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Flying Towards Extinction: The Role of the Aviation Industry in Perpetuating International Wildlife Trafficking

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**FLYING TOWARDS EXTINCTION: THE ROLE OF THE
AVIATION INDUSTRY IN PERPETUATING
INTERNATIONAL WILDLIFE TRAFFICKING**

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ABSTRACT

In the past sixty years, the world has developed significant concern for burgeoning environmental issues. Starting in the 1960s, governments, industries, and the public have embraced efforts to set standards for public and private actors in areas of environmental concern. Particularly, increased globalization has led to an increase in the trade of wildlife and its products, including endangered species.

Unregulated wildlife trade implicates various issues, such as conservation concerns, the spread of diseases, and even funding for criminal organizations. While sovereign governments work independently and together to combat wildlife trafficking and its effects, current law leaves significant gaps in the implementation and enforcement of international agreements. Instead, advocates and researchers are turning to the transport sector to fill the loopholes that allow traffickers to exploit the current antiwildlife trafficking conventions.

Part I of this Comment details the dangers of wildlife trafficking and why industry leaders should care about adopting policies to combat it. Part II discusses the history of international wildlife law and argues that current law is ineffective and requires more comprehensive enforcement at the international level. Foremost, Part III of this Comment argues that the air-

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travel industry *can* and *should* adopt policies, like standards and regulations, that directly affect wildlife trafficking where current law fails.

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I. INTRODUCTION

THE RISE OF COVID-19 brought to light several global issues: inequitable access to healthcare, the role of social media in the spread of misinformation, and humanity's invaluable ability to create effective solutions to pressing issues.¹ As the virus ravaged the globe, discussions of COVID's origin was a leading concern.² The primary culprit varied, but the underlying story remained the same: the virus is a zoonotic disease (a disease transferred from nonhumans to humans) that likely

¹ See *Everyone Included: Social Impact of COVID-19*, U.N., <https://www.un.org/development/desa/dspd/everyone-included-covid-19.html> [<https://perma.cc/PN38-HQYY>].

² See, e.g., Emily Vaughn, *Coronavirus 101: What We Do — And Don't — Know About the Outbreak of COVID-19*, NPR (Jan. 24, 2020, 4:00 AM), <https://www.npr.org/sections/goatsandsoda/2020/01/24/798661901/wuhan-coronavirus-101-what-we-do-and-dont-know-about-a-newly-identified-disease> [<https://perma.cc/3TSA-RBH7>]; Robin Young & Katherine Simpson, *Scientists Try to Pinpoint Animal Origins of COVID-19*, WBUR (Feb. 13, 2020), <https://www.wbur.org/hereandnow/2020/02/13/new-coronavirus-origins-deaths> [<https://perma.cc/2RVA-GR8S>].

originated from a wet market in Wuhan, China, where unregulated wildlife specimens and products are sold.³ While the virus may have originated from a species endemic to China, there is also the chance that the offending specimen originated elsewhere.⁴

International wildlife trafficking is a lucrative business with reports estimating its value between \$7 billion U.S. dollars (USD) and \$23 billion USD annually.⁵ However, the true value and scope of the illicit wildlife trade is unknown because of the inherently obscure nature of criminal activity. What is known is that traffickers often exploit commercial transport industries, including the air-travel industry, to conduct trade.⁶

In August 2021, the aviation industry was implicated in a report issued by the international nonprofit World Animal Protection (WAP).⁷ After a years-long analysis of social-media posts advertising the international sale of exotic animals, WAP concluded that over 20% of the species pictured for sale were protected and regulated under international law.⁸ Even when the species for sale were unprotected, WAP noted that many postings displayed animals in uncomfortable and dangerous shipping containers that are not in compliance with industry regulations regarding the transportation of live animals via airlines.⁹

While several airlines were identified through tag numbers in picture postings, Ethiopian Airlines (Ethiopian) was the primary airline associated with the transportation of these animals.¹⁰ Ethiopian is the flag carrier of Ethiopia and is considered one of the preeminent airlines on the African continent, having won numerous international awards for excellence in logistics, crisis

³ PERVAZE A. SHEIKH & KATARINA C. O'REGAN, CONG. RSCH. SERV., IF11494, WILDLIFE TRADE, COVID-19, AND OTHER ZOOLOGIC DISEASES (2021).

⁴ *See id.* China has a reputation as one of the most prolific importers of trafficked wildlife. SUZANNA STEPHENS & MATTHEW SOUTHERLAND, U.S.-CHINA ECON. & SEC. REV. COMM'N, CHINA'S ROLE IN WILDLIFE TRAFFICKING AND THE CHINESE GOVERNMENT'S RESPONSE 6 (2018).

⁵ *Wildlife Trafficking*, ROUTES, <https://routespartnership.org/about/routes/background> [<https://perma.cc/W4PW-PMZK>].

⁶ *Id.*

⁷ *Cargo of Cruelty: How Ethiopian Airlines Is Fuelling Global Wildlife Trade*, WORLD ANIMAL PROT. 3 (2021), https://www.worldanimalprotection.org/sites/default/files/2021-09/Cargo_of_Cruelty_West_Africa_Report_1.pdf [<https://perma.cc/C9YZ-WUZ4>].

⁸ *See id.* at 9–11.

⁹ *Id.* at 41–42.

¹⁰ *Id.* at 14.

leadership, and efficiency.¹¹ However, the airline's location in West Africa and status as an international carrier makes it an opportunistic courier for wildlife traders looking to send "products" abroad—particularly to Europe and the Americas.¹² Ethiopian swiftly responded to WAP's allegations through a statement in which the airline asserted that it "actively monitors compliance [with international wildlife trade laws] and has refused shipments that were found to be not in compliance."¹³

While WAP's allegations against Ethiopian are demonstrative of the role that airlines play in wildlife trafficking, the issue remains that Ethiopian's statement on the matter is likely as far as this issue will be addressed. As with other areas of public international law, international wildlife law "is characterised by the absence of strong, centralised institutions" without a "supra-national legislature . . . [or] any international police force to ensure compliance" with treaties and conventions.¹⁴ Instead, most international wildlife treaties and conventions place a "heavy emphasis on the individual sovereignty of member states."¹⁵ The burden of implementation and enforcement thus falls to individual states that may neglect international standards or may not have the "technical expertise and financial resources needed to transform" international standards into enforceable law.¹⁶ Even when states *can* implement law, enforcement is further hindered by blurred lines between legal and illegal wildlife trade,¹⁷ use of

¹¹ See *Awards*, ETH. AIRLINES, <https://corporate.ethiopianairlines.com/AboutEthiopian/Awards> [<https://perma.cc/XUE8-U89Q>].

¹² See WORLD ANIMAL PROT., *supra* note 7, at 13.

¹³ Press Release, Eth. Airlines, Statement of Ethiopian Airlines in Response to Report Regarding Transport of Wildlife (Sept. 2, 2021), <https://corporate.ethiopianairlines.com/Press-release-open-page/statement-of-ethiopian-airlines-in-response-to-report-regarding-transport-of-wildlife> [<https://perma.cc/69V8-5YY4>]. While the WAP report focuses on Ethiopian's role in wildlife trafficking, WAP notes that other airlines are also part of the problem. WORLD ANIMAL PROT., *supra* note 7, at 12. In fact, the report is largely supportive of Ethiopian and demonstrates a high regard for the airline. See *id.* at 13.

¹⁴ MICHAEL BOWMAN, PETER DAVIES & CATHERINE REDGWELL, *LYSTER'S INTERNATIONAL WILDLIFE LAW* 25 (2d ed. 2010).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Michael 't Sas-Rolfes, Daniel W.S. Challender, Amy Hinsley, Diogo Verissimo & E.J. Milner-Gulland, *Illegal Wildlife Trade: Scale, Processes, and Governance*, 44 ANN. REV. ENV'T & RES. 201, 204 (2019).

forged trade permits,¹⁸ and inconsistent data reporting between trading partners.¹⁹

Because of these inherent gaps in international and foreign law, the private sector provides an opportunity to unify aviation industry leaders and stakeholders under a single standard to fill the gaps left by uneven and unenforceable legislation.

This Comment seeks to spark interest in the airline industry's role in wildlife trafficking and shine light on the current gaps in international law regarding the illegal wildlife trade. This Comment will first provide a detailed background of the development of international wildlife law. It will then discuss existing law and highlight that existing law is often complicated, decentralized, and unenforceable. Finally, this Comment will discuss current efforts to fill the gaps in international law and demonstrate how the air-travel industry is adopting and enforcing these proposed solutions.

II. THE DEVELOPMENT OF WILDLIFE TRADE LAW

A. THE DANGERS OF INTERNATIONAL WILDLIFE TRAFFICKING

Before discussing the legal background of wildlife law, it is important to understand exactly why such law is necessary. From conservation issues to funding terrorist organizations, international wildlife trafficking proves to be a dangerous industry that threatens global health and safety in several ways.²⁰

Scientists believe Earth is currently experiencing what is referred to as “a sixth great mass extinction.”²¹ Existing wildlife law addresses this ongoing issue by focusing on efforts to protect

¹⁸ See Willow Outhwaite, *Addressing Corruption in CITES Documentation Processes*, TARGETING NAT. RES. CORRUPTION, Mar. 2020, at 1, <https://www.traffic.org/site/assets/files/12675/topic-brief-addressing-corruption-in-cites-documentation-processes.pdf> [<https://perma.cc/F5XU-ZHXY>].

¹⁹ See *Runway to Extinction: Wildlife Trafficking in the Air Transport Sector*, ROUTES (2019), https://www.traffic.org/site/assets/files/12773/runway-to-extinction_web.pdf [<https://perma.cc/WKA4-SZ7U>].

²⁰ See Hannah McNeish, *\$213bn Illegal Wildlife and Charcoal Trade Funding Global Terror Groups*, OUR WORLD (June 27, 2014), <https://ourworld.unu.edu/en/213bn-illegal-wildlife-and-charcoal-trade-funding-global-terror-groups> [<https://perma.cc/HS33-8HYS>]; Vanda Felbab-Brown, *Wildlife and Drug Trafficking, Terrorism, and Human Security*, BROOKINGS (Nov. 8, 2018), <https://www.brookings.edu/articles/wildlife-and-drug-trafficking-terrorism-and-human-security/> [<https://perma.cc/QA5M-REFX>].

