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**Illegal Trade in Wild Animals  
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What Role for International  
Wildlife Agreements?**

Rechtswissenschaftliche  
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## Impressum

Kai-Oliver Knops, Marita Körner, Karsten Nowrot (Hrsg.)  
Rechtswissenschaftliche Beiträge der Hamburger Sozialökonomie

Karsten Nowrot  
Illegal Trade in Wild Animals and Derived Products during Armed  
Conflicts: What Role for International Wildlife Agreements?  
Heft 36, Mai 2020

Bibliografische Information der Deutschen Bibliothek  
Die Deutsche Bibliothek verzeichnet diese Publikations in der  
Deutschen Nationalbibliografie;  
detaillierte bibliografische Daten sind im Internet unter  
<http://dnb.dnb.de> abrufbar.  
ISSN 2366-0260 (print)  
ISSN 2365-4112 (online)

Reihengestaltung: Ina Kwon  
Produktion: UHH Druckerei, Hamburg  
Schutzgebühr: Euro 5,-

Die Hefte der Schriftenreihe „Rechtswissenschaftliche Beiträge der  
Hamburger Sozialökonomie“ finden sich zum Download auf der  
Website des Fachgebiets Rechtswissenschaft am Fachbereich  
Sozialökonomie unter der Adresse:

[https://www.wiso.uni-hamburg.de/fachbereich-sozoek/professuren/  
koerner/fiwa/publikationsreihe.html](https://www.wiso.uni-hamburg.de/fachbereich-sozoek/professuren/koerner/fiwa/publikationsreihe.html)

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# Contents

<b>A.</b>	<b>Introduction</b> .....	5
<b>B.</b>	<b>Treaty-Based Implementation and Compliance Mechanisms for Combatting Wildlife Trafficking</b> .....	8
	I. Implementation Provisions in International Wildlife Treaties .....	8
	II. Treaty Compliance Control and Enforcement Instruments Aimed at Suppressing Illegal Trade in Wildlife .....	10
	1. Compliance Control Instruments .....	10
	2. Compliance Enforcement Approaches .....	12
	III. Compliance Facilitation and Enabling Mechanisms .....	14
<b>C.</b>	<b>Challenges to Effectively Enforcing the International Regime for Wildlife Trafficking during Armed Conflicts</b> .....	18
<b>D.</b>	<b>What Is to Be Done? Some Thoughts on Possible Enforcement Paths Less Taken in Treaty Practice</b> .....	20
	I. Recognising the Potential Benefits of the Securitisation of Wildlife Trafficking in Armed Conflicts .....	21
	II. Broadening the Compliance Focus and Diversifying the Implementation Mechanisms of International Wildlife Treaties in Wartime .....	23
<b>E.</b>	<b>Conclusion</b> .....	27
	<b>References</b> .....	28



## A. Introduction

Disputes over the use and distribution of natural resources are comparatively rarely the primary reason for the outbreak of civil wars and the accompanying formation of armed rebel groups. However, it is by now generally recognised that resource-rich countries, in particular those that rely heavily on the export of primary commodities, are at times suffering from the multi-faceted so-called “natural resource curse”<sup>1</sup> also in the sense of being confronted with the “most severe manifestation”<sup>2</sup> of this phenomenon by facing an overall higher risk of prolonged and even increasingly intensified international and in particular non-international armed conflicts precisely due to the fact that the production of, and international trade in, raw materials such as diamonds and other gemstones, gold, timber, rare minerals, oil or illegal narcotics often presents itself as one of the primary sources of funding for insurgents and other organised armed groups.

In order to illustrate and substantiate the proposition that natural resources have thus a clear potential to “fuel” ongoing civil wars, one only needs to refer to the respective conditions prevailing in the armed conflicts in Angola, Colombia, Myanmar, Sierra Leone, Peru, Somalia, Cambodia, Iraq, Libya, the Central African Republic and – last but unfortunately surely not least – in the Democratic Republic of Congo;<sup>3</sup> a country that also “possesses an outstanding megabiodiversity reservoir that ranks fifth in importance at the global level and is unequalled in Africa”.<sup>4</sup>

And indeed, as more recently, in particular in the previous decade of the 2010s, increasingly recognized, the same finding applies to the international and non-international trade in wildlife, including the trafficking of specimens of endangered and legally protected species.<sup>5</sup> Although the exact importance of these activities as factors contributing to the prolongation of armed conflicts is controversially perceived and most certainly varies from conflict to conflict,<sup>6</sup> it is in principle undisputed that poaching and trafficking of wildlife constitutes one of the notable sources of funding for certain governmental actors, but first and foremost also for organized non-state armed groups, in particular in some regions of Africa, enabling these actors to sustain themselves as well as their weaponry and thus to lengthen and extend the respective

1 Generally on the phenomenon of the so-called “natural resource curse” see for example World Trade Organization (WTO), World Trade Report 2010: Trade in Natural Resources, 2010, 91-96; *DeKoninck*, Indiana Journal of Global Legal Studies 22 (2015), 121 (134-136), each with numerous further references.

2 WTO, World Trade Report 2010: Trade in Natural Resources, 2010, 94.

3 See thereto as well as generally on the correlation between natural resources and civil wars *Ross*, International Organization 58 (2004), 35 *et seq.*; *Smillie*, Vanderbilt Journal of Transnational Law 46 (2013), 1003 *et seq.*; *Voland/Daly*, Journal of World Trade 52 (2018), 37; and specifically with regard to the violent conflict in the Democratic Republic of Congo Final Report of the Group of Experts on the Democratic Republic of the Congo of 26 November 2014, UN Doc. S/2015/19 of 12 January 2015, paras. 73 *et seq.*, 156 *et seq.*; as well as more recently also United Nations, Security Council, Final Report of the Group of Experts on the Democratic Republic of the Congo of 7 June 2019, UN Doc. S/2019/469, paras. 147-91.

4 United Nations Environment Programme (UNEP), The Democratic Republic of the Congo: Post-Conflict Environmental Assessment – Synthesis for Policy Makers, 2011, 22.

5 On a definition of the term “wildlife trafficking” see, e.g., European Union, European Commission, Communication - EU Action Plan against Wildlife Trafficking, 26 February 2016, COM(2016) 87 final, p. 3 n. 1 (“international and non-international illegal trade in wild animals and plants and derived products, and closely interlinked offences such as poaching”); see in this connection also for example UNEP, Strengthening Legal Frameworks for Licit and Illicit Trade in Wildlife and Forest Products, 2018, p. 4.

6 For a rather skeptical account see for example *Crayne/Haenlein*, in: Haenlein/Smith (eds.), Poaching, Wildlife Trafficking and Security in Africa – Myths and Realities, 38-57; for more cautious findings see also United Nations Office on Drugs and Crime, World Wildlife Crime Report – Trafficking in Protected Species, 2016, 19-20 and 43-44; as well as *Elliott*, in: Elliott/Schaedla (eds.), Handbook of Transnational Environmental Crime, 68 (72-78).

armed conflicts.<sup>7</sup>

Thereby, in particular also endangered species and their products are much “wanted”, considering their financial value as “commodities” in legal as well as illegal international trade relations. As for example emphasised already in the 2002 Interim Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo to the UN Security Council, “[t]he increased presence of foreign military, local rebel forces and armed groups, some of which occupy areas within the [national] parks on a quasi-permanent basis, has resulted in the development of highly organized and systematic exploitation activities at levels never before seen. These activities include poaching for ivory, game meat and rare species, [...]”<sup>8</sup>

This phenomenon most certainly adds another deplorable dimension to the already in peacetime rather profitable and thus well-developed illegal trade in wildlife and its products by further contributing to the increasing threats to the survival of many of the world’s endangered species. Whereas the continuing destruction of natural habitats is already for quite some time frequently regarded as the most serious threat to endangered and other animals around the world,<sup>9</sup> the local as well as in particular transboundary trade in these species and their products arguably also constitutes one of the truly crucial factors contributing to their decline.<sup>10</sup> Wildlife trafficking is already for quite some time said to be the third most valuable illicit commerce in the world after drugs and weapons.<sup>11</sup> And it appears to be still on the rise.<sup>12</sup> Whereas in the 1990s, global illegal wildlife trade was estimated to generate five to ten billion US-dollars

7 Generally thereto for example *The Rise of Environmental Crime – A Growing Threat to Natural Resources, Peace, Development and Security*, An UNEP-INTERPOL Rapid Response Assessment by *Christian Nellermann et al.*, 2016, p. 16, 67-71, 86; *Barron*, *Georgetown Journal of International Affairs* 16 (2015), 217-227; *de Hemptinne*, *American Journal of International Law Unbound* 111 (2017), 272; *Douglas/Alie*, *Biological Conservation* 171 (2014), 270-277; *Persaud*, *Journal of International Wildlife Law & Policy* 20 (2017), 295 (296-297); *Daskin/Pringle*, *Nature* 553 (2018), 328-332.

