increased.<sup>172</sup> Terms of imprisonment could be established on similar scales.

By increasing the severity of the financial penalties, national legislation would better reflect the gravity of wildlife crime.<sup>173</sup> This would increase the risk of illegal wildlife trading, which could provide a stronger deterrent to international criminal organizations. The goal of setting monetary criminal sanctions should always be to heighten the penalties of endangered species trafficking to a level which harms the economic viability of the organized criminal rings. Increasing the severity of penalties for wildlife trafficking to the level of those imposed for other types of illegal trafficking would send the message

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169. *Id.*

170. Kazmar, *supra* note 160, at 108.

171. See discussion *supra* Part IV.A and accompanying notes.

172. Kazmar, *supra* note 160, at 123.

173. *Id.* at 108 (arguing that the United States acknowledges the serious criminal nature of drugs and weapons by the severe punishments it imposes for violations).

that governments view wildlife trafficking as a serious problem that needs to be addressed.

Even if CITES member states do not wish to place wildlife crime on the same level as narcotics crime, at the very least, criminal sanctions for wildlife crime need to be increased and punishments enforced. The Lacey Act, which implements CITES in the United States, provides for fines of \$500,000 per organization and up to five years imprisonment for each violation.<sup>174</sup> In contrast, wildlife crime in India that violates CITES carries a maximum penalty of only \$5000 and two years imprisonment, and the Indian Ministry of Justice rarely imposes these maximum penalties.<sup>175</sup> Likewise, Colombia's mandated sentence for animal trafficking is six months to three years, but no Colombian has ever served this sentence.<sup>176</sup> Because Brazilian prisons are already overcrowded, Brazilian judges generally will not imprison wildlife criminals because the judges do not consider wildlife trafficking a serious crime.<sup>177</sup> The lack of strict, enforceable national criminal sanctions against wildlife criminals defeats the goal of elimination of international organized crime in the illegal wildlife trade because it sends the message that states will not punish those involved in this illegal trade.

Increasing the severity and enforceability of wildlife criminal laws is not intended to be an instant solution to wildlife crime. No such solution exists. The problem of having no room for wildlife criminals in overcrowded Brazilian prisons, for example, will not be solved simply by changing the laws. Enacting and amending national wildlife criminal legislation is rather an initial step toward combating organized crime in the illegal wildlife trade. Longer prison terms and higher financial penalties would send a message to law enforcement officials and criminals alike that the government views wildlife crime as a grave offense. Courts and legal officials may then be more willing to hand down maximum sentences or sentences that are closer to the maximum penalties. If members of organized criminal groups understand that there will be a greater chance of conviction under wildlife crime laws, and that they could pay maximum penalties and serve longer sentences in prison, they may be deterred from participation in illegal wildlife trade. Enacting the necessary legislation would be a step in the right direction, and the legislation would be in place when the opportunity and resources arose to enforce it.<sup>178</sup>

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174. 16 U.S.C. § 3372(a)(1) (1994).

175. Kazmar, *supra* note 160, at 123.

176. Ambrus, *supra* note 93, at 3.

177. Veash, *supra* note 91, at A28.

178. *See id.*

## 2. Defining Culpability in Wildlife Trade

In order successfully to prosecute individuals and organizations for wildlife crime, culpability for the crime must be clearly defined in the law. If the culpability requirement for wildlife crime is ambiguous, many wildlife criminals will be able to escape conviction by arguing that they failed to meet the culpability requirement. Ideally, the culpability requirement for wildlife laws would be strict liability, in which the mental state of the defendant is irrelevant.<sup>179</sup> In some cases, strict liability for wildlife crime exists. For example, many U.S. wildlife protection laws contain strict liability clauses.<sup>180</sup>

The benefits of using strict liability, or a requirement closely approaching it, are numerous. When the mental state of the defendant is irrelevant, there is more flexibility in prosecuting wildlife smugglers because the government does not have the heavy burden of proving that the defendant had a certain state of mind.<sup>181</sup> This would prevent accused organized criminal groups from arguing that the person who was caught smuggling illegal wildlife was not the same person who sold the wildlife, who stole the wildlife, and so on.<sup>182</sup> Strict liability, or a culpability requirement similar to it, would allow governments to prosecute all members of an organized criminal group equally.<sup>183</sup> Under existing legislation in many CITES member states, the degree of the defendant's knowledge regarding the illegally obtained wildlife is not considered, making it difficult to distinguish a felony-like crime from a misdemeanor-like crime.<sup>184</sup> This confusion can result in reduced convictions for individual members of organized criminal groups because they may be able successfully to argue that their violation was a lesser, misdemeanor-like crime. A strict liability requirement, or a culpability requirement approaching strict liability, would eliminate the confusion between misdemeanor crimes and felony crimes. It would also put all members of an organized wildlife smuggling ring in danger of conviction.

