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'To be or not to be? Will there be a new Protocol to the UNTOC on environmental crimes – and will it help the planet?'

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We are all currently focused on advancing Resolution 12/4 on crimes that affect the environment (CAE) that was adopted at the United Nations Convention against Transnational Organised Crime (UNTOC) 12th Conference of the Parties (CoP12) in 2024 and the ongoing work of the Intergovernmental Expert Group (IEG) that it established, so ably chaired by Peru.

This is a groundbreaking Resolution, opening a discussion we have never seen take place at the intergovernmental level before.

However, this UNTOC Resolution did not come out of nowhere. It was the result of many years of hard work by States, intergovernmental bodies, and civil society in building momentum within the United Nations (UN), various multi-lateral environmental agreements (MEAs), and other intergovernmental entities.

As we engage in this UNTOC-led process, it is instructive to briefly reflect upon some aspects of this rich intergovernmental history. It is an issue I've been very closely associated with for more than fifteen years now, both within and outside of the UN, and today I'll briefly address the evolution of:

- Resolutions and decisions;
- Our growing knowledge base, and
- Other initiatives that have contributed to this momentum.

I'll then move on to explore what a new UNTOC protocol or protocols could look like and finally respond to some of the issues that have been raised with me about a possible protocol.

Resolutions and decisions

We can trace references to CAE, especially wildlife trafficking, including timber trafficking, back over three decades or more. However, it is over the past 10-15 years that we have seen an acceleration in the attention given to these issues.

Fifteen years ago we were experiencing a surge in wildlife trafficking and I think it's fair to say that the intense level of attention that was given to tackling wildlife trafficking, including timber, is what helped to spur an intergovernmental discussion on a wider range of CAE, including relating to metals, minerals, pollution, wastes, and to a lesser extent fish.

Over this time, we have seen resolutions and decisions adopted on CAE or specific crimes falling under that umbrella by the UN General Assembly (UNGA), Security Council, UN Crime Congress, Economic and Social Council (ECOSOC), UN Commission on Crime Prevention and Criminal Justice (CCPCJ), UN Environment Programme (UNEP), UNTOC and UN Convention Against Corruption (UNCAC), as well as by intergovernmental organisations outside of the UN, such as INTERPOL, by Parties to MEAs, most particularly the Basel Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as well as at fora such as G7 and G20 and the Financial Action Task Force (FATF). A lot has happened over this period of time.

And just this week there was a Motion on CAE adopted by the International Union for Conservation of Nature (IUCN) at its Members Assembly, the current Presidency of the G20 is including CAE as one of its priority issues, and the UN Environment Assembly (UNEA) has a draft decision before it for UNEA 7 in December.

I don't have the time to trace that rich history in any detail, however, we can identify some milestones, namely the:

- UNGA adopting the first comprehensive Resolution on 'Tackling illicit trafficking in wildlife' in June 2015 (which followed two high level events at the UNGA in 2013 and 2014, and the

establishment of an Ambassadorial Friends Group in New York, co-chaired by Gabon and Germany, which continues today).
- UNGA adopting a comprehensive Resolution on 'Preventing and combatting CAE 'in December 2021.
- CCPCJ Resolution adopted in May 2022 on 'Strengthening the international legal framework for international cooperation to prevent and combat illicit trafficking in wildlife' (which followed calls by several Presidents for a Protocol in 2021 and 2022, referred to below).
- UNTOC Resolution 12/4 that we are following up on today.
- CCPCJ Resolution adopted in May 2025 on a wide range of CAE that has been adopted by the ECOSOC and will be with the UNGA in December.

It's also worth recalling the UNEP Governing Council (as it then was) decision 27/9 from 2013 on 'Advancing justice, governance and law for environmental sustainability', that referenced the environmental rule of law for the first time and highlighted the need to combat non-compliance with environmental laws.

We tend to focus on the UN, but non-UN intergovernmental entities and MEAs have been very active over the years, especially INTERPOL, the Basel Convention and CITES. INTERPOL set up a working party on environmental crime and a wildlife crime working group way back in 1992, and in 2010, immediately following an address I made to its General Assembly as CITES Secretary-General, INTERPOL adopted, by consensus, a resolution on environmental crime establishing its Environmental Crime Programme.

