

# Corruption & Illicit Trade

Louise I. Shelley

*Abstract: Illicit trade in diverse commodities – including drugs, people, natural resources, and counterfeit goods – is a significant component of the global economy. And illicit trade could not be possible without both high- and low-level forms of corruption. Transnational corruption has facilitated the global growth of illicit trade, undermining governance, the economy, health, social order, and sustainability in all regions of the world. This essay explores the convergences of corruption, illicit trade markets, and the legitimate economy, and identifies strategies for combatting them.*

Corruption is a key facilitator of illicit trade. Because of corruption – both low- and high-level corruption<sup>1</sup> – protected timber can be logged and traded; humans, drugs, and arms can be smuggled; and illicit goods can be transported across borders without payment of duty. When perpetrators are caught, the payment of bribes can ensure their release or minimize their sentences. This impunity contributes to the growth of illegal activity.

Illicit trade facilitated by corruption is always disturbing; together, these markets produce a more serious composite effect. The corruption associated with illicit trade drives many of the most destabilizing phenomena in the world: the perpetuation of deadly conflicts, the proliferation of the arms and weapons trade, and the propagation of environmental degradation. In the developing world, where corruption is more pervasive and states are weaker, illicit trade is like “termites at work.”<sup>2</sup> But corruption also contributes to the growth of illicit trade in the developed world by stimulating demand for illicit goods and enriching “legitimate” corporations. And as the trade of goods moves into virtual/online marketplaces, corruption follows into cyberspace.

Global illicit trade both undermines the state and creates enormous resources for nonstate actors. As

LOUISE I. SHELLEY is the Omer L. and Nancy Hirst Professor of Public Policy and University Professor in the Schar School of Policy and Government; and Director of the Terrorism, Transnational Crime and Corruption Center at George Mason University. She is the author of *Dark Commerce: How A New Illicit Economy is Threatening our Future* (in press, Princeton University Press), *Dirty Entanglements: Corruption, Crime and Terrorism* (2014), and *Human Trafficking: A Global Perspective* (2010).

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the illicit economy grows, there are fewer opportunities for a viable licit and inclusive economy. Illicit trade, when executed by transnational criminals who no longer need the state and/or terrorists who seek to destroy the state, provides a powerful force for the destruction of the existing order.

This essay examines how corruption has helped illicit trade expand in both the real and the virtual worlds, making the products and services of the illicit economy more widely available. Addressing this corruption linked to illegal global markets must be a much higher priority for both developing and developed states: to ensure that future generations have the natural, human, and economic resources needed to sustain themselves, and that states have the capacity to provide services for their citizens. To do so requires a multifaceted strategy that addresses the corruption of nonstate actors, officials, and corporations.

Researchers of illicit trade have for nearly two decades relied on a shared definition of their subject: “a cross-border commercial activity for the provision of goods and services that violates the laws of the exporting and/or importing country.”<sup>3</sup> But this definition is inadequate; not all illicit trade crosses borders. For instance, the United Nations Protocol addressing the contemporary trade in human beings states that individuals need not cross borders to be victims of trafficking. On closer inspection, this dry and restrictive definition does not capture a phenomenon that has such expansive and profound effects across the planet.

In response, the Organisation for Economic Co-operation and Development (OECD) in 2016 provided a more ample definition: “Illicit trade involves goods and services that are deemed illegal as they threaten communities and society as a whole. Illicit trade has a negative impact on economic stability, social welfare, public health, public safety and our environment.”<sup>4</sup>

Within this very broad framework are diverse categories of trade in goods and services, often facilitated by corruption. One analytical model identifies four primary submarkets of illicit trade.<sup>5</sup> The first market includes “prohibited goods and services,” including narcotics, and human and arms trafficking. Prohibited since 2003 through the United Nations Convention on Transnational Organized Crime, there is a strong consensus on the criminal nature of these areas of illicit trade.<sup>6</sup> And because they are reliant on organized crime for their survival, corruption is closely associated with these forms of illicit trade.

The second market includes the “irregular sale of regulated commodities, such as antiquities, or fauna and flora, goods that infringe upon intellectual property rights, and goods that do not conform to applicable local standards.”<sup>7</sup> Growing scientific evidence and concerns over the survival of cultural heritage and of the planet’s diverse species has led to the regulation of trade of these commodities under the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The illicit trade that has met the demand for restricted natural resources such as timber, minerals, and gold is therefore strongly correlated with high-level corruption.