8 United Nations, Security Council, Interim Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo of 22 May 2002, UN Doc. S/2002/565, para. 52. See also, e.g., UNEP/CITES/IUCN/TRAFFIC, *Elephants in the Dust – The African Elephant Crisis*, 2013, 40 (“weak governance structures and political and military conflicts are some of the main drivers that facilitate poaching and allow illicit trade in ivory to grow”); *id.*, 41 (“Rebel militia groups, including the Lords Resistance Army in Central Africa and the Janjaweed of Chad and Sudan, are alleged to be implicated in elephant killing raids. The ivory collected is believed to have been exchanged for money, weapons and ammunition to support conflicts in neighboring countries.”); *Barron*, *Georgetown Journal of International Affairs* 16 (2015), 217 (219) (“illegal trade in falcons in Afghanistan and Pakistan has been extremely lucrative for the Taliban”); *id.*, 221 (“The poaching of rhinos in Kruger National Park – which rests on the border between Mozambique and South Africa – has served as a lifeline for Mozambican rebels since the 1970s.”); *The Rise of Environmental Crime – A Growing Threat to Natural Resources, Peace, Development and Security*, An UNEP-INTERPOL Rapid Response Assessment by *Christian Nellermann et al.*, 2016, p. 16 (“Groups such as the Lord’s Resistance Army and Janjaweed have been involved in killings of elephants for ivory.”); *id.*, 86 (“When the war gradually broke out in Nepal in 1996 tourism dropped by 41% in two years and rhino numbers dropped by 1/3 in five years to only 408 in 2005 as they were targeted for profits by armed groups.”).

9 See for example *du Plessis*, in: Hutton/Dickson (eds.), *Endangered Species, Threatened Convention: The Past, Present and Future of CITES*, 13 (16); *McOmber*, *Brooklyn Journal of International Law* 27 (2002), 673; *Alagappan*, *Northwestern Journal of International Law & Business* 10 (1990), 541.

10 *Heppes/MacFadden*, *Boston University International Law Journal* 5 (1987), 229 (230); *Reeve*, *International Affairs* 82 (2006), 881; *McOmber*, *Brooklyn Journal of International Law* 27 (2002), 673 (674); *Alagappan*, *Northwestern Journal of International Law & Business* 10 (1990), 541.

11 On this perception see, e.g., *Fuchs*, in: von Bogdandy *et al.* (eds.), *The Exercise of Public Authority by International Institutions*, 475 (500); *Lee*, *Northwestern Journal of International Law & Business* 16 (1996), 497; *Ayling*, *Journal of International Wildlife Law & Policy* 16 (2013), 57 (58); *McOmber*, *Brooklyn Journal of International Law* 27 (2002), 673 (674); *Carey*, *Washington University Law Quarterly* 77 (1999), 1291.

12 See thereto also for example *Asner*, *University of Pennsylvania Asian Law Review* 12 (2016), 1 (“a big uptick in the illegal wildlife trade”).

annually,<sup>13</sup> more recent estimations already amount to more than twenty billion US-dollars.<sup>14</sup> These figures serve as a clear indication that in particular also the participation of organised criminal groups in illegal wildlife trade, attracted by the prospect of considerable profits resulting from what is often viewed as a comparatively low-risk criminal activity,<sup>15</sup> constitutes already in peacetime a severe threat to wildlife populations.

However, the situation is substantially worsened during armed conflicts, considering the fact that also these “civilian” poachers and their smuggling networks can, and most certainly often do, take advantage of the frequently chaotic wartime circumstances, including the significantly weakened capacity of the countries concerned to control their territory and to effectively enforce their international obligations and domestic laws aimed at preventing and combatting illegal wildlife trade. Accordingly, even in those cases where wildlife trafficking does not seem to constitute a significant source of funding for belligerents, the protection of animals is often substantially complicated by the existence of armed conflicts;<sup>16</sup> thus illustrating the multi-dimensional – and in fact multiplying – negative consequences of wartime circumstances for endangered species and wildlife in general.

Nevertheless, in particular as far as the activities of insurgents and other organised armed groups are concerned, the growing recognition of linkages between conflict prevention and containment and thus the issue of international peace and security on the one hand as well as the need for an effective protection of wild animals on the other hand<sup>17</sup> could also – more optimistically – be perceived as a new chance to improve the existing normative framework on the prevention and combatting of wildlife trafficking and its enforcement mechanisms to the benefit of conflict-affected humans and animals alike; possible improvements that – again viewed from a more optimistic perspective – might arguably even have the potential to result in also more effectively combatting the illegal trade in wildlife and its products during peacetime.

- 13 *Lee*, *Northwestern Journal of International Law & Business* 16 (1996), 497; *McOmber*, *Brooklyn Journal of International Law* 27 (2002), 673 (674); *Carey*, *Washington University Law Quarterly* 77 (1999), 1291.
- 14 European Union, European Parliament, Resolution of 24 November 2016 on the EU Action plan against Wildlife Trafficking (2016/2076(INI)), para. A (“wildlife trafficking is an organised international crime which is estimated to be worth approximately EUR 20 billion annually and which has increased worldwide in recent years, becoming one of the biggest and most profitable forms of organised cross-border crime”); see also, e.g., *van Uhm*, *The Illegal Wildlife Trade*, 90; *Cruden/Gualtieri*, *University of Pennsylvania Asian Law Review* 12 (2016), 23; *Wiersema*, *Michigan Journal of International Law* 36 (2015), 375 (376); *Fajardo del Castillo*, *Journal of International Wildlife Law & Policy* 19 (2016), 1 (4) (“The illegal trade in fauna and flora has been estimated to be worth 7 - 23 billion U.S. dollars annually.”); *Barron*, *Georgetown Journal of International Affairs* 16 (2015), 217 (219) (“reported to funnel more than \$ 19 billion per year to international crime syndicates”).
- 15 On this perception see, e.g., *Barron*, *Georgetown Journal of International Affairs* 16 (2015), 217 (218); *van Asch*, in: *Faure/De Smedt/Stas* (eds.), *Environmental Enforcement Networks – Concepts, Implementation and Effectiveness*, 187 (188).
- 16 UNEP, *The Democratic Republic of the Congo: Post-Conflict Environmental Assessment – Synthesis for Policy Makers*, 2011, 25 (“While bushmeat trade and illegal export of live species (e.g. primates, reptiles, parrots) has been exacerbated by the conflict, this commerce is not reported to be an important source of funding for armed groups.”); and *Bowman/Davies/Redgwell*, *Lyster’s International Wildlife Law*, 289.
- 17 See in this connection also for example UN General Assembly Res. 73/343, UN Doc. A/RES/73/343 (2019) of 20 September 2019 (“*Bearing in mind* that the illicit trade in small arms and light weapons could be linked to illicit trafficking in wildlife, which may pose a serious threat to national and regional stability in some parts of Africa, [...]”); as well as in particular also UN Security Council, Res. 1236, UN Doc. S/RES/2136 (2014) of 30 January 2014 (“*Recalling* the linkage between the illegal exploitation of natural resources, including poaching and illegal trafficking of wildlife, illicit trade in such resources, and the proliferation and trafficking of arms as one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of Africa, [...]”); UN Security Council, Res. 1234, UN Doc. S/RES/2134 (2014) of 28 January 2014 (“expressing concern that diamond smuggling and other forms of illicit natural resource exploitation, including wildlife poaching, are destabilizing forces in CAR”); UN Security Council, Res. 2217, UN Doc. S/RES/2217 (2015) of 28 April 2015 (“*Reiterating* that illicit trade, exploitation and smuggling of natural resources including gold, diamonds and wildlife poaching and trafficking continues to threaten the peace and stability of the CAR, [...]”); as well as thereto *Peters*, *American Journal of International Law Unbound* 108 (2014), 162-165.