²¹ Ron Wagler, *Incorporating the Current Sixth Great Mass Extinction Theme into Evolution Education, Science Education, and Environmental Education Research and Standards*, 6 EVOLUTION: EDUC. & OUTREACH 1, 2 (2013).

and support the growth of species facing extinction.²² Under this structure, species are categorized based on their vulnerability to total eradication.²³ While habitat destruction and pollution are some of the more well-known drivers of the current mass extinction, issues also include the “overexploitation of species” and “the spread of invasive species,” which are undoubtedly tied to the wildlife trade.²⁴ Accordingly, “[t]he commercial trade of wildlife . . . is now so substantial that it represents one of the most prominent drivers of vertebrate extinction risk globally.”²⁵

The demand for wildlife products, such as elephant-tusk ivory and rhino horns, is the primary fuel for wildlife trafficking.²⁶ Such products are desirable for their use in traditional Chinese medicine (TCM) or as status symbols.²⁷ Because the demand is so high, the exorbitant prices consumers will pay for these products often incentivize individuals to harvest and sell these products through legal and illegal means.²⁸ However, harvesting some of the most-valuable wildlife products requires maiming and even killing the specimen, leading to significant declines in wildlife populations.²⁹ For example, elephants are often killed to harvest the ivory from their tusks.³⁰ Because of the ivory trade, the number of African elephants (*Loxodonta africana*) has plummeted from “12 million a century ago to an estimated 400,000 today.”³¹ Additionally, the Javan (*Rhinoceros sondaicus*) and Sumatran (*Dicerorhinus sumatrensis*) rhino populations sit at about eighty rhinos each as a result of poachers killing these rhinos for their valuable horns.³²

Another facet of the wildlife trade is the market for exotic pets. The exotic pet market is global in scope, and demand is

²² See, e.g., *What Is CITES?*, CITES, <https://cites.org/eng/disc/what.php> [<https://perma.cc/AL2G-TMUB>].

²³ See *id.*; *Background & History*, IUCN RED LIST, <https://www.iucnredlist.org/about/background-history> [<https://perma.cc/MBX5-KQ2N>].

²⁴ Wagler, *supra* note 21, at 2.

²⁵ WORLD ANIMAL PROT., *supra* note 7, at 28.

²⁶ See Sharon Guynup, Chris R. Shepherd & Loretta Shepherd, *The True Costs of Wildlife Trafficking*, 21 GEO. J. INT'L AFFS. 28, 30 (2020).

²⁷ *Id.*

²⁸ See Neha Jain, *Probing Rural Poachers in Africa: Why Do They Poach?*, MONGABAY (Mar. 22, 2017), <https://news.mongabay.com/2017/03/probing-rural-poachers-in-africa-why-do-they-poach/> [<https://perma.cc/QAC5-S5V6>].

²⁹ See Guynup et al., *supra* note 26, at 30.

³⁰ See *id.*

³¹ *Id.*

³² *Id.*

significantly increasing with improved standards of living.³³ However, affluent western countries are the most prolific purchasers of exotic pets, with the United States leading the charge.³⁴ In 2011 alone, the U.S. reptile trade generated a revenue of nearly \$1.4 billion USD.³⁵ Meanwhile, over 18.8 million protected reptiles were transported to the European Union between 1996 and 2012.³⁶ As with other areas of the wildlife trade, the data from the exotic pet trade is largely unknown due to gaps in research and reporting.³⁷ Thus, the true scope of the exotic wildlife trade is unknown.³⁸

The exotic pet trade can be just as detrimental to a species' survival as the harvesting of animal products. For one, all exotic pets trace back to specimens removed from their natural habitat.³⁹ Additionally, while wildlife breeders often claim their products are bred in captivity, many rely on wild-caught specimens to "maintain captive population viability."⁴⁰ Some traders lie about the origin of their product to avoid regulations that do not apply to captive-bred animals, such as the international permitting requirements.⁴¹

Along with other conservation concerns, the unregulated wildlife trade (particularly the exotic pet trade) plays a significant role in the introduction of invasive species.⁴² A species is considered "invasive" when it is non-native and its introduction is likely to result in environmental-, economic-, or health-related harm.⁴³ Invasive species interfere with local ecosystems, often by "undermin[ing] food and water security" of local species.⁴⁴ Invasive species are also known to spread diseases that may be detrimental to native species and even humans.⁴⁵ Moreover, the

³³ See Julie L. Lockwood et al., *When Pets Become Pests: The Role of the Exotic Pet Trade in Producing Invasive Vertebrate Animals*, 17 *FRONTIERS ECOLOGY & ENV'T* 323, 324 (2019).

³⁴ See James S. Sinclair et al., *The International Vertebrate Pet Trade Network and Insights from US Imports of Exotic Pets*, 71 *BIO SCIENCE* 977, 978 (2019).

³⁵ Lockwood et al., *supra* note 33, at 325.

³⁶ *Id.* at 324.

³⁷ Sinclair et al., *supra* note 34, at 980.

³⁸ *See id.*

³⁹ *Id.* at 979.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See NAT'L INVASIVE SPECIES COUNCIL, *MANAGEMENT PLAN 2016–2018*, AT 1 (2016).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See id.* at 19.

damage caused by invasive species “jeopardize[s] the integrity of critical infrastructure, threaten[ing] the livelihood . . . of people who are largely dependent upon local resources.”⁴⁶

Another particularly topical issue stemming from wildlife trafficking is the rise of zoonotic diseases (zoonoses)—diseases originating in animals that transfer to humans.⁴⁷ Zoonoses are the source of approximately 60% of emerging infectious diseases (EIDs), with 72% of those diseases originating in wildlife.⁴⁸ According to a Congressional Research Service Report, “trade [in wildlife] increases the risk of virus transmission between hosts that might not otherwise interact in nature.”⁴⁹ Even “[l]egal but poorly regulated trade . . . can increase human exposure to zoonotic diseases.”⁵⁰

Many of the most recent epidemics and pandemics originate from the wildlife trade.⁵¹ In the 1980s, Human Immunodeficiency Virus (HIV), a debilitating autoimmune disorder that has killed an estimated 30 million people, is believed to have originated from chimpanzees (*Pan troglodytes*) in Central Africa, likely spreading when humans interacted with the blood of chimpanzee bushmeat.⁵² Ebola virus disease (EVD), a disease in which victims suffer from gruesome hemorrhagic fevers, also likely originated from the consumption of primate bushmeat.⁵³ However, one cannot talk about zoonotic diseases today without discussing the ever-lingering Severe Acute Respiratory Syndrome Coronavirus-2, also known as COVID-19.

The costs of diseases like COVID-19 demonstrate just how dangerous zoonoses can be. Health officials and wildlife conservationists alike have called on governments and global organizations to act swiftly to curb the catastrophic potential of EIDs,

⁴⁶ *Id.* at 1.

⁴⁷ PERVAZE A. SHEIKH & KATARINA C. O'REGAN, CONG. RSCH. SERV., IF11494, WILDLIFE TRADE, COVID-19, AND OTHER ZOOONOTIC DISEASES (2021).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See About HIV*, CTRS. FOR DISEASE CONTROL & PREVENTION [CDC], <https://www.cdc.gov/hiv/basics/whatishiv.html> [<https://perma.cc/8BJX-53S5>] (June 30, 2022); *Appendices*, CITES (June 22, 2022) [hereinafter CITES Appendices], <https://cites.org/eng/app/appendices.php> [<https://perma.cc/4CQT-23U4>]; *Fact Sheet*, UNAIDS (2013), <https://www.unaids.org/en/resources/campaigns/globalreport2013/factsheet> [<https://perma.cc/6Y34-XEYR>].

⁵³ *History of Ebola Virus Disease*, CDC, <https://www.cdc.gov/vhf/ebola/history/summaries.html> [<https://perma.cc/HA8Y-SV8F>] (May 27, 2021).

including those originating from zoonoses.⁵⁴ Generally, these organizations call for increased enforcement and recording efforts to gather data that sufficiently demonstrates trends among traffickers and contact-tracing where infections emerge.⁵⁵ For airlines specifically, suggestions include increasing awareness among passengers and staff, and “[i]nform[ing] aviation policies and practices . . . with data on trends in smuggling of animals and animal products.”⁵⁶ During the pandemic, airlines demonstrated the industry’s vital role in transporting essential goods to communities in need, but “[t]heir part in fighting the pandemic should not be contradicted by their potential role in causing future zoonotic disease spillovers.”⁵⁷

In the WAP report accusing Ethiopian Airlines of participating in the wildlife trade, researchers identified at least fourteen different species known to carry dangerous pathogens.⁵⁸ The social-media listings referenced in the report advertised the sale of bats (order *Chiroptera*), which are well-known to carry diseases like rabies and may possibly be the source of COVID-19.⁵⁹ Additionally, “[r]eptiles, which featured in more than 90% of shipping posts . . . are also well documented as potential carriers of diseases that affect human health, such as Q fever and Lyme disease.”⁶⁰

Along with conservation issues and the spread of disease, wildlife trafficking also creates security risks.⁶¹ When people imagine activities that fund criminal organizations, there tends to be a focus on trafficking drugs, weapons, and human beings.⁶² However, terrorist groups and drug cartels have turned to wildlife

⁵⁴ See PERVAZE A. SHEIKH & KATARINA C. O’REGAN, CONG. RSCH. SERV., IF11494, WILDLIFE TRADE, COVID-19, AND OTHER ZOOONOTIC DISEASES (2021); Guynup et al., *supra* note 26, at 33–35; BEN SPEVACK, ROUTES, ANIMAL SMUGGLING IN AIR TRANSPORT AND PREVENTING ZOOONOTIC SPILLOVER 15 (2020).

⁵⁵ See PERVAZE A. SHEIKH & KATARINA C. O’REGAN, CONG. RSCH. SERV., IF11494, WILDLIFE TRADE, COVID-19, AND OTHER ZOOONOTIC DISEASES (2021); Guynup et al., *supra* note 26, at 33–35.

⁵⁶ SPEVACK, ROUTES, *supra* note 54, at 15.

⁵⁷ WORLD ANIMAL PROT., *supra* note 7, at 34.

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ *Id.*

⁶¹ See MARY UTERMÖHLEN & PATRICK BAINE, ROUTES, IN PLANE SIGHT: WILDLIFE TRAFFICKING IN THE AIR TRANSPORT SECTOR 12–13 (2021), https://www.traffic.org/site/assets/files/10858/in_plane_sight.pdf [<https://perma.cc/NU87-LPSV>].

