



## **Global Initiative to End Wildlife Crime**

### **Form and content of a possible Protocol on the illicit trafficking of wildlife**

The Global Initiative to End Wildlife Crime (“the Initiative”) was created to address serious gaps in the existing international legal framework for combating wildlife crime and regulating wildlife trade. As part of its proposed solution to help address these gaps, the Initiative is advocating for a new protocol on the illicit trafficking of wildlife under the United Nations Convention Against Transnational Organized Crime (“UNTOC”), the main international instrument in the fight against transnational crime.

This second briefing paper released by the Initiative explores the possible form and content of such a Protocol. Its working title is the ‘Protocol against the Illicit Trafficking in Specimens of Wild Fauna and Flora’ (the “Protocol”). If adopted, this would be the fourth protocol to the UNTOC, the others being on human trafficking, migrant smuggling, and illicit manufacture and trafficking in firearms.

The United Nations General Assembly has called upon Member States “to make illicit trafficking in protected species of wild fauna and flora and other crimes that affect the environment, such as trafficking in timber... a serious crime” in accordance with the UNTOC.<sup>1</sup> This new instrument on illicit trafficking in wildlife, including timber, would be the first international instrument that would create specific obligations for States Parties (countries) in this critically important area of criminal law.

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The proposed Protocol would criminalize the intentional illicit trafficking of specimens of wild fauna and flora. States Parties to the Protocol would be agreeing to adopt legislation establishing as a criminal offence the illicit trafficking of any whole or part of a wild animal or plant, whether alive or dead, in

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<sup>1</sup>U.N.G.A. Res. 74/117, U.N. Doc A/RES/74/117 (December 18, 2019). See also U.N.G.A Resolution on Tackling Illicit Trafficking in Wildlife adopted on 10 September 2019, which reaffirmed its resolutions 69/314 of 30 July 2015, 70/301 of 9 September 2016 and 71/326 of 11 September 2017 on tackling illicit trafficking in wildlife. Operative paragraph 3 of this Resolution encouraged “Member States to adopt effective measures to prevent and counter the serious problem of crimes that have an impact on the environment, conservation and biodiversity, such as illicit trafficking in wildlife and wildlife products, including fauna and flora as protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and poaching;” (footnote omitted). Operative paragraph 5 called upon Member States “to make illicit trafficking in protected species of wild fauna and flora a serious crime.” U.N. Sustainable Development Goal 15.7 states “[t]ake urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.”

violation of an applicable international agreement or any domestic or foreign law, together with a wide range of other matters.

Other commitments would include:

- increasing the exchange of information, including on known organized groups suspected of taking part in illicit trafficking, means of concealment of illicit goods and through sharing of forensic samples;
- verifying the validity of documents;
- enhancing border controls, including on the means of transporting specimens;
- training and technical assistance;
- cooperation between States; and
- taking measures to discourage demand.

The Protocol would also automatically trigger, and enhance the use of, all of the UNTOC's provisions on international cooperation, mutual legal assistance, joint investigations, special investigative techniques such as controlled deliveries, and law enforcement cooperation provisions in tackling the illicit trafficking of wildlife.

Illicit trafficking in wild fauna and flora is often fueled by corruption, it deprives governments of revenue, has a devastating impact on wildlife, local communities, national economies, national and regional security, and entire ecosystems, including their ability to sequester carbon,<sup>2</sup> and it poses a risk to public and animal health. Through this Protocol, States Parties would also commit to increasing public awareness of the threats of illicit wildlife trafficking and establish policies and programmes to combat this harmful practice.

Despite the severe impacts of wildlife crimes, we do not yet have a global agreement on illicit trafficking in wildlife. And as more restrictions are placed on wildlife trade, markets, and consumption that could pose a risk to public health, we will need to scale up our enforcement efforts to ensure such trade does not simply move underground.

The draft Protocol would represent a major step forward in the fight against these serious crimes by embedding them into the international criminal law framework. It would signify an unequivocal recognition by States Parties of the devastating scale, nature and consequences of such crimes, of the need to scale up collaborative efforts to prevent and criminalize them, and provide States with the means to do so.

