

PC Pets for a Price: Combating Online and Traditional Wildlife Crime Through International Harmonization and Authoritative Policies

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PC PETS FOR A PRICE: COMBATING ONLINE AND TRADITIONAL WILDLIFE CRIME THROUGH INTERNATIONAL HARMONIZATION AND AUTHORITATIVE POLICIES

JESSICA B. IZZO*

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INTRODUCTION

The illegal animal trade has reached epic proportions in recent years. Illegal animal trafficking is the third largest illegal business in the world, closely following the drug and weapon trade.¹ It is a twenty billion dollar international business that has practically doubled over the last fifteen years.² There is a steep market for these animals and animal parts,

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¹ Dener Giovanni, *Taking Animal Trafficking Out of the Shadows*, INNOVATION: TECH. GLOBALIZATION & GOVERNANCE, Spring 2006, at 25, 25.

² *Id.*

and the species traded are often already endangered.³ The conditions during transport are deplorable, with three out of four animals dying in transit.⁴ The magnitude and rapid growth of the illegal animal trafficking business makes it clear that something must be done to protect these resources, biodiversity, and wildlife for future generations before it is too late.⁵

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"),⁶ signed in 1973, was the first international cooperative effort to regulate the illicit animal trade in order "to safeguard certain species from over-exploitation."⁷ At the time, many conservationists called CITES the "Magna Charta for Wildlife," which was both a "conservation *and* trade instrument" that protected species from desecration.⁸ Since CITES' inception, many have criticized the agreement and questioned its effectiveness.⁹ This is mainly because of CITES' lack of adequate enforcement and authority.¹⁰

In 2005, the International Fund for Animal Welfare ("IFAW") released a study revealing the extent of the illicit business on the internet.¹¹

³ See TRAFFIC—Wildlife Trade, <http://www.traffic.org/trade/> (last visited Mar. 16, 2010).

⁴ Francesca Colombo, *Animal Trafficking—Cruel Billion-Dollar Business*, TERRAAMERICA, Sept. 6, 2003, <http://www.tierramerica.net/english/2003/0901/iarticulo.shtml>.

⁵ See What is CITES?, <http://www.cites.org/eng/disc/what.shtml> (last visited Mar. 16, 2010); see also TRAFFIC—Wildlife Trade, *supra* note 3 (discussing the problem of over-exploitation). Overexploitation can be destructive, even causing the extinction of a species, and must be avoided. World Wildlife Fund, Problems: Unsustainable and Illegal Wildlife Trade, http://www.panda.org/about_our_earth/species/about_species/problems/illegal_trade/ (last visited Mar. 16, 2010). The illegal wildlife trade not only affects an animal's livelihood, however, but our own as well. *Id.* Many communities depend on local wildlife for fuel, food, or medicines. *Id.* The entire world has a stake in curtailing the illegal wildlife trade, both morally and practically.

⁶ 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, available at <http://www.cites.org/eng/disc/text.shtml#texttop> [hereinafter CITES].

⁷ What is CITES?, *supra* note 5.

⁸ Peter H. Sand, *Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment*, 8 EUR. J. INT'L L. 29, 34 (1997).

⁹ See Laura H. Kosloff & Mark Trexler, *The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?*, 17 ENVTL. L. REP. 10222 (1987); Jonathan P. Kazmar, Note, *The International Illegal Plant and Wildlife Trade: Biological Genocide?*, 6 U.C. DAVIS J. INT'L L. & POL'Y 105, 112–13 (2000); Mara E. Zimmerman, Note, *The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade*, 36 VAND. J. TRANSNAT'L L. 1657, 1666 (2003).

¹⁰ Zimmerman, *supra* note 9, at 1660; Kazmar, *supra* note 9, at 112–13; Kosloff & Trexler, *supra* note 9, at 10228.

¹¹ See Int'l Fund for Animal, CAUGHT IN THE WEB: WILDLIFE TRADE ON THE INTERNET (2005), available at <http://www.politics.co.uk/Microsites2/364355/graphics/wildlifetrade>

Some of these transactions are made privately through websites, but IFAW located many traders who advertise products as well.¹² The Council of Europe's Convention on Cybercrime¹³ is an international agreement that attempts to harmonize cybercrime laws, because many cybercrimes are transnational.¹⁴ CITES should be improved to include the evolution of animal trafficking as a cybercrime by including some of the principles set forth in the Convention on Cybercrime.

TRAFFIC, a wildlife trade monitoring network, warned the EU that its wildlife was particularly vulnerable because of the different enforcement plans of the twenty-seven member states.¹⁵ In 2007, the EU launched an Action Plan¹⁶ "to improve wildlife trade enforcement within the EU."¹⁷ The

.pdf [hereinafter CAUGHT IN THE WEB]. *Caught in the Web*, however, was not IFAW's first study on online wildlife trade. See Int'l Fund for Animal, ELEPHANTS ON HIGH STREET (2004), available at http://www.ifaw.org/Publications/Program_Publications/Elephants/asset_upload_file236_12046.pdf. This study focused mainly on the sale of ivory in the United Kingdom, both on the internet and in local markets. *Id.* at executive summary. Although the 2004 study did discuss the online trade, it did not become the illuminating news splash on the extent of the wildlife trade on the internet that *Caught in the Web* would be one year later. Compare Helen Johnstone, *Antiques Markets Across Britain 'Awash' with Illegal Ivory Despite International Trade Ban*, INDEP., Mar. 12, 2004, available at <http://www.independent.co.uk/news/uk/crime/antiques-markets-across-britain-awash-with-illegal-ivory-despite-international-trade-ban-566038.html> (focusing solely on the implication of online ivory sales as seen in *Elephants on High Street*), with *Endangered Wildlife Trafficked via eBay, Other Online Markets International Fund for Animal Welfare*, MONGABAY.COM, Aug. 16, 2005, <http://news.mongabay.com/2005/0816-ifaw.html> (noting the evolution of the cyber black market on several species and the problems therein, as reported in *Caught in the Web*) [hereinafter *Endangered Wildlife Trafficked*], and *Cyber Black Market Dims Outlook for Endangered Species Survival*, ENVT'L NEWS SERVICE, Aug. 16, 2005 (on file with author) (giving an in-depth summary of the report and the prominence of online trade as seen in *Caught in the Web*).

¹² CAUGHT IN THE WEB, *supra* note 11, at 3.

¹³ The Council of Europe Convention on Cybercrime, Nov. 23, 2001, ETS No. 185, available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm> [hereinafter Convention on Cybercrime].

¹⁴ See News Release, Bus. Software Alliance, BSA Applauds US Senate Passage of Cybercrime Convention (Aug. 4, 2006), <http://w3.bsa.org/eupolicy/press/newsreleases/Cybercrime-Convention.cfm>; see also Ted Samson, *Critics Clash Over Cybercrime Convention*, INFO. TECH., Aug. 6, 2006, <http://www.infoworld.com/t/security/critics-clash-over-cybercrime-convention-084>.

¹⁵ Caroline Davies, *EU Criticised over Animal Imports*, TELEGRAPH, June 1, 2007, available at <http://www.telegraph.co.uk/earth/main.jhtml?xml=/earth/2007/06/01/eatrade01.xml>.

¹⁶ Commission Recommendation: identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, 13 June 2007, 2007 O.J. (L159) 45, available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_159/l_15920070620en00450047.pdf [hereinafter EU Action Plan].

¹⁷ TRAFFIC, European Union (EU) Wildlife Trade Initiative, <http://www.traffic.org/>

Action Plan represents an important step towards a universal transnational enforcement plan.

Part I of this note explores CITES and other international initiatives to stop the illegal wildlife trade and discusses the problems with these programs. Part II reveals the emergence of the trade as a cybercrime and argues that this materialization necessitates a more rigorous enforcement plan. Part III examines the new EU Action Plan as an example of a more united and robust program. Part IV suggests improvements to CITES that are chiefly modeled after the EU Action Plan's principles and tactics. Finally, this note concludes by arguing the only successful way to combat the international illicit animal trade is by building a joint international effort.

I. CITES AND THE PROBLEMS WITH INTERNATIONAL ENFORCEMENT

A. *Organization and History of CITES*

Although some may doubt CITES' effectiveness, it is clear that its international acceptance has grown. When CITES was finally implemented on March 3, 1973, eighty countries had signed on.¹⁸ Currently, 175 countries around the world are Parties to CITES, including the United States, Brazil, China, United Kingdom, and France.¹⁹

The organization of CITES is relatively straightforward. The member parties meet every two years at a Conference of Parties ("CoP") to discuss the effectiveness of CITES' conservation efforts and recommend improvements, review and adopt new policies, and consider administrative proposals such as budget concerns.²⁰ CITES provides for a Secretariat who works in an advisory, supervisory, and administrative capacity to ensure the effectiveness of CITES by monitoring each party's compliance with CITES policies, preparing annual reports for each party detailing the current implementation efforts of CITES, making policy recommendations, and performing other managerial functions.²¹ CITES also consists of three

eu-wildlife-trade/ (last visited Mar. 16, 2010).

¹⁸ What is CITES?, *supra* note 5.

¹⁹ See CITES, Member Countries, <http://www.cites.org/eng/disc/parties/index.shtml> (last visited Mar. 16, 2010).

²⁰ CITES, *supra* note 6, at art. 11; Conference of Parties, <http://www.cites.org/eng/disc/CoP.shtml> (last visited Mar. 16, 2010).

²¹ CITES, *supra* note 6, at art. 12; The CITES Secretariat, <http://www.cites.org/eng/disc/sec/index.shtml> (last visited Mar. 16, 2010).

committees whose members represent each of the world's regions and advise the Secretariat with policy and scientific recommendations.²²

CITES provides a list of the species that are restricted in trade globally.²³ It lists the animals protected by the agreement in three Appendices, according to the extent of protection they are given.²⁴ At the Conference of Parties, amendments to the Appendices are typically considered.²⁵

The first Appendix includes all species "threatened with extinction."²⁶ CITES mandates any trade with these species must be subject to "particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances."²⁷ The African elephant (*Loxodonta Africana*), for example, is primarily considered a species threatened with extinction and is in the first Appendix.²⁸

The second Appendix includes "all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation."²⁹ Trade of these specimens must be restricted so as to effectively prevent the species from being presently threatened with extinction.³⁰ Seahorses (*Hippocampus*), for example, are considered species which may be threatened with extinction under the second Appendix.³¹

The third Appendix includes all species which "any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade."³² This Appendix changes frequently

²² See Standing Committee, <http://www.cites.org/eng/disc/SC.shtml> (last visited Mar. 16, 2010); see also Animals and Plants Committees, http://www.cites.org/eng/disc/AC_PC.shtml (last visited Mar. 16, 2010); see also CITES res. 11.1, 11th Conf. (2000), available at <http://www.cites.org/eng/res/11/11-01R14.shtml> (the formal resolution detailing the roles of the committees).

²³ See CITES, *supra* note 6, at art. 2.

²⁴ See *id.*

²⁵ *Id.* at art. 11; Conference of Parties, *supra* note 20.

²⁶ CITES, *supra* note 6, at art. 2.

²⁷ *Id.* at art. 2; see also *id.* at art. 3 (noting the specific regulations concerning the trade of these species).

²⁸ *Id.* at app. 1. Elephants in Botswana, Namibia, South Africa, and Zimbabwe, however, are considered Appendix II animals. See *id.* at app. 2.

