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TIGER, TIGER FLICKERING LIGHT

MILAN DALAL*

Abstract: Tiger population in the wild, particularly in India, is disappearing at a rapid rate because of extensive poaching and destruction of habitats. The poaching is mainly driven by demand for tiger parts used in traditional Chinese medicine. As a result, Indian tiger products are smuggled into Tibet in contravention of the CITES treaty. This Note argues that significant changes need to be made to the legal regimes in India and China to deal with the poaching epidemic, including strengthening anti-poaching laws and legal enforcement. Additionally, the Author advocates implementing alternative economic strategies that rely on giving incentives to people and harnessing the free market to conserve the tiger. In particular, this Note suggests that eco-tourism, combined with environmental entrepreneurship, is a better strategy for conserving tigers than the current, ineffective governmental regime.

INTRODUCTION

One of the most pressing problems the world faces today is the destruction of its environment, primarily due to human action.¹ Nothing symbolizes this destruction more vividly than the rapid disappearance of that majestic animal, the tiger, from its natural environment in Asia,² particularly in India.³ India is party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁴ and as such, has undertaken certain obligations to protect

* Milan Dalal is the Executive Note Editor of the *Boston College International & Comparative Law Review*.

¹ See Richard Black, *New Environment Chief Targets Poverty*, BBC NEWS, June 12, 2006, <http://news.bbc.co.uk/2/hi/science/nature/5053210.stm>.

² See *No Longer Burning Bright*, WASH. POST, Jan. 24, 1998, at A21.

³ See INSIGHT GUIDES, INDIAN WILDLIFE 67 (2d ed. 1993); *Tigers in the Twilight*, ECONOMIST, Sept. 9, 2006, at 46.

⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

the tiger.⁵ Unfortunately, it has not met these obligations; nor has China, another party to CITES.⁶

Part I of this Note describes the history and nature of the growing threat to tigers in the wild. Part II discusses the background of the CITES treaty, the legal framework for enforcing the Wild Life Protection Act in India, and what actions are being taken by individuals, the Indian government and the courts. Part III proposes two solutions to the systemic problems that prevent enforcement of the law, along with alternative strategies for saving the tiger through an economic incentive that makes a wild tiger worth more than a dead tiger.

I. BACKGROUND

Only a hundred years ago, the tiger roamed widely over Asia, stretching from the arid Caspian Sea to the lush rainforests of India.⁷ Early records of British explorers in India in the nineteenth century report on the existence of tigers only a few miles outside of the present-day metropolis of Bombay, in western India.⁸ That famous hunter of man-eating tigers, Jim Corbett, first noticed the rapid decline in tiger population in the early 1900s in India, and alerted people to the need for saving the species and preserving the habitat for its survival.⁹ The increase in human population, particularly in the last fifty years, has rapidly encroached upon tiger habitats, and reduced the population of tigers today to approximately 2000 in India,¹⁰ from 100,000 in 1900.¹¹ In many other places where the tiger used to roam, such as

⁵ Imogen Foulkes, *UN Warns India over Tiger Numbers*, BBC NEWS, Apr. 12, 2005, http://news.bbc.co.uk/2/hi/south_asia/4438177.stm.

⁶ See DEBBIE BANKS ET AL., *SKINNING THE CAT: CRIME AND POLITICS OF THE BIG CAT SKIN TRADE 1* (2006), <http://www.cia-international.org/cgi/reports/reports.cgi?t=template&a=129>.

⁷ See Save the Tiger Fund, Tiger Maps, <http://www.savethetigerfund.org/am/customsource/tiger/mapping/index.cfm> (last visited Jan. 26, 2008) (mapping the tiger's historic range).

⁸ Meena Menon, *India's Natural History*, HINDU, Aug. 28, 2005, available at <http://www.hindu.com/br/2005/08/30/stories/2005083000221500.htm> (stating that tigers were spotted in Thane, a present-day suburb of Bombay, and that a tiger was spotted on Malabar Hill in the city of Bombay in 1806).

⁹ JIM CORBETT, *THE JIM CORBETT OMNIBUS* 236 (1991).

¹⁰ Stephen Mills, *The Dangers of Wooing a Tiger*, BBC SCIENCE & NATURE, <http://www.bbc.co.uk/nature/animals/features/261feature2.shtml>. Although some estimates place the population of tigers in India at 3000, conservationist Valmik Thapar approximates that the population is closer to 2000 to 2500. *Id.*

¹¹ Save the Tiger Fund, *Why Are Tigers in Trouble?*, <http://www.savethetigerfund.org/Content/NavigationMenu2/Community/GeneralPublic/Threats/default.htm> (last visited Jan. 23, 2008).