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The Initiative would like to acknowledge the international law firm Arnold & Porter for its pro bono support in preparing this draft Protocol, together with several other independent reviewers.

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<sup>2</sup> For an assessment of the full costs of illicit wildlife trafficking, see *Illegal Logging, Fishing and Wildlife Trade: The Costs and How to Combat It*, World Bank Group (October 2019).

This brief is intended to offer tangible ideas on the form and content of a possible Protocol and thereby help advance discussion on this necessary reform.

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The draft Protocol and draft offence were developed based on review of the three existing UNTOC protocols,<sup>3</sup> Australia’s Environment Protection and Biodiversity Conservation Act,<sup>4</sup> Canada’s Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act,<sup>5</sup> the Forest Law of the People’s Republic of China,<sup>6</sup> the E.U.’s Council Regulation on the protection of species of wild fauna and flora by regulating trade therein,<sup>7</sup> the E.U.’s Timber Regulation,<sup>8</sup> Japan’s Clean Wood Act,<sup>9</sup> Mexico’s Federal Penal Code,<sup>10</sup> Mozambique’s Criminal Code,<sup>11</sup> the United States’ Lacey Act,<sup>12</sup> Viet Nam’s Criminal Code,<sup>13</sup> and the discussion and collection of authorities in the UNODC’s *Guide on Drafting Legislation to Combat Wildlife Crime* (“UNODC Legislative Guide”).<sup>14</sup>

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On behalf of the Steering Group

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<sup>3</sup> The three protocols currently supplementing the UNTOC are the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (“Protocol Against Trafficking in Persons”), the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (“Protocol Against Smuggling Migrants”), and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunitions* (“Firearms Protocol”).

<sup>4</sup> *Environment Protection and Biodiversity Conservation Act*, 1999 (Cth) section 303GQ.

<sup>5</sup> *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c. 52, section 6(1).

<sup>6</sup> *The Forest Law of the People’s Republic of China* (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 1998, effective Jan. 1, 1985) Article 65 (2019 Amendment).

<sup>7</sup> *Council Regulation (EC) No 338/97 (1996) on the protection of species of wild fauna and flora by regulating trade therein*, Article 8.

<sup>8</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010.

<sup>9</sup> *Act on Promotion of Use and Distribution of Legally-Harvested Wood and Wood Products* (Act No. 48 of 2016).

<sup>10</sup> Articles 419-20; see also *General Wildlife Law (Ley General de Vida Silvestre)* (2000).

<sup>11</sup> *Law No. 10 of 1999*, Article 41; *Law No 5 of 2017*, Article 54.

<sup>12</sup> *Lacey Act*, 16 U.S.C. §§ 3371–3378.

<sup>13</sup> Law No. 12/2017/QH14 dated June 20, 2017 of the National Assembly on amending the Criminal Code No. 100/2015/QH13, Articles 232-234, 244.

<sup>14</sup> UNODC, *Guide on Drafting Legislation to Combat Wildlife Crime*, 2018.

## *Draft Protocol*

### **Protocol against the Illicit Trafficking<sup>15</sup> in Specimens of Wild Fauna and Flora, supplementing the United Nations Convention against Transnational Organized Crime**

#### **I. General provisions**

##### *Article 1. Relation with the United Nations Convention against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.<sup>16</sup>

##### *Article 2. Statement of purpose*

1. The purposes of this Protocol are:
  - (a) To prevent and combat the illicit trafficking in specimens of wild fauna and flora; and
  - (b) To promote cooperation among States Parties to that end.<sup>17</sup>