The third market comprises popular items of consumption on which states often impose high excise taxes, such as cigarettes and alcohol. The smuggling of these commodities results in significant revenue losses for states. Global cigarette smuggling is estimated to cost countries billions of dollars of lost revenue. In Europe alone, annual sales in illicit cigarettes are estimated at €7.8 billion to €10.5 billion.<sup>8</sup> Total revenues may be less, but growth rates for the illicit tobacco trade are higher still in the Middle East, Africa, and Australia.<sup>9</sup> Cigarettes, tobacco, and alcohol have been at the heart of contraband smuggling for several centuries,

consistently involving corruption of border and customs personnel, in particular.

The fourth market includes the sale of stolen goods, such as cars and electronics.<sup>10</sup> This form of illicit trade is not as tightly linked to corruption as are other forms. The trade in stolen goods has evolved in the contemporary cyber world, with stolen property sold alongside licit products online.

But this conceptualization of illicit trade markets is largely pre-Internet and Darknet (the portion of the Internet hidden from search engines and inaccessible without special software or network configurations), before trade expanded to include new virtual goods. Today, we need to add a fifth category: the illicit trade in virtual products that cannot exist outside of cyberspace, such as botnets, malware, and ransomware. These products allow criminals to access bank accounts, steal credit card numbers and identities, and lock the computers of institutions and individuals (denying them access to their data) unless they pay a ransom. The sale and use of these products are also not devoid of corruption.

Commerce requires not just goods, but money to pay for purchases. Currencies developed with commerce in antiquity, as traders needed to pay for goods.<sup>11</sup> In the past, illicit traders produced and benefited from counterfeit currency; now they depend on illegal financial flows facilitated by corruption.<sup>12</sup> The nonprofit Global Financial Integrity has defined illicit financial flows as “money that is illegally earned, transferred or utilized.”<sup>13</sup> But today, with the emergence of anonymized payment systems in cyberspace, of which bitcoin is the best-known, illicit financial flows actually help drive the growth of the new illicit economy.

Not all illicit financial flows help finance criminal commerce; abuse of trade can help mask kleptocratic theft. National leaders often attempt to hide their misappropriation of national resources by label-

ing the transfers sent to offshore banking centers like Panama as payments for commercial goods. Often, no trade occurs, or a minor transaction is disguised as a much larger trade to justify the movement of large funds. This phenomenon is referred to as *trade-based money laundering*.<sup>14</sup> Perpetrators therefore often abuse the global trading system to facilitate large-scale corruption and criminal misconduct.

The illicit economy includes the sale not only of such well-known commodities as drugs, arms, and people, but of endangered species and timber, oil, animal parts, energy resources like oil and gas, counterfeits (including pharmaceuticals), and antiquities. Illicit trade has diversified rapidly in recent years as law enforcement efforts focused on the drug trade have intensified. Illicit actors have thus moved into economic areas with significant profits but much less risk, engaging corrupt officials to facilitate sales of other illegal commodities. The illegal trade of environmental products represents the fastest-growing sector of illicit trade, estimated at 5 and 7 percent annually and exceeding the growth rate of the legitimate economy as a whole.<sup>15</sup> Facilitating this growth is the low cost of corruption to move these goods: the risks of arrest and property seizure are less than in the drug trade, and so officials operating in lower-risk illicit markets cannot command the same high bribes. The illicit trade market in antiquities has also exploded in the context of nearly two decades of continuous war and civil conflicts in the Middle East. Terrorists and militants participate in this trade, but corrupt officials and local criminal entrepreneurs in Syria and Iraq also benefit.

In 2012, the United Nations Office on Drugs and Crime (UNODC) estimated that the sale of illegal goods worldwide was an \$870 billion-a-year business, and that drugs represented \$320 million of the total. According to the UNODC: “These immense

Louise I.  
Shelley

illicit funds are worth more than six times the amount of official development assistance, and are comparable to 1.5 per cent of global GDP, or 7 per cent of the world's exports of merchandise."<sup>16</sup>

Corruption may also result in our underestimation of the size of the problem. High levels of corruption in branches of government most linked to the dynamics of illicit trade – customs, border patrol, and law enforcement – undermine collection of the very data that we need to understand the pervasiveness of the phenomenon. And so statistics on illicit trade rarely cover its extent. This is particularly characteristic of the trade in counterfeit goods, as the data in one recent OECD study suggest. The study concluded that counterfeits represented 5 percent of trade in Europe, but only 2.5 percent of trade in the developing world.<sup>17</sup> Why this discrepancy, when counterfeit goods are so pervasive in Africa and in many parts of Asia and Latin America? The World Customs Organization offers one explanation, acknowledging that no type of government can boast a customs department “immune to corruption.” Corruption plagues customs administrations around the world, and in many countries, positions in the customs service are sold for high prices.<sup>18</sup> Officials who have purchased their positions can go on to make significant revenue by accepting bribes to let counterfeit goods and contraband pass. Therefore, data on counterfeit goods in global trade are almost surely understated, especially in the developing world, where customs corruption is particularly acute.