Java, Bali, the Caspian Sea region, and North Korea, it is now extinct.¹² Only a small population of a few hundred survives in Siberia, north of Vladivostok near the Pacific coast of Russia.¹³

This scene is very different from the one twenty years ago, when the tiger population was growing, particularly in India, owing to determined efforts of two Prime Ministers of India, Indira Gandhi and her son, Rajiv Gandhi.¹⁴ Indira Gandhi set up the Project Tiger to help conserve the animals,¹⁵ and Parliament passed the Wild Life Protection Act.¹⁶ The Indian central government devoted significant resources to preserving the tiger, and set aside land establishing sanctuaries where the tiger could roam.¹⁷ Above all, the personal attention paid by the two Prime Ministers to saving the tiger made the preservation of tigers a priority for the bureaucrats running Project Tiger.¹⁸ Sadly, the assassinations of these two Prime Ministers also led to the demise of the interest in preserving the tiger, with the succeeding Indian governments paying scant attention to the tiger reserves.¹⁹ The state governments, which control the forests, also showed little interest in conservation, and instead allowed widespread incursions by

¹² Save the Tiger Fund, Extinct Tiger Species, <http://www.savethetigerfund.org/Content/NavigationMenu2/Community/TigerSubspecies/Extinctsubspecies/default.htm> (last visited Jan. 26, 2008) [hereinafter Extinct Tiger Species]; World Wildlife Fund, Population Estimates, <http://www.worldwildlife.org/tigers/population.cfm> (last visited Jan. 23, 2008) [hereinafter WWF Population Estimates]. There is a debate over how many species of tigers still exist in the wild. See Extinct Tiger Species, *supra*. Only four decades ago, there were over 4000 South China tigers in the wild. *Id.* After the government labeled them “pests,” uncontrolled hunting ensued. *Id.* According to the Chinese Ministry of Forests, in 1995, there were twenty South China tigers in the wild. *Id.* With no independent sightings, however, speculation abounds that the South China tiger is extinct. See *id.* The World Wildlife Fund estimates there are twenty to thirty South China tigers left in the wild. WWF Population Estimates, *supra*.

¹³ See Cornelia Dean, *Tigers Hold Their Ground*, N.Y. TIMES, June 17, 2005, at A9.

¹⁴ See *Tigers in Twilight*, *supra* note 3; Ranthambore Tiger Reserve, <http://envfor.nic.in/pt/status93/rantham.html> (last visited Jan. 23, 2008) (stating the first eco-development project at Ranthambore was established through the insistence of Rajiv Gandhi).

¹⁵ See *Tigers in Twilight*, *supra* note 3.

¹⁶ See Wild Life Protection Act, 1972, No. 53, Acts of Parliament, 1972.

¹⁷ INSIGHT GUIDES, *supra* note 3, at 42.

¹⁸ See *id.*

¹⁹ See *Tigers in Twilight*, *supra* note 3 (noting the lack of “interest in protecting the great felines” by Indian leaders after Mrs. Gandhi’s death). Indira Gandhi was assassinated in 1984. *Indian Prime Minister Shot Dead*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/october/31/newsid_2464000/2464423.stm. Rajiv Gandhi was assassinated in 1991. *Id.*

mining and other industrial interests into the reserves,²⁰ as well as massive incursions by the neighboring villagers, thereby further shrinking the habitat even in the reserves.²¹

In addition to this apathy, increasing prosperity in China revived the market for luxury goods such as tiger skins and for traditional Chinese medicine (which use tiger parts as ingredients), leading to significant increases in poaching.²² The result is that the tiger is rapidly disappearing from India, with several tiger reserves having lost all or most of their tigers to poaching over the last few years.²³ The tiger population in India has plummeted from approximately 3600 a decade ago to less than 2000 today.²⁴ Over 200 tigers are poached every year in India alone, and at this rate, the wild tiger will disappear from India within a decade or two.²⁵ This is in spite of the fact that both India and China are parties to the CITES treaty,²⁶ which obligates them to protect the tiger by actively pursuing poachers, and bans trading in tiger parts.²⁷ This ban is widely and openly violated in China and Taiwan, where tiger skins and tiger bones are readily available.²⁸

China is the primary destination for tiger skins poached in India.²⁹ There, people in the Tibetan communities wear tiger skins as part of their traditional costumes.³⁰ Khampa Tibetans meet at horse racing festivals, displaying their skins, in an effort to portray their wealth and court potential spouses.³¹ Officials even promote wearing skins to engender “an image of Tibetans prospering, economically

²⁰ See Stop Mining in Indian National Park and Exports for Japan!, <http://www.foejapan.org/en/aid/indianmining.html> (last visited Jan. 23, 2008) (describing incursions of mining companies).

²¹ See Erica Check, *The Tiger's Retreat*, 441 NATURE 927, 928 (2006).

²² See BANKS, *supra* note 6, at 3, 4–6; *Tiger Smuggling 'Out of Control'*, BBC NEWS, Oct. 6, 2004, http://news.bbc.co.uk/2/hi/south_asia/3720980.stm.

²³ See *Where Have All the Tigers Gone?*, BBC NEWS, Apr. 11, 2006, http://news.bbc.co.uk/2/hi/south_asia/4421893.stm [hereinafter *Where Have Tigers Gone?*]; see also Jay Mazoomdar, *Corbett's Slipping: State Ignored Centre's Warnings*, INDIAN EXPRESS, Sept. 14, 2006, available at <http://www.indianexpress.com/story/12629.html> (noting that five tigers have been killed at Corbett National Park between October 2005 and September 2006).

²⁴ INSIGHT GUIDES, *supra* note 3, at 67; Mills, *supra* note 10.

²⁵ Mills, *supra* note 10.

²⁶ CITES, *supra* note 4.

²⁷ See INT'L FUND FOR ANIMAL WELFARE, *MADE IN CHINA: THE ILLICIT TRADE IN TIGER BONE IN CHINA 2* (2006), <http://www.jaderavenclaw.com/tigerbonetrade.pdf> [hereinafter *MADE IN CHINA*].