Against this background and in order to illustrate this more hopeful proposition, the present contribution intends to approach the subject of the normative governance regimes dealing with wildlife trafficking in the context of the protection of animals in wartime from an enforcement perspective in three main steps. The first section will be devoted to an illustration of the implementation regimes as well as compliance facilitation and control mechanisms characterising the international treaty-based framework aimed at the protection of species by, among others, suppressing illegal trade in wildlife (B.). The second part of the contribution attempts to identify and address the challenges arising in practice in connection with the effective implementation of these legal compliance instruments, with particular emphasis on the respective problems resulting from the context of an ongoing armed conflict (C.). In light of the findings made in the second section, the third part intends to present and elaborate on some ideas how to adequately address these challenges and thus to adapt the regime for combatting wildlife trafficking to the specific circumstances of wartime with the aim to make the overall normative framework more effective in the interest of the animals concerned (D.).

## **B. Treaty-Based Implementation and Compliance Mechanisms for Combatting Wildlife Trafficking**

In light of the in principle incontrovertible fact that wildlife trafficking constitutes one of the most serious threats to endangered as well as other animals around the world in times of peace and war,<sup>18</sup> it is hardly surprising and fortunate that a considerable number of international agreements for the protection of animals address, among others, also the issue of suppressing illegal trade in wildlife.<sup>19</sup> When analysing the respective regulatory approaches from an enforcement perspective and in order to reduce the existing factual and normative complexities by way of systemization,<sup>20</sup> it seems possible to broadly distinguish in this regard between three main types of stipulations, namely implementation provisions, compliance control and enforcement instruments as well as compliance facilitation and enabling mechanisms.

### **I. Implementation Provisions in International Wildlife Treaties**

It is well-known that as yet no general consensus has emerged on the definition of terms like “compliance”, “enforcement” and “implementation” in international legal practice and scholarship.<sup>21</sup> Nevertheless, in line with the frequently articulated perception that the term “implementation” refers in particular to the national laws and regulations that treaty parties adopt in

18 See also *supra* under A.

19 For a general overview as well as a more in-depth evaluation of the international treaty regimes for the protection of endangered species see for example *Bowman/Davies/Redgwell*, *Lyster’s International Wildlife Law*, 92 *et seq.*; *Beyerlin/Marauhn*, *International Environmental Law*, 177 *et seq.*, each with numerous further references.

20 Generally on this underlying purpose pursued by approaches of systemization or categorization see, e.g., *Luhmann*, *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 19 (1967), 615 (618 *et seq.*); as well as already *Bruner/Goodnow/Austin*, *A Study of Thinking*, 12 (“A first achievement of categorizing has already been discussed. By categorizing as equivalent discriminable different events, the organism *reduces the complexity of its environment.*”) (emphasis in the original).

21 On this perception see, e.g., *Fitzmaurice*, *Environmental Compliance Control*, para. 16, in: *Wolfrum* (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020); *Reeve*, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, 16.

order to meet their obligations arising from international agreements,<sup>22</sup> for the purposes of this contribution the concept of implementation provisions concerns those stipulations in treaties that explicitly require contracting states to enact respective national rules.

And indeed, most, if not all, treaties in the realm of international environmental law depend on domestic legislative and administrative acts for their effective realization in practice. This applies in particular also to treaties aimed at combatting wildlife trafficking that – due to their non-self-executing character and the fact that most of the relevant legal as well as illegal trading activities are performed by private actors – are largely relying for their effective implementation on the adoption of regulatory measures at the domestic level of each contracting party with their national authorities applying and enforcing these regulations vis-à-vis corporate entities and individuals.<sup>23</sup> The central example for this regulatory approach in the present context is provided by the long-time multilateral “flagship wildlife agreement”,<sup>24</sup> the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>25</sup> In order to effectively implement the contracting parties’ overarching obligation under Art. II (4) CITES not to allow trade in specimens of species listed in the appendices I, II, and III except in accordance with the provisions enshrined in the agreement, Art. VIII (1) CITES requires each party to take appropriate measures to enforce the provisions of the agreement and, in particular, to prohibit trade in specimens in violation thereof, including regulatory measures to penalize trade in, or possession of, such specimens (lit. a) as well as to provide for the confiscation or return to the state of export of such animals and plants (lit. b).<sup>26</sup>

Complementing these obligations under the multilateral framework of CITES, related provisions are stipulated in regional agreements as well as in treaties dealing with the protection, and in this connection also the prohibition of wildlife trafficking, of certain specific animals. Attention might be drawn in this regard to Art. 2 (2) of the 1972 Convention for the Conservation of Antarctic Seals (CCAS),<sup>27</sup> Art. V and VI (1) of the 1973 Agreement on the Conservation of Polar Bears (ACPB),<sup>28</sup> Art. 2, 3 and 4 of the 1979 Convention for the Conservation and Management of the Vicuña (CCMV),<sup>29</sup> Art. 7 (3) lit. d of the 1999 Southern African Develop-

22 See for example UNEP, Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2002), para. 9, reprinted in: UNEP, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), 661-676, at 662; *Sands/Peel*, Principles of International Environmental Law, 147; *Shelton*, in: Shelton (ed.), Commitment and Compliance, 1 (5); *Reeve*, Policing International Trade in Endangered Species: The CITES Treaty and Compliance, 16-17; *Jacobson/Brown Weiss*, Global Governance 1 (1995), 119 (123).

23 See, e.g., *Reeve*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 63 (2003), 333 (338); *Sand*, European Journal of International Law 8 (1997), 29 (46-47); *de Klemm*, Guidelines for Legislation to Implement CITES, 5-9; *Sands/Peel*, Principles of International Environmental Law, 416; *Martin*, in: Hutton/Dickson (eds.), Endangered Species, Threatened Convention: The Past, Present and Future of CITES, 29 (31); *Zimmerman*, Vanderbilt Journal of Transnational Law 36 (2003), 1657 (1660); *Gillespie*, Conservation, Biodiversity and International Law, 410; *Vasquez*, in: Oldfield (ed.), The Trade in Wildlife – Regulation for Conservation, 63-69; *Heppes/MacFadden*, Boston University International Law Journal 5 (1987), 229 (237).

24 *Reeve*, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 63 (2003), 333; see also *Reeve*, in: Ulfstein/Marauhn/Zimmermann (eds.), Making Treaties Work, 134; as well as for example *Maher/Sollund*, in: Sollund/Stefes/Germani (eds.), Fighting Environmental Crime in Europe and Beyond, 99 (113); *Cheung*, Pacific Rim Law & Policy Journal 5 (1995), 125 (127).

25 Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973, reprinted in: 993 UNTS 243. For further details on the background and institutional as well as regulatory structures of CITES see, e.g., *Bowman/Davies/Redgwell*, Lyster’s International Wildlife Law, 483 *et seq.*; *Sand*, Archiv des Völkerrechts 54 (2016), 561 *et seq.*; *Markus*, in: Proelß (ed.), Internationales Umweltrecht, 321 (356 *et seq.*); *Beyerlin/Marauhn*, International Environmental Law, 184 *et seq.*, each with additional references.

26 See also CITES Resolution Conf. 8.4 (National Laws for Implementation of the Convention) as last amended at COP 15 in March 2010.

27 Convention for the Conservation of Antarctic Seals of 1 June 1972, reprinted in: 1080 UNTS 175.

28 Agreement on the Conservation of Polar Bears of 15 November 1973, reprinted in: 2898 UNTS 243.

29 Convention for the Conservation and Management of the Vicuña of 20 December 1979, available at: <<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028051835d>> (last accessed on 6 April 2020).

ment Community (SADC) Protocol on Wildlife Conservation and Law Enforcement (SADC Protocol),<sup>30</sup> Art. III (2) of the 2001 Agreement on the Conservation of Albatrosses and Petrels (ACAP),<sup>31</sup> Art. III (2) lit. a of the 2007 Agreement on the Conservation of Gorillas and their Habitats (Gorilla Agreement)<sup>32</sup> in connection with Art. III (5) of the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS),<sup>33</sup> as well as Art. 4 (8) of the 1994 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Lusaka Agreement).<sup>34</sup> Furthermore, Art. XI (1) of the 2003 African Convention on the Conservation of Nature and Natural Resources (African CCNR) stipulates that the contracting parties are required to regulate the trade in specimen and products thereof with the aim to ensure that these animals and objects have been obtained in conformity with domestic law and applicable international obligations related to trade in species (lit. a), with respective national legislative and administrative acts also providing for appropriate penal sanctions and confiscation measures (lit. b).<sup>35</sup>

## II. Treaty Compliance Control and Enforcement Instruments Aimed at Suppressing Illegal Trade in Wildlife

In case we are willing to base the present systemization on the understanding of compliance, quite often taken recourse to in practice and academia in particular also in the realm of international environmental law,<sup>36</sup> as the degree to which contracting parties in fact fulfil their legal commitments entered into under an international treaty, it seems also in the present context suitable to initially,<sup>37</sup> and at least based on a traditional command and control style of regulatory governance, to distinguish between compliance control procedures on the one hand and compliance enforcement mechanisms on the other hand. Both types of regulatory approaches can be found in treaties aimed at preventing and combatting wildlife trafficking.

