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Countering wildlife trafficking at sea: a global governance perspective

Introduction

Heroin trafficking dhows, cocaine-carrying container vessels, migrant-carrying dinghies, and pirate vessels have become regular features on the oceans. Whether in the Indian or the Atlantic Ocean, Africa is no stranger to [Transnational Organised Crime \(TOC\) around its coastline](#). The seas are also the scene of many greed-driven environmental crimes as fish stocks are severely depleted, pollution is rife and marine biodiversity is destroyed. Some of these crimes, like illegal fishing, are inherently maritime crimes whereby the ocean forms an integral part of the crime itself. But others, like the transport of illegal wildlife and wildlife products, require the ocean to facilitate transport.

Whether illegally caught fish, live cheetahs moved between Somaliland and the Middle East, or pangolin scales from Africa to Asia, the seas provide a useful vector for trafficking Africa's wildlife. Wildlife trafficking is however primarily addressed from a terrestrial perspective, and most efforts are concentrated on land, including in seaports. In addition, the trafficking and smuggling of wildlife at sea poses unique challenges to navies and maritime law enforcement as interdiction regimes applicable to wildlife crime are limited.

Admittedly, the maritime leg of wildlife trafficking must form part of a holistic response in addressing supply, harm, and demand. Yet, one must consider that removing the ocean from the modus operandi leaves few options for moving large wildlife shipments internationally. While high-value commodities like rhino horn can be moved in small quantities via air, large containers filled with wildlife products don't easily lend themselves thereto. So, what could the maritime response look like?

Challenges to responding to wildlife trafficking at sea

[Flag States](#) are chiefly responsible for responding to illegal activities on board their vessels. This applies most importantly on the high seas. As vessels approach land, the coastal state in whose waters a vessel is located may also exercise [varying jurisdiction](#) over illegal activities committed on that vessel.

While international conventions allow for high seas interdiction regimes of crimes like drug trafficking and migrant smuggling, no equivalent exists for wildlife crime. [States](#) wishing to respond to wildlife trafficking on board foreign vessels without the permission of the Flag State currently may not exercise jurisdiction over these vessels on the high seas. Although there are [calls for a wildlife protocol to UNTOC](#), (United Nations Convention against Transnational Organised Crime) wildlife products are often moved on board commercial vessels among

thousands of containers, and extended jurisdiction, such as applicable to drug trafficking and migrant smuggling, would arguably be impractical as it will entail large commercial vessels being either inspected at sea, or asked to return to port for inspection. For this reason, illicit cargo should ideally be identified on land, before leaving a port. This will also allow coastal states to establish domestic jurisdiction.

Public-private cooperation

While the [ISPS Code](#) guides states on safeguarding ports and vessels from their use for criminal activities, there is limited pressure on the shipping industry to implement measures preventing their use for trafficking. Thus far, the Code seems to have had little impact on countering any form of TOC. It arguably never intended to as it was the outflow of terror attacks. How can the shipping industry then best contribute to prevent maritime transport from being used to traffic wildlife? Due to the centrality of the shipping industry in the wildlife trafficking model, a collective effort by the shipping industry and state entities in ports is the best weapon against wildlife trafficking. As criminal networks have perfected the art of organising cross-border maritime shipments, this must be equally countered by a governance mechanism steering the international responses of public and private actors, notably affected and implicated states, and the shipping industry.

If shipping companies fail to identify illicit shipments, it becomes the responsibility of lesser resourced law enforcement entities. As in the [response to Somali piracy](#), the shipping industry must become an active participant in the response. It is equally central to wildlife trafficking and is the primary international entity operating at sea. It needs to engage with Flag States and the countries which form part of the wildlife trafficking modus operandi, as well as other relevant entities, to collectively address security weaknesses in the industry. One way to facilitate this engagement is through existing bodies, like the Contact Group on Piracy off the Coast of Somalia (CGPCS), which has finally broadened its scope to other maritime crimes and is now known as the [Contact Group on Illicit Maritime Activities in the Western Indian Ocean](#). Alternatively, a smaller, more focussed informal cooperation body can be formed, focussing exclusively on wildlife crime. The limited piracy-focused agenda was one of the reasons why the CGPCS succeeded.

Although the shipping industry is not the victim of wildlife crime, as they were of piracy, the industry facilitates the crime, either through negligence or complicity, and is therefore a vital link in countering wildlife trafficking. A key challenge however exists - if wildlife trafficking is not perceived as posing a threat to the countries and owners dominating the shipping industry, what would motivate them to participate in a response? Piracy that threatens trade and drugs that threaten public health, both fuel corruption and sometimes funds terrorism. Unless the shipping industry understands how wildlife trafficking can impact them, their participation in the response is dubious.

Conclusions: Bilateral or multilateral agreements

Should the shipping industry remain an inactive participant in the response to wildlife trafficking at sea, implicated states could conclude bilateral or regional agreements to facilitate international cooperation and the exercise of jurisdiction over each other's vessels on the high seas. This should include agreements with the Flag States of implicated vessels. Direction can be taken from the agreements concluded between states to give effect to counter-piracy off the coast of Somalia, which included agreements on matters such as prosecution and imprisonment. Bilateral or multilateral agreements between states are also arguably the best way to compliment international legal frameworks which do not offer sufficient interdiction and enforcement options. Such agreements reflect the importance of cooperation to counter wildlife crime at sea. The likelihood of such agreements however will depend on the political will of the states involved.

Dr Carina Bruwer holds a PhD in Public Law from the University of Cape Town Centre of Criminology. Her thesis was titled "Global crime governance off the eastern Africa littoral: does the response to piracy in the Western Indian Ocean provide a model?"

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