The UNODC, the United Nations Environment Programme, and the OECD have reported data on revenues generated from distinct categories of illicit trade.<sup>19</sup> But the reality of corruption on the ground means that trade in these illegal goods often converges and overlaps. Once officials have accepted bribes to look the other way, the same smugglers can move people, arms,

and drugs across the same border together or at different times, and in different combinations. Convergences have included rhino horn traveling in hollowed-out South African trucks carrying smuggled cigarettes; ivory tusks packed alongside drugs on the East Coast of Africa; even nuclear materials moving with smuggled antiquities in Turkey.

Illicit trade also is not always a distinct phenomenon; it intersects with the licit economy. Smuggled antiquities are sold on the Darknet and in antique stores, sitting beside objects with appropriate provenance; less regulated pharmacies may sell counterfeit or diverted medicines along with legitimate drugs. Online sales platforms such as Alibaba, eBay, and Amazon sell both legitimate and counterfeit goods simultaneously; the commitment of personnel and time needed to weed out purveyors of counterfeits is too great for them to bother with. But the convergence of the licit and the illicit suggests that the global economy is more affected by illicit trade than current global figures suggest.

One of the most destabilizing and disturbing world crises today is the conflict in Syria. Overwhelmed by the massive destruction, loss of lives, millions of refugees, and assortment of military actors, it is hard to remember that corruption and illicit trade had much to do with the initiation of this crisis. In the 1970s, then – President Hafez al-Assad, the father of President Bashar al-Assad, launched an unsustainable program for agricultural self-sufficiency, growing crops requiring significant amounts of water without considering whether “Syria had sufficient groundwater and rainfall to raise those crops. Farmers made up for water shortages by drilling wells to tap the country’s underground water reserves.”<sup>20</sup> Due to diminishing water tables, Bashar al-Assad in 2005 made it illegal to dig new wells without a license. But

in an environment of high levels of corruption, the ban did not stop those who had money to bribe officials for licenses to dig deeper. Even bribery could not ensure sustainable access, however, as the drought in the once-fabled Fertile Crescent continued, and any remaining water was at such depth that it was no longer profitable to dig for it.<sup>21</sup>

Desperation drove Syrians to desert agricultural land and migrate en masse to urban areas. Between 2002 and 2010, Syria experienced an incredibly rapid rate of urbanization. Before the U.S. invasion of Iraq in 2003, there were 8.9 million Syrians living in cities; in 2010, there were 13.8 million. Of this urban growth, approximately 1.5 million people were fleeing the drought.<sup>22</sup> Syria, in a decade, became one of the most urbanized countries in the world.<sup>23</sup> But this population transition occurred in a corrupt and badly governed state that did not show concern for its citizens and their welfare.

Recent migrants to urban areas congregated in illegal settlements that developed on the periphery of Syrian cities. The corrupt Assad government neglected these communities, and they were therefore characterized by a paucity of infrastructure, high crime rates, absence of services, and unemployment. They became “the heart of the developing unrest” during the Arab Spring.<sup>24</sup> Today this region is a center of illicit trade in drugs, particularly Captagon; people; oil; weapons; cigarettes; antiquities; and every other type of contraband imaginable. Those profiting from the smuggling in Syria include corrupt government officials, criminals, and members of terrorist organizations like ISIL and Al Nusra.<sup>25</sup>

Syria demonstrates how, fed by corruption, an urban hub of illicit trade can develop in the chaos and destruction of conflict. Meanwhile, the advent of the Darknet – an overlay network that hides users’ location/identity and activities from private or state surveillance and is accessible

only through special software like Tor – is another kind of hub entirely.<sup>26</sup> While the Darknet is an important anonymizing tool for dissidents in authoritarian countries, it is also host to sales of the most dangerous items evading law enforcement: narcotics, arms, and malicious tools to undermine computer systems and hack into financial accounts. Many believe that these hidden sites are safer, less violent, and devoid of the corruption that characterizes the criminal world. Yet in many respects, the Darknet resembles more traditional criminal markets. For example, law enforcement efforts to dismantle the Darknet megacommerce site Silk Road and to bring its founder Ross Ulbricht, also known as Dread Pirate Roberts, to justice reveal that the corrupt practices associated with large-scale organized crime also transfer to the cyber world.