### 1. Compliance Control Instruments

Compliance control regulations in international wildlife treaties refer to normative instruments that enable treaty bodies, parties and other actors including the general public to receive information on, to monitor and to assess the current degree of fulfilment of treaty obligations by a specific contracting state. Quite common regulatory techniques in this regard, not the least in the realm of international wildlife treaties, are provisions on reporting, monitoring,

30 SADC Protocol on Wildlife Conservation and Law Enforcement of 18 August 1999, available at: <[https://www.sadc.int/documents-publications/show/Protocol%20on%20Wildlife%20Conservation%20and%20Law%20Enforcement%20\(1999\)](https://www.sadc.int/documents-publications/show/Protocol%20on%20Wildlife%20Conservation%20and%20Law%20Enforcement%20(1999))> (last accessed on 6 April 2020).

31 Agreement on the Conservation of Albatrosses and Petrels of 19 June 2001, reprinted in: 2258 UNTS 257.

32 Agreement on the Conservation of Gorillas and their Habitats of 26 October 2007, reprinted in: 2545 UNTS 55.

33 Convention on the Conservation of Migratory Species of Wild Animals of 23 June 1979, reprinted in: 1651 UNTS 333.

34 Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora of 8 September 1994, reprinted in: 1950 UNTS 35.

35 African Convention on the Conservation of Nature and Natural Resources of 11 July 2003, available at: <<https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>> (last accessed on 6 April 2020).

36 See, e.g., UNEP, Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2002), para. 9, reprinted in: UNEP, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), 661-676, at 662; *Shelton*, in: *Shelton* (ed.), *Commitment and Compliance*, 1 (5); *Jacobson/Brown Weiss*, *Global Governance* 1 (1995), 119 (123); *Wolftrum*, *Recueil des Cours* 272 (1998), 9 (29).

37 See, however, also *infra* section B.III.

and verification of the information obtained on compliance,<sup>38</sup> all of them stipulating valuable prerequisites for a meaningful assessment of the level of treaty observance by a contracting party and the challenges encountered in this connection.

Despite being one of the earlier environmental agreements and thus for example lacking any explicit reference to compliance issues, CITES distinguishes itself not only by a quite sophisticated reporting system but in fact also foresees certain monitoring and verification procedures in the text of the treaty. According to Art. VIII (7) CITES, each party is required to prepare periodic reports on its implementation and shall submit them to the Secretariat (Art. XII CITES).<sup>39</sup> This includes an annual report on the trade in specimens of species included in the Appendices I, II and III of CITES (lit. a, see also Art. VIII (6) CITES) as well as a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the agreement (lit. b), with the content of both reports in principle also to be made available to the general public (Art. VIII (8) CITES). In addition and of particular relevance in the present context, on the basis of paragraph 3 of CITES Resolution Conf. 11.17 (National Reports) as last amended at the 18th meeting of the Conference of the Parties (COP 18) in August 2019, the contracting parties are also expected to prepare and submit an “illegal trade report” on an annual basis.

The Secretariat is not only entrusted with the task to study and consider the respective reports by the parties as well as to request additional information in this regard that it considers necessary to ensure compliance with the convention (Art. XII (2) lit. d CITES).<sup>40</sup> Rather, it also enjoys the competence under Art. XIII (1) and (2) CITES to initiate and exercise a kind of external compliance control.<sup>41</sup> In case the Secretariat receives information, for example from civil society groups, of instances of non-compliance, it is asked to communicate such information to the authorized management authority (Art. IX (1) lit. a CITES) of the party concerned in order to receive an explanation and proposals for remedial action.<sup>42</sup> Moreover, Art. XIII (2) CITES also provides for the possibility of ad hoc monitoring and verification missions conducted by the Secretariat with the consent of the contracting parties concerned. In addition, another type of external compliance control – although not explicitly foreseen in the treaty provisions of CITES themselves – is the so-called “Review of Significant Trade in specimens of Appendix II species” procedure established by the COP on the basis of CITES Resolution Conf. 12.8 in November 2002 and last amended at COP 18 in August 2019; a mechanism intended to monitor compliance by individual contracting parties with their obligations under Art. IV (2) lit. a, (3) and (6) lit a CITES.<sup>43</sup> Furthermore, a comparable compliance control instrument is provided by the more recently introduced “Review of trade in animal specimens reported as produced in captivity” procedure as introduced by the COP in the form of CITES Resolution Conf. 17.7 in October 2016 and last amended at COP 18 in August 2019 with the aim to verify

38 See UNEP, Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2002), para. 14 lit. c, reprinted in: UNEP, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006), 661-676, at 664; *Fitzmaurice*, Environmental Compliance Control, paras. 23-30, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020).

39 For further details see also CITES Resolution Conf. 11.17 (National Reports) as last amended at COP 18 in August 2019.

40 See also Art. XI (3) lit. d CITES for respective functions exercised by the Conference of the Parties (COP).

41 See *Sand*, European Journal of International Law 8 (1997), 29 (49); *Beyrerlin/Marauhn*, International Environmental Law, 322.

42 See thereto also paragraph 5 of CITES Resolution Conf. 11.3 (Compliance and enforcement) as most recently amended at COP 18 in August 2019.

43 For further details see CITES Resolution Conf. 12.8 (Review of Significant Trade in specimens of Appendix II species) as last amended at COP 18 in August 2019; as well as for example *Reeve*, Policing International Trade in Endangered Species: The CITES Treaty and Compliance, 159-181; *Reeve*, International Affairs 82 (2006), 881 (887-888).

compliance with the obligations under Art. VII (4) and (5) CITES.<sup>44</sup>

Respective provisions on reporting requirements are also included in a number of other international wildlife agreements, which are, however, mostly lacking respective stipulations concerning other compliance control mechanisms. This applies for example to Art. 4 (11) Lusaka Agreement, Art. 13 SADC Protocol, Art. IV (1) lit. c Gorilla Agreement, Art. 5 (2) CCAS, Art. XXIX African CCNR and to Art. VII (1) lit. c ACAP.

## 2. Compliance Enforcement Approaches

Based on an understanding of the term and concept of enforcement in a narrower sense as being concerned with procedures initiated and actions taken by states and other international actors with the aim to incite or compel contracting parties to fulfil their treaty obligations, compliance enforcement mechanisms refer to stipulations that address reactions to findings of (alleged) individual non-compliance.<sup>45</sup> Respective non-compliance procedures manifest themselves also in the present context for example in the form of dispute settlement provisions. Art. XVIII (2) CITES foresees in this regard that in case of a dispute with respect to the interpretation or application of the convention that cannot be resolved through negotiations, the disputing parties may, by mutual consent, submit the dispute to arbitration. Related stipulations can be found for example in Art. XXX African CCNR, Art. 10 Lusaka Agreement, Art. XIV ACAP as well as in Art. XII (2) Gorilla Agreement.