²⁸ BANKS, *supra* note 6, at 3.

²⁹ See *id.* at 4.

³⁰ *Id.* at 3.

³¹ *Id.* at 9.

and culturally.”³² Unfortunately, law enforcement measures to prevent the sale of tiger skins are ineffective in this region, with traders operating in the open in Lhasa and other cities across Tibet and mainland China.³³ Cultural awareness programs, however, are underway to educate Tibetans on the use of animal skins.³⁴ As one commentator notes, in January 2006 the Dalai Lama even addressed the issue by warning Tibetans not to “use, sell or buy wild animals, their products or derivatives.”³⁵

Other tiger products are used as ingredients in traditional Chinese medicines.³⁶ Tiger claws are used to treat insomnia; the fat and meat is used as a cure for leprosy and rheumatism; bones are crushed up and made into wine; and the tiger penis is made into a soup and used as an aphrodisiac.³⁷

II. DISCUSSION

A. Background of CITES

By the 1960s, it was clear that several species of animals, including the tiger, would soon become extinct if no measures were taken to ensure their preservation.³⁸ Thus representatives of several nations convened under the aegis of the World Conservation Union with an aim to “ensure that international trade in specimens of wild animals and plants does not threaten their survival.”³⁹ The result was CITES.⁴⁰ The spirit of the multilateral environmental agreement is to use international cooperation to protect endangered species from extinction, and is binding on all signatories.⁴¹ Today there are 169 parties, including India and China.⁴²

³² *Id.* at 11.

³³ See BANKS, *supra* note 6, at 4, 9.

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ See Barun Mitra, *Sell the Tiger to Save It*, N.Y. TIMES, Aug. 15, 2006, at A19.

³⁷ *Id.*; MADE IN CHINA, *supra* note 27, at 3.

³⁸ INSIGHT GUIDES, *supra* note 3, at 42.

³⁹ U.N. Env't Programme, What is CITES?, <http://www.cites.org/eng/disc/what.shtml> (last visited Jan. 23, 2008) [hereinafter What is Cites?].

⁴⁰ *Id.*

⁴¹ See *id.*

⁴² See CITES, *supra* note 4.

B. *Obligations Undertaken by India and China under CITES*

As a result of its ratifying CITES, India was required to enact domestic legislation to enforce CITES' international obligations.⁴³ To facilitate the implementation of procedures designed to protect endangered species from eradication through relentless hunting and habitat encroachment, Prime Minister Indira Gandhi pushed through Parliament the Wild Life Protection Act of 1972 (WPA 1972).⁴⁴ Chapter III of WPA 1972 prohibited the hunting of several species of wild animals, including tigers.⁴⁵ Furthermore, it gave the central government and state governments the power to designate areas as "a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment."⁴⁶ Most significantly, the Act criminalized offenses against protected animals, with penalties including up to three years in prison, as well as fines up to 25,000 Rupees (approximately \$500).⁴⁷ The Act did not, however, give the Ministry of Environment and Forests "statutory sway" over state governments and their management of the tiger reserves.⁴⁸

Following the adoption of WPA 1972, the Indian government also established a tiger conservation task-force dubbed "Project Tiger."⁴⁹ Implemented in 1973, the task-force created several tiger sanctuaries with the goal of ensuring the tiger's survival in these protected areas.⁵⁰

Similarly, China became a signatory to CITES in 1981 and implemented legislation in compliance with the multilateral environmental agreement.⁵¹ These acts included: the Forestry Law and the Law on the Protection of Wildlife (LPW).⁵² Among the purposes of LPW was the protection of "species of wildlife which are rare or near

⁴³ What is CITES, *supra* note 39.

⁴⁴ Wild Life Protection Act, 1972, No. 53, Acts of Parliament, 1972.

⁴⁵ *Id.* at ch. III, § 9.

⁴⁶ *Id.* at ch. IV, § 18., § 38.

⁴⁷ *Id.* at ch. IV, § 51.

⁴⁸ Save the Tiger Fund, CATT Alert #40: Better Tiger Protection Closer but Still Elusive in India, http://www.savethetigerfund.org/AM/Template.cfm?Section=CATT_Alerts&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=2828 (last visited Jan. 23, 2008) [hereinafter CATT Alert #40].

⁴⁹ Project Tiger, Past, Present, Future, <http://projecttiger.nic.in/past.htm> (last visited Jan. 23, 2008).

⁵⁰ *Id.* Among the early tiger reserves were: Manas, Palamau, Simipal, Corbett, Kanha, Melghat, Bandipur, Ranthambore, and the Sunderbans. *Id.*

⁵¹ *China Praised for Progress in CITES Enforcement*, XINHUA, Aug. 15, 2005, available at http://news.xinhuanet.com/english/2005-08/26/content_3405562.htm.