During the height of Silk Road’s operations, buyers and sellers exchanged more than six hundred thousand messages monthly, overwhelmingly concerning drug sales. Ulbricht received a commission on sales through the Silk Road site; processing \$1.2 billion in transactions in a little over two years through the cryptocurrency bitcoin netted Ulbricht \$80 million.<sup>27</sup> During the two-year federal investigation of Silk Road, in which law enforcement had to first identify the mastermind behind the site, a U.S. Secret Service agent and a Drug Enforcement Administration agent used pseudonyms to steal bitcoins from the site, attempted to extort money from Ulbricht, and sold Ulbricht sensitive law enforcement information helping him to avoid arrest.<sup>28</sup> Clearly some of the same forms of corruption exist in virtual illicit trade as in the real world: law enforcement participation in extortion, theft, and abuse of position for financial advantage. The Web is not a hygienic space, as some believe. This is hardly surprising, given that known behaviors in the real world transfer into the new technology.

Corruption facilitates illicit trade not only in hubs but also along the long supply chains that move illicit environmental commodities from their sources to their final sales markets. At the source, corrupt officials take advantage of their position to be guardians of the natural resources of the regions they rule, often profiting significantly from their exploitation and sale.

The perpetrator of the “biggest environmental crime of our time,” according to former prime minister of the United Kingdom Gordon Brown, is not a named criminal, but the governor of Sarawak (one of two Malaysian states on Borneo), Abdul Taib Mahmud.<sup>29</sup> A graduate of an Australian law school, Taib served as chief minister of Sarawak for more than thirty years. Under his leadership, and with loans from some of the largest multinational banks in the world, he helped facilitate the deforestation of 80 percent of Sarawak’s rain forests, which had been among the most biologically diverse and best preserved in the world. (And the Borneo rain forest was enormous, ranking behind only the Amazon and Congo Basin in size.) Through a patronage system that also favored Taib’s family businesses, the Sarawak state awarded contracts to commercial logging firms to deforest the territory at an unprecedented rate, suddenly depriving the earth of one of its last remaining rain forests, and the native populations of the habitat where they had traditionally lived.<sup>30</sup> Leading international financial institutions have happily accepted the profits from this devastation, frequently ignoring the corruption behind their kleptocratic depositors.<sup>31</sup>

As in Sarawak and Sabah, the destroyers of timber resources in Kalimantan (Indonesian Borneo) are principally high-level officials. Yet their corruption has been unmasked by national state-sponsored anti-corruption activities. In contrast, the revelations surrounding the perpetrators and facilitators of the destruction of Malaysian

Borneo’s rain forests were possible only through investigations and advocacy conducted outside of Malaysia, since the leadership of the Malaysian government remains embroiled in its own major corruption charges.

In Indonesia, timber exploitation and the surrounding corruption were investigated by the state’s most trusted public institution: the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK). Established by law in 2002, the Commission has “made a reputation for itself globally for thoroughly investigating, researching, and trying high-level targets,” while achieving high conviction rates.<sup>32</sup>

The Commission has made the destroyers of Indonesian rain forests a top focus of its activities. The rationale for this approach is clear. The Indonesian anticorruption agency analyses indicate that Indonesia may have lost as much as \$9 billion in revenues from 2003 to 2014, largely owing to companies underreporting timber production. The government collected fees and royalties on only about 19 to 23 percent of all timber production during these years, a revenue loss that could occur only with pervasive high-level corruption.<sup>33</sup> Many different corrupt and illegal activities facilitate the deforesting of Indonesia, such as illegal logging, logging prior to receiving necessary permits (including environmental permits), logging outside of the territory for which the permit was granted, and logging within primary forests (old-growth forests that have developed undisturbed and thus have unique ecological features).<sup>34</sup> This deforestation could only proceed with corruption on the local, regional, and/or national level. Corrupt officials include not only forestry officials and local governors, but also judges and law enforcement, exhibiting such blatant corruption as the direct delivery of cash.<sup>35</sup>

In the early 2000s, a member of the Indonesian parliament was sentenced to eight

years' imprisonment for accepting bribes to allow the conversion of protected forest zones (rain forest land is often converted into palm oil or pulp plantations). Subsequently, in 2007, two government officials and their collaborator, a logging company executive, were convicted for illegal logging. In another case in 2008, a government regent, the ruler of an Indonesian province, received an eleven-year prison sentence for his role in illegal logging. By 2014, one-third of Kalimantan regents were under investigation for corruption. The dominant form of corruption among them was taking bribes to issue permits to cut timber and thereby allow the expansion of palm oil plantations.<sup>36</sup>