## 3. International Cooperation and Extradition

Because international smuggling rings are based in many different countries, international cooperation among governments is

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179. See Kazmar, *supra* note 160, at 121. Strict liability for criminal offenses tends to be a highly contested issue. Even if states do not agree that strict liability is necessary for wildlife crimes, they still must clearly define some form of culpability.

180. *Id.* at 120.

181. *Id.*

182. *Id.* at 121.

183. *Id.*

184. *Id.*

essential to ensure the effectiveness of CITES.<sup>185</sup> CITES does not impose any criminal penalties itself, so parties to the treaty are often dependent upon the legislation of other member states for prosecution of treaty violations.<sup>186</sup> Therefore, member states that are aware of organized criminal operations within their borders should work to ensure that their criminal wildlife legislation is compatible with that of other member states where organized criminal operations are prevalent.

Extradition is one of the most critical areas in which compatible legislation is necessary. Extradition is a complicated process for both the requesting and the requested states, but it may be one of the better ways to control illegal wildlife trade if prosecution under domestic legislation of the requesting state is severe.<sup>187</sup> However, an essential requirement for extradition is double criminality, meaning that extradition is available only when the accused is alleged to have committed an act that is an offense in both the requesting country and the country where the accused is residing.<sup>188</sup> Even if the requesting and requested states are both parties to CITES, each state must provide criminal penalties for violations of the Convention; establishing wildlife crime as an offense does not occur simply because both parties are signatories.<sup>189</sup> Therefore, if one CITES member state has provided criminal sanctions for violations of CITES, but the member state where an organized criminal ring is residing has not, it becomes nearly impossible to prosecute members of that organized criminal ring. This not only defeats the purpose of combating organized crime in the illegal wildlife trade, but encourages the continuous spread of organized crime because groups will keep moving to and operating from countries that do not have adequate wildlife criminal legislation or extradition policies.

There are several ways in which CITES member states can ensure that extradition is a possibility for the prosecution of individuals belonging to organized crime rings. On a regional level, member states can conduct research to discover which organized criminal rings are operating where, which of their borders are considered permeable, and which species are most commonly smuggled across their borders. For example, the United States and Mexico share a border where wildlife smuggling is extensive.<sup>190</sup> The

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185. See Ferrer, *supra* note 23.

186. See generally CITES, *supra* note 18.

187. Terrence L. Lavy, *Extradition in the Protection of Endangered Species*, 4 CRIM. L.F. 443, 451 (1993).

188. *Id.*

189. *Id.* at 452.

190. See Bruce Zagaris & Jessica Resnick, *The Mexico-U.S. Mutual Legal Assistance in Criminal Matters Treaty: Another Step Toward the Harmonization of International Law Enforcement*, 14 ARIZ. J. INT'L & COMP. L. 1, 11 (1997).

countries in the Caspian region share a common concern over the fate of the sturgeon fish used for caviar.<sup>191</sup> Cooperation between the regions that share endangered species or permeable borders is essential for the prosecution of highly sophisticated criminal rings, many of which form strategic alliances with one another to ensure continuity and smoothness of operations.<sup>192</sup>

Another possibility for member states is to ensure that extradition treaties are flexible enough to respond to evolving patterns of criminal activity.<sup>193</sup> The Model Treaty on Extradition, prepared by the United Nations, provides for extradition for any offense for which the maximum penalty under the legislation of both states is imprisonment for a specified period.<sup>194</sup> The Model Treaty suggests a period of imprisonment for at least one year.<sup>195</sup> Many extradition treaties, instead of adopting this type of general approach, "list" crimes where extradition is a possibility.<sup>196</sup> There exists a high chance that wildlife crime did not make such lists, especially given that the rise of organized crime in the illegal wildlife trade is a fairly recent event.<sup>197</sup> If individuals of organized criminal rings cannot be extradited because wildlife crime is not on a specified list, it becomes extremely arduous to combat organized crime on an international level. If CITES member states reform and enact legislation to provide for incarceration periods of at least one year, and they also model extradition treaties on the United Nations example, it becomes possible to extradite organized wildlife criminals and prosecute them under the strictest laws available.<sup>198</sup> The combination of comprehensive, flexible extradition treaties and viable, strong criminal legislation for wildlife crimes is an effective vehicle for combating transnational organized crime in the illegal wildlife trade.