⁵² *Id.*

extinction.”⁵³ In addition, China’s State Council banned the domestic trade of tiger products and “the use of tiger bone in traditional Chinese medicine” in 1993.⁵⁴

C. Initial Success

The results from the establishment of new wildlife sanctuaries under Project Tiger and the enforcement of the wildlife laws of the 1970s were astonishing.⁵⁵ The scheme, at its induction, created six tiger reserves that spawned into fifteen tiger parks by 1986.⁵⁶ The tiger population rebounded significantly and began to reverse the trend that had begun almost a century earlier.⁵⁷ Data collected in the mid-1980s estimated that the population of tigers in India had more than doubled from the 1800 surveyed in 1972.⁵⁸ At the time, one commentator gloated, “[b]y any measure, Project Tiger must be seen as one of Asia’s most successful conservation sagas and the tiger a symbol of the health of the Indian jungle.”⁵⁹

D. Selective Enforcement and Other Problems

The cause for jubilation after the initial successes of India’s conservation scheme soon began to diminish.⁶⁰ Valmik Thapar, a prominent tiger expert and conservationist, warned as early as 1989 that the success of Project Tiger was waning, noting that although official figures estimated the number of tigers in India at 4500, the actual population was probably closer to 3000.⁶¹ Tigers, he wrote had “little chance of survival against” the twin onslaught from “man and livestock” unless laws were again enforced.⁶² Unfortunately, the governments that succeeded those of Prime Ministers Indira and Rajiv Gandhi ignored Mr. Thapar’s admonition.⁶³

⁵³ Law on the Protection of Wildlife (P.R.C.) (promulgated by the Standing Comm. Nat’l People’s Cong., Nov. 8, 1988, effective Mar. 1, 1989), available at <http://www.china.org.cn/english/environment/34349.htm>.

⁵⁴ MADE IN CHINA, *supra* note 27, at 2.

⁵⁵ See INSIGHT GUIDES, *supra* note 3, at 43.

⁵⁶ *Id.* at 42.

⁵⁷ *Id.* at 67.

⁵⁸ *Id.* at 73.

⁵⁹ *Id.* at 42–43.

⁶⁰ See VALMIK THAPAR, TIGERS: THE SECRET LIFE 149 (1989).

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *Tigers in Twilight*, *supra* note 3.

What followed was a relapse into the destructive state that existed prior to the adoption of WPA 1972 and the creation of the Project Tiger administration.⁶⁴ With selective enforcement of the laws, and neglect for conservation efforts, the tiger population once again began to decrease.⁶⁵ Yet, it was not until early 2005 that the Indian government received a wakeup call.⁶⁶

In early 2005, stories began to circulate that the entire tiger population of one of India's premier tiger sanctuaries, Sariska National Park in the state of Rajasthan, had become extinct.⁶⁷ These reports alerted the head of UN CITES, Willem Wijnstekers, who took the unusual and bold step of writing an open letter to India's prime minister imploring him to take measures to protect the tigers.⁶⁸ The letter informed India that it was in danger of violating international law, as it was a signatory to the CITES treaty and therefore had an obligation to ensure the protection of endangered species such as the tiger.⁶⁹ Specifically, Wijnstekers was worried that India's lackadaisical approach to "implementing anti-poaching measures" was a sign that it was wavering on its commitment to CITES.⁷⁰

After the Sariska alert, instead of owning up to the problems of tiger poaching, many Indian government officials issued excuses and tried to pass the blame.⁷¹ One former senior forest official from the province of Madhya Pradesh complained about the "hue and cry" and told *BBC News* that the decrease in population was likely due to "migration."⁷² Rajasthan's Minister for Forest and Environment, L.N. Dave, while admitting "these events have taken place because of the lax attitude of subordinate officials," tried to justify the lower tiger population by suggesting mining and farming were to blame.⁷³ Other officials speculated the tigers "might be hiding."⁷⁴ In an interview with

⁶⁴ *See id.*

⁶⁵ *See* THAPAR, *supra* note 60, at 149. The decline in tiger population was not a shock—conservationists had warned about the danger beginning in the late 1980s. *See id.*

⁶⁶ *See* Narayan Bareth, *Arrests over Tiger Killings*, BBC NEWS, Nov. 21, 2005, http://news.bbc.co.uk/2/hi/south_asia/4456518.stm.

⁶⁷ *Id.* A May 2004 survey showed twelve tigers in Sariska; however, a census conducted a year later turned up none. *Id.*

⁶⁸ Foulkes *supra* note 5.

⁶⁹ *See id.*

⁷⁰ *Id.*

⁷¹ *See* KS Shaini, *The Threat to India's Main Tiger Centre*, BBC NEWS, May 5, 2005, http://news.bbc.co.uk/2/hi/south_asia/4497925.stm; *Where Have Tigers Gone?*, *supra* note 23.

⁷² Shaini, *supra* note 71.

⁷³ *Where Have Tigers Gone?*, *supra* note 23.

⁷⁴ *Id.*

BBC News, a member of Parliament from Rajasthan tried to excuse the tragedy of Sariska by saying, “This has been happening all over the country, not just Rajasthan.”⁷⁵

Simultaneous to the poaching epidemic in India, disturbing reports have surfaced from China about illegal trade in tiger products.⁷⁶ Despite the 1993 State Council ban on domestic trade and use of tiger bone, several tiger wine selling schemes have been uncovered.⁷⁷ In addition, traders selling tiger skins were discovered to be operating in the open in Lhasa, Tibet and mainland China as recently as 2006.⁷⁸ The failure of China to enforce its obligations under CITES has wrought destruction upon the worldwide tiger population, as the continued production and marketing of wine and other traditional medicines has fed the demand for dead tigers.⁷⁹

E. *India’s Response to the Sariska Crisis*

In response to this startling development and the international criticism his government was facing, Indian Prime Minister Manmohan Singh took action.⁸⁰ One of his first steps was to agree to chair Project Tiger for the next two years in order to “push implementation of recommendations” of the task-force.⁸¹ The Prime Minister also agreed to convert Project Tiger into a legal entity, which would give it statutory power, and to establish a wildlife crime bureau.⁸² In addition, the Indian government created a new Central Empowered Committee, which was given the power to settle disputes such as “illegal encroachments within tiger reserves.”⁸³ Prominent conservationists, including Valmik Thapar, have been appointed to the Committee.⁸⁴

On September 4, 2006, the Indian Parliament amended the Wild Life Protection Act of 1972.⁸⁵ The amendment (WPA 2006) did sev-

⁷⁵ *Id.*

⁷⁶ See MADE IN CHINA, *supra* note 27, at 3–6.