Once the timber is shipped from Indonesia, it often passes through free trade zones (FTZs), where goods can be landed, warehoused, manufactured or altered, distributed for trade, or re-exported duty free. Before the government of Indonesia cracked down on illicit timber trade, approximately fifteen cargo vessels per month were filled with illegally cut timber and moved through free trade zones in Singapore, Hong Kong, and Malaysia, before being transported to China and other Asian countries for importation. One illegal timber investigation in Indonesia revealed the involvement of an Indonesian general working with brokers in Singapore and document forgers in Malaysia. Traders, shipping agents, and banks were also directly involved in disguising the origin and nature of illegal timber shipments.<sup>37</sup>

The passage through Singapore may be surprising, since the country enforces strong anticorruption policies and is ranked sixth among states with the lowest level of corruptions, according to Transparency International's Corruption Perception Index 2017.<sup>38</sup> But as the Economist Intelligence Unit reports, "Singapore is less vigilant than it could be, particularly with regards to the FTZs, inside of which neither

Singapore Customs nor any other government authority is a consistent presence."<sup>39</sup>

A report from the International Chamber of Commerce on the use of FTZs to move illicit goods applies to the timber trade as well as counterfeiting:

In recent years, FTZs have provided a mechanism for counterfeiters to move illegal fake products around the world. Increasingly, counterfeiters use transit or transshipment of goods, through multiple, geographically diverse FTZs for no other purpose than to disguise the illicit nature of the products. Once introduced into an FTZ, counterfeit goods may undergo a series of economic operations, including assembly, manufacturing, processing, warehousing, re-packaging, and re-labelling.<sup>40</sup>

After moving through FTZs, the timber continues on to processors, often in China, who sell the processed timber to the United States and Europe, where there is great commercial demand for wood flooring and furniture. A recent exhibition on plywood at the Victoria and Albert Museum in London shows the journey endangered wood takes, from harvest and transport to importation and illegal entry into commercial markets.<sup>41</sup> In the United States, for example, the recent prosecution of hardwood retailer Lumber Liquidators revealed that the company, aware of its origin, had bought lumber from a Chinese source in the illicit timber trade.<sup>42</sup> The corruption and criminal sanctions brought against Lumber Liquidators reveal the complicity of purchasers in the United States, just as charted in the Victoria and Albert exhibit. Commercial corruption facilitates illicit trade at the retail end of the market, the final stage of the supply chain.

Free trade zones also enable smugglers of ivory. To move ivory to China from Africa, one Guangzhou-based trafficking network moved a shipment of tusks through at least eighteen different transshipment

points to obfuscate the commodity, its origin, and its destination. Among these transit points were free trade zones, illustrating how these ungoverned ports employ corruption to facilitate illicit trade.<sup>43</sup>

Different corrupt actors facilitate the illicit trade in animal parts of endangered species. Rhino horn smugglers have identified and recruited corrupt officials, both local and international, with care. Law enforcement in Africa, Asia, and at points in between has failed to disrupt the crime syndicates and transnational networks that are key to the success of this trade. As a South African government advocate for the rhino said to me in a meeting: “There is not only our corruption but everyone else’s along the route.”<sup>44</sup> A recent exposé by investigative journalists, presented at The Hague and on television, revealed the personal relationship between the South African minister of security and a Chinese organized crime figure who ran massage parlors frequented by the minister. According to the program, this relationship helped facilitate the rhino trade.<sup>45</sup> The minister’s leadership coincided with the inability of security forces to investigate rhino horn trade effectively, a phenomenon that made observers question his integrity.<sup>46</sup> Particularly problematic is China’s role as a major investor in South Africa and other countries in Africa. The importance of these larger trade and investment issues to African countries too often overrides efforts to counter this illicit trade and the corruption that facilitates it.

The South African security minister and other high-level officials prevented much-needed investigations of poachers and poaching networks by removing network analysts and counterpoaching agents from the state effort. This enabled corrupt airport employees in South Africa to load the rhino horn on planes in airports transiting the Middle East. On this journey, some of the cargo passes through FTZs, where there is no scrutiny of goods, while in other

cases, officials are bribed to ignore certain loads. The horn then moves on to Southeast Asia, where local as well as high-level corruption facilitates the movement of endangered species parts. Particularly notorious is the prime minister’s office in Laos, which has cut deals with wildlife traffickers to allow parts of tigers, elephants, and rhinos to transit the country.<sup>47</sup> Animal parts also flow through Myanmar and Vietnam, both among the lowest rated countries in Asia on the Corruptions Perceptions Index.<sup>48</sup> Once the animal parts arrive in Southeast Asia, corrupt officials and crime syndicates help move the rhino horn to high-end purchasers largely in Vietnam, where increasing private wealth and uses varying from party drug to cancer treatment have created a strong market.<sup>49</sup> (The number of rhinos poached in South Africa rose from thirteen in 2007 to more than twelve hundred in 2014, although recent education campaigns in Vietnam have lowered demand since the mid-decade peak.)<sup>50</sup>