While these dispute settlement clauses, in particular as far as they refer to the possibility of international judicial or quasi-judicial proceedings, are rarely, if ever, taken recourse to by contracting parties of international wildlife agreements and have thus until now proven to be largely irrelevant in practice,<sup>46</sup> the same cannot be said as far as other compliance enforcement mechanisms are concerned. This applies in particular to the trade sanctions regime as gradually established by CITES. Whereas other wildlife agreements like Art. 12 SADC Protocol explicitly envision the possibility to impose sanctions against contracting parties that persistently fail to fulfil their treaty obligations without, however, the parties making any significant use of this enforcement approach in practice, the sanctions regime under CITES has developed precisely the other way around. The adoption of economic sanctions for non-compliance is not foreseen in the provisions of CITES. Rather, the sanctions regime and its respective procedures have progressively evolved and developed in the last four decades on the basis of a practice by the contracting parties with the currently applicable approach being re-stated and consolidated in the “Guide to CITES Compliance Procedure” as an Annex to CITES Resolution Conf. 14.3 as adopted by the COP in June 2007 and most recently amended at COP 18 in August 2019.<sup>47</sup>

With regard to the underlying legal basis of this compliance enforcement mechanism, two

44 For additional information on this procedure see CITES Resolution Conf. 17.7 (Review of trade in animal specimens reported as produced in captivity) as last amended at COP 18 in August 2019.

45 See for example *Wolftrum*, *Recueil des Cours* 272 (1998), 9 (30); *Sands/Peel*, *Principles of International Environmental Law*, 153; *Fitzmaurice*, *Environmental Compliance Control*, para. 20, in: *Wolftrum* (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020); *O’Connell*, *Indiana Journal of Global Legal Studies* 3 (1995), 47 (48).

46 See, e.g., *Sand*, *Endangered Species, International Protection*, para. 18, in: *Wolftrum* (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020). Generally with regard to international environmental agreements see also for example *Fitzmaurice/Redgwell*, *Netherlands Yearbook of International Law* 31 (2000), 35 (44).

47 CITES Resolution Conf. 14.3 (CITES Compliance Procedures) as last amended at COP 18 in August 2019, Annex. Generally on the use of this compliance enforcement mechanism see also, e.g., *Sand*, *Review of European Community & International Environmental Law* 22 (2013), 251-263; *Sand*, in: *Beyerlin/Stoll/Wolftrum* (eds.), *Ensuring Compliance with Multilateral Environmental Agreements*, 259-272; *Sand*, *Archiv des Völkerrechts* 54 (2016), 561 (574-581); *Reeve*, *International Affairs* 82 (2006), 881-897.

provisions, namely Art. XIV (1) as well as Art. XIII (3) CITES, seem to be particularly worth noticing. To begin with, Art. XIV (1) lit. a CITES reserves the right of the contracting parties to adopt “stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof” and thus – at least implicitly – also allows from the perspective of CITES a recourse to economic sanctions in the form of trade restrictions or embargoes against other states with regard to the covered animals and plants.<sup>48</sup> And indeed, this stipulation has also occasionally been relied upon by contracting parties, among them the United States and the EU member states, for the use of unilateral actions temporarily banning wildlife imports from certain countries like Singapore and Indonesia.<sup>49</sup> Moreover, and in fact even more noteworthy, however, Art. XIV (1) lit. a CITES also serves already for some decades as the basis for the enforcement, by the individual contracting parties, of collective trade bans in cases of non-compliance.

Ever since its first respective use as a compliance enforcement instrument against Bolivia in 1985, the COP, and – more frequently – the Standing Committee of the COP created by it,<sup>50</sup> have adopted the approach of recommending, on the basis of Art. XIII (3) CITES, trade suspensions as a means of inducing compliance in those cases “where a Party’s compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance”.<sup>51</sup> The compatibility of these collective economic sanctions with world trade law under the former General Agreement on Tariffs and Trade (GATT 1947) and the current World Trade Organization (WTO) legal order had once been subject to quite intensive and controversial debate but has never been tested in the WTO/GATT dispute settlement practice and appears to be now mostly – and rightly – accepted among legal scholars.<sup>52</sup>

Recommended trade suspensions can either focus on trade in particular species only or may take the form of general embargoes, with the later entirely excluding a country from participation in the export markets for all wildlife and wildlife products listed under CITES.<sup>53</sup> Since 1985, such collective trade suspensions have already been recommended in more than 100 cases.<sup>54</sup> Moreover, and despite certain challenges resulting, among others, from their character as merely recommended and thus in principle voluntary measures, already the threat, and in particular the use, of these types of economic sanctions seems to be overall rather successful

48 See also *Sand*, *Review of European Community & International Environmental Law* 22 (2013), 251 (253).

49 For further details see, e.g., *Reeve*, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance*, 125-130; *Sand*, *European Journal of International Law* 8 (1997), 29 (39-40); *Sand*, *Review of European Community & International Environmental Law* 22 (2013), 251 (253).

50 On the Standing Committee and its current legal basis see CITES Resolution Conf. 18.2 (Establishment of Committees) of August 2019, para. 1 and Annex 1.

51 CITES Resolution Conf. 14.3 (CITES Compliance Procedures) as last amended at COP 18 in August 2019, Annex, para. 30. See *id.*, para. 30 also on the possibility to recommend a trade ban vis-à-vis non-party States of CITES failing to issue the documentation referred to in Art. X CITES and CITES Resolution Conf. 9.5 (Trade with States not party to the Convention) as last amended at COP 16 in March 2013.

52 On the respective discussion see, e.g., WTO/CITES, CITES and the WTO – Enhancing Cooperation for Sustainable Development, 2015; *Crawford*, *Georgetown International Environmental Law Review* 7 (1995), 555-585; *Yeater/Vasquez*, *European Community & International Environmental Law* 10 (2001), 271-276; *Beyerlin/Marauhn*, *International Environmental Law*, 434; *Sand*, *Review of European Community & International Environmental Law* 22 (2013), 251 (257-258).

53 *Reeve*, *International Affairs* 82 (2006), 881 (889); *Sand*, *Review of European Community & International Environmental Law* 22 (2013), 251 (254).

54 *Sand*, *Endangered Species, International Protection*, para. 18, in: Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020); for a table of trade suspensions between 1985 and 2016 see *Sand*, *Asia Pacific Journal of Environmental Law* 20 (2017), 5 (19-20). A frequently updated list of countries currently subject to a recommendation to suspend trade under CITES is available at: <<https://www.cites.org/eng/resources/ref/suspend.php>> (last accessed on 6 April 2020).

in inducing compliance with the treaty obligations arising under CITES,<sup>55</sup> most certainly including at least in principle those contractual commitments that can be related to the issue of wildlife trafficking.

### III. Compliance Facilitation and Enabling Mechanisms

CITES in particular is, in light of its quite sophisticated compliance control and compliance enforcement mechanisms,<sup>56</sup> not infrequently perceived as being among the most successful multilateral environmental agreements in general and one of the truly effective international wildlife treaties in particular with regard to addressing situations of non-compliance.<sup>57</sup> Nevertheless, it seems appropriate to recall that wildlife protection treaties like CITES display regulatory structures that not infrequently require quite significant financial and other recourse commitments. In order to comply with their treaty obligations, the parties – including the numerous developing countries – are expected to create domestically a variety of institutions, administrative procedures, and legal regulations and must enforce these laws vis-à-vis potential violators.<sup>58</sup>

Consequently, what applies to numerous other international (environmental) agreements undoubtedly holds true also for CITES and other related governance regime, namely the understanding that many of these situations of non-compliance are not the result of an intentional violation of treaty obligations on the side of the respective party but rather attributable to a lack of, among others, financial resources, technical abilities, expertise as well as a number of other factors such as corruption<sup>59</sup> that might summarily be referred to as good governance

55 On this perception see, e.g., *Raustiala*, Reporting and Review Institutions in 10 Multilateral Environmental Agreements, 27 (“a unique and potent tool in MEA management”); *Sand*, Asia Pacific Journal of Environmental Law 20 (2017), 5 (18); *Sand*, Review of European Community & International Environmental Law 22 (2013), 251 (254-255); *Sand*, Finnish Yearbook of International Law 19 (2008), 93 (121); *Reeve*, International Affairs 82 (2006), 881 (892); *Yeater/Vasquez*, European Community & International Environmental Law 10 (2001), 271 (274-275), each with additional references.