⁷⁷ *Id.*

⁷⁸ See BANKS, *supra* note 6, at 3; MADE IN CHINA, *supra* note 27 at 3–6.

⁷⁹ See BANKS, *supra* note 6, at 3.

⁸⁰ PM to Chair Project Tiger for Two Years, DECCAN HERALD (India), Aug. 6, 2005, available at <http://www.deccanherald.com/archives/aug62005>.

⁸¹ *Id.*

⁸² *Id.*; see *Indian Agency to Protect Tigers*, BBC NEWS, June 25, 2005, http://news.bbc.co.uk/2/hi/south_asia/4622437.stm.

⁸³ Mills, *supra* note 10.

⁸⁴ *Id.*

⁸⁵ CATT Alert #40, *supra* note 48.

eral vital things.⁸⁶ First, it established the National Tiger Conservation Authority.⁸⁷ This is significant because, unlike under Project Tiger, the central government's Ministry of Environment and Forests now has the statutory power to coordinate with and mandate tiger conservation at the state level.⁸⁸ It also created an agency, the Wildlife Crime Control Bureau, to "investigate and prosecute crimes against tigers."⁸⁹ Moreover, WPA 2006 increased the penalties for poaching "to seven years in jail and \$4,000 for a first offense and at least seven years imprisonment" and up to \$100,000 for subsequent crimes.⁹⁰

Most important is what the amendment did not do.⁹¹ Some conservationists and editorialists feared that Parliament would simultaneously enact legislation, called the Tribal Bill, allowing villagers to "pillage the heart of tiger reserves" by moving into the reserves and encroaching on the habitat of the animals through deforestation.⁹² Fortunately, such legislation has been put on hold.⁹³

III. ANALYSIS

The recent modifications of the Wild Life Protection Act may not be enough, as tigers continue to be poached at an alarming rate.⁹⁴ Amending the law to ensure stiffer penalties for poaching and giving the federal government more control to implement protection schemes are steps in the right direction.⁹⁵ The new legislation was certainly long overdue and desperately needed.⁹⁶ Furthermore, because the legislation gives additional incentive for cooperation between state governments and the national government, there is hope that turf wars that previously led to a lack of vigilance will be avoided.⁹⁷

There are systemic problems in India that prevent the swift administration of justice that is necessary to punish crimes against wild-

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ CATT Alert #40, *supra* note 48.

⁹¹ *See id.*

⁹² *Id.*; *Tigers in Twilight*, *supra* note 3.

⁹³ CATT Alert #40, *supra* note 48.

⁹⁴ *See* Bareth, *supra* note 66; Mazoomdar, *supra* note 23 (noting that five tigers were killed at Corbett National Park, India's flagship tiger reserve, between October 2005 and September 2006).

⁹⁵ *See Tigers in Twilight*, *supra* note 3.

⁹⁶ *See id.*

⁹⁷ *See* Mazoomdar, *supra* note 23.

life.⁹⁸ The first major problem is corruption.⁹⁹ As one commentator diplomatically states, “border officials can often be persuaded to look the other way.”¹⁰⁰ Furthermore, adjudication is rarely swift.¹⁰¹ Cases often take several years, sometimes over ten years, to come to court, and in the meantime, “those involved are free to re-offend whilst out on bail.”¹⁰² Third, recent governments have not prioritized protection of endangered species and are now seen as too weak to be effective.¹⁰³ Tiger conservationist Valmik Thapar stated, “[W]hat we suffer from in India is a government which has reached an abysmal state where they’re not able to protect our national parks and sanctuaries.”¹⁰⁴

Selective and inconsistent enforcement of the law is also a problem in China.¹⁰⁵ As noted earlier, despite legislation banning the sale of tiger products for traditional Chinese medicine, the practice occurs frequently with little governmental interference.¹⁰⁶ Furthermore, the trade in skins operates in the open in the markets of Lhasa and Linxia.¹⁰⁷

A. *Proposals to Save the Tiger*

There are a number of measures that the Indian and Chinese authorities can enact to ensure the safety and prosperity of the remaining 2000 to 3000 tigers in their natural habitat.¹⁰⁸ First, these countries should strengthen the police forces responsible for protecting the tiger. The present arrangement of using poorly equipped rangers to patrol the forests and prevent poaching is simply not working.¹⁰⁹ The rangers are not equipped with either the vehicles or the guns needed to confront the poachers.¹¹⁰ India could use Nepal as a model for successful efforts, where the Royal Nepalese Army, while patrolling the Royal Chitwan National Park and other tiger sanctuaries, was very successful

⁹⁸ See CATT Alert #40, *supra* note 48.

⁹⁹ See BANKS, *supra* note 6, at 12.