In this trade, officials do more than turn a blind eye; they can serve as key personnel in conspiracies to move rhino horn. Corrupt park rangers, park guards, and other employees of national and private reserves provide information to poaching syndicates and, on occasion, provide cover for poaching teams moving inside protected areas. Some corrupt park employees actually run their own poaching rings, with analysis suggesting that they are passing information on social media, using coded signals and photos to help poachers locate rhino and avoid detection. Officials can also issue fraudulent CITES permits authorizing the export of rhino horn.<sup>51</sup> Corrupt military personnel, border guards, and customs officials of all levels are key figures in the operation of this illicit trade.

None of the above cases of corruption have been proven to reach the top of government, but heads of state and their im-



mediate families do play roles in many other forms of illicit trade, including drug trafficking, human trafficking, and the cigarette trade. Illicit actors have also strategically penetrated the state, often entering legislative bodies to shape laws in their favor; for instance in Russia, Colombia, and Italy. These criminals may also join the executive branch of government to ensure the absence of effective law enforcement. That government officials in many countries acquire immunity from prosecution upon election or appointment is only added incentive to enter government.<sup>52</sup>

High-level corruption challenges efforts to counter illicit trade; present strategies to combat illegal commerce are state-based and there are no existing mechanisms to counter heads of state or high-level officials who are themselves major perpetrators or facilitators. The problem is most acute in relationship to the drug trade, but is also present in many other major forms of illicit trade, such as cigarette smuggling, the diversion and resale of donated pharmaceuticals, and illicit arms sales.

President Manuel Noriega of Panama was tried and imprisoned for his involvement with the drug trade.<sup>53</sup> Top officials in Venezuela and Afghanistan and their close family members have also played important facilitating roles in the transnational drug trade. Ahmed Karzai, the brother of President Hamid Karzai, was a key figure in the Afghan drug trade, and the president, according to a leaked U.S. government cable, actively intervened on behalf of accused drug traffickers.<sup>54</sup> In 2016, the Organized Crime and Corruption Reporting Project (OCCRP) named President of Venezuela Nicolás Maduro as its “Man of the Year” for doing the most in the world to advance organized criminal activity and corruption. His nephews were indicted in U.S. courts for trying to use the presidential hangar of a Venezuelan airport to smuggle 800 kilos of cocaine into the United States.<sup>55</sup>

Many officials seek to share in the profits of the drug trade, but participation may often be coerced. The Latin American expression *plata o plomo* (silver or lead) describes how traffickers compel obedience in helping facilitate the drug trade not just from community members, but even national leaders in the Caribbean and high-level officials in Mexico, Central America, and South America.<sup>56</sup>

Top officials also abuse their office for personal gain by promoting other forms of illicit trade. Milo Djukanović, the former president and prime minister of Montenegro, was indicted by the Italian government for his role at the center of a ten-year cigarette smuggling conspiracy.<sup>57</sup> The OCCRP named the former president its Man of the Year in 2015. The distinguished jury of the OCCRP concluded that “Djukanović and his close associates engaged in extensive cigarette smuggling with the Italian Sacra Corona Unita and Camorra crime families. He was indicted in Bari and freely admitted [to] the trade, but said his country needed money. He invoked diplomatic immunity to get the charges dropped.”<sup>58</sup> The trade benefited him and his cronies but had very significant negative financial effects on neighboring countries that lost tax revenue through the sale of contraband cigarettes.

The family of Horacio Cartas, president of Paraguay, is also deeply involved in producing “illicit white cigarettes”: cigarettes produced legally at the factory but with the intention of smuggling them into other countries for sale without payment of national taxes. Examining President Cartas’s family tobacco business (of which he is a key shareholder) raises multiple red flags. Paraguay produces a significant share of the world’s illicit whites, an estimated sixty-five billion cigarettes annually, and is responsible for 11 percent of the world’s contraband cigarettes.<sup>59</sup> The prime target of Paraguay’s smuggled cigarettes is Brazil, where one-third of all purchased cig-

arettes are illegal, costing the Brazilian government an estimated tax loss of \$1.2 billion annually.<sup>60</sup> Large-scale smuggling helps fund crime groups that facilitate the trade, such as Los Zetas and the Sinaloa cartel, who in turn use the operation to launder their money.<sup>61</sup> Corrupt participants include border and customs officials who facilitate the cross-border movement of the cigarettes and the law enforcement officials who allow the criminal organization to operate as distributors and profiteers.