²⁹ *Id.* at art. 2.

³⁰ *Id.*; see also *id.* at art. 4 (stating the specific regulations concerning the trade of these species).

³¹ *Id.* at app. 2.

³² CITES, *supra* note 6, at art. 2; see also *id.* at art. 5 (the specific regulations on the trade of these species).

at the request of member parties to the Secretariat.³³ As of January 2010, the Canadian Walrus (*Odobenus rosmarus*), for example, is considered a third Appendix species.³⁴

B. *Problems with Enforcement of CITES*

One of the main problems with CITES is that the treaty has no authority to impose criminal penalties on its own.³⁵ Although CITES provides guidelines to member states for implementing policies, CITES has no power to force nations to pass unified legislation.³⁶ And although CITES monitors the member states for conformity with the treaty, the Secretariat cannot effectively sanction countries that are non-compliant.³⁷ An international cooperative must be created that holds more authority to enact policies.

Although CITES is an international treaty, it does little to foster actual international cooperation. Because CITES has no overarching authority, each state must enact their own laws.³⁸ This means that many of the policies have radically different penalties and encourage traders to make transactions in one country over another.³⁹ “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.”⁴⁰ CITES also has no provision mandating that the countries allow extradition if cross-border crimes are committed.⁴¹ International cooperation between the states, especially among countries who share borders, is essential to combating wildlife crime because so many wildlife crimes are transnational.⁴² CITES,

³³ See *id.* at art. 16.

³⁴ *Id.* at app. 3.

³⁵ See Zimmerman, *supra* note 9, at 1679–82; see also Kazmar, *supra* note 9, at 110.

³⁶ Zimmerman, *supra* note 9, at 1665; Kazmar, *supra* note 9, at 110–13.

³⁷ Kazmar, *supra* note 9, at 112–13.

³⁸ Zimmerman, *supra* note 9, at 1665–66; Kazmar, *supra* note 9, at 110–11.

³⁹ Zimmerman, *supra* note 9, at 1680.

⁴⁰ *Id.*

⁴¹ *Id.* at 1679–80. For more information on the possibility of extradition, see *infra* text accompanying notes 86–90 (on the Convention on Cybercrime and its provision supporting extradition).

⁴² Zimmerman, *supra* note 9, at 1665–69, 81 (suggesting that wildlife criminal rings are often transnational and that international cooperation between the member states of CITES is essential).

therefore, fails to encourage adequate collaboration between its member states to combat wildlife crime.

Lastly, CITES fails to provide sufficient financial support to countries in order for them to independently combat wildlife crime in an efficient manner. Although CITES allows non-governmental organizations (“NGOs”), like the World Wildlife Fund (“WWF”), to give financial resources to CITES,⁴³ the treaty continues to be criticized for not doing enough to financially assist developing countries.⁴⁴

Although CITES is an important first step in the fight against wildlife crime, it is critically flawed. CITES does not have enough authority to enact its own legislation and no power to sanction countries that are not enacting appropriate legislation. CITES also does not adequately foster and encourage international cooperation, which weakens the world’s ability to aptly fight transnational wildlife crime. Finally, the treaty does not sufficiently provide developing countries with the resources to effectively combat illegal animal trafficking. International legislation must be enacted to overcome these obstacles and provide a surmountable possibility of successful wildlife protection.

II. ANIMAL TRAFFICKING AS A CYBERCRIME

As criminals become more sophisticated and internet use becomes more prominent, animal trafficking has emerged as a significant cybercrime. The internet poses a new significant threat to the protection of animal trafficking.⁴⁵ Although animals are still being exploited in a traditional sense through poaching,⁴⁶ traffickers are now utilizing the internet’s many tools to do their dirty business.⁴⁷ The internet provides the “anonymity

⁴³ Kosloff & Trexler, *supra* note 9, at 10225; Zimmerman, *supra* note 9, at 1664. NGOs provide substantial financing and participate in the COPs. See Kosloff & Trexler, *supra* note 9, at 10225–26 (discussing NGOs and how they have supported CITES in the past); see also, e.g., WORLD WILDLIFE FUND, SPECIES FACT SHEET: ILLEGAL AND UNSUSTAINABLE WILDLIFE TRADE 1–4 (2006), available at http://assets.panda.org/downloads/wildlife_trade_factsheet2006.pdf (describing how WWF helps support CITES and the enforcement of international laws).

⁴⁴ Zimmerman, *supra* note 9, at 1682–83; see also *infra* text accompanying notes 158–69 (discussion of CITES’ Trust Fund and its inadequacies).

⁴⁵ CAUGHT IN THE WEB, *supra* note 11, at ii.

⁴⁶ See Sharon Begley, *Extinction Trade: Endangered Animals are the New Blood Diamonds as Militias and Warlords Use Poaching to Fund Death*, NEWSWEEK, Mar. 1, 2008, available at <http://www.newsweek.com/id/117875> (describing the prevalence of African militia poaching).

⁴⁷ Elizabeth A. Beardsley, *Poachers with PCs: The United States’ Potential Obligations and Ability to Enforce Endangered Wildlife Trading Prohibitions against Foreign Traders*

and global reach” that ultimately frustrates wildlife protection efforts.⁴⁸ Law enforcement agencies now must fight criminals from all over the world who may or may not be easily identifiable. The problems of combating cybercrimes have now been extended to the crime of animal trafficking.

A. *The History of Online Animal Trade*

The groundbreaking 2005 IFAW study on online animal trafficking revealed the extent of the problem to the world.⁴⁹ News outlets around the world reported the results overnight, and everything people thought they knew about animal trafficking changed.⁵⁰

IFAW began its study with a comprehensive one-week investigation of the extent of wildlife trade on the internet.⁵¹ IFAW “found over 9,000 wild animal products and specimens and live wild animals for sale, predominantly from species protected by law.”⁵² “The majority of these were offered for sale by . . . individuals,” either privately or through a website.⁵³

It is impossible to know just how many illegal transactions are being made online, since the investigation only consisted of English-language sites and focused mainly on five areas: live primates; elephant products; turtle and tortoiseshell products; other reptile products; and wild cat products.⁵⁴ IFAW found 5527 elephant products on the internet including “skin/leather products such as boots, wallets, purses, footwear and bags; bone products such as carvings, jewellery [sic], a Mah-jong set and fans; and ivory products such as jewellery [sic], boxes, chess sets, ornaments, and expensive sculptures . . .”⁵⁵ The fact that 146 live primates sold were on fifteen websites is horrifying; a transaction that is either entirely

Who Advertise on eBay, 25 UCLA J. ENVTL. L. & POL'Y 1, 6–7 (2006). “[A] recent criminal justice study of the illegal wildlife market in South Africa and Namibia reported that ‘traffickers relied on modern communications technology of email and Internet web sites to trade their stolen goods.’” *Id.* at 6.

⁴⁸ *Id.* at 7; see also CAUGHT IN THE WEB, *supra* note 11, at ii.

⁴⁹ See generally CAUGHT IN THE WEB, *supra* note 11; see also *Endangered Wildlife Trafficked via eBay*, *supra* note 11; *Cyber Black Market Dims Outlook for Endangered Species Survival*, *supra* note 11.

⁵⁰ See *Endangered Wildlife Trafficked Via eBay*, *supra* note 11; see also *Cyber Black Market Dims Outlook for Endangered Species Survival*, *supra* note 11.

⁵¹ CAUGHT IN THE WEB, *supra* note 11, at 3.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*; Int'l Fund for Animal Welfare, BIDDING FOR EXTINCTION 1 (2007), available at http://www.ifaw.org/Publications/Program_Publications/Wildlife_Trade/Campaign_Scientific_Publications/asset_upload_file64_12456.pdf [hereinafter BIDDING FOR EXTINCTION].

⁵⁵ CAUGHT IN THE WEB, *supra* note 11, at 3.

illegal or strictly restricted.⁵⁶ 526 turtle and tortoiseshell products were being sold on the internet, including websites such as eBay.⁵⁷ 2630 reptile products, including both live animals such as crocodiles and reptile clothing accessories, were being sold by fifteen internet traders.⁵⁸ IFAW also found 239 live wild cat specimens and wild cat products, such as claws and skulls, on the internet.⁵⁹ The entire extent of wildlife trade on the internet must be staggering if this snapshot is any indicator.⁶⁰

eBay in particular has been widely criticized recently over listings of ivory on their website.⁶¹ After IFAW's *Caught in the Web* was published, IFAW met with eBay and recommended that the website restrict all sales of wildlife and wildlife products on their sites.⁶² Although some eBay sites, like Germany eBay, were willing to crack down on illegal wildlife trade, IFAW followed the discussions with another investigatory study focusing solely on eBay transactions.⁶³ The one-week investigation, in 2007, focused on eBay websites in Australia, Canada, France, Germany, the Netherlands, the United Kingdom, and the United States.⁶⁴ IFAW found over 2000 listings for ivory products and only 134 of the listings were "potentially fully compliant" with eBay's rules and CITES.⁶⁵ Over ninety percent of the ivory listings breached eBay's listed policy by either claiming to be antique but offering no proof of age or not referencing eBay policy or age at all.⁶⁶

There is no question that IFAW's investigations have affected eBay policy. Less than a month after *Bidding for Extinction* was published, eBay banned the cross-border sale of ivory on its sites.⁶⁷ Some critics, however, questioned whether eBay was doing enough to stop illegal ivory sales.⁶⁸

⁵⁶ *Id.*

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.*

⁶⁰ BIDDING FOR EXTINCTION, *supra* note 54, at 1 ("Clearly, the investigation uncovered merely the tip of an enormous iceberg.").

⁶¹ See Larry Greenemeier, *Is EBay Doing Enough to Stop Illegal Ivory Sales on Its Site?*, SCI. AM., June 5, 2008, available at <http://www.sciam.com/article.cfm?id=is-ebay-doing-enough>. See generally BIDDING FOR EXTINCTION, *supra* note 54.

⁶² BIDDING FOR EXTINCTION, *supra* note 54, at 1.

⁶³ *Id.*

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 4, 14; Arthur Max, *eBay Banning Cross-Border Sales of Ivory*, USA TODAY, June 5, 2007, available at http://www.usatoday.com/tech/news/2007-06-05-ebay-ivory-ban_N.htm.

⁶⁷ Max, *supra* note 66.

⁶⁸ See Greenemeier, *supra* note 61; Max, *supra* note 66 (noting that animal welfare critics argue that eBay will eventually be forced to stop all ivory trade).