¹⁰⁰ *Id.*

¹⁰¹ *See id.*

¹⁰² *Id.*

¹⁰³ See *India Counts Its Dwindling Tigers*, BBC NEWS, Jan. 16, 2006, http://news.bbc.co.uk/2/hi/south_asia/4615894.stm.

¹⁰⁴ *Id.*

¹⁰⁵ BANKS, *supra* note 6, at 3.

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See id.* at 12.

¹⁰⁹ See WILDLIFE TOURS IN INDIA, TIGER IN INDIA, <http://www.wildlife-tour-india.com/indian-wildlife/tiger-in-india.html> (last visited Jan. 23, 2008) (observing that rangers are so poorly equipped that some do not even have boots or binoculars).

¹¹⁰ *See id.*

in protecting the tiger, leading to a significant decrease in poaching.¹¹¹ In the short term, while the rangers are given paramilitary training, some reserve companies of either the Army or the paramilitary Central Reserve Police could be posted to the tiger parks, with the rangers helping these soldiers in the patrolling task.¹¹² The poachers do not fear the rangers, but they would fear the Army.¹¹³

The second proposal is to strengthen the enforcement of laws.¹¹⁴ Special fast-track courts, similar to the courts established under The Terrorist and Disruptive Activities Prevention Act (TADA), which try terrorists, need to be set up to deal swift justice to poachers and those who traffic in tiger parts.¹¹⁵ Alternatively, the Indian Supreme Court could order the lower courts to proceed quickly on such cases. The Supreme Court has significant powers to enforce the laws, and in many cases, has taken action in the public interest.¹¹⁶ India has an interesting mechanism called Public Interest Litigation (PIL), where any citizen can file a petition with the courts, including the Supreme Court, requesting relief for the public good when laws are violated or unenforced.¹¹⁷ A classic example is the PIL that resulted in the Supreme Court ordering that all public transport and public conveyances (taxis and auto-rickshaws) in major cities of India, such as Delhi and Mumbai, be fueled by natural gas instead of diesel or gasoline.¹¹⁸ This order resulted in a significant and measurable decrease in pollution in the major cities over the past few years.¹¹⁹ It is not unreasonable to suggest that the Court be moved under a PIL to order the state and central governments to enforce anti-poaching laws, employ all necessary means to

¹¹¹ See UNESCO, Nomination [of Royal Chitwan National Park] to World Heritage List 12 (1984), available at http://whc.unesco.org/archive/advisory_body_evaluation/284.pdf (noting that an entire battalion of the Royal Nepal Army patrols the park).

¹¹² See *id.*

¹¹³ See *id.*

¹¹⁴ See BANKS, *supra* note 6, at 12.

¹¹⁵ See The Terrorist and Disruptive Activities Prevention Act, 1987, No. 28, Acts of Parliament, 1987, available at <http://www.satp.org/satporgtp/countries/india/document/act-andordinances/TADA.htm>.

¹¹⁶ See generally ARMIN ROSENCRANZ & MICHAEL JACKSON, THE DELHI POLLUTION CASE: THE SUPREME COURT OF INDIA AND THE LIMITS OF JUDICIAL POWER, available at http://www.cleanairnet.org/caiasia/1412/articles-69423_delhi_case.pdf (discussing activism of Indian Supreme Court in area of public interest litigation).

¹¹⁷ *Id.* at 6.

¹¹⁸ See *id.* at 10–11.

¹¹⁹ See *id.*

reduce poaching, and to appoint a special master who will monitor such compliance and report to the Court on a regular basis.¹²⁰

A third idea is to increase the penalties for poaching and trading in tiger products.¹²¹ Because a tiger's body parts are potentially worth \$40,000 to \$50,000, a fine of \$440 is a paltry amount for a poacher to pay.¹²² Substantial fines and jail sentences will serve as a deterrent for poaching.¹²³ Because poaching and international trade in tiger parts is part of international organized crime, the penalties for engaging in poaching should be commensurate with those of other organized crimes.¹²⁴

Over the long term, the conservation of tigers can only be ensured if the local villagers who come in daily contact with them and who are sometimes antagonistic to the concept of national parks, see the tiger not as a hindrance but as a key to their economic well-being.¹²⁵ That is, a live tiger must be worth more than a dead tiger to the local villagers.¹²⁶ This objective can be achieved by using the free market to benefit the villagers.¹²⁷ Currently, the free market benefits the local poacher because he has access to a free resource, namely the tiger.¹²⁸ The vast majority of villagers do not share in this bounty, yet neither do they suffer from the poaching.¹²⁹

There is a great demand for eco-tourism in the world.¹³⁰ Places like Kruger National Park in South Africa provide luxury accommodations and charge thousands of dollars per family for a safari visit.¹³¹ India is now a major tourist destination, both for the very large India diaspora and for western tourists.¹³² There is no doubt that eco-tourism can be a

¹²⁰ See *SC Questions Lax Legal Cover to Tiger Reserves*, TIMES OF INDIA, Nov. 13, 2006, http://timesofindia.indiatimes.com/NEWS/India/SC_questions_lax_legal_cover_to_tiger_re_serves/articleshow/432044.cms. The Supreme Court recently ordered the Indian Ministry of Environment and Forests to report "why the protection given to national parks and sanctuaries under the Wildlife Act was not extended to forests [designated] as tiger reserves?" *Id.*

¹²¹ See CATT Alert #40, *supra* note 48.