Defining corruption as “the abuse of public or private office for personal gain,” our analysis of corruption encompasses not only public officials who engage in illicit trade, but private sector participants as well. Company leadership can benefit personally from illicit trade, but corporations can also gain as a whole, since illicit trade may increase business revenues and share values. Such was the case with cigarette giants Philip Morris and British American Tobacco, among others, which had engaged with smugglers and companies closely tied to international organized crime to boost sales, avoid taxes, and increase profits. That is, at least until a major European investigation exposed this behavior, leading to billions of dollars in fines and legally binding agreements designed to increase regulation and accountability.

Facilitators in the private sector are diverse and span low-level employees up to the top of corporations. Corrupt individuals at all levels of government, companies, and professions are needed to facilitate illicit trade. The most harm, however, is done by officials at the top who have the ability to set policies in motion that facilitate illicit trade, derail investigations, or cause massive shipments to pass without obstruction across borders.

Corporate facilitators range from the Jet-Blue flight attendant who checked baggage containing seventy pounds of cocaine to the

high-paid professionals at Mossack Fonseca in Panama who helped launder money for criminals, corrupt officials, and even terrorists.<sup>62</sup> The participation of Mossack Fonseca employees is, unfortunately, far from unique. Supporting each illicit market is a chain of professionals who violate the ethical codes of their profession and engage in what many would perceive to be corrupt and even criminal behavior. Email records included in the Panama Papers reveal that Mossack Fonseca leadership knew when corrupt officials or criminals were opening new accounts, but willingly accepted them as clients to profit from their ill-gotten gains.

Through their involvement in illicit trade, corrupt officials undermine not only financial systems but the sustainability of the planet. Illustrative of this was the CEO of Volkswagen who, with other Volkswagen corporate leaders, made the decision to build “clean diesel” Volkswagen cars with a so-called defeat device to recognize when they were undergoing emissions tests and manipulate their emissions-control systems to beat the test. In reality, on the road, these vehicles emitted up to forty times the allowable level of nitrogen oxide, which can cause respiratory diseases such as asthma and lung cancer.<sup>63</sup> In addition to health and environmental consequences, Volkswagen deceived more than eleven million customers. For these crimes, and with company officials indicted, Volkswagen entered a guilty plea in U.S. courts to multiple charges, including conspiracy to commit wire fraud, conspiracy to violate the Clean Air Act, customs violations, and obstruction of justice. Volkswagen paid a multibillion dollar fine to the U.S. government in early 2017.<sup>64</sup> Further investigations now underway reveal that Volkswagen was not the only automobile manufacturer to evade emissions controls deliberately.

To take another example, legitimate Chinese factories producing ozone-depleting

substances (ODS) deal directly in legal trade with legitimate clientele around the world. But the illicit market includes diverters as well as middlemen from these factories who trade and broker their commodities illegally. They do this by means of “false labelling, misdeclaration of documents, concealment, fake recycled materials and transshipment fraud,” which are all used to smuggle hydrochlorofluorocarbons (pollutants), violating the Montreal Protocol.<sup>65</sup> This is not only corporate fraud, but public corruption, because the people responsible are employees of state-owned companies.

Illicit trade demands more attention from many different sectors of society: the global community that faces instability and destruction, governments that lose tax and customs revenues, corporations that lose profits and revenues needed for innovation, individuals who may purchase inferior or dangerous goods, and any person concerned with species extinction or the quality of their environment. Yet many do not appreciate the full consequences of the corruption that facilitates illicit trade because they examine each of its traits in a stovepipe fashion rather than understanding the convergence of these phenomena.

Corruption at all levels of state bureaucracy is necessary to facilitate illicit trade. Yet corporations, as well as shippers, expeditors, brokers, and bankers, also play a critical role. Some corporations are privately held and controlled by shareholders, some are publicly traded but with a government as the majority shareholder, and some are owned by government outright. Illicit trade on a global scale, totaling hundreds of billions of dollars annually, requires much more than criminal actors; it requires workers from diverse parts of the legitimate economy to facilitate and protect it.

The phenomenon that we have analyzed is decidedly transnational; yet most strategies and legal frameworks to combat cor-

ruption are state-based and thus are woefully inadequate to the task. Therefore, we need strategies to address the corruption facilitating illicit trade. These strategies are complex, requiring tactics that cross borders and are not confined to a single jurisdiction. Such strategies must be able to target high-level state but also corporate officials.