In May 2008, over a year after their investigation for *Bidding for Extinction*, IFAW found over 600 listings for elephant ivory on eBay.⁶⁹ This was after eBay's ban on cross-border ivory sales.⁷⁰ Greenemeier also did an investigation in June of 2008 and found 306 elephant ivory items for sale on eBay.⁷¹ Again, several of the sellers claimed that the items were antique or pre-ban, most offered no proof to corroborate their claims.⁷² Although eBay had implemented more progressive policies, they were poorly enforced and relatively ineffective.⁷³

The most recent IFAW investigative study in 2008, *Killing With Keystrokes*, concluded that eBay alone was responsible for almost two-thirds of online animal trafficking despite its 2007 report *Bidding for Extinction*.⁷⁴ Specifically, eBay was responsible for eighty percent of all elephant ivory sales.⁷⁵ Additionally, eleven percent of the ivory sales explicitly offered international shipping, despite the cross-border ban.⁷⁶ IFAW also called for a worldwide ban on ivory sales.⁷⁷

IFAW's investigation finally caused eBay to make a radical policy decision. Hours before the public release of *Killing With Keystrokes*, eBay announced a complete ban on ivory sales on its sites worldwide beginning January 1, 2009.⁷⁸ IFAW also urged other online trading websites to follow suit.⁷⁹

⁶⁹ Greenemeier, *supra* note 61. IFAW reported that several of the ads claimed to be pre-ban. *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See id.*

⁷⁴ INT'L FUND FOR ANIMAL WELFARE, KILLING WITH KEYSTROKES 13 (2008), http://www.ifaw.org/Publications/Program_Publications/Wildlife_Trade/Campaign_Scientific_Publications/asset_upload_file848_49629.pdf; Press Release, Int'l Fund for Animal Welfare, *eBay Announces Ivory Ban in Wake of IFAW Report* (Oct. 20, 2008), http://www.ifaw.org/ifaw_united_states/media_center/press_releases/10_20_2008_49638.phpt.

⁷⁵ KILLING WITH KEYSTROKES, *supra* note 74, at 11.

⁷⁶ *Id.*

⁷⁷ *Id.* at 17–18.

⁷⁸ Press Release, Int'l Fund for Animal Welfare, *supra* note 74. A recent search for elephant ivory only found one advertisement selling a hand-carved ivory toothpick holder. Posting of Kelly45 to www.ebay.com (Jan. 27, 2010) (on file with author). Although the search revealed fifty-nine items, most of these were "faux ivory" or simply ivory-colored. Search of "Elephant Ivory," eBay, <http://www.ebay.com> (last performed Jan. 28, 2010). This is a large improvement over searches done in 2008. *See* Greenemeier, *supra* note 61 (finding over 300 listings in June 2008).

⁷⁹ Press Release, Int'l Fund for Animal Welfare, *supra* note 74.

It is important to remember that ivory is not the only wildlife product that needs to be restricted. On eBay.com, you can buy real seahorses, listed under the second Appendix of CITES.⁸⁰ Some sellers are only offering tiny seahorses for less than \$2.00 each,⁸¹ while others sell large seahorses for up to \$35.00.⁸² Although seahorses are not yet endangered, they are being threatened, in part, because of sales like these.⁸³

It is important, however, to note that eBay is not the only website that engages in the illicit trade.⁸⁴ Private online transactions on lesser known sites are also problematic and cannot be ignored.

On [exoticanimalsforsale.net](http://www.exoticanimalsforsale.net), for example, you can buy various exotic animals.⁸⁵ For example, this author found several ads for primates,⁸⁶ which

⁸⁰ Search of “Real Seahorses,” eBay, <http://www.ebay.com> (last performed Jan. 26, 2009) (on file with author); CITES, *supra* note 6, at app. 2. This search resulted in over forty postings for dried seahorses. Search of “Real Seahorses,” *supra*.

⁸¹ *See, e.g.*, Posting of kawagner101 to www.ebay.com (Jan. 27, 2010) (on file with author) (noting the seahorses are “real” and “sealife.”).

⁸² *See, e.g.*, Posting of thaiseashell to www.ebay.com (Jan. 27, 2010) (on file with author) (noting the seahorse was taken from the Andaman Sea and that the starting bid was \$34.99).

⁸³ Seahorses Breeding at London Aquarium, <http://www.londonaquarium.co.uk/node/110> (last visited Jan. 20, 2010) “One of the biggest threats comes from the seahorse’s reputation for possessing magical and healing powers, which have made it a popular ‘cure’ in traditional Chinese medicine.” Maxine Frith, *Revealed: The Illegal Online Animal Trade*, INDEPT. (London), Aug. 16, 2005 at 6, <http://www.independent.co.uk/environment/revealed-the-illegal-online-animal-trade-503078.html>.

On eBay, a buyer can find “1 LB China Real Sea Horse Seahorse Seashell herb tonic” for \$299.99. *See* Posting of peterli1981120 to www.ebay.com (Jan. 27, 2010) (on file with author). The price is much higher than other postings and the risk to seahorse population is greater. *Id.* This seller had twenty pounds of seahorses to sell. *Compare id. with* footnotes 80–82 and accompanying text.

⁸⁴ *See* KILLING WITH KEYSTROKES, *supra* note 74, at 21 (for a specific listing of each website cited in the report).

⁸⁵ *See* Exotic Animals For Sale, <http://www.exoticanimalsforsale.net/animalsforsale.asp> (last visited Mar. 16, 2010).

⁸⁶ *See, e.g.*, Posting to www.exoticanimalsforsale.net (Dec. 27, 2009) (on file with author) (selling Capuchins); Posting to www.exoticanimalsforsale.net (Oct. 2, 2009) (on file with author) (selling a Marmoset for \$1500); Posting to www.exoticanimalsforsale.net (Dec. 20, 2009) (on file with author) (selling marmosets, squirrel monkeys, owl monkeys, and bushbabies).

Some owners negligently blur the line between pet and exotic animal. For example, one seller on the website notes “[t]his baby Marmoset is diaper trained and, as you can see, looks pretty spiffy in his little outfits (not included) as well!” Posting to www.exoticanimalsforsale.net (Oct. 23, 2009) (on file with author). Besides ridiculously equating wild animals to children or dogs, irresponsible owners can be putting themselves and others at risk. The horrific and tragic chimpanzee attack in 2009 led to an increased awareness of the dangers of having wild animals for pets. *See* Andy Newman, *Pet Chimp is Shot Dead after*

are usually either wholly illegal to trade or highly restricted.⁸⁷ You can buy a Cottontop Tamarin (*Saguinus Oedipus*) for \$3,300 on this site.⁸⁸ These Tamarins are listed under Appendix 1.⁸⁹ The seller negligently makes no mention of any restrictions on the sale, licenses, or permits for any of the available animals.⁹⁰

Research and data should continue to be written, because IFAW's past reports have impacted the world's fundamental thinking about on-line animal trafficking. After *Caught in the Web*, the world stood up and took notice.⁹¹ As the criminal enterprises change, more research initiatives from NGOs like TRAFFIC and IFAW must continue to keep online animal trafficking at the forefront of the world's mind.

B. *The Convention on Cybercrime*

The Council of Europe Convention on Cybercrime attempts to address the inherent problems of internet crime over traditional markets.⁹² The Council of Europe Convention on Cybercrime, which entered into force in July 2004, is the first international treaty on crimes committed via the internet, including illegal trade.⁹³ It is open for signature by member states of the Council of Europe and non-member states.⁹⁴ As of December 2009, twenty-six countries have ratified the document, including the United States, France, and Italy.⁹⁵ The member states pledge to “pursue, as a

Mauling Woman in Connecticut, N.Y. TIMES, Feb. 17, 2009 at A30, available at <http://www.nytimes.com/2009/02/17/world/americas/17iht-chimp.1.20241928.html> (“A 200-pound pet chimpanzee in Stamford, Connecticut, viciously mauled a woman he had known for years, leaving her critically injured with much of her face torn away.”); see Joshua Rhett Miller, *Chimpanzee Attack Revives Call for Federal Primate Law*, FOXNEWS.COM, Feb. 18, 2009, <http://www.foxnews.com/story/0,2933,495787,00.html>.

⁸⁷ CAUGHT IN THE WEB, *supra* note 11, at 3; see also CITES, *supra* note 6, at apps. 1–3.

⁸⁸ Posting to www.exoticanimalsforsale.net (Dec. 20, 2009) (on file with author).

⁸⁹ CITES, *supra* note 6, at app. 1.

⁹⁰ See posting to www.exoticanimalsforsale.net (Dec. 22, 2009) (on file with author).

⁹¹ For another example of another report that changed wildlife policy, see *infra* text accompanying notes 106–10.

⁹² See *supra* text accompanying notes 45–48.

⁹³ Ira Piltz, *Internet Law—European Union's Convention on Cyber Crime (ets no. 185): First International Treaty on Crimes Committed via the Internet*, COMPUTER CRIME RES. CTR., Jan. 22, 2008, <http://www.crime-research.org/news/22.01.2008/3144/>.

⁹⁴ Convention on Cybercrime, *supra* note 13, at art. 36.

⁹⁵ Member States of the Council of Europe, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG> (last visited Mar. 16, 2010). The United States joined in 2006, and the Convention subsequently went into effect in the United States on January 1, 2007. Press Statement, U.S. Dep't of State, Sean McCormack, United

matter of priority, a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international cooperation”⁹⁶

The Treaty also allows for the extradition of cross-border criminals even if the two parties do not have a specific treaty allowing for it.⁹⁷ There are limits, however, on the extradition agreement.⁹⁸ First, the party must be accused of one of the most severe crimes, found in articles 2–11.⁹⁹ Also, the crimes must be punishable under the laws of both countries by at least one year in jail.¹⁰⁰ “This Convention provision is an important step in harmonizing extradition laws between member countries and bringing reluctant countries up to date.”¹⁰¹ The provisions encouraging extradition are an important feature of the treaty because criminals cannot hide from prosecution in one jurisdiction with more lenient penalties.¹⁰²

Although the Convention on Cybercrime does not explicitly mention online animal trafficking, it does encompass online illicit wildlife trade.¹⁰³ The IFAW considered the convention a potentially effective and coordinated international law tackling online wildlife crimes.¹⁰⁴ Proponents of

States Joins Council of Europe Convention on Cybercrime (Sept. 29, 2006), <http://www.state.gov/r/pa/prs/ps/2006/73353.htm>.

⁹⁶ Convention on Cybercrime, *supra* note 13, at pmb1.

⁹⁷ *Id.* at art. 24.

⁹⁸ *See id.*

⁹⁹ *Id.* at art. 24, para. 1.

¹⁰⁰ *Id.*

¹⁰¹ Mike Keyser, *The Council of Europe Convention on Cybercrime*, 12 J. TRANSNAT’L L. & POL’Y 287, 317 (2003).

¹⁰² *Id.*; President Bush supported the extradition clause for the same reasons saying:

By providing for broad international cooperation in the form of extradition and mutual legal assistance, the Cybercrime Convention would remove or minimize legal obstacles to international cooperation that delay or endanger U.S. investigations and prosecutions of computer-related crime. As such, it would help deny “safe havens” to criminals, including terrorists, who can cause damage to U.S. interests from abroad using computer systems.

Message to Senate Transmitting the Council of Europe Convention on Cybercrime, 2 PUB. PAPERS 1579 (Nov. 17, 2003), *available at* <http://www.america.gov/st/washfile-english/2003/November/20031117190405rennefl0.4209101.html>.

¹⁰³ CAUGHT IN THE WEB, *supra* note 11, at 16 (calling the Convention “the first international treaty on crimes committed via the Internet, including illegal trade.”); Convention on Cybercrime, *supra* note 13, at art. 14, para. 2 (noting that “except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to . . . other criminal offences committed by means of a computer system.”).