CITES member states can also cooperate with each other by enacting legislation that allows a violation of foreign laws to trigger a domestic criminal charge.<sup>199</sup> An example of this can be seen in the Lacey Act.<sup>200</sup> The Lacey Act imposes criminal or civil sanctions on any individual who imports or exports wildlife in violation of a state,

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191. See Suri, *supra* note 6.

192. See Lee, *supra* note 84, at 15.

193. Lavy, *supra* note 187, at 456.

194. Model Treaty on Extradition, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990, art. 2.

195. *Id.*

196. See Sharon Williams, *Human Rights Safeguards and International Cooperation in Extradition: Striking the Balance*, 3 CRIM. L.F. 191, 209 (1992).

197. See CITES Seeks Stronger Action Against Organized Wildlife Criminals, *supra* note 8.

198. Ideally, countries would provide for an incarceration period of four years in order to meet other U.N. Conventions. See discussion *infra* Part III.B.1 and accompanying notes.

199. Anderson, *supra* note 9, at 14.

200. *Id.*

federal, tribal or foreign wildlife-related regulation.<sup>201</sup> Individuals in the United States have been charged for violating a foreign law.<sup>202</sup> In *United States v. Cook*, for example, the defendant was convicted of selling rare tarantulas in violation of Mexican law.<sup>203</sup> If the option to prosecute wildlife criminals who are currently residing in a country other than where they committed the wildlife crime were widely available under foreign law, it would become easier successfully to convict these individuals.

#### 4. Providing Resources for Enforcement

One problem with combating wildlife crime is the lack of resources, financial and otherwise, directed at the issue. Although many countries, particularly developing countries, lack substantial resources for preventing wildlife crime, some are still able to funnel resources towards combating the narcotics trade.<sup>204</sup> If similar resources could be directed toward wildlife crime, there would be substantial improvement in the ability to arrest, indict, and convict wildlife criminals.

Several countries have developed new tools that concentrate on improving CITES enforcement. For example, the United Kingdom, a major port of entry for contraband endangered wildlife, has created a National Wildlife Crime Unit.<sup>205</sup> These types of units also exist in India, Namibia, the Russian Federation, South Africa, Taiwan, and the United States, where they have generally had great success.<sup>206</sup> In South Korea, customs authorities presently use a wildlife sniffer dog unit in the Seoul airport.<sup>207</sup> The dogs are trained to detect wildlife byproducts that are typically smuggled throughout Asia, such as bone, musk and bear gall bladder and bladder powder.<sup>208</sup> The CITES Secretariat has assisted the World Wildlife Federation in producing identification manuals on traditional Asian medicines for the use of law enforcement officials and educational campaigns to raise awareness of the problem of illegal wildlife trade have taken place all over the world.<sup>209</sup> The educational campaigns aim to reduce the demand for wildlife trade, which reduces the ability for transnational

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201. *Id.*

202. *Id.*

203. *United States v. Cook*, No. 97-50205, 1998 U.S. App. LEXIS 31556, at \*1 (9th Cir. 1998).

204. *See* Eveleigh, *supra* note 7.

205. Traffic, *Partners in Crime Prevention: Developments in the Enforcement of CITES*, available at <http://www.traffic.org/cop11/briefingroom/partnersincrimeprevention.html> (last visited Feb. 7, 2003).

206. REEVE, *supra* note 19, at 221.

207. Traffic, *supra* note 205.

208. *Id.*

209. *Id.*

organized crime rings to make a profit.<sup>210</sup> All of these efforts are similar to those made to combat the drug trade, and should meet with some measure of success. Directing financial resources at training programs and increased salaries for the officials that are physically responsible for detaining criminals at national borders will also serve to combat organized wildlife crime. Clearly, not all CITES member states have the resources extensively to improve efforts to combat wildlife crime.<sup>211</sup> Those who are able should take advantage of the tools that have already proved successful in combating the drug trade.

### B. *Utilizing International Mechanisms to Combat Organized Crime*

The problem of transnational organized crime in the illegal wildlife trade is one that calls for international solutions. There are two ways of dealing with an international issue of this type: (1) by utilizing existing international mechanisms to assist in solving the problem; or, (2) by enacting new mechanisms to combat it. The likely success of each of these methods is considered in the following sections.