¹²² BANKS, *supra* note 6, at 15; *Where Have Tigers Gone*, *supra* note 23.

¹²³ See CATT Alert #40, *supra* note 48.

¹²⁴ See BANKS, *supra* note 6, at 15.

¹²⁵ See THAPAR, *supra* note 60, at 150.

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See Mitra, *supra* note 36.

¹²⁹ See *id.*

¹³⁰ See generally INSIGHT GUIDES, *supra* note 3 (describing, for example, the various eco-tourism opportunities in India).

¹³¹ See Kruger National Park, <http://www.krugerpark.co.za> (last visited Jan. 23, 2008).

¹³² See *Going to Goa*, ECONOMIST, http://www.economist.com/cities/displayObject.cfm?obj_id=7239316&city_id=MBI (last visited Jan. 23, 2008).

major draw for such tourists.¹³³ Sanctuaries such as Corbett National Park and Ranthambore are near enough to the major cities of Delhi and Jaipur to become part of a regular eco-tourist schedule, providing the tourists with the rare experience of seeing the tiger in its natural element.¹³⁴ Currently, many tourist lodges exist outside these parks, but, none of them directly benefit the local villagers.¹³⁵ The locals simply find some low level employment opportunities at the lodges.¹³⁶

This situation can change dramatically if the local villagers became part owners of the resorts and lodges.¹³⁷ Since the parkland is government owned, it would be logical for the state governments to provide land for setting up more resorts and lodges in attractive locations, and make the local villages, acting through their local governments (*panchayats*), part owners of the resorts along with outside entrepreneurs who would operate them.¹³⁸ The situation is analogous to what happens in the oil industry, where state governments that own oil resources share in the revenues through co-ownership with foreign oil companies, which operate the oil fields.¹³⁹ Once the villagers start sharing the profits, they will realize the economic value of keeping tigers alive rather than seeing them as the problem.¹⁴⁰

In addition to ownership, there should be significant occupation taxes (roughly twenty percent) levied on the lodges and resorts, which should be kept and distributed to local communities.¹⁴¹ This profit

¹³³ See Corbett National Park, <http://www.corbettpark.com/jim-corbett-national-park-facts.asp> (last visited Jan. 23, 2008) [hereinafter Corbett Park]; Ranthambore National Park, <http://www.ranthamborenationalpark.com/travel-information.html> (last visited Jan. 23, 2008) [hereinafter Ranthambore Park].

¹³⁴ Corbett Park, *supra* note 133. Corbett is located approximately 270 kilometers north of Delhi. *Id.* Ranthambore is 132 kilometers from Jaipur. Ranthambore Park, *supra* note 133.

¹³⁵ See THAPAR, *supra* note 60, at 150 (decrying the failure of Project Tiger “to take into consideration the plight and concerns of the people living around” Ranthambore).

¹³⁶ See *id.* at 153. Thapar notes that “villagers will only give freely of their time and labour if they perceive work to be for their common good and know that the benefits will therefore be shared in a fair and equitable way.” *Id.*

¹³⁷ See *id.* at 150–52 (discussing schemes to “strengthen the links between the people and the wilderness areas they live around”).

¹³⁸ See *id.* (advocating dairy co-operatives).

¹³⁹ See generally BG INDIA ANNUAL REVIEW, http://www.bg-india.com/indiabus/BG_India_Review2005.pdf (discussing British Gas’s joint venture in India Oil and Natural Gas Corp (ONGC), a Government of India public sector oil company); Krishnan Devidoss, *Energizing the Indian Economy*, 30 B.C. INT’L & COMP. L. REV. 199 (2007) (describing energy market in India).

¹⁴⁰ See THAPAR, *supra* note 60, at 150.

¹⁴¹ See, e.g., Eco-tourism and the Maasai, <http://www.maasai.com/Ecotourism%20and%20the%20Maasai.asp> (last visited Jan. 26, 2008) (stating for every guest that

motive can work very well to protect the tiger because, without the tacit cooperation of the local villagers, the poachers, who are all local, cannot survive.¹⁴² One classic example of a similarly successful scheme is from East Africa, where Masai tribesmen wiped out poaching once they began to share in the taxes from the safaris.¹⁴³

Although parks such as Corbett and Ranthambore are near major metropolitan areas, the strategy needs to be implemented for all national parks.¹⁴⁴ Toward this end, local airports should be built near the major parks so that foreign tourists could easily visit such parks from the major hubs of Mumbai, Delhi, Bangalore, Chennai, and Kolkata.¹⁴⁵ India has one of the fastest growing air markets in the world, with a host of new low-cost airlines that aggressively cater to the market.¹⁴⁶ Some flights can be booked for as little as thirty dollars for a 300 mile flight.¹⁴⁷ If state governments were to build airports near tiger reserves, there are likely to be many flights to such parks, carrying tourists who are willing to pay a premium price to visit tiger reserves.¹⁴⁸ Thus, virtually all tiger reserves in the country could become accessible to the high income eco-tourist.¹⁴⁹ The hotels in major Indian resorts routinely charge upwards of \$200 per night.¹⁵⁰ The hotel rates in Delhi, Mumbai, and Bangalore are among the highest in the world.¹⁵¹

Yet another idea would be to reward the rangers who patrol the reserves for an increase in the number of tigers.¹⁵² If the rangers received, for example, a ten percent bonus for every verified increase in

goes on safari at Camp ya Kanzi in Kenya, thirty dollars is allotted for Masai community [hereinafter Eco-tourism and the Maasai].