¹⁰⁴ CAUGHT IN THE WEB, *supra* note 11, at 16–17 (when the article was written the

the Treaty are encouraged by the Convention on Cybercrime's tough answer to complex legal and technical international problems concerning internet crimes, saying "[C]yber criminals are not limited by borders, and this treaty will help ensure that law enforcement isn't either."¹⁰⁵

Many, however, criticized the United States' ratification of the Convention of Cybercrime.¹⁰⁶ The chief concerns among critics seem to be the lack of "dual criminality" and alleged United States constitutional violations.¹⁰⁷ Convention supporters, however, argue that the treaty provides safeguards to prevent the alleged abuses.¹⁰⁸

Critics condemn the treaty's lack of dual criminality.¹⁰⁹ Dual criminality would require that the offense be illegal in both countries before one country asks for support from the other.¹¹⁰ The Electronic Privacy Information Center ("EPIC") argued that the treaty requires "U.S. law enforcement authorities to cooperate with a foreign police force even when such an agency is investigating an activity that, while constituting a crime in their territory, is perfectly legal in the U.S."¹¹¹ Critics allege that this

Convention had not been ratified by the UK and, therefore, IFAW cautions that although the convention had progressive ideas, it has yet to come into force).

¹⁰⁵ News Release, Bus. Software Alliance, *supra* note 14; Samson, *supra* note 14.

¹⁰⁶ Compare Cyber Security Industry Alliance, Council of Europe's Convention on Cybercrime: Get the Facts (supporting the Convention and calling it "an important tool in the global fight against those who seek to disrupt computer networks, misuse sensitive or private information, or commit traditional crimes using Internet-enabled technologies.") (on file with author), with Danny O'Brien, *The World's Worst Internet Laws Sneaking Through the Senate*, ELEC. FRONTIER FOUND., Aug. 3, 2006, <http://www.eff.org/deeplinks/2006/08/worlds-worst-internet-laws-sneaking-through-senate> (calling the treaty "invasive" and a "bad internet law."), and Letter from Marc Rotenberg, Electric Privacy Info. Center President, to Chairman Richard G. Lugar & Sen. Joseph R. Biden, Jr., Senate Committee on Foreign Relations (July 26, 2005), available at <http://epic.org/privacy/intl/senateletter-072605.pdf> (arguing the convention "threatens core legal protections, in the United States Constitution, for persons in the United States.").

¹⁰⁷ Letter from Marc Rotenberg, *supra* note 106; see also Samson, *supra* note 14; O'Brien, *supra* note 106 (arguing that countries that limit free speech could require U.S. officials to revoke U.S. citizen's constitutional rights).

¹⁰⁸ Kevin Poulsen, *U.S. Defends Cybercrime Treaty*, SECURITYFOCUS, Apr. 23, 2004, <http://www.securityfocus.com/news/8529> (noting the Justice Department's response to critics). It is important to note that Poulsen may be biased when reporting about internet crimes. Poulsen was convicted of "mail, wire and computer fraud, as well as obstruction of justice and sentenced to almost 5 years in prison and forced to pay \$56,000 in restitution" in 1994. Home Security, Most Famous Hackers and Crackers in the World, <http://homesecurity.net/hackers-crackers/> (last visited Mar. 16, 2010).

¹⁰⁹ Poulsen, *supra* note 108; Samson, *supra* note 14; O'Brien, *supra* note 106; Letter from Marc Rotenberg, *supra* note 106, at 3-4.

¹¹⁰ Letter from Marc Rotenberg, *supra* note 106, at 3.

¹¹¹ *Id.*

is particularly a concern when another country's laws limit free speech or privacy rights guaranteed by the United States Constitution.¹¹²

The Justice Department countered, however, by arguing that the treaty protects Americans from abuses of this nature.¹¹³ The treaty allows a country to refuse to cooperate in an investigation if its "essential interests" are threatened by the request and the Justice Department argues that this clause allows the United States to refuse cooperation if the government believes it is unconstitutional or inappropriate.¹¹⁴ In fact, the United States did refuse to sign a protocol criminalizing the distribution or publication of anything online that is racist or xenophobic in nature.¹¹⁵ Although the Protocol is on the surface admirable, the Justice Department was concerned that it abridged the right to free speech.¹¹⁶ The Protocol, being separate from the main treaty, allows for any member state to refuse to sign the additional protocol, but still endorse the main treaty.¹¹⁷

There has been little evidence to support the proposition that the Convention on Cybercrime will lead to flagrant violations of the U.S. Constitution. There have been no cases in the U.S. prosecuting U.S. citizens under the Convention, let alone highly publicized abuses of justice.¹¹⁸

¹¹² Samson, *supra* note 14; O'Brien, *supra* note 106.

¹¹³ Poulsen, *supra* note 108.

¹¹⁴ Convention on Cybercrime, *supra* note 13, at art. 27, para. 4; Poulsen, *supra* note 108.

¹¹⁵ See Additional Protocol to the Convention on Cybercrime ch. 1, Jan. 28, 2003, ETS No. 189; Declan McCullagh, *U.S. Won't Support Net "Hate Speech" Ban*, ZDNET, Nov. 15, 2002, http://news.zdnet.com/2100-9595_22-126319.html; United States Department of Justice, Council of Europe Convention on Cybercrime—Frequently Asked Questions and Answers, <http://www.usdoj.gov/criminal/cybercrime/COEFAQs.htm> (last visited Mar. 16, 2010) [hereinafter Convention on Cybercrime FAQs].

¹¹⁶ McCullagh, *supra* note 115; Convention on Cybercrime FAQs, *supra* note 115.

¹¹⁷ Convention on Cybercrime FAQs, *supra* note 115; Additional Protocol to the Convention on Cybercrime, *supra* note 115, at art. 9.

¹¹⁸ This author has been unable to find any U.S. prosecutions or extraditions under the Convention on Cybercrime. Search of "Convention on Cybercrime" or "ETS No. 185," LexisNexis, All Federal and State Cases, <http://www.lexisnexis.com> (last performed Jan. 19, 2010) (on file with author); Search of "Convention on Cybercrime" or "ETS No. 185," Westlaw, All Federal and State Cases, <http://www.westlaw.com> (last performed Jan. 19, 2010) (on file with author).

If extradition was necessary, the process can take a prohibitively long time. For example, Gary McKinnon, the famous British NASA hacker, who allegedly hacked NASA's computers in 2001, has still not been extradited under the Convention. Tom Espiner, *Nasa Hacker Defence Vows to Fight On*, ZDNET UK, Nov. 27, 2009, <http://news.zdnet.com.uk/security/0,1000000189,39909131,00.htm>; Iain Thompson & John Gerald, *US Wants to Extradite UK Hacker*, VNUNET.COM, Nov. 13, 2002, <http://www.vnunet.com/vnunet/news/2120729/wants-extradite-uk-hacker>. McKinnon has appealed to several UK courts to avoid extradition. Tom Espiner, *Nasa Hacker Closer to Extradition After CPS Refusal*,

Additionally, the U.S. has shown in the past, with the protocol on xenophobia, that it is unwilling to sacrifice privacy and free speech in the name of tough cybercrime prosecution. It is premature, therefore, to predict the doom of liberty.

III. EU ACTION PLAN

In 2007, TRAFFIC published a report, "*Opportunity or Threat: The Role of the European Union in the Global Wildlife Trade*,"¹¹⁹ criticizing the EU's prominent illegal wildlife trade.¹²⁰ TRAFFIC estimated that between 2000–2005 the EU imported "3.4 million lizard skins, 2.9 million crocodile skins and 3.4 million snake skins" and over a million live reptiles.¹²¹ TRAFFIC blamed the EU's low political awareness of the problem, the high prices for wildlife, and the low penalties charged by the governments for its high level of illegal imports.¹²² TRAFFIC ultimately recommended that the EU adopt a "greater national, regional and interregional co-ordination" believing that a "coordinated EU wildlife trade enforcement action plan with identified priorities, and building on growing political will would considerably strengthen the EU's response to illegal trade."¹²³ It is likely this recommendation that led to the EU Action Plan.

The EU Action Plan went into effect on June 13, 2007.¹²⁴ The EU Action Plan is comprised of a series of resolutions that condemn the illegal wildlife and plant trade, stating that it "causes serious damage

ZDNET UK, Feb. 26, 2009, <http://news.zdnet.co.uk/security/0,1000000189,39619206,00.htm>. So it is possible that if an American is facing extradition or prosecution right now, that person may not actually be prosecuted for many years. Regardless, this appeal process is yet another safeguard that an alleged criminal under the convention can utilize to protect their liberty from the unjustified attacks critics warn about.

¹¹⁹ See MARILYN ENGER & ROB PARRY-JONES, TRAFFIC, *OPPORTUNITY OR THREAT: THE ROLE OF THE EUROPEAN UNION IN THE GLOBAL WILDLIFE TRADE* (2007), available at http://www.traffic.org/general-reports/traffic_pub_trade15.pdf [hereinafter *OPPORTUNITY OR THREAT*].

¹²⁰ Davies, *supra* note 15; *EU: Top Global Importer of Wildlife*, TRAFFIC, June 1, 2007, <http://www.traffic.org/home/2007/6/1/eu-top-global-importer-of-wildlife.html>.

For example, EU seizures of the endangered Egyptian Tortoise constituted thirteen percent of the animal's global population left in the wild. Davies, *supra* note 15; see also *OPPORTUNITY OR THREAT*, *supra* note 119, at 6. The Egyptian Tortoise (*Testudo Kleinmanni*) is listed in CITES Appendix 1. *OPPORTUNITY OR THREAT*, *supra* note 119, at 13; CITES, *supra* note 6, at app. 1.

¹²¹ *OPPORTUNITY OR THREAT*, *supra* note 119, at 29.

¹²² *Id.* at 6.

¹²³ *Id.*

¹²⁴ EU Action Plan, *supra* note 16.

to wildlife resources, reduces the effectiveness of wildlife management programs, undermines legal, sustainable trade and threatens sustainable development particularly in the developing economies of many producing countries.”¹²⁵ The EU Action Plan focuses on the cooperation between the twenty-seven EU states.¹²⁶ The EU Action Plan then makes recommendations in order to better enforce the policies of CITES and its EU counterparts.¹²⁷

The Plan details what individual member states can do to increase domestic enforcement of wildlife crime.¹²⁸ The Plan recommends adopting national policies in order to coordinate increased enforcement as TRAFFIC ultimately recommended.¹²⁹ The Plan also seeks to increase the intelligence efforts and cross-border checks among the participating nations.¹³⁰ The Plan also seeks to increase the enforcement of wildlife crimes by ensuring penalties are a sufficient deterrent.¹³¹ The Plan finally acknowledges the need for increased funding for these programs, especially in developing countries and wants to ensure that all enforcement agencies are adequately funded and are provided with the necessary personnel, training, expertise, and equipment.¹³² It is encouraging that the EU Action Plan seems to make increased enforcement a priority.¹³³

The Plan makes recommendations for increasing cooperation and information exchange in order to increase the transnational enforcement of CITES.¹³⁴ The Plan creates inter-agency committees to establish the cooperative national enforcement policies.¹³⁵ The Plan also ensures that an Enforcement Group will meet regularly to share relative intelligence concerning significant trends in illegal trade, seizures, and important court cases and prosecutions to ensure consistency in the application of the laws

¹²⁵ *Id.* at para. I.

¹²⁶ *Id.* at para. III.

¹²⁷ *Id.* at para. II.

¹²⁸ *See id.*

¹²⁹ *Id.* at para. II(a); *see* OPPORTUNITY OR THREAT, *supra* note 119, at 6, 42.

¹³⁰ EU Action Plan, *supra* note 16, at para. II(g)–(h).

¹³¹ *Id.* at paras. 5–6; *see id.* at para. III(g) (ensuring consistent penalties among the member states).

¹³² *Id.* at para. III(h)–(i), (m); *id.* at para. II(b).