⁶² *See* Guynup et al., *supra* note 26, at 32.

trafficking for a new source of revenue.⁶³ Whereas drug and weapons trafficking are highly publicized and a cause for vigilance among enforcement personnel, wildlife trafficking does not garner the same attention.⁶⁴ The lack of attention given to wildlife trafficking translates to less enforcement and lesser punishment.⁶⁵ Therefore, criminal organizations are attracted to wildlife trafficking because of its low risk and high reward, and have begun to shift toward a seemingly safer but similarly profitable option.⁶⁶

For example, National Geographic published a report by investigative journalist Bryan Christy in which Christy connects the ivory trade with known terror organizations in Central Africa, specifically Sudan, South Sudan, and the Democratic Republic of the Congo.⁶⁷ Through his investigation, Christy confirmed the widely shared belief that the Lord's Resistance Army (LRA), a fundamental-Christian terror organization, relied on the sale of ivory for funding.⁶⁸ Joseph Kony, LRA's leader and one of Africa's most wanted terrorists, apparently regards ivory as a sort of savings account that funds his organization's campaign of violence and corruption.⁶⁹

As these three distinct issues demonstrate, the regulation of the wildlife trade is a necessary intervention to preserve Earth's fragile ecosystem and provide safety to humans.

B. A HISTORICAL BACKGROUND OF WILDLIFE TRADE LAW

Historians have recorded wildlife conservation efforts as far back as 1900 B.C.E., when the Babylonians adopted laws to preserve local forests.⁷⁰ However, it was not until the 19th century when governments and scientific communities began to recognize a need for more global efforts to combat the effects of "the development of heavy industry and the expansion of human settlements."⁷¹ In 1893, one of the most prominent international wildlife cases, the *Bering Sea Arbitration*, resulted in a short-lived

⁶³ *See id.*

⁶⁴ *See* Guynup et al., *supra* note 26, at 32.

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ Bryan Christy, *How Killing Elephants Finances Terror in Africa*, NAT'L GEOGRAPHIC (Aug. 12, 2015), <https://www.nationalgeographic.com/tracking-ivory/article.html> [<https://perma.cc/V29N-JEDC>].

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ BOWMAN ET AL., *supra* note 14, at 3.

⁷¹ *Id.* at 4.

agreement between the United States and the United Kingdom concerning the hunting of wild fur seals residing in disputed territory in the Bering Strait.⁷² In the following decades, more countries made efforts to preserve wildlife.⁷³ Global officials joined multiple treaties seeking to preserve wild species in regions like southern Africa, but none achieved much success due to structural issues resulting from the weak international system.⁷⁴

More conservation efforts focusing on wildlife preservation came about in the 1920s and 1930s.⁷⁵ During this era, the Dutch government funded the International Office for the Protection of Nature (IOPN).⁷⁶ The colonial powers in Africa also collaborated with nongovernmental organizations (NGOs) to discuss preservation efforts in the region, resulting in the 1933 International Convention for the Protection of Flora and Fauna.⁷⁷ In the Americas, the United States and other countries adopted similar conservation treaties, such as the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.⁷⁸ The primary goal of these international efforts was “the creation of protected areas, but also . . . the protection of species listed in an Annex.”⁷⁹

While global attention drifted away from conservation efforts during the world wars and the economic depression of the 1930s, the creation of the United Nations (UN) in 1945 catalyzed international efforts to develop more-comprehensive wildlife conservation law.⁸⁰ The UN established the IOPN and renamed it as the more familiar International Union for the Conservation of Nature and Natural Resources (IUCN) to take the lead on conservation efforts.⁸¹ The IUCN continues to “play a vital role in this field” by establishing “lines of communication and co-operation between the governmental and non-governmental sectors.”⁸² Most significantly, the IUCN publishes “its *Red*

⁷² See J. Stanley Brown, *Fur Seals and the Bering Sea Arbitration*, 26 J. AM. GEOGRAPHICAL SOC'Y N.Y. 326, 361–63 (1894).

⁷³ See BOWMAN ET AL., *supra* note 14, at 5.

⁷⁴ *Id.*

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 8.

⁸¹ See *id.* at 9.

⁸² *Id.*

List of Threatened Species, a comprehensive guide to current conservation status of plants and animals.”⁸³ The UN continues to host conventions to promote wildlife conservation.⁸⁴

In 1962, Rachel Carson published *Silent Spring*, a renowned criticism of the chemical industry’s use of destructive pesticides and their effect on wildlife populations.⁸⁵ *Silent Spring* and other works marshalled in the “age of environmental awareness,” which saw a “discernible change in the climate of public opinion” concerning how governments and businesses interacted with the environment.⁸⁶ One particular concern was the increased international trade of wildlife and how the trade affected the survival and treatment of commodified species.⁸⁷ In 1963, the IUCN General Assembly met to address these concerns.⁸⁸ The meeting resulted in a preliminary version of what is now called the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁸⁹ In 1973, CITES was formally agreed upon by representatives from eighty countries, and the Convention went into effect two years later.⁹⁰ Today, CITES is considered the “most successful of all international treaties concerned with the conservation of wildlife.”⁹¹

C. THE CITES REGULATORY FRAMEWORK

CITES is the preeminent law regarding the international trade of endangered species. Taking effect in 1975, CITES was developed to recognize “that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade.”⁹² In furtherance of this goal, CITES establishes a regulatory scheme limiting or prohibiting trade of species listed in one of CITES’s

⁸³ *Id.*

⁸⁴ *See id.*

⁸⁵ *Id.* at 11.

⁸⁶ *Id.*

⁸⁷ *See id.* at 483.

⁸⁸ *Id.* at 483–84.

⁸⁹ *Id.* at 484.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Convention on International Trade in Endangered Species of Wild Fauna and Flora pmb., Mar. 3, 1973, 27 U.S.T. 1087, 1090, 993 U.N.T.S. 243, 245 [hereinafter CITES].

three appendices.⁹³ Currently, CITES has over 180 signatory countries, including the United States.⁹⁴

The foremost feature of CITES is its unique regulatory scheme. Specifically, CITES lists permitting criteria required for the international trade of protected species.⁹⁵ Similar to the IUCN Red List, protected species are separated into one of three appendices based on their current conservation status.⁹⁶ Appendix I species are offered the most protection whereas Appendix III species only have minimal permitting restraints.⁹⁷

Appendix I species include those “threatened with extinction which are or may be affected by trade” so much so that “[t]rade . . . of these species must be subject to particularly strict regulation in order not to endanger further their survival.”⁹⁸ These species are determined by a two-thirds majority vote of member states at the Conference of the Parties, which occurs approximately every two years.⁹⁹ Appendix I includes species such as the western gorilla (*Gorilla gorilla*), the red-necked parrot (*Amazona arausiaca*), and the Guatemalan fir tree (*Abies guatemalensis*).¹⁰⁰

Generally, when a party files for a permit requesting the trade of an Appendix I species, the authorities of exporting states must ensure that four criteria are satisfied: (1) the specimen’s “export will not be detrimental to the survival of that species”; (2) the specimen was legally obtained according to that state’s laws; (3) the specimen will be transported so “as to minimize the risk of injury, damage to health or cruel treatment”; and (4) the import state has granted a valid import permit.¹⁰¹ On the other side, the importing state must check off three criteria: (1) “the import will be for purposes which are not detrimental to the survival of the species involved,” (2) the specimen is being placed with a person or entity that has the proper ability to care for it, and (3) “the specimen is not to be used for primarily commercial purposes.”¹⁰²

⁹³ See *id.* arts. III–V.

⁹⁴ See *List of Parties to the Convention*, CITES, <https://cites.org/eng/disc/parties/index.php> [<https://perma.cc/A5GM-MNEW>].

⁹⁵ See CITES, *supra* note 92, arts. III–V.

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ *Id.* art. II(1).

⁹⁹ See *id.* art. XV.

¹⁰⁰ See CITES Appendices, *supra* note 52.

¹⁰¹ See CITES, *supra* note 92, art. III(2).

¹⁰² *Id.* art. III(2).

Appendix II species include “all species which although not necessarily now threatened with extinction may become so” without proper regulation of their trade.¹⁰³ Additionally, Appendix II covers species “which must be subject to regulation in order that trade” of other Appendix II species “may be brought under effective control.”¹⁰⁴ A species may be added to Appendix II in the same way as Appendix I species, by a two-thirds majority vote at the Conference.¹⁰⁵ The North American river otter (*Lontra canadensis*), the green iguana (*Iguana iguana*), and Venus fly-trap (*Dionaea muscipula*) are all species included in Appendix II.¹⁰⁶

Export permits for Appendix II specimens require that three criteria are met: (1) the specimen’s “export will not be detrimental to the survival of that species,” (2) the specimen was legally obtained according to that state’s laws, and (3) the specimen will be transported so “as to minimize the risk of injury, damage to health or cruel treatment.”¹⁰⁷ Unlike species in Appendix I, Appendix II species do not require that a valid import permit has been granted by the importing state.¹⁰⁸ In fact, all the importing state must do is ensure the export permit is valid under CITES.¹⁰⁹ As with Appendix I, Appendix II has similar requirements for the reexport of species and the introduction of Appendix II marine species.¹¹⁰

Finally, Appendix III species are those “which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.”¹¹¹ Amendments to Appendix III may take place at the Conference or between meetings and requires a two-thirds vote.¹¹² Appendix III species include the African civet (*Civettictis civetta*) as requested by Botswana, the northern anteater (*Tamandua mexicana*) as requested by Guatemala, and the hellbender

¹⁰³ *Id.* art. II(2).

¹⁰⁴ *Id.*

¹⁰⁵ *See id.* art. XV.

¹⁰⁶ CITES Appendices, *supra* note 52.

¹⁰⁷ *See* CITES, *supra* note 92, art. IV(2).

¹⁰⁸ *See id.* arts. III(2), IV(2).

¹⁰⁹ *See id.* art. IV(4).

¹¹⁰ *See id.* art. IV(5)–(6).

¹¹¹ *Id.* art. II(3).

¹¹² *Id.* art. XVII.

salamander (*Cryptobranchus alleganiensis*) as requested by the United States.¹¹³

Appendix III species have the least-restrictive permit requirements. Exporting states need only ensure that (1) the specimen was legally obtained according to that state's laws, and (2) the specimen will be transported so "as to minimize the risk of injury, damage to health or cruel treatment."¹¹⁴ Meanwhile, importing states only require the presentation of a certificate of origin or "where the import is from a State which has included that species in Appendix III, an export permit."¹¹⁵

To fulfill its goal of "ensur[ing] that international trade in specimens of wild animals and plants does not threaten the survival of threatened species," CITES specifies measures to be implemented by parties in furtherance of this goal.¹¹⁶ Primarily, parties are required to "take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof."¹¹⁷ These measures include restricting the trade and possession of protected species, as well as the confiscation and return of specimens exported in violation of CITES.¹¹⁸ If a living specimen is confiscated, law enforcement places the specimen with a management authority who will either export the specimen to the state of origin or rehome the specimen in an appropriate rescue center that conforms with the treatment guidelines prescribed by CITES.¹¹⁹

Parties are also encouraged to establish ports of exit and entry through which specimens may be transported with "minimum of delay" and tailored care "so as to minimize the risk of injury, damage to health or cruel treatment."¹²⁰ In addition, parties must maintain records of these specimens, including the names and addresses of exporters and importers, the number of permits granted, and specimen data.¹²¹ Periodically, parties must compile trading records with biennial reports about implementation measures and publish a cumulative report that is available to the public.¹²²

¹¹³ CITES Appendices, *supra* note 52.