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<sup>15</sup> The term “illicit trafficking” is taken from the U.N.G.A. resolutions on tackling illicit trafficking in wildlife. G.A. Res. 69/314, U.N. Doc A/RES/69/314 (July 30, 2015); G.A. Res. 70/301, U.N. Doc A/RES/70/301 (Sept. 9, 2016); G.A. Res. 71/326, U.N. Doc A/RES/71/326 (Sept. 11, 2017); G.A. Res. 73/343, U.N. Doc A/RES/73/343 (Sept. 16, 2019). The Firearms Protocol also uses the term “illicit trafficking” to include the “import, export, acquisition, sale, delivery, movement or transfer of firearms[.]” The UNODC Legislative Guide defines “trafficking” (without the “illicit” modifier) in relation to a specimen, to mean “illegal acts by a person, whether for the benefit of themselves or another person, for purposes of importing, exporting, re-exporting, introducing from the sea, dispatching, dispatching in transit, distributing, brokering, offering, keeping for offer, dealing, processing, purchasing, selling, supplying, storing or transporting.” UNODC Legislative Guide, 13 (emphasis added). We have elected not to include “illegal acts” within our definition of “trafficking” because, standing alone, the acts of importing, exporting, selling, etc. are not themselves illegal. Rather, they only become illegal if the perpetrator intentionally did one of those acts knowing that the specimen had been illegally taken, harvested etc.

<sup>16</sup> This language is based on Article 1 of all three protocols supplementing the UNTOC: the Protocol Against Smuggling Migrants, the Protocol Against Trafficking in Persons and the Firearms Protocol.

<sup>17</sup> This language is based on Article 2 of the Protocol Against Trafficking in Persons. It also generally follows the pattern of the language in the Protocol Against Smuggling Migrants and the Firearms Protocol.

### *Article 3. Use of Terms*

“Trafficking” shall mean the import, export, transport, sale (including by electronic means),<sup>18</sup> receipt, introduction from the sea, acquisition, possession, purchase, delivery, movement or transfer of specimens of wild fauna and flora.<sup>19</sup>

“Illicit trafficking” shall mean trafficking in contravention of article 5 of this Protocol.

“Specimen” shall mean, but is not limited to: (a) any wild fauna or flora<sup>20</sup> or parts thereof, whether alive or dead; (b) any seed, egg, gamete or propagule or part of any wild fauna or flora; (c) any readily recognizable part or derivative of any wild fauna or flora; or (d) any goods which contain a part or derivative of any wild fauna or flora.<sup>21</sup>

### *Article 4. Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature.<sup>22</sup>

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<sup>18</sup> See UNODC Legislative Guide, 29.

<sup>19</sup> This language is loosely based on the definition of “illicit trafficking” in the Firearms Protocol. It generally tracks the language of the U.S. Lacey Act. 16 U.S.C. § 3372(a)(1). The definition is also influenced by the UNODC Legislative Guide. UNODC Legislative Guide, 13.

<sup>20</sup> This protocol does not include a specific definition for “wild fauna or flora” because, as explained in the UNODC Legislative Guide, “the concept of wildlife is viewed differently in different parts of the world.” UNODC Legislative Guide, 2. The lack of a specific definition in the protocol does not suggest that domestic legislation should not define the term. *Id.* On the contrary, clearly and precisely defining what constitutes “wild fauna and flora” in domestic legislation “will define the scope of the legislation and hence its effectiveness.” *Id.* While this protocol leaves the precise definition of “wild fauna and flora” to each State, the term as used throughout the protocol does refer to “specimens of both wild plant and animal species,” including “animals, birds and fish, as well as timber and non-timber forest products.” *Id.* States may include “certain captive-bred animals in their definition” to provide a wider scope of protection and clarify whether there are any fungi not covered. *Id.* Article VII(4) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) affords lesser protection to species bred or propagated in captivity for commercial use.

In the U.S., the Lacey Act uses the term “fish or wildlife” defined as “any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.” 16 U.S.C. § 3371(a). This is one example of how a country could define wild fauna and flora in its domestic legislation.

<sup>21</sup> This definition is based on the glossary of terms included in the UNODC Legislative Guide. UNODC Legislative Guide, 13.

<sup>22</sup> All of the protocols and the UNTOC also include “involve an organized criminal group” in the scope of the application. We have not included “involve an organized criminal group” to keep the scope of the protocol broader, but this will be a decision point that should be discussed.

The decision to omit the organized criminal group requirement finds support in CITES related literature. An organized criminal group is defined under Article 2 of UNTOC as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences...” Illegal wildlife trafficking is sometimes carried out by informal networks. See Res. Conf. 11.9 (Rev. CoP18) (explaining that “the collection of tortoises and freshwater is carried out through an extensive informal network of trappers, hunters and middlemen.”). The proposed Protocol omits the element of “organized criminal group” in order to enhance law enforcement’s ability to police such activities.