¹³³ This is especially important, since it was one of the chief complaints TRAFFIC detailed in its report. OPPORTUNITY OR THREAT, *supra* note 119, at 42.

¹³⁴ EU Action Plan, *supra* note 16, at para. III. The Plan encourages collaboration between all states to combat illegal wildlife trade by interconnecting state policies “with other regional and sub-regional initiatives.” *Id.* at para. III(n).

¹³⁵ *Id.* at para. III(a).

between the states.¹³⁶ In addition, the Plan recognizes the need to help build up the enforcement tactics in developing countries by providing assistance to these states with training mechanisms and equipment for better detection of crimes.¹³⁷

Lastly, the Plan encourages a close relationship with CITES. The EU will liaison with CITES to help detect wildlife laws through the “exchange of information and intelligence.”¹³⁸ Again, the EU requires the support of “capacity-building programmes in third [world] countries in order to improve implementation and enforcement of CITES.”¹³⁹ The Plan recognizes the importance of coordination with CITES in order to encourage better wildlife law enforcement rather than simply an EU-centered program.

The EU Action Plan is the next step in the effective combat of illegal wildlife trade.¹⁴⁰ The EU CITES Enforcement Group supports the Action Plan saying, “[g]iving high priority to CITES enforcement is crucial to combating illegal trade. This EU Action Plan demonstrates the EU’s commitment to effective enforcement.”¹⁴¹ Importantly, there will be support for enforcement efforts in developing countries including law enforcement equipment, training, personnel, and expertise, an “increase[ed] awareness of illegal wildlife trade,” and adequate funding to support enforcement programs.¹⁴² CITES does not effectively financially support developing countries to combat the illegal wildlife trade.¹⁴³ The EU Action Plan effectively supplements CITES and its programs.

One of the most effective tools that the EU uses is the EU-TWIX. EU-TWIX, or “EU Trade in Wildlife Information eXchange,” is an intranet tool, run in conjunction with TRAFFIC, used to “exchange [] information

¹³⁶ *Id.* at para. III(d); *see also id.* at para. III(g).

¹³⁷ *Id.* at para. III(h); *see also id.* at para. II(b).

¹³⁸ *Id.* at para. III(k).

¹³⁹ *Id.* at para. III(m).

¹⁴⁰ *See Global Push to Tackle International Wildlife Crime*, WORLD WILDLIFE FUND, June 6, 2007, http://www.panda.org/what_we_do/how_we_work/conservation/species_programme/species_news/species_news_archive.cfm?105700/Global-push-to-tackle-international-wildlife-crime; Press Release, World WILDLIFE FUND, CITES: Commercially Traded Species Big Losers—WWF/TRAFFIC, June 27, 2007, <http://www.worldwildlife.org/who/media/press/2007/WWFPresitem971.html> (noting that CITES officials thought the Action Plan “was a positive step in the right direction”).

¹⁴¹ *Global Push to Tackle International Wildlife Crime*, *supra* note 140.

¹⁴² EU Action Plan, *supra* note 16, at para. II(b); *id.* at III(h)–(i), (m); *Global Push to Tackle International Wildlife Crime*, *supra* note 140.

¹⁴³ *See supra* Part I.B and accompanying text.

on wildlife seizures across all twenty-seven member states.”¹⁴⁴ The intranet is partially funded by the EU Commission and “. . . a joint initiative of the Belgian Federal Police, Customs and CITES Management Authority, and TRAFFIC Europe.”¹⁴⁵ The database contains information on animals commonly sought after, seizure methods, prices of wildlife, and other information helpful to monitor and combat the illicit wildlife trade.¹⁴⁶ The intranet encourages international cooperation by including sharing of resources, information, training and identification techniques, and expertise.¹⁴⁷ Only designated enforcement officials with access codes can use the database, so it can remain secure.¹⁴⁸ This intranet embodies the goals and policies put forward by the Action Plan.¹⁴⁹ Any international cooperative should include this intranet or a similar program to help effectively realize CITES’ goals and policies.

It is difficult to assess the Action Plan’s success at this point. Although CITES requires each member to make annual and biennial reports on the implementation of the convention,¹⁵⁰ these reports are predictably backlogged. The latest European Commission Annual Report available is from 2007.¹⁵¹ Since the Action Plan was implemented in mid-2007, there is no data available to show the success of the Action Plan on combating illegal wildlife trade in the EU.¹⁵²

This is the first step to an international cooperative conservation plan that has universal enforcement penalties and policies. The Plan’s cooperation efforts are an exemplary example of international cooperation, information sharing, and funding that the CITES convention inherently

¹⁴⁴ TRAFFIC—EU Wildlife Trade Initiative, <http://www.traffic.org/eu-wildlife-trade/> (last visited Jan. 19, 2010); *Global Push to Tackle International Wildlife Crime*, *supra* note 140; *see also* EUR. UNION TRADE IN WILDLIFE INFO. EXCH., EU-TWIX INFORMATION LEAFLET, available at http://www.traffic.org/enforcement-reports/traffic_pub_enforce5.pdf [hereinafter EU-TWIX INFORMATION LEAFLET].

¹⁴⁵ EU-TWIX INFORMATION LEAFLET, *supra* note 144.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* (noting specific examples on how the countries have been using the intranet and helping each other).

¹⁴⁸ *Id.* This author, therefore, cannot investigate the actual intranet and its uses.

¹⁴⁹ The intranet was actually in place before the EU Action Plan. *Global Push to Tackle International Wildlife Crime*, *supra* note 140 (“The action plan builds on existing initiatives to combat the increasing illegal wildlife trade . . . include[ing] [the] EU TWIX.”).

¹⁵⁰ CITES, *supra* note 6, at art. XVIII (7)(a)–(b); *see also* European Commission—Annual and Biennial Reports, http://ec.europa.eu/environment/cites/reports_en.htm (last visited Mar. 16, 2010).

¹⁵¹ European Commission—Annual and Biennial Reports, *supra* note 150.

¹⁵² *See id.*

lacks. With the EU Action Plan still in its infancy, however, it is hard to tell if it will be successful or not. At the very least, the EU Action Plan reveals the possibility of an international cooperative of several countries, both westernized and third world, working together for the common goal of wildlife protection.

IV. SOLUTIONS

A. *Provide Resources For Enforcement Through International Cooperation and Support*

One major problem plaguing CITES is that it lacks both the financial and subsidiary resources to effectively enforce its provisions. Third world countries are less likely to have the resources to properly train enforcement officials, have technological support, and generally finance the programs necessary to successfully combat wildlife crime.¹⁵³ Signatory countries that have more resources must be strongly persuaded to share resources and information and encouraged to provide financial support to poorer countries. Although the international economy is suffering, the world must put the environment at the forefront of their policies to curb the disastrous animal overexploitation.

Although the treaty does allow the Convention of Parties to adopt financial provisions¹⁵⁴ and the treaty has developed a trust fund which provides the budget for the convention,¹⁵⁵ critics argue that CITES is underfunded and that third world countries, particularly, cannot afford to implement the programs necessary for it to be effective.¹⁵⁶ Poor countries cannot be expected to implement the expensive programs necessary to effectively combat wildlife crime on their own and need support from CITES and other member states.¹⁵⁷ CITES must also be able to rely on

¹⁵³ See Zimmerman, *supra* note 9, at 1682 (citing ROSALIND REEVE, *POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE* 221 (Royal Institute of International Affairs 2002)).

¹⁵⁴ CITES, *supra* note 6, at art. (3)(a).

¹⁵⁵ How Is CITES Financed?, <http://www.cites.org/eng/disc/fund.shtml> (last visited Mar. 16, 2010).

¹⁵⁶ Zimmerman, *supra* note 9, at 1682–83. The EU Action Plan recognizes the need for additional funding. See also EU Action Plan, *supra* note 16, at pt. 3(h)–(i), (m) (providing more assistance to third world countries and other member states).

¹⁵⁷ Zimmerman, *supra* note 9, at 1682–83; John L. Garrison, *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Debate Over Sustainable Use*, 12 PACE ENVTL. L. REV. 301, 389 (1994).

the funds that are already provided for by the treaty. CITES, and the member states, are crippled from a lack of resources.

The Trust Fund has been recently criticized as ineffective. The Trust Fund is made up of contributions from the Parties to the Convention “based on the United Nations scale of assessment,”¹⁵⁸ which is why the U.S. paid \$1,135,359 in 2009 while Saint Kitts and Nevis was responsible for only \$52.¹⁵⁹ The first problem is that the Trust Fund only primarily covers the administrative costs of the Convention and does not provide funds for countries to finance their policies.¹⁶⁰ This leaves very little money left to help countries implement CITES policies.

The second problem is that \$636,498 has not been paid to the Trust Fund for 2009 as of January 1, 2010, more than ten percent of the 2009 annual budget.¹⁶¹ Additionally, because the U.S. contributes over one-fifth of the trust fund, the ten percent of unpaid contributions has a larger impact on the Convention’s overall financial outlook.¹⁶² Even more unsettling is that sixteen countries have not paid anything since 1992.¹⁶³ Iran has the largest long-term debt, \$87,796, almost ten percent of the total unpaid contributions since 2008.¹⁶⁴ The Secretariat alleges that most debts are the result of a “lack of political will” rather than a “lack of capacity.”¹⁶⁵

The Secretariat has little power to force countries to pay their debts and struggles to collect payments.¹⁶⁶ The Secretariat sends requests and reminders to delinquent countries often without success.¹⁶⁷ In the 13th Conference of Parties, CITES simply “requests all Parties to pay their

¹⁵⁸ How is CITES Financed?, *supra* note 155.

¹⁵⁹ CITES, TRUST FUND: STATUS AS OF 28FEBRUARY 2010 (2010), available at <http://www.cites.org/eng/disc/funds/CT.pdf> [hereinafter TRUST FUND STATUS].

¹⁶⁰ See Garrison, *supra* note 157, at 388.

¹⁶¹ TRUST FUND STATUS, *supra* note 159 (noting that \$5,164,821 is due for 2010).

¹⁶² See *id.* (noting that the U.S. paid \$1,135,359 for 2009).

¹⁶³ CITES, TRUST FUND: ANNUAL DISTRIBUTION OF THE UNPAID CONTRIBUTIONS AS OF 30 NOVEMBER 2009 (2009), available at <http://www.cites.org/eng/disc/funds/unpaid.pdf> [hereinafter CITES ANNUAL UNPAID CONTRIBUTIONS]. Several more countries have not paid in the last five years. *Id.*

¹⁶⁴ *Id.* (noting that Iran has not paid anything since 1999). It is worse when you consider that Iran is actually responsible for twenty-five percent of the debt excluding unpaid contributions for 2009. *Id.* (noting that the total unpaid contributions is \$5,196,162, but only \$195,899 is unpaid from 1992–2008).

¹⁶⁵ See Standing Comm. Doc. 12.1, 50th Meeting para. 9 (2004), available at <http://www.cites.org/eng/com/sc/50/E50-12-1.pdf>.

¹⁶⁶ Garrison, *supra* note 157, at 388.