56 See *supra* section B.II.

57 For a respective perception see, e.g., *Fuchs*, in: von Bogdandy *et al.* (eds.), The Exercise of Public Authority by International Institutions, 475 (508) (“one of the most effective multilateral environmental agreements”); *Hickey*, Vermont Law Review 23 (1999), 861 (“CITES has proved to be one of the most successful wildlife conservation treaties in the international arena”); *Sand*, Endangered Species, International Protection, para. 10, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> (last accessed on 6 April 2020) (“have made CITES demonstrably more effective in practice than most other comparable treaty regimes”); *Harland*, Killing Game: International Law and the African Elephant, 12; *Durner*, Archiv des Völkerrechts 54 (2016), 355 (369); *McOmber*, Brooklyn Journal of International Law 27 (2002), 673 (674); as well as the references provided by *Sand*, Asia Pacific Journal of Environmental Law 20 (2017), 5 (7-8); see also, however, for more reserved or balanced findings in this regard for example *Scholtz*, in: Scholtz (ed.), Animal Welfare and International Environmental Law – From Conservation to Compassion, 235 (245-247); *Wandesforde-Smith*, Journal of International Wildlife Law & Policy 19 (2016), 365-381; *White*, in: Scholtz (ed.), Animal Welfare and International Environmental Law – From Conservation to Compassion, 180 (185-187); *Huggins*, Multilateral Environmental Agreements and Compliance, 117-141; *Bowman*, Review of European Community & International Environmental Law 22 (2013), 228-238.

58 *White*, in: Scholtz (ed.), Animal Welfare and International Environmental Law – From Conservation to Compassion, 180 (187); *Baker*, Journal of International Wildlife Law & Policy 2 (1999), 1 (2).

59 See in this connection for example CITES Resolution Conf. 17.6 (Prohibiting, preventing, detecting and countering corruption which facilitates activities conducted in violation of the Convention) of October 2016, para. 1 (“STRESSES that failure to prohibit, prevent, and counter corruption which relates to the implementation or enforcement of CITES greatly undermines the effectiveness of the Convention”). See also, e.g., UN General Assembly Res. 73/343, UN Doc. A/RES/73/343 (2019) of 20 September 2019, paras. 22, 23, 26 and 29; UN Economic and Social Council, Res. 2013/40, UN Doc. E/RES/2013/40 (2013) of 17 October 2013, para. 3; as well as *Ivory*, American Journal of International Law Unbound 111 (2017), 413-418.

challenges.<sup>60</sup>

Against this background, many more recently established treaty regimes, among them in particular also international environmental agreements concluded from the 1980s onwards, have with regard to their compliance approaches transcended the traditional command and control style of regulatory governance by also stipulating what might appropriately be referred to as compliance facilitation and enabling mechanisms to more effectively address these other diverse reasons for non-compliance; in particular, albeit most certainly not exclusively, as far as developing countries are concerned. The various different instruments and approaches developed and applied in this connection – among them capacity-building, exchange of information and good practices, technology transfer, establishment of joint enforcement institutions, financial assistance and collective actions based on commitments to cooperate – all have in common that they are designed and adopted to create a domestic and international environment more conducive to treaty compliance than a mere reliance on unilateral efforts by individual states combined with control and sanctions mechanisms.<sup>61</sup>

In the present context, respective provisions creating compliance facilitation and enabling mechanisms first and foremost also aimed at preventing and combatting wildlife trafficking are for example quite extensively stipulated in the 1994 Lusaka Agreement. In furtherance of the aim to “reduce and ultimately eliminate illegal trade in wild fauna and flora” (Art. 2), the treaty parties, among others, establish a joint task force entrusted with various implementation functions (Art. 5),<sup>62</sup> create mutual obligations to cooperate with the aim to improve compliance (e.g., Art. 4 (2)) and commit themselves to encourage “public awareness campaigns aimed at enlisting public support for the objective of this Agreement, and the said campaigns shall be so designed as to encourage public reporting of illegal trade” (Art. 4 (7)).

Comparable regulatory approaches are enshrined in other regional agreements as well as in treaties dealing with the protection, and in this connection also the prohibition of wildlife trafficking, of certain specific animals. Art. IV (4) Gorilla Agreement foresees that the contracting parties are “encouraged to provide training and technical support, and any other necessary support, to other Parties on a multilateral or bilateral basis to assist them in implementing the provisions of this Agreement and to seek support from other States, agencies or organisations interested”. Art. XXII African CCNR stipulates quite comprehensive duties to cooperate for the contracting parties; international legal obligations that are supplemented by specific provisions on the development and transfer of technology (Art. XIX) as well as on capacity building (Art. XX). Art. IV (1) ACAP recognises that an effective approach to implementation requires “assistance to be provided to some Range States, including through research, training or monitoring for implementation of conservation measures for albatrosses and petrels and their habitats” and, in light of this finding, requires the contracting parties to “give priority to capacity building, through funding, training, information and institutional support, for the implementation of the Agreement” (Art. IV (2) ACAP).

60 See specifically with regard to CITES for example *Baker*, *Journal of International Wildlife Law & Policy* 2 (1999), 1 (1-22); *Sand*, *European Journal of International Law* 8 (1997), 29 (51); *Le*, *Journal of International Wildlife Law & Policy* 22 (2019), 115 (120). Generally on this finding see also, e.g., *Chayes/Handler Chayes*, *The New Sovereignty – Compliance with International Regulatory Agreements*, 13-15; *O’Connell*, *Indiana Journal of Global Legal Studies* 3 (1995), 47 (55); *Beyerlin/Marauhn*, *International Environmental Law*, 319.

61 Generally on these compliance facilitation and enabling mechanisms in the realm of international environmental law see, e.g., *Beyerlin/Marauhn*, *International Environmental Law*, 343-358; *Gündling*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 56 (1996), 796-809; *Fitzmaurice*, *Environmental Compliance Control*, paras. 31-37, in: *Wolfrum* (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020).

62 See thereto for example *Kasimbazi*, in: *Faure/De Smedt/Stas* (eds.), *Environmental Enforcement Networks – Concepts, Implementation and Effectiveness*, 239-262.



Another vivid example is provided in this connection by the regulatory structures of the 1999 SADC Protocol. The agreement stipulates, among others, the obligation of the parties to “co-operate in capacity-building for effective wildlife management” (Art. 10 (1)) and, in this regard, to “identify aspects of wildlife management and wildlife law enforcement for which adequate training programmes are not available within the Region and shall establish training programmes to meet the needs” (Art. 10 (3)). Moreover, they commit themselves to cooperate and intensify their co-ordinating efforts with wildlife law enforcement authorities and their Interpol National Central Bureaus with the aim to “apprehend illegal takers and traders and to recover and dispose of illegal wildlife products” (Art. 9 (3) lit. c). In addition, the contracting parties are expected to endeavour to harmonise national legal instruments and approaches, *inter alia*, in the realm of “measures governing the trade in wildlife and wildlife products and bringing the penalties for the illegal taking of wildlife and the illegal trade in wildlife and wildlife products to comparable deterrent levels” (Art. 6 (2) lit. c). Pursuing the objective to “assist in the building of national and regional capacity for wildlife management, conservation and enforcement of wildlife laws” (Art. 4 (2) lit. e), the 1999 SADC Protocol furthermore foresees in its Art. 5 the establishment of a joint Wildlife Sector Technical Coordinating Unit entrusted with a variety of competences and functions in accordance with Art. 5 (8).

Concluded already in 1973 and thus belonging to the class of earlier international environmental agreements that are predominantly characterized by providing identical treatment to all contracting parties, CITES does neither explicitly foresee in its regulatory structures a differential treatment between industrialized states and developing countries in the sense of common but differentiated responsibilities,<sup>63</sup> nor does it enshrine provisions on compliance facilitation and enabling instruments in the treaty text itself. Nevertheless, and not the least for reasons already introduced in the beginning of this section, it is hardly surprising that the underlying need for technical and financial compliance assistance, in particular as far developing country parties are concerned, has in principle long been recognized also within this treaty regime.<sup>64</sup> In the same way as the CITES sanctions regime,<sup>65</sup> these capacity building measures – in principle provided to parties by the CITES Secretariat since the late 1970s – are progressively evolving on the basis of a practice primarily orchestrated by the contracting parties and currently find their manifestations in various approaches and individual initiatives.<sup>66</sup> In fact, to mention but one specific example, the close interrelationship between the CITES sanctions regime and the issue of compliance assistance is vividly illustrated by the fact that the 2007 Guide to CITES Compliance Procedure foresees in cases of non-compliance also, *inter alia*, the provision of advice, information and appropriate facilitation of assistance and other capacity-building support to the contracting party concerned instead of, or prior to, the recommendation of trade

63 See also *Wiersema*, *Journal of International Wildlife Law & Policy* 20 (2017), 207 (209) (“Unlike many other international environmental treaties, it [CITES] does not have flexible language or commitments based on a country’s development status. Instead, it has firm obligations and is, as a result, one of the ‘hardest’ treaties in the field of international environmental law.”). Generally on the conceptual approach of common but differentiated responsibilities see, e.g., *Stone*, *American Journal of International Law* 98 (2004), 276-301; *French*, *International and Comparative Law Quarterly* 49 (2000), 35-60; *Beyrerlin/Marauhn*, *International Environmental Law*, 61-71.