¹¹⁴ See CITES, *supra* note 92, art. V(2).

¹¹⁵ *Id.* art. V(3).

¹¹⁶ CITES, *supra* note 22.

¹¹⁷ CITES, *supra* note 92, art. VIII(1).

¹¹⁸ *Id.*

¹¹⁹ *Id.* art. VIII(4).

¹²⁰ *Id.* art. VIII(3).

¹²¹ *Id.* art. VIII(6).

¹²² *Id.* art. VIII(7).

Finally, the implementation of the CITES permitting regime requires states to establish management and scientific authorities to assist in the approval or denial of trade permits.¹²³ The authorities of the importing and exporting states must ensure the specific appendix criteria are satisfied before the import and export permits are granted.¹²⁴ As its name suggests, the scientific authority advises primarily on how a proposed trade will impact the species in question and the ecosystem to which it is being moved.¹²⁵ The management authority conducts more administrative tasks, such as ensuring the animal is transported safely and proper permitting has been granted from the partner state.¹²⁶ For example, the United States implemented these required departments in the Division of Scientific Authority and Division of Management Authority, both of which fall under the International Affairs Program of the U.S. Fish and Wildlife Service.¹²⁷

CITES provides several exceptions and allows parties to file reservations with respect to individual species.¹²⁸ For example, CITES does not regulate the trade of species within a party's borders so long as the specimen remains in customs' control.¹²⁹ Additionally, Appendix I species "bred in captivity for commercial purposes" or "artificially propagated for commercial purposes" are only entitled to Appendix II protections.¹³⁰ CITES similarly does not protect specimens that are "personal or household effects."¹³¹ However, this exemption does not apply to Appendices I and II animals that are imported from outside the owner's usual state of residence.¹³² Finally, a party may file reservations to exempt certain individual species, which effectively allows states to pick and choose which species to protect.¹³³

Despite its seemingly comprehensive protection of threatened wildlife, CITES still has its critics. One significant critique of

¹²³ *Id.* art. VIII(4).

¹²⁴ *See id.* arts. III–V.

¹²⁵ *See id.*

¹²⁶ *Id.*

¹²⁷ *See* CITES, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/program/cites> [<https://perma.cc/9R3S-NKJ6>].

¹²⁸ *See* CITES, *supra* note 92, art. VII.

¹²⁹ *Id.* art. VII(1).

¹³⁰ *Id.* art. VII(4).

¹³¹ *Id.* art. VII(3).

¹³² *Id.*

¹³³ *See id.* art. XXIII.

CITES results from a party's ability to file a reservation exempting the reserving party from permitting requirements.¹³⁴ In doing so, CITES allows the reserving parties to trade protected species between each other and nonparty countries.¹³⁵ This criticism is particularly prevalent in the whaling industry.¹³⁶

At its inception, CITES listed several whale species as protected per Appendix I and Appendix II, primarily because of overhunting by a small set of parties.¹³⁷ Unsurprisingly, the parties that contributed most to the endangerment of whales were the parties who opted for reservations to avoid limitations on the trade of protected whale species.¹³⁸ These countries (Japan, Norway, and Iceland) all sought reservations for whale species and have repeatedly set forth proposals to CITES to decrease protections for protected whale species.¹³⁹ In addition to CITES, the International Whaling Commission implemented a 1986 moratorium on whale hunting, but the whaling nations utilized loopholes and the CITES reservations to continue hunting whales.¹⁴⁰

Today, a decline in demand for whale products stemming from trade sanctions and media campaigns is leading whaling countries to decrease whaling subsidies and even ban whaling.¹⁴¹ However, the reservations and other enforcement failures have resulted in over 31,000 whales killed since the 1986 moratorium.¹⁴² Many of these CITES-protected whale species, like the blue whale (*Balaenoptera musculus*), remain vulnerable or endangered according to the IUCN.¹⁴³

¹³⁴ See ROB TINCH & ZARA PHANG, SINK OR SWIM: THE ECONOMICS OF WHALING TODAY, WORLD WILDLIFE FUND & WHALE & DOLPHIN CONSERVATION SOC'Y (June 2009), <https://us.whales.org/wp-content/uploads/sites/2/2018/08/economics-of-whaling.pdf> [<https://perma.cc/VL7P-JWQD>].

¹³⁵ See *id.*

¹³⁶ See *id.*

¹³⁷ See *id.*

¹³⁸ See *id.* at 7.

¹³⁹ See *id.*; *Reservations Entered by Parties*, CITES, <https://cites.org/eng/app/reserve.php> [<https://perma.cc/QMP3-UBN3>].

¹⁴⁰ TINCH & PHANG, *supra* note 134, at 2.

¹⁴¹ See *id.* at 7; Arnaud Siad & Sana Noor Haq, *Iceland to End Whaling from 2024 Amid Controversy and Falling Demand*, CNN, <https://www.cnn.com/2022/02/05/europe/iceland-whaling-to-end-2024-intl/index.html> [<https://perma.cc/5AAJ-5NAS>] (Feb. 5, 2022, 5:18 AM).

¹⁴² See TINCH & PHANG, *supra* note 134, at 2.

¹⁴³ See, e.g., J.G. COOKE, BALAENOPTERA MUSCULUS, BLUE WHALE, IUCN RED LIST OF THREATENED SPECIES 2 (2018), <https://www.iucnredlist.org/species/2477/50226195> [<https://perma.cc/H4LS-UD63>].

Another critique of CITES stems from its lack of enforcement power.¹⁴⁴ As with most public international law, CITES has little power to bind member states or curb the endangered wildlife trade in nonsignatory countries.¹⁴⁵ Take, for example, the case of members of the family Rhinocerotidae, more commonly known as rhinos.¹⁴⁶ At CITES's inception, many rhino species were listed in Appendix I due to severe population loss resulting from poaching.¹⁴⁷ While the move was supposed to decrease the supply of rhino horns on the international market, the listing had the inverse effect—rhino horns increased in value by over 300%, encouraging poachers to circumvent the law for a significant return.¹⁴⁸ Over the next decade or so, the CITES conference released resolution after resolution encouraging nonparty states to partake in the rhino-horn ban while calling on parties to sanction countries that permitted the trade to continue.¹⁴⁹ However, the conference's calls went unheeded primarily because CITES relies heavily on voluntary participation by parties.¹⁵⁰ Moreover, CITES has virtually no authority over nonparty states.¹⁵¹ Many countries simply ignored CITES as the rhino population exponentially declined.¹⁵² Consequently, most rhino species continue to fall victim to declining numbers, further inching towards complete extinction.¹⁵³

Despite these criticisms, CITES remains the preeminent convention in international wildlife law. However, CITES requires more than just signatories. As demonstrated in the Convention's text, CITES requires that parties take specific steps to implement and enforce CITES's principles at the national level.¹⁵⁴

¹⁴⁴ See MICHAEL 'T SAS-ROLFES, INST. ECON. AFFS., DOES CITES WORK?: FOUR CASE STUDIES 1, 4–5 (1997), <https://iea.org.uk/publications/research/does-cites-work-four-case-studies> [<https://perma.cc/EVG9-GTGJ>].

¹⁴⁵ See *id.* at 1–2, 4.

¹⁴⁶ See *id.* at 1–4.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ See *id.* at 2–3.

¹⁵¹ See *id.*

¹⁵² See *id.* at 4.

¹⁵³ See *Rhino*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/species/rhino> [<https://perma.cc/LW4X-6TTF>].

¹⁵⁴ CITES, *supra* note 92, art. VIII.

D. AN EXAMPLE OF NATIONAL IMPLEMENTATION OF CITES:
UNITED STATES OF AMERICA

As with most areas of public international law, CITES relies on the voluntary cooperation of sovereign states.¹⁵⁵ CITES provides a detailed regulatory scheme, but parties are the ones that adopt, implement, and enforce binding policies.¹⁵⁶ Generally, parties comply with these requirements by adopting the scheme through legislation.¹⁵⁷ The United States provides one of many successful CITES implementation stories.

The Endangered Species Act (ESA) of 1973 is the United States' foremost legislation protecting endangered species.¹⁵⁸ The ESA also serves as the United States' implementation of CITES.¹⁵⁹ The primary goal of the ESA is to identify endangered and threatened species and to employ "all methods and procedures which are necessary to bring [these] species to the point at which the measures provided pursuant to [the ESA] are no longer necessary."¹⁶⁰ Congress vested most ESA authority in the Secretary of the Interior, who collaborates with other departments and agencies to fulfill the ESA's goals.¹⁶¹ The ESA also explicitly implements CITES and prescribes punishments for CITES violations that occur within the United States.¹⁶²

The connection between CITES and the ESA is clear in the Act's text. Like CITES, the ESA establishes two categories of protected species, "endangered" and "threatened," both of which are entitled to protections under the Act.¹⁶³ Protections include the designation of specific prohibited acts, including the unpermitted international and intrastate trade of protected species.¹⁶⁴ However, the Act goes further by allowing the officials to take actions to ensure the growth of protected species by developing conservation plans that include propagation efforts, census data

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*

¹⁵⁷ *See* Efstathia Laina, *Tackling Challenges in Wildlife Trade*, 46 ENV'T POL'Y & L. 112, 115 (2016).

¹⁵⁸ *See Endangered Species Act*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/endangered-species-act.html> [<https://perma.cc/CZU3-EG7D>].

¹⁵⁹ *Id.*

¹⁶⁰ Endangered Species Act, 16 U.S.C. § 1532(3).

¹⁶¹ *See id.* §§ 1532, 1536.

¹⁶² *Id.* §§ 1537(a), 1538.

¹⁶³ *Id.* § 1532.

¹⁶⁴ *Id.* § 1538.

collection, and even regulated takings.¹⁶⁵ The Act also provides for civil and criminal punishment for violations and gives the relevant U.S. agencies the power to impose appropriate punishment.¹⁶⁶

Trade is not completely forbidden by the ESA. Rather, the Act adopts a permitting scheme like the one set forth in CITES.¹⁶⁷ For example, intranational permits to interact with native species are issued by the Ecological Services Program, whereas international import and export permits are issued by the management authority implemented from CITES.¹⁶⁸ However, unlike CITES, the Act applies to private citizens and federal government agencies.¹⁶⁹ Therefore, both private and public parties must apply for permits before they hunt, trade, and trap protected species or otherwise disrupt protected habitats.¹⁷⁰ The ESA incorporates other exceptions as well, including one allowing the traditional activities of indigenous populations.¹⁷¹

Along with the ESA, the United States has other legislation regarding the protection of endangered species and their trade. For example, over seventy years before the ESA's passage, the Lacey Act of 1900 made it "unlawful . . . to import, export, sell, receive, acquire, or purchase any fish or wildlife or plants taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law" or "in interstate or foreign commerce" involving "any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law."¹⁷² The Lacey Act remains in effect and works in tandem with the ESA.¹⁷³ Other legislation setting specifications for trade of wild birds and mammals similarly exists in the United States.¹⁷⁴

Outside of the permitting and researching that goes into enacting national legislation, governments must also ensure the

¹⁶⁵ *Id.* § 1532.