#### 1. The United Nations Convention against Transnational Organized Crime

In recent years, the international community has recognized the increasing problem of transnational organized crime.<sup>212</sup> The United Nations has attempted to strengthen international cooperation against transnational organized crime for almost three decades through various conventions and agreements.<sup>213</sup> In 2000, the efforts of the United Nations culminated in 120 of its member countries drafting the U.N. Convention against Transnational Organized

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210. See Ambrus, *supra* note 93, at 3. Many scholars and other parties advocate the use of demand reduction techniques as effective tools against criminal trafficking of contraband. While it is true that demand reduction programs have met with some success, the success would be limited here. It is doubtful that crime lords who wish to keep exotic animals as pets, or who use animals as drug mules, would change their activities based on education through demand reduction programs. See, e.g., Lee, *supra* note 84, at 33 (noting that demand reduction programs, while cost-effective, are not necessarily effective against hard-core drug users). Where demand reduction programs would be most effective is the education of tourists who are buying exotic animal derivatives as souvenirs and persons who consume animal derivatives through traditional medicines.

211. REEVE, *supra* note 19, at 250-51.

212. Dimitri Vlassis, *The UN Convention Against Transnational Organized Crime*, in TRANSNATIONAL ORGANIZED CRIME & INTERNATIONAL SECURITY 83 (Mats Berdan & Monica Serrano eds., 2002).

213. *Id.*

Crime.<sup>214</sup> By this time, the need for a multilateral convention on transnational organized crime was so great that U.N. member countries drafted the U.N. Convention in only one and a half years.<sup>215</sup>

Noting that international organized criminal groups were forming faster than ever, and that technology was providing even wider avenues for these groups to flourish, the U.N. Convention serves as a guiding document for countries to combat international criminal organizations.<sup>216</sup> The U.N. Convention lists two main goals: (1) eliminating differences between national legal systems that have prevented mutual assistance in the past; and (2) setting standards of national legislation that will effectively combat organized crime.<sup>217</sup> Four offenses are established by the Convention: participation in an organized criminal group, money laundering, corruption and obstruction of justice.<sup>218</sup> The U.N. Convention is directed at, but not limited to, human trafficking, drug trafficking, firearms and the illegal transportation of migrants.<sup>219</sup>

The U.N. Convention could serve as an effective international mechanism for combating transnational organized crime in the illegal wildlife trade, provided that CITES member states either amend or enact legislation that complied with the Convention. Most current national legislation aimed at wildlife crime, if it exists at all, does not meet the terms of the U.N. Convention. In order to fall within the scope of the Convention, crimes must be designated as "serious," as defined in the Convention.<sup>220</sup> The Convention applies to "serious" crimes when the "offense is transnational in nature and involves an organized criminal group."<sup>221</sup> A "serious" crime is one "punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."<sup>222</sup> The majority of CITES member states do not have sanctions that provide for a maximum deprivation of liberty for at least four years for wildlife crime.<sup>223</sup> The minimal fines traditionally imposed most likely will not constitute a "more serious penalty" than four years imprisonment. Because most current

214. UNITED NATIONS: OFFICE ON DRUGS AND CRIME, *After Palermo: An Overview of What the Convention and Protocols Hope to Accomplish*, available at <http://www.undcop.org/adhoc/palermo/sum1.html> (last visited Feb. 21, 2003).

215. See United Nations: Office on Drugs and Crime, ORGANIZED CRIME, available at [http://www.undcp.org/odccp/organized\\_crime.html](http://www.undcp.org/odccp/organized_crime.html) (last visited Feb. 21, 2003).

216. *Id.*

217. UNITED NATIONS: OFFICE ON DRUGS AND CRIME, *supra* note 214.

218. Vlassis, *supra* note 212, at 90.

219. U.N. Convention against Transnational Organized Crime, at preamble, U.N. GAOR, 55th Sess., Agenda Item 105, U.N. Doc. A/Res/55/25 (2001) [hereinafter U.N. Convention].

220. *Id.* art. 3.