64 See, e.g., *Sand*, *European Journal of International Law* 8 (1997), 29 (51-52); *Sand*, *Asia Pacific Journal of Environmental Law* 20 (2017), 5 (17); *Reeve*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 63 (2003), 333 (343-344).

65 See *supra* section B.II.2.

66 See thereto more recently for example CITES COP 17 Doc. 15, Strategic Matters – Capacity Building, 2016; CITES Standing Committee (SC) 70th Meeting, Doc. 22.1, Capacity-Building Needs of Developing Countries and Countries with Economies in Transition: Report of the Secretariat, 2018; CITES COP 18 Doc. 21.3, Strategic Matters – Framework to Facilitate Coordination, Transparency and Accountability of CITES Capacity-Building Efforts, 2019; CITES COP 18 Doc. 28, Compliance Assistance Programme, 2019; as well as the information available on the CITES website at: <[https://www.cites.org/eng/prog/capacity\\_building/index.php](https://www.cites.org/eng/prog/capacity_building/index.php)> (last accessed on 6 April 2020).

sanctions.<sup>67</sup>

However, it seems appropriate to emphasise in particular also in the present context that respective compliance facilitation and enabling efforts are not confined to the internal dimension of individual wildlife agreements alone. Quite to the contrary, one can identify a whole range of activities taking place in what might be characterised, from the perspective of specific treaty regimes, as the realm of external compliance assistance and encouragement; efforts that are also aimed at facilitating states' compliance with obligations arising under respective wildlife treaties.<sup>68</sup>

This external dimension finds its manifestation for example in initiatives aimed at establishing forms of inter-agency cooperation to prevent and combat illegal wildlife trade. In this regard, the CITES Secretariat has, among others, concluded memoranda of understanding with the World Customs Organization (WCO)<sup>69</sup> in July 1996 and with the General Secretariat of the International Criminal Police Organization (ICPO-INTERPOL) in October 1998. Moreover, CITES has created, for the same purposes, together with the WCO, ICPO-INTERPOL, the World Bank and the United Nations Office on Drugs and Crime (UNODC) in November 2010 the International Consortium on Combating Wildlife Crime (ICCWC) on the basis of a letter of understanding.<sup>70</sup> In addition, to mention only one more notable example in this regard, the CITES Secretariat is also a member entity of the UN Inter-Agency Task Force on Illicit Trade in Wildlife and Forest Products, formed in March 2017 under participation of, *inter alia*, UNDP, UNODC and the UN Department for Peacekeeping Operations.<sup>71</sup>

Finally, another type of activities worth at least briefly mentioning in the realm of compliance facilitation and enabling efforts concerns initiatives and declarations by other international actors intended to draw attention to the importance of, as well as encourage compliance with, obligations arising under international (wildlife) agreements. Respective examples for these compliance encouraging activities are in the present context certain resolutions more recently adopted by the UN General Assembly and the UN Economic and Social Council emphasising the significance of effectively preventing and combatting wildlife trafficking as well as calling upon UN member states to adopt a variety of measures aimed at further increasing the effectiveness of their domestic and international efforts in this regard.<sup>72</sup>

67 CITES Resolution Conf. 14.3 (CITES Compliance Procedures) as last amended at COP 18 in August 2019, Annex, para. 29 lit. a, d and e.

68 Generally on these approaches see, e.g., *Fitzmaurice*, Environmental Compliance Control, paras. 84-90, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020).

69 More generally on the role and activities of the WCO in combating illegal wildlife trade see, e.g., *Mikuriya*, University of Pennsylvania Asian Law Review 12 (2016), 55-64.

70 Further information on the ICCWC and its activities are available at: <<https://www.cites.org/eng/prog/iccwc.php>> (last accessed on 6 April 2020). See also, e.g., *van Asch*, in: Elliott/Schaedla (eds.), Handbook of Transnational Environmental Crime, 469-477.

71 Additional information on the UN Inter-Agency Task Force on Illicit Trade in Wildlife and Forest Products is for example available at: <<https://www.un.int/news/inter-agency-task-force-launched-combat-illicit-wildlife-trade>> (last accessed on 6 April 2020).

72 See for example UN General Assembly Res. 73/343, UN Doc. A/RES/73/343 (2019) of 20 September 2019; UN Economic and Social Council, Res. 2013/40, UN Doc. E/RES/2013/40 (2013) of 17 October 2013, both with further references to prior related resolutions.

### C. Challenges to Effectively Enforcing the International Regime for Wildlife Trafficking during Armed Conflicts

The assessment undertaken in the previous section has revealed that international wildlife treaties are in general characterized by a variety of often quite sophisticated implementation and compliance mechanisms aimed at preventing and combatting wildlife trafficking.<sup>73</sup> While it is sadly well-known that, in spite of these regimes, the phenomenon of wildlife trafficking continues to exist and in part even flourish, thus indicating that the respective normative frameworks are for a variety of reasons suffering from certain structural and/or enforcement deficits already in the rather “ordinary” scenario of peacetime, the at least equally pressing issue that this section of the contribution intends to focus on concerns the specific, additional challenges arising in practice in connection with the effective application of the respective implementation and compliance approaches under the “extraordinary” circumstances of an armed conflict.

When considering this topic from the formal perspective of public international law, the first and overarching question obviously arising in this regard concerns the effects of an armed conflict on international wildlife treaties.<sup>74</sup> Whereas some agreements like Art. XV (1) of the 2003 African CCNR explicitly address specific obligations of the contracting parties in wartime and thus indirectly provide for their continued application during hostilities, most respective treaties, including for example CITES, remain silent on this issue. However, even if one – rightly – assumes that also the protection provided by those international wildlife treaties that contain no reference to their applicability or non-applicability during armed conflict can at least be presumed to continue to apply in wartime to the extent that the respective obligations do not conflict with relevant international humanitarian law,<sup>75</sup> the underlying fundamental issue remains whether and to what extent a contracting party involved in an armed conflict can and should be expected to comply with its respective treaty obligations in basically the same way as if the conflict did not exist.<sup>76</sup> Although recognising – or even explicitly providing for – the continued application of international wildlife treaties can be considered as “laudable”, it might be not too far-fetched to assume that “those actively involved in conflicts may well in practice be unlikely to regard protection of wildlife and of the wider environment as immediate and pressing concerns in times of war”.<sup>77</sup>

However, the issue in the present context is not merely one of subjective motivation and thus of an – depending on the perspective adopted – understandable or deplorable unwillingness

73 See thereto *supra* section B.

74 For a general discussion of the multi-faceted questions arising in connection with the normative effects of armed conflicts on the continued validity and applicability of international agreements as well as the respective scholarly debates in this regard see for example the International Law Commission (ILC) Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries, in: Yearbook of the International Law Commission 2011, Vol. II, Part Two, 108 *et seq.*; Pronto, Cambridge Journal of International and Comparative Law 2 (2013), 227-241; Vöneky, Armed Conflict, Effect on Treaties, paras. 1 *et seq.*, in: Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, available under: <www.mpepil.com/> (last accessed on 6 April 2020); Aust, Modern Treaty Law and Practice, 271-272; Ackermann, in: Wuschka/Risini/Lorenzmeier/Boor (eds.), Zeit und Internationales Recht, 121-138; Crawford, Brownlie’s Principles of Public International Law, 376; Orakhelashvili, Akehurst’s Modern Introduction to International Law, 274-275; Prescott, Emory International Law Review 7 (1993), 197-231; Ronen, in: Tams/Tzanakopoulos/Zimmermann (eds.), Research Handbook on the Law of Treaties, 541-564, each with further references.

75 On this approach see also more recently, e.g., UN General Assembly, ILC, Second Report on Protection of the Environment in Relations to Armed Conflicts by Marja Lehto, UN Doc. A/CN.4/728 of 27 March 2019, para. 28; UN General Assembly, ILC, First Report on Protection of the Environment in Relations to Armed Conflicts by Marja Lehto, UN Doc. A/CN.4/720 of 30 April 2018, paras. 77-80, with further references.