¹⁶⁶ *Id.* § 1540.

¹⁶⁷ *See id.* § 1539(a).

¹⁶⁸ *See id.* § 1537(b).

¹⁶⁹ *See id.* (placing explicit limitations on any permit application or action).

¹⁷⁰ *See id.*

¹⁷¹ *See, e.g., id.* § 1539(e).

¹⁷² Lacey Act, 16 U.S.C. § 3372(a).

¹⁷³ *See, e.g.,* 18 U.S.C. §§ 41–49.

¹⁷⁴ *See, e.g.,* Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712; Marine Mammal Protection Act, 16 U.S.C. §§ 1361–1407.

law's violators are prosecuted.¹⁷⁵ The United States has a track record for prosecuting individuals violating wildlife trade laws.¹⁷⁶ For example, in 2014 two Santa Monica sushi chefs pleaded guilty to selling endangered Sei whale (*Balaenoptera borealis*) meat at their restaurant in violation of the Marine Mammal Protection Act.¹⁷⁷ While the whale meat was imported from Japan, a country that filed a reservation to avoid trade restrictions regarding this CITES Appendix I protected animal, the trade of Sei whale products remains illegal in the United States.¹⁷⁸ The purchasers avoided detection by simply describing the illicit whale meat as "fatty tuna."¹⁷⁹ Though the chefs faced up to sixty-seven years in prison, both pleaded guilty and were released on probation with orders to pay fines.¹⁸⁰

Outside of legislation and prosecution, the United States' most ambitious effort in stopping wildlife trafficking has been through the task force established by the Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 (END).¹⁸¹ The END task force was developed in response to the threat that poaching and wildlife trafficking have on the conservation of animals and the safety of the United States.¹⁸² The primary goal of the task force is to collaborate with foreign and international organizations geared towards decreasing the wildlife trade.¹⁸³ Efforts include protecting and conserving populations of species threatened by illegal poaching and the illegal wildlife trade, and

¹⁷⁵ See CITES, *supra* note 92, art. VIII.

¹⁷⁶ See *Prosecution of Federal Wildlife Crimes*, U.S. DEP'T OF JUST., <https://www.justice.gov/enrd/prosecution-federal-wildlife-crimes> [https://perma.cc/ZS4K-MKPF] (Jan. 3, 2022).

¹⁷⁷ See Press Release, U.S. Dep't of Just., Grand Jury Indicts Santa Monica Restaurant and Sushi Chefs on Federal Charges Related to Sale of Protected Whale Meat (Feb. 1, 2013), <https://www.justice.gov/usao-cdca/pr/grand-jury-indicts-santa-monica-restaurant-and-sushi-chefs-federal-charges-related-sale> [https://perma.cc/G7AF-UFMB].

¹⁷⁸ *Id.* In fact, the United States has no reservations for any particular species, meaning that each species covered by CITES is observed as protected by the United States. See CITES, *supra* note 139.

¹⁷⁹ U.S. Dep't of Just., *supra* note 177.

¹⁸⁰ *Id.*

¹⁸¹ Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016, 16 U.S.C. §§ 7601–7644.

¹⁸² *Id.* § 7611.

¹⁸³ *Id.*

assisting countries in implementing wildlife antitrafficking laws.¹⁸⁴

The END task force publishes an annual strategic review to assess its successes and failures from the previous year.¹⁸⁵ The 2021 Strategic Review discussed how law enforcement guided by the task force busted several large wildlife trafficking operations in the United States, including an operation from which law enforcement seized nearly \$100,000 in totoaba fish bladders.¹⁸⁶ The END operations also assisted foreign governments by providing specialized wildlife law enforcement training to officers in Uganda and Tanzania.¹⁸⁷ The full report demonstrates the task force's international influence through leadership, experience, and financial assistance.¹⁸⁸

While the United States and other signatories have taken significant steps to implement and enforce CITES, some parties have failed to meet the minimum standards set by CITES.¹⁸⁹ In 2016, fourteen countries failed to provide annual reports regarding the import and export of protected species, a report required by CITES Article VIII.¹⁹⁰ Additionally, "three countries (Guinea-Bissau, Liberia and Venezuela) have failed to adopt the legislative measures for [the] effective implementation" of CITES while "[s]even other countries . . . were also noted to have legislative deficiencies."¹⁹¹

CITES is the foremost public international law regarding the wildlife trade, with much of the implementation and enforce-

¹⁸⁴ See 2021 END Wildlife Trafficking Strategic Review, U.S. DEP'T OF STATE (Nov. 4, 2021), <https://www.state.gov/2021-end-wildlife-trafficking-strategic-review/> [<https://perma.cc/KF87-6SKV>].

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ See *id.*

¹⁸⁹ See Laina, *supra* note 157, at 115. It is worth noting that much of the criticism around CITES focuses on developing countries in the Global South; conversely, much of the celebration of successes focuses on developed countries in the Global North. See, e.g., *id.* (listing countries with ineffective implementation). While this is reasonable because many of these protected species originate from the Global South and thus much of the trade can be tied back to this region, it is also true that much of the demand for these wildlife products comes from countries in the Global North. See Sinclair et al., *supra* note 34, at 978. While I was unable to pursue this discussion in my research, I believe that a qualitative analysis on the impact of the Global North's demand for wildlife products could be an enlightening topic that could shine light on the true drivers of international wildlife trafficking.

¹⁹⁰ Laina, *supra* note 157, at 115.

¹⁹¹ *Id.*

ment occurring at the national level.¹⁹² Because of its focus on regulating imports and exports, CITES has particular importance at ports of entry and exit, like airports.¹⁹³ While government agencies oversee the research and issuance of trade permits, private actors like airports and airlines are in a unique position to intervene when these barriers fail.

III. CURRENT EFFORTS AND PROPOSED SOLUTIONS

A. LIMITATIONS OF PUBLIC INTERNATIONAL LAW

The primary issue behind the deficiency of public international law is that of accountability. At the international level, there is no truly independent and authoritative regime to hold sovereign governments accountable for violations of public international law, and there likely never will be.¹⁹⁴ There are few other avenues, and while some cases make their way to the International Court of Justice or other international tribunals, their powers are also restricted by a lack of enforcement measures.¹⁹⁵ Two questions remain as to how to increase the efficacy of international wildlife law: (1) Who can enforce international law, and (2) how can they do so?

The common-sense response to who should enforce international law is individual governments, as suggested by CITES.¹⁹⁶ However, governments have done an overall shoddy job at implementing and enforcing environmental law.¹⁹⁷ The implementation and enforcement of international environmental law is often “irregular, incomplete, and ineffective.”¹⁹⁸ Both developing and developed countries “prioritize macroeconomic devel-

¹⁹² See *id.* at 114.

¹⁹³ See *id.* at 112 (reviewing the importation and exportation of specimens).

¹⁹⁴ See, e.g., Rosa Freedman, *Failing to Protect: Systemic Weaknesses Within the UN Human Rights Machinery*, UNIVERSAL RTS. GRP. (July 7, 2014), <https://www.universal-rights.org/blog/failing-to-protect-systemic-weaknesses-within-the-un-human-rights-machinery/> [<https://perma.cc/LRF2-R9EX>] (arguing that “a key weakness of UN human rights bodies is that, while they are set up for dialogue and engagement, they lack the teeth to effectively protect rights where a state is not willing to cooperate.”).

¹⁹⁵ See, e.g., Marcel Berlins, *The ICJ is the UN’s Least Effective Body*, GUARDIAN (July 12, 2004, 7:12 PM), <https://www.theguardian.com/world/2004/jul/13/law.features11> [<https://perma.cc/9D8R-EM3C>].

¹⁹⁶ See CITES, *supra* note 22.

¹⁹⁷ See CARL BRUCH ET AL., U.N. ENV’T PROGRAMME, ENVIRONMENTAL RULE OF LAW 2–7 (2019), https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report?_ga=2.214758930.461370091.1670905557-1589797634.1670905557 [<https://perma.cc/D8P6-BV7F>].

¹⁹⁸ *Id.* at 3.

opment when allocating government funds and setting priorities. This results in environment ministries that are under resourced and politically weak in comparison to ministries for economic and natural resource development.”¹⁹⁹ Additionally, the issue of environmental protection too often is seen as a political issue.²⁰⁰ Together, these concerns make many political actors see environmental protection as an impediment to development.²⁰¹

Outside of sovereign government, there are solutions to counteract the overall poor implementation of environmental law. The United Nations Environment Program (UNEP) specifically discusses the engagement of diverse actors as one possible solution.²⁰² Through case studies and research, UNEP “emphasize[s] the need for coordinated efforts from a diverse set of actors that perform different roles.”²⁰³ This includes private actors, particularly because “where environmental rule of law is weak, private environmental governance can provide a complementary means to make progress on environmental and social standards, even as improving environmental rule of law remains essential.”²⁰⁴ Such private actors include leaders in the aviation industry, like airports and airlines, who can fill the gap of current laws by implementing their own industry standards to limit wildlife trafficking.²⁰⁵

B. EFFORTS BY INDIVIDUAL ACTORS

While private actors like companies can fill the gaps left by government inaction, there is substantial debate as to whether they should or are required to act in pursuit of social goals, like efforts to stop wildlife trafficking.²⁰⁶ In 1970, renowned economist Milton Friedman decried the idea that private companies should even consider taking on social responsibility outside of increasing profit.²⁰⁷ According to Friedman, such concerns vio-

¹⁹⁹ *Id.*

²⁰⁰ *See id.*

²⁰¹ *See id.*

²⁰² *Id.* at 229–34.

²⁰³ *Id.* at 229.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 231.

²⁰⁶ *See* Nikola Kozłowska, *Is CSR Always Good?*, MEDIUM (Apr. 28, 2020), <https://medium.com/ethics-organisations-and-society/csr-2518b0ade828> [<https://perma.cc/SDL7-9BP5>].