221. Vlassis, *supra* note 212, at 93.

222. U.N. Convention, *supra* note 219, art. 2.

223. See *supra* Parts IV.A -IV.A.1 and accompanying notes.

national legislation would not meet the definitional requirement of a "serious crime" under the U.N. Convention, the Convention cannot yet encompass wildlife crime.<sup>224</sup>

Enacting new wildlife legislation or amending current wildlife legislation to define such crimes in accordance with the U.N. Convention definition of a "serious crime" would be highly beneficial in combating transnational organized wildlife crime. Signatories to the U.N. Convention commit themselves to numerous measures, including criminalizing offenses committed by organized crime groups, increasing the severity of efforts directed at money-laundering and the proceeds of crime, quickening and widening the reaches of extradition, protecting witnesses testifying against criminal groups, increasing cooperation in searching for and prosecuting suspects, increasing prevention of organized crime at the national and international levels, and developing a series of protocols containing measures to combat specific acts of transnational organized crime.<sup>225</sup> These are the same types of measures that are needed to combat transnational organized wildlife crime.

The U.N. Convention also provides extradition guidelines and expects states to increase financial and material assistance to developing nations for the successful implementation of the Convention; both of these areas are also critical to CITES enforcement.<sup>226</sup> Wildlife criminal legislation that falls under the scope of the U.N. Convention would help ensure that wildlife crime is recognized in the global community as serious crime. It would also ensure that governments continue to commit themselves to the prevention of transnational organized crime in the illegal wildlife trade. Finally, bringing wildlife crime under the U.N. Convention would transfer more resources to the enforcement of CITES. If governments commit themselves to providing resources to prevent organized criminal activity that falls under the auspices of the Convention, then governments need to provide those same resources to preventing illegal wildlife trade. By linking the illegal wildlife trade to the U.N. Convention against Transnational Organized Crime, CITES member states would have a powerful international weapon for combating transnational organized wildlife crime.

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224. Organized criminals can be prosecuted under the U.N. Convention because it designates participation in an organized criminal group as an offense. However, this still does not effectively address the problem of wildlife crime, since wildlife crime still would not be viewed as "serious" under the Convention. Without wildlife crime falling under the Convention, it is doubtful that organized criminals who only participated in the illegal wildlife trade would be prosecuted under it.

225. *Id.*

226. Vlassis, *supra* note 212, at 91-92.

## 2. Other Possible International Enforcement Mechanisms

CITES has suffered much criticism for its lack of an international enforcement mechanism.<sup>227</sup> Proposals for improving international enforcement have included amending the treaty and establishing international bodies to prosecute wildlife criminals.<sup>228</sup> Although amending the treaty to include enforcement mechanisms or forming an international court for wildlife crime appears ideal for strengthening CITES, it is doubtful that these attempts would be successful in the current international climate.

One common suggestion is to amend the treaty to provide substantial financial penalties for violations.<sup>229</sup> The penalties would supposedly encourage member states to enact and enforce the necessary legislation.<sup>230</sup> Significant financial penalties would probably not have the desired effect. The majority of the countries that have not enacted specific legislation to counteract violations of the treaty or that are not able to enforce existing legislation are developing countries with limited resources.<sup>231</sup> These countries would not be able to pay any substantial penalty to an international organization. The existence of such penalties may also discourage member states from attempting to track wildlife crime, for fear of violations being discovered and fined. Penalties may also discourage countries that are not yet parties to CITES from becoming signatories to the treaty. All of the consequences of financial penalties run directly contrary to the goal of CITES, which is international cooperation in wildlife protection and the prevention of extinction of species.<sup>232</sup> Furthermore, imposing substantial penalties upon member states in violation of the treaty would require additional monitoring by the CITES Secretariat or another international organization. Because CITES is already an underfunded treaty, it is improbable that the Secretariat would be able to undertake the costly efforts of monitoring each individual member state for violations in addition to the proscribed duties of assisting countries in implementing the treaty as it now stands.<sup>233</sup>

Another suggestion is to create an international tribunal with the authority to enforce treaty obligations.<sup>234</sup> As with all international agreements, there would ideally be an international

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227. See generally Kosloff & Trexler, *supra* note 16.

228. Lavy, *supra* note 187, at 456.

229. *Id.*

230. See *id.*

231. See generally Mastny & French, *supra* note 76.

232. What is CITES?, *supra* note 31.

233. HEMLEY, *supra* note 13, at 6.

234. Lavy, *supra* note 187, at 456.

body that could enforce obligations against individual nation states. However, the current problems with international tribunals already in existence would endure with any sort of international tribunal designed to pass and enforce judgments on wildlife crime. For example, international criminal tribunals, such as those enacted for Rwanda and the former Yugoslavia, are plagued with such problems as lack of funding, disputes over jurisdiction, lack of ability to find witnesses, and disputes over definitions of certain crimes.<sup>235</sup> Individual member nations may also resist the idea of such a tribunal, as demonstrated by the current United States resistance to the International Criminal Court.<sup>236</sup> Although an international tribunal established specifically for the purposes of combating wildlife crime might be workable at some point in the future, it is not currently a viable option.