CITES has a large body of resolutions and decisions on illegal wildlife trade and CITES also led the creation of the International Consortium on Combating Wildlife Crime (ICWCC) in 2010, and the Basel Convention also has a large body of decisions on the trafficking of hazardous waste that it refers to as illegal traffic. These conventions have been most active as they include obligations to penalise or criminalise violations of the conventions.

Turning point - CCPCJ Resolution of 2022

I'd like to explore the 2022 CCPCJ Resolution I referred to a little further. Following outreach from the Global Initiative to End Wildlife Crime, in 2021 and 2022 the Presidents of Angola, Costa Rica, Gabon and Malawi all called for a new protocol under the UNTOC on preventing and combatting illicit wildlife trafficking, and in 2022, Angola, Kenya and Peru (later co-sponsored by others) took the Resolution to the CCPCJ, which was adopted by consensus.

This Resolution was a turning point. It was the first time that a UN resolution had mentioned a new global agreement on tackling a CAE, namely illicit wildlife trafficking, and the Resolution launched an inclusive intergovernmental process to explore the 'potential of creating an additional protocol to the UNTOC to address any gaps in the current international legal framework to prevent and combat illicit trafficking in wildlife'.

More than half of the respondents to this process had a positive view of the potential of an additional protocol to the UNTOC, with some expressing the view that the scope of a possible

additional protocol should be extended to include other crimes that affect the environment.

And that led us to where we are today, with an UNTOC Resolution on CAE that requested the establishment of an IEG that is now in place and implementing its mandate.

What's the definition of CAE?

None of these resolutions or decisions seek to define CAE, and it's not a term that requires a definition. It's used more as an umbrella term.

There is a spectrum of crimes that are seen as falling underneath this umbrella, some transnational in nature, others more domestic. This list is not agreed and nor is it exhaustive, but we can compile a list of crimes it could cover, some of which may fall within the scope of a protocol, and others that may not.

Improving knowledge base

This increasing level of intergovernmental attention to CAE reflects a growing awareness of the industrial scale, organised and transnational nature, and severe economic, environmental and social impacts of these crimes.

Technical reports issued over the past decade by the UNODC, INTERPOL, UNEP, The World Bank, ICCWC, the FATF and civil society organisations has helped raise this level of awareness. There are too many to mention, but these reports include the:

- series of UNODC World Wildlife Crime Reports, with the first being released in 2016 and the most recent report released in 2024.
- 2016 Rise of Environmental Crime report by INTERPOL and UNEP.
- 2019 World Bank publication on Illegal Logging, Fishing, and Wildlife Trade: The Costs and How to Combat it, which not only valued the contraband but placed a value on the impacts.
- FATF 2020 report on Money Laundering and the Illegal Wildlife Trade and its 2021 report on Money Laundering from Environmental Crime.
- 2024 UNODC Global Analysis on Crimes that Affect the Environment, which has been followed by a series of more specific publications.

Other global and regional events and initiatives

We have also seen some high-profile initiatives, perhaps most notably the London Conference on Illegal Wildlife Trade of 2014 and related Declarations and follow-up events, and efforts to engage with the private sector, notably through the transport and financial action task forces established by United for Wildlife, as well as Declarations such as the World Travel and Tourism Council Buenos Aires Declaration on Illegal Wildlife Trade. There have been many others at regional level, such as the recent Congo Basin Forest Partnership Conference on Environmental Crime and Human-Wildlife Conflict co-hosted with Gabon and France in Libreville.

Overall progress

As we can see, over the past 10-15 years there has been a growing body of resolutions and decisions, based upon an improved knowledge base, and many supportive global and regional initiatives. This has all helped to build a growing momentum for enhancing international cooperation and national efforts to tackle these crimes.

However, the intergovernmental discussion around a new protocol or protocols under the UNTOC is relatively new, coming in 2022 and 2024, and it followed the adoption of many previous resolutions and decisions on CAE and an improved knowledge base.

The attention given to a possible UNTOC protocol on CAE was sparked, at least in part, by the endeavours of the Global Initiative to End Wildlife Crime, through its concerted efforts to engage directly with many states, especially states rich in biodiversity, and with organisations from across every region and sector, on the need to close gaps in the international legal framework to prevent and combat wildlife trafficking through an additional protocol to the UNTOC.