Some of the proposed countermeasures are useful in addressing corruption but do not specifically target illicit trade, whereas others are focused on stopping the corruption behind smuggling and other forms of illegal commerce. For human health and the welfare of other forms of life on the planet, we must prioritize corruption that undermines sustainability. This is an alien concept, but one that requires serious consideration if future generations will reside on this planet.

The analysis here reveals that many people engaged in highly lucrative forms of illicit trade are national leaders or close family members. Their positions of power grant them total impunity in their home country because domestic law enforcement will rarely investigate their corruption and do so only at great personal risk to themselves. Therefore, to address this high-level corruption and its devastating consequences on (often developing) countries' economies and governance, it is necessary for there to be investigative capacity outside of the country in question. Just as the International Criminal Court has investigated and prosecuted officials and rebel leaders who have engaged in mass crimes, we need an institution that allows the international community to investigate and sanction corrupt leaders engaging in illicit trade. The International Anti-Corruption Court proposed by Judge Mark Wolf elsewhere in this volume might prove such a mechanism.<sup>66</sup> With a non-state-based institution to impose accountability, government officials might re-

frain from or reduce participation in illicit trade with the knowledge that they could be brought to trial by skilled independent prosecutors. With an anticorruption institution that focuses on the proceeds of corruption rather than just the perpetration, it might reduce the likelihood of high-level officials participating in illicit trade.

Legislation requiring banks and financial institutions to identify beneficial ownership is another important step toward reducing corruption, both generally and specifically in regard to illicit trade. Illicit fortunes can be laundered through illicit trade because of the absence of transparency in financial accounts and institutions. Moreover, trade-based money laundering is key to the movement of wealth to anonymous offshore accounts. Therefore, requirements that those depositing funds or buying real estate declare the beneficial owner of the property would help curb the corruption behind many forms of illicit trade. Making it more difficult to hide or use the fruits of official corruption is a disincentive to participate.

Transparency and oversight are central to preventing corruption. Because illicit trade intersects so frequently with the licit business world, it is important that there be public-private partnerships that help expose these forms of corruption. Such partnerships now exist in extractive industries. For example, the Extractive Industries Transparency Initiative takes a multistakeholder approach to monitoring resources in oil, gas, and minerals. The Initiative lists right on its homepage those countries not in compliance.<sup>67</sup> This serves a dual function. It names and shames noncompliant countries. Moreover, it discourages foreign investment in countries that are not compliant, leading investors to put their money where they can ensure there is oversight. A similar effort is now being made in the fishing industry, in which corruption facilitates trade in illegally caught fish as well as human trafficking of men to be fishermen.<sup>68</sup>

The Extractive Industries Transparency Initiative is monitoring corruption at the source, while other efforts are attempting to track corruption that facilitates the movement of illicit goods along supply chains. Corporations, often under pressure from civil society, are paying more attention to both the goods they sell and how they reach market. Unions, consumers, students, and human rights activists have made supply chain transparency a priority, particularly in regard to human trafficking. The Supply Chain Transparency Act was passed in California in 2010 and went into force in 2012. Although only one U.S. state has enacted such a measure, the size of the California market – larger than many countries – has forced companies to change business practices in order to be able to continue to sell there. Improved supply chain transparency efforts have focused primarily on clothing and footwear, but because these commodities make up a major import and export sector, these efforts also have important effects on controlling corruption.<sup>69</sup> The nonprofit organization Verité works with corporations to improve the transparency of their supply chains and provides educational and training materials to help businesses who do not contract for Verité's services. There are now many more opportunities to engage in monitoring.

We must focus not just on corruption in the real world, but on how the corruption patterns we have identified translate into the cyber world. As more commercial activity transfers to the Internet, there are more and greater opportunities for anonymity in both commerce and payments, especially through cybercurrencies. Illicit trade in multinational commerce requires cooperation from law enforcement in many countries. But with corruption becoming less traceable online, it becomes of paramount importance that procedures are established to make it more difficult for corrupt officials to undermine investigations.

As we establish regulatory frameworks for new and developing technologies, we must incorporate anticorruption measures.

Controlling corruption is key to combating illegal trade in drugs (pharmaceuticals and illicit drugs); people; cyber resources; cigarettes, alcohol, and other legitimately produced goods; and endangered natural resources like ivory, rhino horn, and protected timber. There is not one form of cor-

ruption or one level of official that is responsible for this trade. Strategies to address corruption facilitating illicit trade must therefore range from petty bribery to heads of state to the offshore banks that harbor the proceeds. Only by using diverse anticorruption strategies can one begin to tackle both the national and transnational corruption that facilitates this trade.

#### ENDNOTES

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