## V. CONCLUSION

When CITES was first signed in Washington, D.C. on March 3, 1973, the parties were primarily concerned with the conservation of a few well-known species, such as crocodiles, spotted cats and chimpanzees.<sup>237</sup> At the time, it was impossible for the signatories to the treaty to foresee the expansion of CITES to cover hundreds of species of plant and animal life or the rapid growth of the black market for illegally obtained wildlife. As a result, the treaty itself is ill-equipped to deal with the complicated problem of sophisticated transnational organized criminal participation in the illegal wildlife trade, and the responsibility of enacting measures to combat this problem lies with the individual member states. Unfortunately, many member states either have not enacted the necessary wildlife criminal legislation or have not been enforcing existing criminal legislation. The lack of environmental enforcement against violators of wildlife legislation makes the illegal wildlife trade highly attractive to transnational organized criminal groups. These groups are able to smuggle exotic animals, plants, and their derivatives in and out of member states with comparable ease, while facing little risk of prosecution and conviction. The insatiable demand for exotic wildlife

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235. See, e.g., MICHAEL P. SCHARF, *BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG* 63-66, 69-73 (1997) (discussing the problems inherent in the International Criminal Tribunal for the former Yugoslavia); VIRGINIA MORRIS & MICHAEL P. SCHARF, *THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA* 59-72 (1998) (noting the problems with the International Criminal Tribunal for Rwanda).

236. Keith B. Richburg, *International War Crimes Court is Inaugurated, But Without U.S.*, WASH. POST, Mar. 12, 2003, at A18 (discussing reasons for U.S. opposition to the International Criminal Court).

237. See generally CITES, *supra* note 18.

results in profits rivaling those of the narcotics trade, which only encourages the continued involvement of organized criminal groups.

The participation of organized criminals in the illegal wildlife trade is of concern for both social and environmental reasons. Organized crime contributes to corruption of government and the undermining of state stability and control. It also furthers environmental degradation and greatly increases the chances of species extinction. Both humans and animals have been victims of violence from organized wildlife criminals. All of these consequences illustrate the importance of combating organized crime on the national and international levels. On the national level, CITES member states must enact legislation that is not only sufficient to implement the basic provisions of the treaty, but also provides for severe criminal sanctions against wildlife criminals. By enacting and enforcing severe criminal sanctions against wildlife criminals, nations would acknowledge that wildlife crime is a serious crime. The sanctions should include financial and penal penalties that reflect the scope, danger, and profitability of wildlife crime, in the same way that these factors are reflected in legislation directed at narcotics criminals. Member states should seriously consider a strict liability requirement for wildlife laws, which would allow for more flexibility in prosecuting organized wildlife criminals. If possible, member states should also direct additional resources toward tools designed to combat transnational organized crime, such as national wildlife crime units, educational campaigns, and the training of enforcement personnel. Finally, for successful prosecution of international wildlife criminals, CITES member states should take steps to ensure compatibility of national legislation with that of similar or surrounding states.

Several proposals have been made for enforcement mechanisms on the international level, including amending the treaty to encompass financial penalties for violators and constructing an international wildlife criminal tribunal. Due to the current international climate, these methods would most likely not be successful. Instead, CITES member nations should concentrate on utilizing existing international mechanisms. The U.N. Convention against Transnational Organized Crime is currently the most effective vehicle for combating transnational organized crime in the illegal wildlife trade. Under the Convention, governments commit themselves to directing resources towards preventing serious criminal activity traditionally engaged in by international organized criminal rings. However, to fall within the scope of the Convention, wildlife crime needs to be considered a "serious" crime, as defined by the Convention. If CITES member states amended their legislation to provide for more severe penalties for violators of the treaty, wildlife crime could be linked to the Convention. By characterizing wildlife crime as a serious crime, CITES member states that are also

signatories to the U.N. Convention would commit themselves to providing additional resources for combating transnational organized crime in the illegal wildlife trade.

Eventually, transnational organized criminal participation in the illegal wildlife trade will disappear. The question is what will put the crime rings out of business: the efforts of the global community to prevent illegal wildlife trafficking; or the extinction of protected plant and animal species, leaving the organized criminal rings with nothing left to sell.

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