¹⁶⁷ See Standing Comm. Doc. 12.1, *supra* note 165, at para. 4 (noting that “[i]n spite of the above measures 79 CITES Parties fell into arrears with their contributions over the period 1992–2003.”).

contributions as far as possible during the year prior to the one to which they relate . . . [and] . . . *appeals* strongly to those Parties which, for legal or other reasons, have so far been unable to contribute to the Trust Fund to do so.”¹⁶⁸ The Secretariat has very little other significant power to force countries to meet their financial obligations.¹⁶⁹

The amount of external funding, funds which are donated both by member states and NGOs, has also decreased over the last couple of years. In 2006, \$3,052,021 was donated to supplement the Trust Fund; but in 2007, less than half, about \$1,094,710, was donated, and in 2008, only \$565,190 total was donated.¹⁷⁰ The rapid decline may be caused, in part, by the EU's missing donation. In 2006, the EU donated \$1,939,947 and did not donate anything in 2007 or 2008.¹⁷¹ In 2007, the EU implemented the EU Action Plan, and it is likely that the EU is using that money to finance its own programs.¹⁷² It is also possible that the countries are annoyed that others are not receiving any measurable benefit from the donations, since most of the fund is used to cover the administrative costs of the treaty.¹⁷³ Whatever the reason, there is evidence that member states are hesitant to give more money to CITES as it currently exists.

Although apparently the thought of giving extra money to CITES is daunting for some countries, more financially stable countries have made technological advancements that could be made available to third world countries. “For example, the United Kingdom, a major port of entry for contraband endangered wildlife, has created a National Wildlife Crime Unit. These types of units also exist in India, Namibia, the Russian Federation, South Africa, Taiwan, and the United States, where they have generally

¹⁶⁸ CITES res. 13.1, 13th Conf. (2004), available at <http://www.cites.org/eng/res/13/13-01.shtml#table> (emphasis added).

¹⁶⁹ Garrison, *supra* note 157, at 388; see *infra* Part IV.D (discussion of CITES enforcement powers).

¹⁷⁰ CONVENTION ON INT'L TRADE OF ENDANGERED SPECIES OF WILD FAUNA AND FLORA, 2008 EXTERNAL FUNDS, <http://www.cites.org/eng/disc/funds/EF2008.pdf> [hereinafter 2008 EXTERNAL FUNDS]; CONVENTION ON INT'L TRADE OF ENDANGERED SPECIES OF WILD FAUNA AND FLORA, 2007 EXTERNAL FUNDS, <http://www.cites.org/eng/disc/funds/EF2007.pdf> [hereinafter 2007 EXTERNAL FUNDS]; CONVENTION ON INT'L TRADE OF ENDANGERED SPECIES OF WILD FAUNA AND FLORA, 2006 EXTERNAL FUNDS, <http://www.cites.org/eng/disc/funds/EF2006.pdf> [hereinafter 2006 EXTERNAL FUNDS].

¹⁷¹ 2008 EXTERNAL FUNDS, *supra* note 170; 2007 EXTERNAL FUNDS, *supra* note 170; 2006 EXTERNAL FUNDS, *supra* note 170. The EU's donation, however, does not fully explain the multi-million dollar decline from 2007–2008.

¹⁷² See EU Action Plan, *supra* note 16, at para. II(h)–(i), (m), II(b).

¹⁷³ Garrison, *supra* note 157, at 388. CITES has considered ways to leave more of the Trust Fund to finance programs. See Standing Comm. Doc. 12.1, *supra* note 165, at paras. 16–18, 30–32 (discussing ways to decrease administrative costs).

had great success.”¹⁷⁴ Several countries have successfully employed dog sniffer programs to help combat wildlife crime.¹⁷⁵ Since the conventions only meet every few years, a database similar to the EU-Twix would allow countries to easily share information and resources.¹⁷⁶

The EU Action Plan specifically calls for the sharing of technology, information, and resources between member states.¹⁷⁷ The financial and subsidiary assistance to other member states, especially in developing countries, is required in order to ensure that all enforcement agencies are adequately funded and provided with the necessary technology, expertise, information, and staff to enforce wildlife policies.¹⁷⁸ There is precedent, therefore, for the sharing of funds and resources present in the EU that could be spread outside Europe.

First, CITES needs more funding to help countries effectively combat wildlife crime. Any cooperative must include a fund specifically for helping countries pay for the incremental costs of the wildlife policies. The Convention on Biological Diversity¹⁷⁹ has a similar fund called the Special Voluntary Trust Fund.¹⁸⁰ This is a voluntary fund that is specifically set up to provide funds for countries to implement programs specific to the Convention.¹⁸¹ Countries have been more generous to this fund than

¹⁷⁴ Zimmerman, *supra* note 9, at 1682.

¹⁷⁵ Jyoti Kamal, *Govt to Use Sniffer Dogs to Curb Illegal Wildlife Trade*, CNN, Nov. 7, 2008, available at <http://ibnlive.in.com/news/govt-to-use-sniffer-dogs-to-curb-illegal-wildlife-trade/77648-3.html> (India); Zimmerman, *supra* note 9, at 1682 (South Korea); Endangered Wildlife Trust—TRAFFIC East/Southern Africa Activities, https://www.ewt.org.za/workgroups_overview.aspx?group=traffic&page=activities&morePage=activities_more&activity=4 (last visited Mar. 16, 2009) (Kenya); Stuart Winter, *Battle to Halt Menace of Deadly Bushmeat Trade*, SUNDAY EXPRESS, Oct. 31, 2004, available at <http://www.sovereignty.org.uk/features/footnsmouth/bushmeat.html> (United Kingdom).

¹⁷⁶ See CITES, *supra* note 6, at art. 11(2); *supra* text accompanying notes 144–49.

¹⁷⁷ EU Action Plan, *supra* note 16, at para. III(d), (h)–(i); see also ENGER & PARRY-JONES, *supra* note 119, at 42 (the TRAFFIC report that recommended information and resource sharing in EU).

¹⁷⁸ EU Action Plan, *supra* note 16, at para. II(b); OPPORTUNITY OR THREAT, *supra* note 119, at 42.

¹⁷⁹ The Convention on Biological Diversity is a treaty “signed by 150 government leaders at the 1992 Rio Earth Summit [and] . . . is dedicated to promoting sustainable development.” Convention on Biological Diversity, <http://www.cbd.int/convention/> (last visited Jan. 19, 2009). See generally United Nations Convention on Biological Diversity, Jan. 5, 1992, 31 I.L.M. 818, available at <http://www.cbd.int/convention/convention.shtml> [hereinafter CBD].

¹⁸⁰ CBD—Status of Contributions, <http://www.cbd.int/convention/parties/contributions.shtml?tab=0> (last visited Jan. 19, 2009).

¹⁸¹ Garrison, *supra* note 157, at 388 (“Unlike the Convention on Biological Diversity, which has a funding mechanism designed to assist Parties in implementing sustainable

to CITES' external funding program; in 2009, this fund had \$6,119,573 pledged,¹⁸² while CITES' external funding for 2008 was only \$565,190.¹⁸³ One possible reason that countries have been more willing to donate money to the CBD fund over the CITES fund is that the money goes to directly help countries implement programs.¹⁸⁴ A funding regime similar to the CBD's voluntary fund should be implemented—this fund would still be supplemented by donations and should, theoretically, be as successful as the CBD voluntary fund. This fund would help poorer countries as promulgated by the EU Action Plan and, in turn, help more effectively combat wildlife crime all over the world.

Secondly, CITES must be able to penalize countries for refusing to pay their dues. The Secretariat has argued that countries are not paying because of politics and not because they cannot afford to pay the dues.¹⁸⁵ This willful noncompliance cannot be allowed to go on.¹⁸⁶ Moreover, if the member states paid the dues in full, it is possible that the Convention would have money in excess of administrative costs to better finance programs and policies,¹⁸⁷ such as instructive training manuals for enforcement officials.¹⁸⁸ CITES should also strongly consider requiring countries to pay more than the U.N. assessment amount.¹⁸⁹ CITES cannot be expected to make gold from wood; in order to effectively combat wildlife crime, CITES must have the necessary resources to reasonably accomplish this.

use projects at the national level, CITES' trust fund only covers CITES administrative operations."); CBD—Status of Contributions, *supra* note 180.

¹⁸² Voluntary Contributions under the Convention on Biological Diversity for 2008, <http://www.cbd.int/convention/parties/contributions.shtml?tab=4> (last visited Mar. 16, 2010). And this is without a contribution from the U.S. *Id.*

¹⁸³ 2008 EXTERNAL FUNDS, *supra* note 170.

¹⁸⁴ CBD—Status of Contributions, *supra* note 180; Garrison, *supra* note 157, at 388.

¹⁸⁵ See CITES Standing Comm. Doc. 12.1, *supra* note 165, para. 9.

¹⁸⁶ For further discussion, see *infra* Part IV.D.

¹⁸⁷ As it stands, the administrative costs of the convention, including travel expenditures, payment for experts, technology requirements, etc., barely covers the amount of money received from the trust fund. CITES Doc. No. 8.1, 13th Conf. 1 (2004), available at <http://www.cites.org/eng/cop/13/doc/E13-08-1.pdf>. "The expenditures in 2002 amounted to CHF 8.70 million [~5.5 million USD], which is 98 percent of the budget of CHF 8.92 million [~5.65 million USD] approved by the Conference of the Parties." *Id.*

¹⁸⁸ *Id.* at 1 (identification manuals in budget). CITES has interactive training materials for enforcement officers available through their website. CITES Publications, <http://www.cites.org/eng/resources/publications.shtml> (last visited Mar. 16, 2010).

¹⁸⁹ This was already discussed as a possibility in 2004, but was not adopted. CITES Standing Comm. Doc. No. 12.1, *supra* note 165, paras. 22–25. They discussed raising the minimum dues from .001% of the total budget to .01% for the least developed countries. *Id.* at para 23–24.

Countries may plead poverty when asked to step up enforcement of wildlife crime, especially considering the current economic situation. Spain, for example, has done just this, advocating economic growth and stimulus at the expense of environmental concerns.¹⁹⁰ Spain has pushed public works projects, such as highway building, regardless of the damaging effect such projects may have on sensitive environmental areas.¹⁹¹

It is possible, however, to have an economic package while still being sensitive to environmental concerns. The recently passed stimulus package in the United States, for example, includes many environmental initiatives including \$32.80 billion in clean energy projects, \$26.86 billion in energy efficient projects, and \$18.95 billion for eco-friendly transportation initiatives.¹⁹² Additionally, the U.S. package shows that it is possible to still be concerned about environmental issues even in the face of a serious economic downturn.¹⁹³ As such, pleading poverty is not necessarily a compelling argument for a lack of environmental regulation, including a lack of oversight regarding illegal wildlife trafficking.

CITES should require member states to be more cooperative and share resources to more effectively combat wildlife crime, as witnessed in the EU Action Plan. Secondly, CITES needs to raise more money to help countries reasonably implement the policies enacted by the convention. Lastly, CITES must begin to penalize countries for refusing to supplement the Trust Fund. And although the poor economy is an easy scapegoat for member states to rely on, it does not give countries permission to forego their environmental responsibilities.

B. Require More Rigorous Culpability Standards

First, in order to help the laws be successful, the culpability requirement for a conviction under these laws should include some form of strict liability.¹⁹⁴ Although there is no example of an unconditional standard of

¹⁹⁰ See Richard Weynalding, *Wildlife Risks Paying the Price for Economic Gloom*, ENDS EUROPE, Feb. 11, 2009 (on file with author).

¹⁹¹ See *id.*

¹⁹² Sarah Karlin, *What Will It Take to Implement a Green Jobs Agenda?*, CELSIAS, <http://www.celsias.com/article/what-will-it-take-implement-green-jobs-agenda/> (last visited Mar. 16, 2010).