When this Initiative was launched in 2020 it is fair to say that it got a lukewarm reception from some quarters, including from some in civil society. However, things have changed significantly over the past five years for the reasons just elaborated upon.

States are today leading an intergovernmental dialogue, drawing upon technical support from the GI-TOC, the Global Initiative to End Wildlife Crime and its International Champions, and other civil society organisations, as required.

Sources to draw from for a protocol or protocols

While the debate about the possibility, feasibility and merits of any additional protocol or protocols is far from over, we have seen the attention increasingly turn to the possible form and content of a protocol and whether one or more protocols are needed.

In that regard, there are a number of sources to draw from. This includes, the UNTOC and its three Protocols, the UN Convention against Corruption, national legislation from many countries (including Australia, China, Mexico, Mozambique, and the US), the UNODC guides on drafting legislation, and the recent European Union (EU) Directive and Council of Europe (CoE) Convention on the Protection of the Environment through Criminal Law**.**

EU Directive and Council of Europe (CoE) Convention

The EU directive and CoE Convention are both valuable, although one needs to exercise some caution in putting forward language from negotiating processes that are not universal (the EU is 27 States and the Council of Europe 46). Additionally, these European instruments also relate to domestic crimes with local impacts, not just those that are transnational in nature and involve an organised criminal group, which is the focus of the UNTOC-led process.

We can discuss a broad suite of environmental crimes but, for a protocol, we should focus on those that are transnational and involve organised crime, falling within the scope of the UNTOC. For

example, noise crime is identified by UNODC as an environmental crime but is unlikely to be either transnational or organised.

However, these two instruments do offer some excellent forward-looking language, including on damage, penalties and statistics. They also show that—while the chapeau for the Directive and CoE Convention is environmental crime—the instruments themselves set out specific criminal offences to be included without seeking to define 'environmental crime'.

Possible form and content of a protocol or protocols

Let's explore what a protocol or protocols might contain. I've done this before focussing largely on specific provisions that could be included within a protocol on illicit wildlife trafficking (and the Global Initiative to End Wildlife Crime released a rough draft protocol in 2021 in response to a request from several states and to help stimulate the discussion). However, today I want to broaden my remarks to look at the possible form of a protocol on CAE.

As a protocol would automatically trigger the UNTOC and its implementation review mechanism (that assesses how countries are implementing the protocols), its provisions need not be repeated in a protocol. And it would also trigger the global mechanism for electronic evidence exchange under the UN Convention against Cybercrime, which would also require its States parties to ensure that these crimes are criminalised when committed "online".

Further, if fish species were included within a protocol, the requirement under the United Nations Convention on the Law of the Sea (UNCLOS) Article 73.3—to have an agreement in place to include imprisonment and other forms of corporal punishment for violations of fisheries laws and regulations in the Exclusive Economic Zone—would also be satisfied.

As mentioned earlier, there is no agreed definition of CAE and there is no need for a definition of CAE - it's an umbrella term under which certain crimes that affect the environment fall. States will, however, need to agree on what crimes they wish to include within the scope of a protocol or protocols, and whether they want to make provisions for expanding its scope over time.

Various resolutions referred to earlier provide an indicative list of crimes, often using the words 'such as' – and one usually finds trafficking in wildlife, including in timber and timber products, in hazardous and other wastes, in precious metals and other minerals and poaching. Illegal fishing, other than in CITES listed species, is referenced less often and does not appear in the CoE Convention, other than if involving a protected species.

The approach of the CoE Convention is worth a closer look. It has a number of generic provisions and general obligations, and it then separates out different thematic areas into Sections, such as 'pollution', 'products and substances', 'waste' and 'biodiversity'. Under each Section one finds a list of specific crimes and the conduct to be criminalised, including on:

- Unlawful pollution.
- Unlawful management of hazardous waste.
- Unlawful mining.

- Trade in unlawfully harvested timber.
- Unlawful destruction or trade in wild fauna or flora.

Its more general provisions include sanctions and measures, protections for victims, witnesses and whistleblowers, and there is a full chapter on prevention measures, including awareness-raising campaigns, and it recognises the important role of civil society and other stakeholders.

It also makes provision for a "particularly serious offence".