¹⁴² See THAPAR, *supra* note 60, at 150.

¹⁴³ Eco-tourism and the Maasai, *supra* note 141.

¹⁴⁴ See Corbett Park, *supra* note 133; Ranthambore Park, *supra* note 133.

¹⁴⁵ See Corbett Park, *supra* note 133; Ranthambore Park, *supra* note 133.

¹⁴⁶ See *India's Jet Air Plans Share Sale*, BBC News, Jan. 7, 2005, <http://news.bbc.co.uk/2/hi/business/4154837.stm> (noting "fast growth is driving consumer and corporate demand for services like air travel").

¹⁴⁷ See SpiceJet, <http://www.spicejet.com/> (last visited Jan. 23, 2008) (quoting a sample roundtrip fare between Ahmedabad and Mumbai at Rs. 1798 (aprox. thirty-six dollars)).

¹⁴⁸ See Taj Hotels, Resorts, & Palace, <http://www.tajhotels.com/TajHotelFinder/default.aspx> (last visited Jan. 23, 2008).

¹⁴⁹ See *id.*

¹⁵⁰ See *id.* A sample rate for a one night stay at the Sawai Madhopur Lodge, near Ranthambore National Park, is \$185 for the cheapest room, as of November 2006. See *id.*

¹⁵¹ See *id.* The minimum rate for a room at the Taj Gateway Hotel in Mumbai is \$280. See *id.*

¹⁵² See Terry McCarthy & Andrea Dorfman, *Nowhere to Roam*, TIME, Sept. 17, 2004, at 4 (noting villagers in Kyrgyzstan are paid a bonus for every year that a snow leopard is not killed).

tiger population, they are much more likely to prevent poaching.¹⁵³ With the tiger numbers decreasing, such a scheme may be absolutely essential in reversing this depressing trend.¹⁵⁴

An additional strategy would be to increase educational programs to inform locals about the harms of tiger poaching and use of tiger products.¹⁵⁵ While use of tiger products in Tibet and China are strongly ingrained in culture, educating the Chinese population about the harms of poaching is instrumental in combating the destruction to the wildlife.¹⁵⁶ The Dalai Lama has taken the right step in admonishing Tibetans on the culling of wildlife for materialistic purposes.¹⁵⁷ Yet the Dalai Lama is not a governmental official and his reach is somewhat limited.¹⁵⁸

Finally, there must be strong cooperation between the Indian and Chinese governments and agencies to combat cross-border smuggling of tiger products.¹⁵⁹ The two nations should hold cabinet level meetings on an annual basis to develop strategies to prevent trade in tiger products.¹⁶⁰

B. Other General Proposals

The international community can also pressure India and China into action.¹⁶¹ For example, their most important trading partners, including the United States and the European Union, could enact legislation barring trade or levying significant tariffs on Indian and Chinese exports until those countries become serious about the protection of endangered wildlife, including the tiger.¹⁶² Although drastic, this proposal would immediately alert the lackadaisical governments in New Delhi and Beijing to the urgency of the problem and international sentiments concerning the loss of this vital animal.¹⁶³ Furthermore, this

¹⁵³ *See id.*

¹⁵⁴ *See id.*

¹⁵⁵ BANKS, *supra* note 6, at 12.

¹⁵⁶ *See id.*

¹⁵⁷ *See id.*

¹⁵⁸ *See id.*

¹⁵⁹ *See* World Wildlife Fund, *What's TRAFFIC Doing to Save Tigers?*, <http://www.worldwildlife.org/tigers/traffic-update.cfm>.

¹⁶⁰ *See id.* Governmental delegates from India, Nepal, and China met under the aegis of TRAFFIC, a joint-venture of the World Wildlife Fund and the World Conservation Union in July 2006. *Id.* Such efforts are commendable and should be encouraged. *See id.*

¹⁶¹ *See Tigers in Twilight*, *supra* note 3.

¹⁶² *See id.*

¹⁶³ *See id.*

idea is not unfathomable, as the U.S. Congress has previously enacted legislation with respect to conservation of tigers and rhinos.¹⁶⁴

CONCLUSION

To save the majestic tiger, drastic measures must be taken soon. Tiger poaching is occurring at a devastating pace, with the culling of the entire population of tigers at Sariska National Park in 2004, and the poaching of at least five tigers at Corbett National Park in the last year. Recent legislation by the Indian Parliament is a step in the right direction. Yet, it is only the first step. Several systematic changes must be implemented in order to ensure the success of conservation and anti-poaching programs, and for India and China to be in compliance with international law. Anti-poaching laws must not only be strengthened, but they must be enforced in order to successfully conserve threatened wildlife. Another good option is to send in well-trained professional soldiers to help the forest rangers prevent poaching. Most importantly, in the long-run, it is necessary that the free market be harnessed creatively to save the tiger.

¹⁶⁴ See Rhinoceros and Tiger Conservation Act of 1994, 16 U.S.C. 5301-5306. The Act was aimed at providing “greater protection and resources for conservation of these species.” See World Wildlife Fund, Tigers Trade, <http://www.worldwildlife.org/tigers/tigers-and-trade.cfm> (last visited Jan. 23, 2008).