## Article 5. Criminalization<sup>23</sup>

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,<sup>24</sup> the trafficking in any specimen, knowing that the specimen was taken, possessed, distributed, transported, purchased or sold in contravention of:<sup>25</sup>

(a) Any international agreement concerning or relating to the protection, conservation, management, trade or use of wild fauna or flora binding on the State Party;<sup>26</sup> or

(b) Any applicable domestic or foreign law concerning the protection, conservation management, trade or use of wild fauna or flora.<sup>27</sup>

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the falsifying or illicitly altering of any document required for the import, export, transport, sale (including by electronic means),

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<sup>23</sup> Article 6 of the UNTOC requires States to establish four enumerated offences related to money-laundering. A “predicate offence,” as defined in Article 2 of the UNTOC, is “any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention.” Article 6 of the UNTOC requires that provisions concerning money-laundering are applicable to the “widest range of predicate offences,” including offences established by the Convention itself. Relatedly, Article 1(3) of this Protocol states: “[t]he offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.” For that reason, offences established under Article 5 of this Protocol are predicate offences for the purposes of Article 6 of the UNTOC.

<sup>24</sup> This language is identical to that in Article 5 of the Firearms Protocol. The language also follows a generally similar pattern as the offences in the Protocol Against Smuggling Migrants and Protocol Against Trafficking in Persons. The offences in the UNTOC and its three protocols all require the conduct to be committed “intentionally” to be included as an offence. This is similar to Australia’s *Environment Protection and Biodiversity Conservation Act* which requires that “[a] person must not *intentionally* import a specimen if the person *knows*” that it was illegally exported from a foreign country. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 303GQ (emphasis added).

<sup>25</sup> Article 5(1) is modeled after the language and structure of the UNTOC protocols and the language of UNODC Legislative Guide “Optional Addendum” to Model provision 10: Trafficking in wildlife. See UNODC Legislative Guide, 27. The language is also generally similar to that of the U.S. Lacey Act, but includes the additional terms “distributed” and “purchased.” See 16 U.S.C. § 3372(a)(1).

The Lacey Act also includes the possibility of misdemeanors for instances in which a defendant intentionally trades in specimens that he or she “in the exercise of due care should know” is prohibited. See 16 U.S.C. § 3373(d)(2). It could be quite difficult to reach an international consensus on a lower standard of “due care” for an law enforcement convention. Our recommendation is that we should track the existing agreements and the “intentional” standard in Australia’s *Environment Protection and Biodiversity Conservation Act* in the draft protocol.

<sup>26</sup> This provision is based on the UNODC Legislative Guide “Optional Addendum,” which states “any international agreement binding on [insert name of the State].” UNODC Legislative Guide, 27. The language is intended to capture agreements such as CITES and the Convention on the Conservation of Migratory Species of Wild Animals.

<sup>27</sup> This language is based on the “Optional Addendum” to Model provision 10: Trafficking in wildlife in the UNODC Legislative Guide. UNODC Legislative Guide, 27. The Guide explains that “[t]he term “applicable foreign law” imports into the offence a requirement of a jurisdictional nexus between the foreign law and the act of taking, possessing, distributing, transporting, purchasing or selling[,]” but does not require or involve States having to enforce foreign laws. *Id.* at 26. Rather, the Guide explains that “it is the applicable foreign law that informs the illegal status of the specimen and renders the import or trafficking in the specimen illegal under domestic law.” *Id.* The offence focuses on “protecting the domestic market from the entry of contraband.” *Id.*

receipt, introduction from the sea, acquisition, possession, purchase, delivery, movement or transfer of specimens of wild fauna and flora.

3. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.<sup>28</sup>

#### *Article 6. Confiscation, seizure, forfeiture, and disposal*

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable the confiscation, seizure, forfeiture, and disposal of specimens that have been illicitly trafficked.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.<sup>29</sup>

## **II. Prevention, cooperation, and other measures**

#### *Article 7. Prevention of illicit trafficking in specimens*

1. States Parties shall establish comprehensive policies, programmes and other measures to prevent and combat the illicit trafficking in specimens.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in specimens. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 5 of this Protocol is criminal activity.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

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<sup>28</sup> Article 5(3) is designed to extend the offence to include attempts and aiding and abetting. The draft language corresponds with Article 5(2) of the Firearms Protocol.