²⁰⁷ Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://www.nytimes.com/1970/>

lated the basic tenant of private enterprise: to act in “the best interests of the corporation.”²⁰⁸ However, corporate environmental disasters such as the 1989 Exxon Valdez oil spill shifted public opinion in favor of corporate social responsibility (CSR), which is defined as an “organization’s respect for society’s interests, as demonstrated by its taking ownership of the effect its activities have on” areas of public concern.²⁰⁹ Despite continued debate, CSR is now widely accepted by companies and governments.²¹⁰ For example, “70% of global chief executives believe that CSR is vital to their company’s profitability.”²¹¹

CSR works primarily through the public pressuring corporations to take action regarding social issues.²¹² Consumers are eager to patronize businesses that are concerned about social and environmental issues, leading businesses to respond to public outcry about perceived injustices.²¹³ For example, the past decade saw consumers becoming increasingly aware of the environmental issues stemming from single-use plastic.²¹⁴ One target of the criticism was Starbucks, the globally renowned coffee provider.²¹⁵ Starbucks, whose famed white and green cups are made predominately of plastic, responded to the criticism through efforts such as sponsoring the NextGen Cup Challenge and encouraging customers to bring reusable cups for a discount.²¹⁶

09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html [https://perma.cc/5UXJ-X3C6].

²⁰⁸ *Id.*

²⁰⁹ Paul A. Argenti, *An Introduction to Corporate Responsibility*, in CORPORATE RESPONSIBILITY 2, 3 (2016).

²¹⁰ Li-Wen Lin, *Mandatory Corporate Social Responsibility Legislation Around the World: Emergent Varieties and National Experiences*, 23 U. PA. J. BUS. L. 429, 431 (2021) (“Implicit CSR legislation can be found in virtually every jurisdiction around the world.”).

²¹¹ *How CSR Works*, VARIETY, <https://www.variety.org.au/nt/get-involved/corporates/how-csr-works/> [https://perma.cc/F8EB-338M].

²¹² See Argenti, *supra* note 209, at 13–14.

²¹³ VARIETY, *supra* note 211 (noting that “66% of customers say they would choose a product that supports a cause over one that does not, the products were equivalent in every other way and 23% had done so in the past 12 months.”).

²¹⁴ See Courtney Lindwall, *Single-Use Plastics 101*, NAT. RES. DEF. COUNCIL (Jan. 9, 2020), <https://www.nrdc.org/stories/single-use-plastics-101> [https://perma.cc/BK7R-T84E].

²¹⁵ Danielle Wiener-Bronner, *Forget Plastic Straws. Starbucks Has a Cup Problem*, CNN BUS. (Feb. 27, 2019), <https://www.cnn.com/interactive/2019/02/business/starbucks-cup-problem/index.html> [https://perma.cc/738D-BKWN].

²¹⁶ *Id.*

CSR is also prominent in wildlife conservation efforts, particularly in biodiverse countries.²¹⁷ India, home to “869 protected areas covering 165,088.36 [square kilometers], which is 5.02% of the total geographic area of the country,” has many corporations who voluntarily collaborate with India’s World Wildlife Fund to protect endangered species.²¹⁸ For example, Tata Group, one of the largest business groups in India, has contributed resources to multiple successful conservation efforts concerning whale sharks (*Rhincodon typus*), Bengal tigers (*Panthera tigris tigris*), and snow leopards (*Panthera uncia*).²¹⁹

These voluntary CSR efforts similarly are visible in the context of the aviation industry. Calls from advocacy groups for better employee training and monitoring of wildlife trafficking instances have resulted in some of the world’s largest airlines making commitments, albeit ambiguous ones, to end wildlife trafficking. Over 120 companies in the transport industry have signed onto the United for Wildlife (UFW) transportation task force “with the objective of engaging the transport sector in identifying and developing relevant and targeted solutions to wildlife trafficking,” primarily through social awareness campaigns.²²⁰ Individually, many of these same airlines and other airlines similarly address the industry’s role in wildlife trafficking and often release statements outlining their promise to abide by CITES, national legislation, and industry standards geared towards protecting wildlife.²²¹

²¹⁷ See, e.g., Anju Baroth & V.B. Mathur, *Wildlife Conservation Through Corporate Social Responsibility Initiatives in India*, 117 CURRENT SCI. 405, 405, 410 (2019); *Vietnamese Woman Champions Wildlife Protection Through Corporate Social Responsibility*, USAID, <https://www.usaidwildlifeasia.org/news/all-news/vietnamese-woman-champions-wildlife-protection-through-corporate-social-responsibility> [https://perma.cc/7T7E-UZ42].

²¹⁸ Baroth & Mathur, *supra* note 217, at 405.

²¹⁹ *Id.* at 406–07.

²²⁰ *How DLA Piper Is Helping the Royal Foundation Fight the Illegal Wildlife Trade*, DLA PIPER (May 15, 2019), <https://www.dlapiper.com/no/global/insights/publications/2019/05/how-dla-piper-is-helping-the-royal-foundation-fight-the-illegal-wildlife-trade/> [https://perma.cc/67MM-FJ95].

²²¹ See, e.g., Press Release, Eth. Airlines, Statement of Ethiopian Airlines in Response to Report Regarding Transport of Wildlife (Sept. 2, 2021), <https://corporate.ethiopianairlines.com/Press-release-open-page/statement-of-ethiopian-airlines-in-response-to-report-regarding-transport-of-wildlife> [https://perma.cc/46V3-5M7H]; *The Emirates Group Commitment to Act Sustainably*, EMIRATES, <https://www.emirates.com/us/english/about-us/our-planet/chairmans-message/> [https://perma.cc/62LG-M89X].

Though CSR is generally discussed as a voluntary effort, some governments have taken a more aggressive approach by adopting broad mandatory CSR legislation.²²² For example, in 2013 India passed legislation requiring “any company with an annual turnover of 151 million USD and more, or a net worth of 75 million USD and more, or a net profit of 0.7 million USD and more . . . to . . . spend at least 2% of their average net profit from the previous three years on CSR activities.”²²³ In France, companies are bound by the “duty of vigilance law,” which “requir[es] due diligence and impos[es] legal liability in case of ineffective implementation resulting in damages.”²²⁴ China and Indonesia have passed similarly broad legislation requiring companies to engage in social responsibility.²²⁵

While the concept of mandatory CSR may seem like an unfeasible option for governments that favor free trade, CSR regulations are more common than one might think.²²⁶ In the United States, a country where businesses exercise great political influence, more implicit CSR regulations exist at the federal and state level. For example, the federal Dodd-Frank Act of 2010 requires actors in the finance industry to disclose specific information to protect investors from fraud.²²⁷ At the state level, the California Transparency in Supply Chains Act similarly “requires companies subject to the law to [publicly] disclose information regarding their efforts to eradicate human trafficking and slavery within their supply chains.”²²⁸

Therefore, it is not unreasonable to believe that many more countries could pass wildlife protection legislation further requiring action by aviation-industry actors.²²⁹ While many of

²²² See, e.g., Baroth & Mathur, *supra* note 217, at 405 (stating that “about 6,000 [Indian] companies fall under the category to take up CSR projects on a mandatory basis.”).

²²³ *Id.* (citing India’s Companies Act of 2013).

²²⁴ Lin, *supra* note 210, at 435.

²²⁵ *Id.* at 449–57. For specific examples on CSR in China, see Hency Thacker, *Top Companies for CSR in China*, CSR J. (June 8, 2021), <https://thecsrjournal.in/csr-china-corporate-social-responsibility/> [<https://perma.cc/U2QA-E6DZ>].

²²⁶ See Lin, *supra* note 210, at 431 (“Implicit CSR legislation can be found in virtually every jurisdiction around the world.”).

²²⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5301–5628.

²²⁸ See Rob Bonta, *The California Transparency in Supply Chains Act*, CAL. OFF. OF THE ATT’Y GEN., <https://oag.ca.gov/SB657> [<https://perma.cc/UJX5-UQWK>].

²²⁹ Of course, the effects of CSR may differ for the aviation industry in contrast with other industries, depending on their economic factors. See generally Paul Stephen Dempsey, *Introduction to Airline Economics*, MCGILL U. INST. AIR & SPACE L.

these industry actors have stated their intention to engage in environmentally friendly practices, such actions may be more effective should a government have legal recourse to hold these companies accountable. Legislation could provide a broad requirement to use funds in a particular matter, similar to India's Companies Act, such as obligating the aviation industry to invest in efforts to stop wildlife trafficking.²³⁰ Another option is to take a narrower approach by instructing companies to disclose information about wildlife trafficking instances in a more public manner. As seen in California legislation, this kind of requirement informs consumers who "are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products [or services] free from the taint of slavery and trafficking."²³¹ For consumers who have already demonstrated that the perception of social ills can negatively impact a business, such disclosure could force the air-travel industry to reconsider unworkable policies.²³²

Regardless of the type of legislation, efforts to pass such legislation must be persistent because "mandatory CSR laws often experience[] a difficult legislative journey" as these laws "face[] strong opposition from the business sector."²³³ Moreover, the demands of legislative sponsors must be vigilant as "[m]andatory CSR obligations [are] significantly watered down[] after the legal battles."²³⁴

For example, France's duty of vigilance law "is the result of a lengthy and persistent campaign by NGOs, trade unions, and left-wing parliament members."²³⁵ Even then, the resulting legislation was a watered down version of the initial bill.²³⁶ The initial bill "introduced a general duty for corporations to prevent any negative impact on human rights, health and safety, and the environment caused by their operations" and placed the burden on corporations to rebut a presumption of liability.²³⁷ However, the final bill replaced the general duty to protect French society

(2017), https://www.mcgill.ca/iasl/files/iasl/airline_economics_psd.pdf [<https://perma.cc/2ZY3-YKYR>] (explaining the economics involved in air travel).

²³⁰ Baroth & Mathur, *supra* note 217, at 405.

²³¹ Bonta, *supra* note 228.

²³² Lindwall, *supra* note 214.

²³³ Lin, *supra* note 210, at 461.

²³⁴ *Id.*

²³⁵ *Id.* at 435.

²³⁶ *Id.* at 461.

²³⁷ *Id.* at 436.

with the mere requirement to implement a “vigilance plan . . . to identify risks and prevent severe human rights violations and environmental damage resulting directly or indirectly from the operations of the company, its subsidiaries or its subcontractors with whom it has an established relationship.”²³⁸ Moreover, the final law shifted the burden of proving a violation on the claimant, not the company.²³⁹

CSR is a unique and collaborative way for aviation leaders to involve themselves in antiwildlife trafficking efforts.²⁴⁰ Whether it is mandatory or voluntary, CSR drives companies to truly consider their impact on social and environmental issues while providing potential solutions to gaps in enforcement and training.²⁴¹

C. EFFORTS BY TRADE ORGANIZATIONS

While individual airlines may utilize CSR to polish their own images, influential international trade organizations can set and enforce uniform standards for air-travel actors globally.²⁴² The International Air Transport Association (IATA), an international trade association based out of Montreal, Canada, developed as a result of the 1944 Convention on International Civil Aviation (Chicago Convention).²⁴³ IATA’s membership consists of private airlines, not sovereign states.²⁴⁴ While IATA membership is not required under any national or international law, nearly 290 airlines—constituting over 80% of the total available seat miles—have voluntarily joined IATA.²⁴⁵ Membership benefits include participation in IATA’s specialized committees, councils, and the IATA clearinghouse, in addition to discounts on training and publications.²⁴⁶

²³⁸ *Id.* at 437.