¹⁹³ See Larry West, *Obama Signs "Green" Economic Stimulus Package*, ABOUT.COM, Feb. 17, 2009, available at <http://environment.about.com/b/2009/02/17/obama-signs-green-economic-stimulus-package.htm>.

¹⁹⁴ For a general discussion of having strict liability culpability in animal trafficking laws see Zimmerman, *supra* note 9, at 1679 and Kazmar, *supra* note 9, at 120–23.

strict liability for the crimes, there is international precedent of more rigorous culpability standards for both cybercrimes and wildlife crimes. Any new international cooperative should stipulate more severe liability policies to act as a deterrent for wildlife crime, both on the internet or in the traditional market.

If we do not require strict liability under the law, many wildlife criminals will be able to escape prosecution by arguing an innocent mind.¹⁹⁵ This is especially risky in online transactions. For example, even though eBay has a policy outlawing the sale of elephant ivory, there are still many solicitors on the website purporting to sell elephant ivory.¹⁹⁶ A seller could theoretically escape prosecution by arguing that he thought the ivory was antique or did not know it was real elephant ivory.¹⁹⁷ An international law stipulating strict liability, or a culpability standard similar to strict liability, would mitigate that possibility. It would also be easier for the government to prosecute these individuals if they do not have to prove *mens rea*.¹⁹⁸

Some countries, however, have rejected blanket applications of strict liability in favor of a more limited strict liability. Victoria, Australia, for example, enacted a strict liability offense of computer trespass in 1988.¹⁹⁹ Australia, however, eventually repealed this statute because it posed a risk of over-criminalization²⁰⁰ and passed the Cybercrime Act of 2001.²⁰¹ This act relies on either intent or recklessness for liability for most crimes.²⁰² Some crimes, such as ones involving government computers and information or telecommunications services, however, dictate absolute liability.²⁰³ In the instant case, a limited form of strict liability could be applied for only the most egregious violations of wildlife crime, such as appendix I violations. The Australian law, while offering proof that pure strict liability

¹⁹⁵ Zimmerman, *supra* note 9, at 1679.

¹⁹⁶ See *supra* note 78 (author's search on eBay for elephant ivory); Greenemeier, *supra* note 61 (critic's search on eBay for elephant ivory).

¹⁹⁷ This would be especially true if there was no documentation present or the sale purports to be authentic elephant ivory.

¹⁹⁸ Zimmerman, *supra* note 9, at 1679.

¹⁹⁹ Victoria Crimes (Computer) Act of 1988, 1988, sec. 9A (Austl.) ("A person must not gain access to, or enter, a computer system, or part of a computer system without lawful authority."); Simon Bronitt & Miriam Gani, *Cyber-crime in the 21st Century: Windows on Australian Law*, in CYBER-CRIME: THE CHALLENGE IN ASIA 147 (Roderic G. Broadhurst & Peter N. Grabosky eds., 2005).

²⁰⁰ Bronitt & Gani, *supra* note 199, at 147–49.

²⁰¹ The Cybercrime Act of 2001, 2001 (Austl.); see Bronitt & Gani, *supra* note 199, at 149–54.

²⁰² Bronitt & Gani, *supra* note 199, at 151–52, tbl.8.2.

²⁰³ The Cybercrime Act of 2001 § 477.2(d) (Austl.).

clauses are frowned upon, does offer precedent for a more stringent culpability standard for cybercrimes.

There is precedent in the United States supporting strict liability in wildlife crimes, albeit on a limited scale. Many U.S. wildlife laws already require strict liability.²⁰⁴ For example, the U.S. Lacey Act requires strict liability in cases where anyone who knows, or in the exercise of due care should know, that the wildlife was illegally sold or transported.²⁰⁵ If the government could not prove the requisite state of mind, the accused would be convicted of a misdemeanor instead of a felony.²⁰⁶ This partial form of strict liability could be the best of both worlds: offering harsher penalties for intentional wildlife crimes, but also punishing the incidental crimes.²⁰⁷

There is international acceptance of more rigorous *mens rea* requirements specifically for cybercrimes. The Commonwealth of Nations²⁰⁸ Model Law on Computer and Computer Related Crime,²⁰⁹ included the concept of reckless liability in their criminal code.²¹⁰ The Model Code reaches further than the Convention on Cybercrime in this respect²¹¹ and allows for easier prosecutions of cybercrimes. Reckless liability is a better requirement for wildlife crimes, because it encourages persons to think

²⁰⁴ Zimmerman, *supra* note 9, at 1679 n.180 (citing Kazmar, *supra* note 9, at 120).

²⁰⁵ Lacey Act, 16 U.S.C. § 3373(a) (2006) (“It is unlawful for any person . . . to import . . . wildlife . . . taken, possessed, transported, or sold in violation of any law.”). See Robert S. Anderson, *The Lacey Act: America’s Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27, 61 n.240 (1995) (“Congress intended the common law definition of ‘due care’ to apply” to Lacey Act prosecutions). For further discussion of the Lacey Act’s culpability requirements, see *id.* at 61–62; Zimmerman, *supra* note 9, at 1679 (discussing the possibility of including a standard close to strict liability, but not quite as stringent); Kazmar, *supra* note 9, at 121–22.

²⁰⁶ 16 U.S.C. § 3373(d) (2006). See also Anderson, *supra* note 205, at 61.

²⁰⁷ See Zimmerman, *supra* note 9, at 1679; Kazmar, *supra* note 9, at 121–22.

²⁰⁸ The Commonwealth of Nations is comprised of fifty-four countries “work[ing] together toward international goals.” Commonwealth of Nations, Introducing the Commonwealth, <http://www.commonwealth-of-nations.org/article.php?id=2&subsection=2> (last visited Mar. 16, 2010).

²⁰⁹ MODEL LAW ON COMPUTER AND COMPUTER RELATED CRIME (2002) (Commonwealth of Nations), available at <http://www.ictparliament.org/index.php/component/legislationlibrary/?task=view&id=307&catid=303>.

²¹⁰ *Id.* at pt. 2, para. 6(1). For example, a person could be liable for interfering with data if she “intentionally or recklessly, without lawful excuse or justification” destroys or alters data. *Id.* at pt. 2, para.(6)(1)(a).

²¹¹ Xingan Li, *International Actions against Cybercrime: Networking Legal Systems in the Networked Crime Scene*, 4(3) WEBOLOGY (2007), <http://www.webology.ir/2007/v4n3/a45.html>. “[T]he Commonwealth’s model law represents a breakthrough in extending criminal liability to the *mens rea* of offences of interfering with data, interfering with computer systems, and illegal devices so as to include reckless liability.” *Id.*

critically and do their research before buying or selling animals online. For example, a person may be recklessly liable for selling a seahorse, or any other animal online, without the required paperwork.²¹² This standard would also protect the completely “innocent” buyer who receives forged documents or receives wrong information that the some government seemed to want to prevent.

Currently, 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.”²¹³ Although it may not be feasible for all wildlife crimes to require strict liability, it is not unreasonable to extend a conditional strict liability requirement to international wildlife laws. If the countries would not agree to a full strict liability requirement for all crimes, then a conditional requirement could be employed. A combination of reckless liability and strict liability standards would protect both the completely innocent or duped buyer, but also deter buyers and sellers from carelessly engaging in wildlife trade, especially over the internet. This way, more wildlife criminals could be prosecuted and this would send a clear message to all potential wildlife offenders.²¹⁴ In order to deter future wildlife criminals and to punish any careless criminals and advance CITES’ enforcement goals, any international wildlife cybercrime cooperative should contain a more rigorous culpability standard.

C. *International Harmonization of Wildlife Laws*

Evidence has shown that wildlife criminals are relying more on the internet to commit crimes.²¹⁵ Now that animal trafficking has evolved into a cybercrime, wildlife legislation must change to reflect this. Cybercrimes cannot be fought exclusively on a local front since cybercrimes are often transnational.²¹⁶ The goals of international harmonization of cybercrime legislation, as evidenced in the Convention on Cybercrime, and wildlife legislation, as seen in the EU Action Plan, must be implemented in CITES.

²¹² See *supra* text accompanying notes 80–83 for examples of online sales of seahorses.

²¹³ Zimmerman, *supra* note 9, at 1679; see also Kazmar, *supra* note 9, at 121 (citing Nepal, Panama, and Chile as examples of States that do not consider a defendant’s knowledge).

²¹⁴ Zimmerman, *supra* note 9, at 1679.

²¹⁵ CAUGHT IN THE WEB, *supra* note 11, at ii (“The Internet is coming to play a central role in the activities of illegal traders.”).

²¹⁶ Susan W. Brenner, *The Council of Europe’s Convention on Cybercrime*, in CYBERCRIME: DIGITAL COPS IN A NETWORKED ENVIRONMENT 218 (Jack M. Balkin et al. eds., 2007).

Presently, CITES requires signatory countries to enact national legislation consistent with CITES, but the inconsistency between policies among the different states is cause for concern. Because CITES has no overarching authority, each state must enact its own laws.²¹⁷ This means that many of the policies have radically different penalties, thereby allowing traders to choose the most lenient country to commit the act in.²¹⁸ Now that animal trafficking is being perpetrated online, it is even more likely that the crime is transnational.²¹⁹ In order to fight animal trafficking effectively, the fight must be a global one.

Using the principles of the Convention on Cybercrime, CITES should encourage more international cooperation between parties. CITES should require member states to define certain wildlife trades as crimes as the Convention does.²²⁰ This will ensure a “baseline of consistency” for wildlife crimes that the Convention on Cybercrime attempts to achieve.²²¹ It may be advisable to create “model legislation” for countries to refer to when drafting their own laws that would not necessarily be compulsory.²²²

Additionally, an extradition policy modeled after the Convention on Cybercrime should be included in the new CITES policies. CITES, by not having an extradition policy, hampers the enforcement of wildlife laws. CITES should specifically allow for extradition of cross-border criminals²²³ for the most severe wildlife crimes dictated.²²⁴ Extradition agreements are necessary because so many wildlife crimes are transnational.²²⁵

The new provisions would only necessitate a bare minimum of legislation that would not likely interfere with national sovereignty or

²¹⁷ Zimmerman, *supra* note 9, at 1680; Kazmar, *supra* note 9, at 113.

²¹⁸ Zimmerman, *supra* note 9, at 1680 (“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.”).

²¹⁹ See Brenner, *supra* note 216, at 209.

²²⁰ See Convention on Cybercrime, *supra* note 13, at arts. 2–9.

²²¹ Brenner, *supra* note 216, at 211.

²²² The Convention on Cybercrime does not take this step and is criticized for it. See *id.* at 212.

²²³ Zimmerman, *supra* note 9, at 1680–81.

²²⁴ This is similar to the Convention on Cybercrime’s requirement that extradition be allowed only for the most severe crimes in the treaty. Convention on Cybercrime, *supra* note 13, at art. 24, para. 1.