<sup>29</sup> Article 6 is based on Article 6 of the Firearms Protocol and Article VIII of CITES. *See also* the Lacey Act's Forfeiture Provision, 16 U.S.C. § 3374.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make wild fauna and flora vulnerable to illicit trafficking.

5. State Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters the illicit trafficking in wild fauna and flora.<sup>30</sup>

#### *Article 8. Information Exchange*

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized importers and exporters of specimens.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

- (a) Organized criminal groups known to take part or suspected of taking part in the illicit trafficking in specimens;
- (b) The means of concealment used in the illicit trafficking in specimens and ways of detecting them;
- (c) The methods and means, points of dispatch, embarkation and destination points, relevant customs processes and forms, as well as routes, carriers and means of transportation, known to be or suspected of being used the illicit trafficking in specimens; and
- (d) Legislative experiences and practices and measures to prevent, combat, and eradicate illicit trafficking in specimens.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information, including forensic samples, useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate illicit trafficking in specimens and to prosecute those involved.

4. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.<sup>31</sup>

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<sup>30</sup> This language is based on Article 9 of the Protocol Against Trafficking in Persons and Article 15 of the Protocol Against Smuggling Migrants. Raising public awareness about the illegal wildlife trade is also a feature of multiple CITES resolutions – see e.g. Res. Conf. 11.9 (Rev. CoP18) (re: turtles) and Res. Conf. 12.5 (Rev. CoP18) (re: tigers).

<sup>31</sup> This language is based on Article 10 of the Protocol Against Trafficking in Persons and Article 12 of the Firearms Protocol.

### *Article 9. Cooperation and border measures*

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit trafficking in specimens.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

3. States Parties shall seek the support and cooperation of importers, exporters, brokers and commercial carriers of specimens to prevent and detect the illicit activities referred to in paragraph 1 of this article.

4. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect conduct set forth in article 5 of this Protocol.

5. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

6. Where appropriate, and without prejudice to applicable international conventions, such measures may include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to use best endeavors to ascertain that specimens of wild fauna and flora are not being transported in contravention of article 5.

7. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

8. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.<sup>32</sup>

### *Article 10. Training and technical assistance*

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit trafficking in specimens, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.<sup>33</sup>

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<sup>32</sup> This language is based on Article 13 of the Firearms Protocol, Article 11 of the Protocol Against Trafficking in Persons, and Article 11 of the Protocol Against Smuggling Migrants.

<sup>33</sup> This language is taken directly from Article 14 of the Firearms Protocol.

### *Article 11. Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of documents issued or purported to have been issued in its name, including any documents suspected of being misused for purposes of conduct set forth in article 5 of this Protocol.<sup>34</sup>

### **III. Final Provisions<sup>35</sup>**

#### *Article 12. Saving clause*

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 5 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

#### *Article 13. Settlement of disputes*

1. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

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<sup>34</sup> This language is taken directly from Article 13 of the Protocol Against Smuggling Migrants.

<sup>35</sup> The language in Articles 12-18 is taken directly from Articles 19-25 of the Protocol Against Smuggling Migrants, Articles 14-20 of the Protocol Against Trafficking in Person and Articles 16-21 of the Firearms Protocol. With minor exceptions, the relevant language is identical in all three protocols.

*Article 14. Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature at United Nations Headquarters in New York from the **thirtieth day** after its adoption by the General Assembly until **Day Month Year**.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 15. Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.<sup>36</sup> For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

*Article 16. Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on

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<sup>36</sup> The language stating that this Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession is based on Article 38 of the UNTOC, Article 22 of the Protocol Against Smuggling Migrants, Article 17 of the Protocol Against Trafficking in Persons, and Article 18 of the Firearms Protocol. The Convention, and each Protocol, includes a reference to the fortieth instrument.

each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### *Article 17. Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### *Article 18. Depository and languages*

1. The Secretary-General of the United Nations is designated depository of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.