²³⁹ *See id.*

²⁴⁰ *See* BRUCH ET AL., U.N. ENV’T PROGRAMME, *supra* note 197, at 229.

²⁴¹ *See* Argenti, *supra* note 209, at 13–14.

²⁴² *See, e.g., About Us*, IATA, <https://www.iata.org/en/about/> [<https://perma.cc/LB3V-3QY6>]; *About ACI*, ACI, <https://aci.aero/about-aci/> [<https://perma.cc/TM7J-CHVK>].

²⁴³ *The Early Days*, IATA, <https://www.iata.org/en/about/history/history-early-days/> [<https://perma.cc/J9UP-H6WA>].

²⁴⁴ IATA, *supra* note 242.

²⁴⁵ IATA Members, IATA, <https://www.iata.org/en/about/members/> [<https://perma.cc/L8SA-A9JM>].

²⁴⁶ *IATA Airline Membership Benefits*, IATA, <https://www.iata.org/en/about/members/benefits/> [<https://perma.cc/23KS-R7GD>].

One of IATA's goals is setting industry standards.²⁴⁷ IATA combines practices recommended by the International Civil Aviation Organization (ICAO) with advice and input from member airlines to draft and publish standards and procedures necessary for the safe and efficient functioning of the air-transport industry.²⁴⁸ Much of the work on the regulations comes from IATA's specialized work groups led by industry officials, who are generally officers from member airlines.²⁴⁹ The Sustainability and Environment Advisory Council (SEAC) is one of those work groups, researching and advising the IATA board of directors on all issues related to the sustainability of the airline industry and environmental concerns, including the issue of wildlife trafficking.²⁵⁰

Regarding environmental concerns, IATA focuses on "ensur[ing] proportionate and coherent environmental policies are implemented by governments around the world" and acknowledges the airline industry's role in wildlife trafficking.²⁵¹ IATA's efforts to curb wildlife trafficking gained significant traction in 2015, when IATA signed a Memorandum of Understanding (Memo) with CITES "to facilitate and strengthen . . . further collaboration to improve transport conditions for CITES specimens."²⁵² For example, the Memo states that the parties will "endeavour to recommend mutually relevant standards, guidelines and recommendations" regarding CITES-protected specimens.²⁵³ The Memo also notes how the organizations will "collaborate in the development and use of electronic documents," indicating that CITES and IATA recognize the data gaps in wildlife trade studies.²⁵⁴ IATA has similarly associated itself with the U.S. Agency for International Development (USAID) Reducing Opportunities for Unlawful Transport of Endangered Species (ROUTES) Partnership (which will be further discussed be-

²⁴⁷ *See id.*

²⁴⁸ *Why Should You Use IATA Manuals?*, IATA (Aug. 16, 2022), <https://www.iata.org/en/publications/newsletters/iata-knowledge-hub/why-should-you-use-iata-regulations-manuals/> [<https://perma.cc/L78D-K2HP>].

²⁴⁹ *Id.*

²⁵⁰ *Aviation and Environment Policy*, IATA, <https://www.iata.org/en/policy/environment/> [<https://perma.cc/PA97-H5F9>].

²⁵¹ *Id.*

²⁵² MEMORANDUM OF UNDERSTANDING BETWEEN IATA & CITES 2 (June 8, 2015), <https://www.iata.org/contentassets/adfc0ea8044648fcbff13d79dceff7ae/cites-iata-mou.pdf> [<https://perma.cc/M9MP-SNCD>].

²⁵³ *Id.* at 3.

²⁵⁴ *Id.*

low),²⁵⁵ United for Wildlife, and other organizations established to combat wildlife trafficking.²⁵⁶

IATA took further steps to protect all animals transported by air in adopting its Live Animal Regulations (LAR).²⁵⁷ The IATA LAR sets standards for the transport of animals via commercial airlines, including standards for protected species.²⁵⁸ The LAR is updated annually to account for new developments in national laws and best practices.²⁵⁹

The WAP report regarding wildlife trafficking via airlines implicates the IATA LAR.²⁶⁰ As stated, the analysis of the social-media posts by WAP researchers demonstrated that only about 7% of the animals pictured were protected by CITES.²⁶¹ However, WAP noted that many of the pictures showed animals (protected or not) being transported in ways that violated the LAR.²⁶² One example is demonstrated by pictures of young tortoises that were “packed in such restricted spaces they were highly unlikely to be able to fully extend their head and neck during the journey.”²⁶³

While access to the LAR is restricted and cost prohibitive for individual researchers, IATA does have a publicly accessible checklist that gives some insight into what IATA considers vital for live animal transport.²⁶⁴ This information concerns the transport of *any* animal, not just species protected by CITES or other relevant wildlife law, but it remains relevant regarding some of the violations put forth by the WAP article and the enforcement of wildlife law.²⁶⁵ Moreover, IATA’s published Live Animal Acceptance Check List requests information regarding issues such as shipping certification; labeling and marking; containers; and feeding and watering.²⁶⁶

²⁵⁵ See discussion *infra* Section III.D.

²⁵⁶ *Illegal Wildlife Trade*, IATA, <https://www.iata.org/en/programs/environment/wildlife-trafficking/> [<https://perma.cc/VZ5M-WW4J>].

²⁵⁷ *Live Animals Regulations (LAR)*, IATA, <https://www.iata.org/en/publications/store/live-animals-regulations/> [<https://perma.cc/F98H-YKHK>].

²⁵⁸ See *id.*

²⁵⁹ *Id.*

²⁶⁰ WORLD ANIMAL PROT., *supra* note 7, at 47.

²⁶¹ *Id.* at 10.

²⁶² See *id.* at 47.

²⁶³ *Id.*

²⁶⁴ IATA Live Animals Acceptance Check List, IATA, <https://www.iata.org/contentassets/d7c512eb9a704ba2a8056e3186a31921/animalschecklist-en.pdf> [<https://perma.cc/U4UD-YTGY>].

²⁶⁵ See *id.*

²⁶⁶ *Id.*

The airport industry is similarly attempting to tackle the issue of wildlife trafficking. Like IATA, the Airports Council International (ACI) is a Montreal-based organization that works to unify standards among international airport authorities “by working with governments, regional ACI members, experts, and international organizations like ICAO” and IATA.²⁶⁷ ACI represents over 700 members present in nearly 2,000 airports worldwide.²⁶⁸ ACI is also like IATA in that it has specialized task forces to research and advocate for specific areas of concern.²⁶⁹ One such task force is the ACI Wildlife Trafficking Task Force.²⁷⁰

The ACI Wildlife Trafficking Task Force “discusses emerging wildlife conservation issues and develops an appropriate response.”²⁷¹ The task force seeks to bolster the efforts set forth by legal frameworks like CITES to respond to wildlife trafficking threats that exist despite current law.²⁷² However, ACI’s preeminent effort is the Virtual APEX Assessment Program.²⁷³

The Virtual APEX Assessment Program (APEX) was developed as a result of the Buckingham Palace Declaration (BPD), the collaborative effort between transport-industry leaders regarding wildlife trafficking issues.²⁷⁴ Specifically, the BPD outlines the signatories’ commitments to securing and reporting information regarding wildlife trafficking seizures and trends.²⁷⁵ APEX was developed to further these commitments by “[p]rovid[ing] tailored guidance, training, tools, and techniques on how to close identified gaps and support the airport industry’s efforts in combatting wildlife trafficking.”²⁷⁶

²⁶⁷ ACI, *supra* note 242.

²⁶⁸ *Id.*

²⁶⁹ *See Advocacy*, ACI, <https://aci.aero/advocacy/> [<https://perma.cc/K4QB-G7ZS>].

²⁷⁰ *Combating Wildlife Trafficking*, ACI, <https://aci.aero/advocacy/environment/combating-wildlife-trafficking/> [<https://perma.cc/QT3L-NR2N>].

²⁷¹ *Id.*

²⁷² *See id.*

²⁷³ *See AIRPORTS COUNCIL INT’L, WILDLIFE TRAFFICKING PREVENTION (WTP) VIRTUAL APEX ASSESSMENT PROGRAMME 1*, <https://aci.aero/wp-content/uploads/2021/10/WTP-Virtual-APEX-Assessment-Programme-Reference-Dokument-FINAL.pdf> [<https://perma.cc/AA45-SRWG>].

²⁷⁴ *Id.*; *The Buckingham Palace Declaration*, UNITED FOR WILDLIFE (Mar. 2016), <https://unitedforwildlife.org/the-buckingham-palace-declaration/> [<https://perma.cc/UJ9Y-9GX7>].

²⁷⁵ *See* UNITED FOR WILDLIFE, *supra* note 274. While ACI has a significant number of member airports, this author was unable to find any number regarding how many members have taken advantage of the APEX program.

²⁷⁶ AIRPORT COUNCIL INT’L, *supra* note 273, at 1.

The APEX assessment structure is straightforward. The host airport requests an assessment through the ACI website.²⁷⁷ ACI then sends a prereview questionnaire for the host to complete.²⁷⁸ The questionnaire includes inquiries into the airport's current policy, existing trainings and signage, the role of stakeholders, and the use of reporting systems.²⁷⁹ ACI experts then review the questionnaire responses and meet virtually with the host airport and relevant stakeholders.²⁸⁰ This meeting stage will "include discussions on the use of technologies, tactics, and intelligence techniques that airports can adopt in order to support global efforts to progress on the BPD commitments."²⁸¹ Finally, ACI experts will issue an APEX Review Report with "identification of gaps and recommendations on how to close those gaps, including on specific training needs in key areas where improvement is needed."²⁸²

IATA and ACI are unique entities in that they have significant control over actors in the aviation industry where governments have a limited ability to pursue charges against aviation actors due to legislative constraints, politics, or jurisdiction.²⁸³ Both IATA and ACI charters provide for avenues to enforce requirements against members.²⁸⁴ For example, IATA's Articles of Association allows the IATA board of directors to limit, suspend, or terminate a party's membership if the "Member is in breach of . . . any rule or regulation adopted" by IATA, such as the LAR.²⁸⁵ Members may also vote to terminate another member's membership with a two-thirds vote at a General Meeting.²⁸⁶ These safeguards give IATA an opportunity to hold private airlines accountable for nonlegal violations where government action may require a more lengthy, in-depth investigation process.²⁸⁷

²⁷⁷ *Id.* at 3.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.* at 4.