While the language used and specific provisions will likely differ, it is the overall approach taken by the CoE Convention that may be worth considering in relation to an UNTOC protocol or protocols. The options being discussed to date revolve around negotiating a single protocol that includes general provisions, with specific crimes being addressed in separate articles, as is the case with the CoE Convention, or negotiating separate protocols to tackle different crimes, such as one on wildlife trafficking, one on timber, and one on mining etc. This second option does not find favour with some states as it involves multiple negotiating streams.

Multiple protocols are, however, preferred by some states, in part, due to concerns that different crimes have different levels of support and resistance, and, to bundle them all together can make a negotiation more challenging. Further, not all crimes are the same and some will require different experts to engage and some unique provisions to tackle them.

However, there may be another way forward.

One could contemplate a single UNTOC protocol with general provisions that apply to all CAE, with several separate annexes addressing specific crimes. While the context is quite different, this is the approach adopted by the UN Convention to Combat Desertification (UNCCD), which has the general framework treaty text, but provides for the adoption of Annexes that outline region-specific approaches and priorities.

An UNTOC protocol could include general provisions that cover all CAE, with separate annexes that cover specific crimes, including setting out the conduct to be criminalised and any other provisions that relate more directly to those crimes. It could also make provision for the adoption of additional annexes in the future (as does).

It may be that there is a consensus around some crimes, such as illicit wildlife trafficking, but not around others, such as illegal fishing (assuming it's not included as wildlife). One could narrow down the number of annexes to cover only those crimes where there is broad agreement, especially to start with, allowing additional annexes to be adopted over time.

One could also consider adopting a larger number of annexes from the outset but allowing states to enter a reservation against an annex upon ratification. The UNCCD makes no provision for reservations but it does allow Parties to express their non-acceptance of a new annex. CITES allows for reservations when the Convention's appendices are amended to include a new species or change an existing listing.

What is the difference between UNTOC process and Ecocide

While engaging on these topics several questions have frequently arisen. One that most often arises is about ecocide.

Through a new UNTOC protocol or protocols on CAE states will agree, inter alia, on what crimes to include under an agreement and on the conduct to be criminalised. Such obligations will be implemented at the national level, through national legislation, and enforced through national enforcement authorities and courts.

Ecocide, at the international level, is about amending the Rome Statute, which sets out the four most serious offences of global concern, including genocide, to include a fifth crime of ecocide, thereby bringing it under the jurisdiction of the International Criminal Court.

A crime of ecocide can be dealt with at the national level, as we have seen in several states, and the CoE Convention includes what is called a "particularly serious offence".

These are quite separate and distinct tracks at the international level, and through the work of the IEG states are considering a protocol or protocols under the UNTOC.

What is the difference between compliance with treaty obligations and national law enforcement.

A State's failure to comply with a treaty obligation is not a criminal offence. It is a matter of compliance. States determine how they will hold each other accountable to treaty obligations. It is set out within a treaty, often elaborated upon by resolutions and decisions. A States' failure to enforce a treaty may give rise to a compliance issue, but it is not an enforcement matter.

Enforcement takes place at the national level, and an UNTOC protocol or protocols is intended to facilitate enforcement across international borders, including through having common offences and penalties allowing for dual criminality, which facilitates extradition, and many other matters to enhance cooperation, such as the sharing of forensics, verifying the legitimacy and validity of documents and sharing information, such as on known groups active in trafficking.

The time is now

We know of the cascading effect of the three existing UNTOC Protocols on national laws and international cooperation, and the Global Analysis of Crimes that Affect the Environment shows a causal connection between the obligations found in the Basel Convention and CITES and the high number of States that have criminalised waste and wildlife violations.

We have a unique opportunity over the next year or so to make a fundamental change to how we prevent and combat transnational environmental crimes. These opportunities are rare and don't last forever. Either we seize the moment, or it passes.

The economic, environmental and social impacts of CAE are of such a serious nature that it demands a scaled-up response, and if we don't make fundamental changes to our global legal framework we will just continue to work around the edges.

The organisations I am associated with will do their utmost to support States advance this bold and critically important work.

[1] Given time constraints only part of this written speech could be delivered orally

[2] 'Enhancing measures to prevent and combat crimes that affect the environment falling within the scope of the United Nations Convention against Transnational Organized Crime'

[3] Noting that some fish are listed under CITES, and fish should, according to the Global Initiative on Wildlife Crime and others be treated as wildlife.