²²⁵ See Message to Senate Transmitting the Council of Europe Convention on Cybercrime, *supra* note 102 (noting that “As such, it would help deny ‘safe havens’ to criminals . . . who can cause damage to U.S. interests from abroad using computer systems.”); see also Brenner, *supra* note 216, at 209 (discussing the “safe haven” problem).

privacy rights. Many critics of the Convention on Cybercrime would likely criticize this proposal.²²⁶ The safeguards the Convention employs would need to be implemented in the new CITES legislation.²²⁷ CITES would need to have an opt-out similar to the Convention, which would allow countries to refuse to sign on to certain resolutions if there are constitutional, sovereign, or privacy concerns.²²⁸ As earlier discussed, there is no indication that the Convention on Cybercrime will lead to blatant constitutional problems,²²⁹ and there is no indication that this will be any different for the proposed CITES changes.

The EU Action Plan is indicative of the type of international cooperation that is needed to combat the illegal animal trade. The EU Action Plan specifically requires the cooperation between states by sharing resources and information.²³⁰ An intranet, similar to EU-TWIX, would be a very beneficial tool to have and utilize globally. Since CITES conventions are only every two years or so, the intranet would allow for a more frequent form of communication and assistance between countries.²³¹ Although the EU is a small body of countries as compared to CITES, the principles employed by the EU Action Plan can easily be utilized on a larger scale.

Although the Convention on Cybercrime and the EU Action Plan are both in their infancy and their success is not altogether known, the principles of harmonization and cooperation can be developed in new CITES legislation to increase the effectiveness of the treaty. As animal trafficking has become a more lucrative and transnational crime, it has become clear that a global initiative is needed. CITES needs to adapt to the evolution of wildlife crimes or face a losing battle.

D. *Let CITES Carry a "Big Stick": Bolstering of CITES' Authority*

President Theodore Roosevelt often explained his foreign policy attitude as "speak softly and carry a big stick."²³² CITES, in order to be

²²⁶ See *supra* notes 106–18 and accompanying text describing the critics to the Convention on Cybercrime.

²²⁷ See Convention on Cybercrime, *supra* note 13, at art. 27; *supra* notes 113–18 and accompanying text.

²²⁸ Convention on Cybercrime, *supra* note 13, at art. 27.

²²⁹ See *supra* text accompanying note 118.

²³⁰ See EU Action Plan, *supra* note 16, at para. III.

²³¹ See *supra* notes 144–49 and accompanying text describing the EU-TWIX and its benefits.

²³² NATHAN MILLER, THEODORE ROOSEVELT: A LIFE 337 (New York 1992). The quote is a West African Proverb President Roosevelt was fond of. *Id.*

effective, must employ the same principle. CITES, a non-binding agreement by nature,²³³ has had an abysmal track record ensuring member states' compliance with its policies and must be able to effectively enforce policies.²³⁴

CITES has little or no authority to ensure member states' compliance with the treaty. CITES has, by its own admission, had problems with non-compliance.²³⁵ Countries have failed to supplement the trust fund,²³⁶ prepare annual reports on time,²³⁷ and to create appropriate national legislation consistent with CITES.²³⁸ Some member parties continually allow "significant trade" of CITES-listed animals.²³⁹ This persistent non-compliance essentially inhibits the effectiveness of CITES. Presently, the Secretariat lacks the authentic ability to sanction the member states which fail to meet their CITES obligations.²⁴⁰

Although the Parties at the Conference of Parties in 2007 passed a resolution concerning the compliance of the treaty,²⁴¹ it gives the Secretariat very little real power. The resolution allows the Standing Committee to recommend the suspension of trade in specimens of one or more CITES-listed species if the non-compliance is persistent.²⁴² Although twenty-one member states have been recommended for trade suspension,²⁴³ there is no evidence that any of the other countries have actually refused to trade with the negligent country.²⁴⁴ The resolution also does not include any form

²³³ Kazmar, *supra* note 9, at 113 ("CITES mainly serves as an international coordinating instrument.").

²³⁴ Rosalind Reeve, *Wildlife Trade, Sanctions and compliance: Lessons from the CITES Regime*, 82 INT'L AFFAIRS 88, 884–85 (2006).

²³⁵ See CITES res. 14.3, 14th Conf. (2007), available at <http://www.cites.org/eng/res/14/14-03.shtml> (discussing ways to better facilitate compliance of policies).

²³⁶ See *supra* notes 163–65 and accompanying text for further discussion.

²³⁷ Kazmar, *supra* note 9, at 112.

²³⁸ *Id.* at 112–13.

²³⁹ See Countries Currently Subject to a Recommendation to Suspend Trade, http://www.cites.org/eng/news/sundry/trade_suspension.shtml (last visited Mar. 16, 2009) (noting the countries subject to a trade suspension because of their continued allowance of trade in CITES-listed animals).

²⁴⁰ Kazmar, *supra* note 9, at 113; Zimmerman, *supra* note 9, at 1667.

²⁴¹ See CITES res. 14.3, *supra* note 235.

²⁴² *Id.* at para. 30.

²⁴³ Countries Currently Subject to a Recommendation to Suspend Trade, *supra* note 239 (noting that twenty-five countries are subject to the recommendation, although only twenty-one are parties to the treaty). The reasons for suspension are varied, such as lack of national legislation, failing to produce annual reports, and trade of prohibited animals. *Id.*

²⁴⁴ Zimmerman, *supra* note 9, at 1667. "Trade sanctions generally recommend that member states temporarily suspend wildlife trade with countries that are in noncompliance with

of financial penalty as earlier discussed by the Standing Committee.²⁴⁵ This resolution is admittedly a non-binding legal “guide” only and has little power to actually sanction anyone²⁴⁶ and has not been an effective deterrent for countries.²⁴⁷ Without actual power, the Secretariat has little choice, but to depend on the good graces of the country to comply with the sanctioned trade restrictions. Although this resolution is a good beginning, a more resolute sanctioning policy must be enacted to actually curb non-compliance.

CITES' purpose must be fundamentally changed to realistically bolster its authoritative power. CITES, as it currently stands, is little more than a guideline.²⁴⁸ CITES' resolutions must no longer be “non-binding” guidelines, but must have the effect of law. Such penalties could include the institution of fines,²⁴⁹ trade restrictions as already agreed to, and the inability to participate in decision-making at the Conference of Parties. This would allow CITES to properly sanction a country's non-compliance, which would act as a real deterrent.

Although countries may object to the swift sanctioning power of CITES,²⁵⁰ the changes from present resolutions would be relatively minor.

CITES. . . . [However,] no part of the treaty binds member states to act on recommendations. . . .” *Id.* at 1666–67 (emphasis added).

²⁴⁵ See Standing Comm. Doc. 12.1, *supra* note 165, at para. 8(b) (“Financial penalty (ineligibility of a Party to have its participation in a meeting of the Conference of the Parties funded by the Convention, ineligibility of a Party to receive other financial assistance from the Convention).”); see CITES res. 14.3, *supra* note 235.

Some recommend fining countries that violate the provisions of the treaty. Compare Terrence L. Lavy, *Extradition in the Protection of Endangered Species*, 4 CRIM. L.F. 443, 456 (1993) (recommending financial penalties), with Zimmerman, *supra* note 9, at 1686 (arguing that financial penalties will not work). Many of the countries that are unable to adequately comply with CITES are developing countries that likely could not pay the fines. Zimmerman, *supra* note 9, at 1686.

²⁴⁶ CITES res. 14.3, *supra* note 235, at para. 1.

²⁴⁷ This is evidenced by the eighty-seven countries that have still not paid their dues for 2009 to the tune of \$367,716 even after the passage of the resolution. CITES ANNUAL UNPAID CONTRIBUTIONS, *supra* note 163. Also, \$71,069 is still due for 2008. *Id.*

²⁴⁸ See Kazmar, *supra* note 9, at 112–13.

²⁴⁹ Large financial penalties are not necessary, but a nominal fine may still send the message. Zimmerman, *supra* note 9, at 1686 (noting specifically that “significant” fines may not work).

²⁵⁰ It is important to note that similar international sanctioning powers exist in the UN. For example, the United Nations (U.N.) recently imposed serious sanctions on Iran for violation of the Treaty on the Non-Proliferation of Nuclear Weapons. Treaty on the Non-Proliferation of Nuclear Weapons (NPT), July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161, available at <http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc140.pdf>; Security Council Toughens Sanctions Against Iran, Adds Arms Embargo, S.C. Doc. No.

Member states, by passing resolutions on compliance measures, have acknowledged the problem and agreed to the possibility of trade restrictions and have considered financial penalties in the past. Countries simply would be held responsible for their commitments to the protection of wildlife. CITES must have a way to ensure compliance or the fight against animal trafficking will inevitably fail.

CONCLUSION

As the third largest illegal business in the world,²⁵¹ one that is growing at an astonishing rate,²⁵² animal trafficking deserves more attention than it has been given to date. Although efforts such as CITES are commendable, they are largely ineffective because they bow to concerns of national sovereignty.²⁵³ By allowing its members to make their own rules, CITES renders itself toothless. The unification of wildlife legislation, including culpability requirements, is essential to the successful combat of wildlife crime.

CITES amounts to little more than a symbolic gesture and a warning not to traffic in animals. The necessary solution to illegal animal trafficking is to bolster CITES and increase its power to enforce regulations.²⁵⁴ It is time for the world to take responsibility for protecting wildlife and give CITES the power it needs to be effective.

The growing use of the internet in wildlife trafficking necessitates a global response and harmonization is needed to effectively combat wildlife crime. Because wildlife crime is a global crime, international cooperation is essential. CITES should draft model legislation or specific policies for member states to adopt.²⁵⁵ Consistency between national legislation is necessary to ensure that criminals are not using lenient countries as “safe havens” to commit animal trafficking.²⁵⁶ A more rigorous culpability

8980, ¶¶ 1–3 (Mar. 24, 2007), available at <http://www.un.org/News/Press/docs/2007/sc8980.doc.htm>. Although wildlife trafficking is not as grievous as nuclear proliferation, the treaty, and other UN sanctions, are precedent for this type of international sanctioning.

²⁵¹ Giovanni, *supra* note 1, at 25.

²⁵² Joonmoo Lee, *Poachers, Tigers and Bears . . . Oh my! Asia's Illegal Wildlife Trade*, 16 *NW. J. INT'L L. & BUS.* 497, 497 (1996).

²⁵³ This is because CITES allows parties to draft their own national policies rather than providing model legislation or implementing its own policies. See Kazmar, *supra* note 9, at 110–13; Zimmerman, *supra* note 9, at 1665–66.

²⁵⁴ See *supra* Part IV.D.

²⁵⁵ See *supra* Part IV.C.

²⁵⁶ See Brenner, *supra* note 216, at 209 (discussing the problem of “safe havens”); see also Message to Senate Transmitting the Council of Europe Convention on Cybercrime, *supra*

standard for online wildlife crimes in the new legislation is essential, because it is easy for a criminal to feign ignorance of the laws.²⁵⁷ This would force the buyer or seller to take, at the very least, minimal precautions before engaging in online wildlife transactions.

Funds, technology, and resources must be shared to ensure that criminals do not have a haven to commit wildlife crimes.²⁵⁸ There is precedent of this ideal cooperation seen in the EU Action Plan.²⁵⁹ Countries must make the fight against wildlife crime a priority and pony up the resources necessary to sustain the fight in order for the overexploitation of wildlife to be curbed. Only when the world takes responsibility for the environment as a whole will environmental sustainability and stability be achieved.

note 102 (noting the importance of the Convention of Cybercrime to combat transnational computer crimes).

²⁵⁷ See *supra* notes 195–97 for further discussion.

²⁵⁸ See *supra* Part IV.A.

²⁵⁹ See *supra* Part III.