²⁸² *Id.*

²⁸³ See, e.g., *Articles of Association*, IATA, <https://www.iata.org/contentassets/01e197ea66384f27a9e763d151ae2d7d/articles-of-association.pdf> [<https://perma.cc/NG8H-C6K9>] (detailing IATA's powers).

²⁸⁴ See generally *id.* (establishing IATA's Articles of Association).

²⁸⁵ *Id.* art. V.6(c)(iv)(1).

²⁸⁶ *Id.* art. 5.6(c)(v).

²⁸⁷ See *id.* art. IV (setting forth IATA's mission).

The ACI's APEX program is relatively new, as the program launched within the past decade.²⁸⁸ There is little data regarding the effectiveness of ACI and IATA's programs, leaving much to be desired regarding whether such efforts have been worth the time and cost. However, these programs demonstrate that private actors are looking to further develop processes that may affect the illegal international wildlife trade, and fill the gaps left by government inaction.

D. ISSUES REQUIRING FURTHER ATTENTION

Statements from aviation-industry actors and programs established by trade associations demonstrate the industry's commitment to taking on wildlife trafficking.²⁸⁹ However, such efforts can be more effective if they address holes in the existing structure, particularly those of data collection²⁹⁰ and awareness training.²⁹¹ By establishing programs that contribute to either of these two areas, private aviation actors will bolster the existing defense against wildlife trafficking.

The lack of a standardized data-collection structure appears to be the biggest obstacle to combatting wildlife trafficking.²⁹² The collection of seizure data is useful as it helps enforcement agencies and industry actors to recognize trends in traffickers' methods, particularly because "wildlife traffickers rely on the same weaknesses and loopholes within airports that are exploited by criminals of all types."²⁹³ While seizure data has its limits, without it, "enforcement and the private sector would be fighting an unseen aggressor."²⁹⁴ Thus, data collection is an invaluable tool to public and private actors.²⁹⁵

The data-collection issue lies in the fact that, while there are numerous seizure databases, "analyses are . . . plagued by a system-wide lack of consistent, accurate, adequately detailed, and

²⁸⁸ See Angela Gittens, *Looking Back: A Brief History of ACI*, ACI (Apr. 4, 2020), <https://blog.aci.aero/looking-back-a-brief-history-of-aci/> [https://perma.cc/4577-8D5S].

²⁸⁹ See discussion *supra* Sections II.A–C.

²⁹⁰ See UTERMÖHLEN & BAINE, *ROUTES*, *supra* note 61, at 13.

²⁹¹ See *id.* at 162–65.

²⁹² See *id.* at 13; OPEN DATA INST., *EXPLORING THE POTENTIAL FOR DATA TRUSTS TO HELP TACKLE THE ILLEGAL WILDLIFE TRADE* 14 (2019); U.N. OFF. ON DRUGS & CRIME, *WORLD WILDLIFE CRIME REPORT: TRAFFICKING IN PROTECTED SPECIES* 9–10 (2020).

²⁹³ UTERMÖHLEN & BAINE, *ROUTES*, *supra* note 61, at 13.

²⁹⁴ *Id.* at 15.

²⁹⁵ See U.N. OFF. ON DRUGS & CRIME, *supra* note 292, at 10.

publicly available seizure information.”²⁹⁶ Even organizations focused on the accumulation and consolidation of seizure data are unable to do so because of differences in methods of collection and recordation.²⁹⁷

Presently, governments and private organizations are collaborating on standardizing seizure data collection and recordation. The primary partnership was developed by the U.S. Agency for International Development (USAID).²⁹⁸ The partnership, known as Reducing Opportunities for Unlawful Transport of Endangered Species (ROUTES), “[brings] together transport and logistics companies, government agencies, development groups, law enforcement, conservation organizations, academia and donors to disrupt wildlife trafficking activities” to “form a . . . concerted international response to addressing wildlife poaching and associated criminal activities worldwide.”²⁹⁹ These efforts include collaboration with IATA and ACI.³⁰⁰ ROUTES provides resources like “[p]rinted and digital awareness-raising materials” to the transport industry.³⁰¹ However, ROUTES’s data-collection campaign offers a possible solution to the data issue facing antiwildlife trafficking efforts.³⁰²

For this issue, ROUTES collaborates with C4ADS, a “non-profit organization dedicated to data-driven analysis and evidence-based reporting of conflict and security issues worldwide.”³⁰³ Currently, the data collected from ROUTES spans from 2009 to modern day and is accessible through the Wildlife Trade Portal.³⁰⁴

Despite these efforts, ROUTES has difficulty compiling all available data because of the various methods of seizure data recordation by enforcement officials and private actors.³⁰⁵ In its most recent annual report, ROUTES acknowledges how important such information is because there is a significant “preva-

²⁹⁶ UTERMOHLEN & BAINE, ROUTES, *supra* note 61, at 13.

²⁹⁷ *See id.* at 13–14.

²⁹⁸ *See* ROUTES, ROUTES, <https://routespartnership.org/> [<https://perma.cc/SGG6-6LGD>].

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *See* UTERMOHLEN & BAINE, ROUTES, *supra* note 61, at 3.

³⁰³ *Id.*

³⁰⁴ *Wildlife Trafficking Data*, ROUTES, <https://routespartnership.org/data> [<https://perma.cc/2FCK-2XW5>]; WILDLIFE TRADE PORTAL, <https://www.wildlifetradeportal.org/#/login> [<https://perma.cc/4M64-E6H5>].

³⁰⁵ *See* UTERMOHLEN & BAINE, ROUTES, *supra* note 61, at 14–15.

lence of repeat offenders involved in wildlife trafficking.”³⁰⁶ To cure this issue, ROUTES suggests that “customs and enforcement should first take note of individuals and companies that have previously been involved in wildlife seizures in their jurisdictions,” specifically by recording an offender’s basic information, including: name, age, a photo (or physical characteristics), passport information, and details on past seizures.³⁰⁷

The responsibility of data collection belongs to law enforcement, a duty that most often falls under government control.³⁰⁸ However, ROUTES notes that private actors in the air-travel industry are in a unique position to witness and report violations of international wildlife trade law.³⁰⁹ Where traffickers may be more vigilant around law enforcement, airline and airport employees may have the benefit of catching traffickers at a moment of vulnerability, like when passengers are conversing among themselves at the terminal or on the plane.³¹⁰ It is here that private employees could overhear or spot something that could direct law enforcement to potential trafficking-related activities.³¹¹ To recognize suspicious behavior or documentation, ROUTES recommends that air-travel companies “[p]rovide training on red flag indicators associated with wildlife traffickers and shipments.”³¹² Such trainings “should be tailored for relevant personnel.”³¹³

Several entities offer antiwildlife trafficking trainings for aviation industry employees. ROUTES provides several awareness trainings, including programs that focus on specific regions such as the Asia Pacific.³¹⁴ ACI offers a Wildlife Hazard Management certification course that informs participants on “the latest developments in methods and techniques, technology and equipment, and investigates the safety measures to adopt regarding wildlife and habitat management.”³¹⁵ Furthermore,

³⁰⁶ *Id.* at 168.

³⁰⁷ *Id.*

³⁰⁸ *See id.* at 180.

³⁰⁹ *See id.* at 162.

³¹⁰ *See id.* at 162–63.

³¹¹ *See id.*

³¹² *Id.* at 163.

³¹³ *Id.* at 164.

³¹⁴ *General Awareness Training*, ROUTES, <https://routespartnership.org/training-modules/general-training> [<https://perma.cc/N43E-WRTH>].

³¹⁵ *Wildlife Hazard Management*, ACI, <https://aci.aero/programs-and-services/global-training/airport-safety-training/wildlife-hazard-management/> [<https://perma.cc/JHC2-8BVH>].

CITES often collaborates with individual governments to bring more-experienced law enforcement to countries facing enforcement issues with the goal of improving the local enforcement officials' skills.³¹⁶

As demonstrated in Sections III.B and III.C, both individual companies and international trade organizations are capable of taking on the responsibility of implementing potential solutions to wildlife trafficking.³¹⁷ As governments develop legislation and international agreements regarding the wildlife trade, industry actors should bolster these efforts by adopting policies that require regular trainings for employees.³¹⁸ Such trainings will prepare airline and airport employees to identify and efficiently report wildlife law violations when government agents are unavailable.³¹⁹

IV. CONCLUSION

The role of the aviation industry in wildlife trafficking is an extremely complicated topic. There are several different areas of law implicated: trade law, environmental law, wildlife law, and international relations. There are different standards and requirements for each country that international traders must abide by before engaging in trade.³²⁰ Further, there are significant gaps in research, primarily where criminal actors are at play.³²¹ These issues demonstrate the complexity of the wildlife trade and how traffickers can take advantage of the existing system.³²²

Private actors in the air-travel industry are in a unique position to witness and report violations of international wildlife trade law.³²³ Further, international organizations can hold individual actors accountable where their actions do not reach the level of requiring governmental intervention.³²⁴ While many of these entities are not legally bound to act in pursuit of socially desirable outcomes, public demands and legislative mandates

³¹⁶ See, e.g., U.S. DEP'T OF STATE, *supra* note 184.

³¹⁷ See discussion *supra* Sections III.B–C.

³¹⁸ See UTERMOHLEN & BAINE, ROUTES, *supra* note 61, at 162–63.

³¹⁹ See *id.*

³²⁰ Sas-Rolfes et al., *supra* note 17, at 204.

³²¹ See OPEN DATA INST., *supra* note 292, at 14.

³²² See UTERMOHLEN & BAINE, ROUTES, *supra* note 61, at 14–15.

³²³ See *id.* at 162–63.

³²⁴ See discussion *supra* Section III.C.

can push entities into contributing to the fight against wildlife trafficking.³²⁵

However, the research is not complete. More investigation is needed into the impacts of CSR initiatives and trade association standard setting. Because many of these efforts are so new, their true efficacy remains in question. Meanwhile, individual governments should continue to find ways to hold private actors accountable as violations continue to cause harm to endangered species³²⁶ and humanity.³²⁷

³²⁵ See discussion *supra* Section III.B.

³²⁶ See SAS-ROLFES, INST. ECON. AFFS., *supra* note 144, at 3–4.

³²⁷ See PERVAZE A. SHEIKH & KATARINA C. O'REGAN, CONG. RSCH. SERV., IF11494, WILDLIFE TRADE, COVID-19, AND OTHER ZOOONOTIC DISEASES (2021).