76 See thereto also already for example Bothe/Bruch/Diamond/Jensen, International Review of the Red Cross 92 (2010), 569 (581).

77 Bowman/Davies/Redgwell, Lyster’s International Wildlife Law, 290.

on the side of conflict-affected countries to effectively combat poaching and trafficking of wildlife during hostilities. Rather, one of the, if not even the, central challenge relates to the respective contracting parties' objective capacity to successfully implement and enforce the treaty regimes; a capacity that is often significantly weakened as a result of the ongoing armed conflict.<sup>78</sup> Prominently among the respective issues is the limited control of the affected treaty parties over parts of their territory and the related activities undertaken therein. And it is in particular this aspect that has ultimately also the potential to lead to severe consequences as far as the workability and remedial functions of treaty compliance mechanisms are concerned.

To mention but two examples: First, a valid and convincing argument can be made that any acts related to wildlife trafficking committed by insurgents or other organised armed groups during an armed conflict and contravening protection standards enshrined in wildlife agreements are not attributable to the affected contracting party. Consequently, such situations of non-compliance are for example not appropriately addressed by recourse to the in principle quite effective CITES Compliance Procedure, in particular the option, granted to the Standing Committee of the COP, to recommend on the basis of Art. XIII (3) CITES the adoption of trade sanctions against the party concerned.<sup>79</sup> This finding is not only based on the international legal regime on state responsibility, especially the rules concerning the (non-)attribution of conduct of insurrectional and secessionist movements to the state at issue as for example at least implicitly enshrined in Art. 10 of the 2001 Articles on State Responsibility developed by the ILC and also reflecting customary international law.<sup>80</sup> Rather, this approach also finds its manifestation in the regulatory structure and stipulations of the 2007 Guide to CITES Compliance Procedure itself, requiring the Standing Committee of the COP, when deciding about the recommendation of trade suspensions, to take into account, among others, "the capacity of the Party concerned" as well as "such factors as the cause, [...] of the compliance matter" and "the appropriateness of the measures".<sup>81</sup>

Second, in addition to the general inappropriateness of trade sanctions regimes like the one created under CITES, it seems necessary to at least briefly recall that first and foremost also many of the compliance facilitation and enabling approaches as explicitly foreseen in international wildlife agreements or developed in subsequent treaty practice,<sup>82</sup> among them the provision of financial and technical assistance, capacity-building, exchange of information and good practices as well as other means of capacity-building, are during ongoing armed conflicts for a variety of obvious reasons frequently unable to achieve their intended positive effects on the compliance level of affected contracting parties.

In sum, when assessing the respective scenarios from an enforcement perspective, it becomes quite obvious that the wildlife treaty compliance mechanisms are in general unsuited to promote the legal protection of animals in wartime with their remedial potential and overall workability being frequently significantly weakened because of the armed conflict; at least as far as the conflict-affected countries and the activities taking place on their territories are concerned.

78 See also UN General Assembly, ILC, Second Report on Protection of the Environment in Relations to Armed Conflicts by *Marja Lehto*, UN Doc. A/CN.4/728 of 27 March 2019, para. 28.

79 Generally on this approach see already *supra* section B.II.2.

80 See ILC Draft Articles on Responsibility of States for International Wrongful Acts, with Commentaries, in: Yearbook of the International Law Commission 2001, Vol. II, Part Two, 50-52, with additional references.

81 See CITES Resolution Conf. 14.3 (CITES Compliance Procedures) as last amended at COP 18 in August 2019, Annex, para. 32 lit. a, lit. b and lit. c respectively.

82 Generally thereto see already *supra* section B.III.

## D. What Is to Be Done?

### Some Thoughts on Possible Enforcement Paths Less Taken in Treaty Practice

In light of the findings made in the previous section, this final part of the contribution attempts to present and discuss some ideas how to adequately address the respective challenges and thus to adapt the regime for preventing and combatting wildlife trafficking to the specific circumstances of wartime with the aim to make the overall normative framework more effective in the interest of the animals concerned. In this regard, it is submitted that it seems potentially promising – and with that the analysis turns towards its end to perceptions already introduced in its very beginning<sup>83</sup> – to start by taking a closer look at the domestic, supranational as well as international governance mechanisms that have been created, in particular in the last two decades, with the aim to suppress or at least limit the funding of parties to armed conflicts by means of transboundary trade in other (non-living) natural resources.

Among these hard and soft law approaches, the probably most well-known example is the Kimberley Process Certification Scheme, a joint initiative of governments, civil society as well as representatives of the diamond industry formally launched in 2003. This regime portrays itself as an attempt to curb the transboundary trade in so-called “conflict” or “blood” diamonds that are used by armed insurgent groups to finance the continuation of civil wars, in particular in Africa.<sup>84</sup> In addition, reference can be made in the present context to the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, adopted by the OECD Council at Ministerial level on 25 May 2011 and subsequently amended on 17 July 2012 as well as on 25 September 2015. The central purpose of this soft law governance instrument is “to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices” by clarifying how economic actors can identify and better manage risks throughout the entire mineral supply chain.<sup>85</sup> Other examples from the realms of domestic and supranational legislations are section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that became effective on 21 July 2010 following its approval by the United States Congress<sup>86</sup> as well as the EU Regulation 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas of 17 May 2017 (EU Conflict Minerals Regulation).<sup>87</sup>

83 See *supra* section A.

84 Further information on this regime and its governance approaches are available at: <<https://www.kimberleyprocess.com/>> (last accessed on 6 April 2020). See also, e.g., *Brouder*, in: Tietje/Brouder (eds.), *Handbook of Transnational Economic Governance Regimes*, 969-987; *Vidal*, in: Berman *et al.* (eds.), *Informal International Lawmaking: Case Studies*, 505-525.

85 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition, 2016, p. 3, available at: <<http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>> (last accessed 6 April 2020).

86 Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 – July 21, 2010, 124 Stat. 1375 (2010), available at: <<https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>> (last accessed on 6 April 2020). See thereto as well as with regard to more recent related developments also, e.g., *Harline*, *Northwestern Journal of International Law & Business* 35 (2015), 439-467; *Keenan*, in: Feichtner/Krajewski/Roesch (eds.), *Human Rights in the Extractive Industries – Transparency, Participation, Resistance*, 27-49.

87 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ EU L 130/1 of 19 May 2017. For an assessment of this EU regulation see for

It is most certainly not suggested here to transfer and apply the regulatory structures and various governance approaches foreseen in these hard as well as soft law instruments “lock, stock, and barrel” to address and cope with the problem of wildlife trafficking in wartime. Aside from the general fact that animals are rightly increasingly recognised as sentient beings or at least not merely as legal objects<sup>88</sup> and thus cannot easily be compared to minerals and other raw materials, the respective call for caution is in particular also supported by the frequently divergent regulatory goals pursued by conflict minerals governance schemes on the one hand and international wildlife regimes on the other hand. Whereas the former are exclusively aimed at promoting responsible commercial transactions in raw materials and are obviously lacking any protective, trade-discouraging dimension with regard to the often also quite rare commodities concerned, the latter are generally first and foremost intended to provide care for endangered species and, in this regard, frequently either stipulate a more or less comprehensive prohibition of commercial transactions in respective specimens or at least protect them against over-exploitation through trade.

Moreover, it should be recalled that the more recently formed governance instruments dealing with the issue of conflict minerals have been created, and some of them have established respective certification and disclosure mechanisms, in what used to be more or less a kind of normative “no man’s land”. To the contrary, in the realm of international wildlife regimes such reporting obligations and, as far as permitted trade in wild animals is concerned, also quite elaborate mandatory schemes of permits and certificates by national authorities especially under CITES have been in place already for a number of decades. Consequently, it is surely not a general lack of governance instruments *per se* that prevents the treaty framework for combatting wildlife trafficking from becoming more effective in wartime and could be remedied by relying on and copying from models and templates provided by conflict minerals regimes.

That said, it is nevertheless submitted that we can, especially also in the present context of protecting animals during hostilities, learn some useful lessons and receive some valuable inspiration from the existence, context and regulatory approaches of these conflict minerals regulations; in particular if we view and assess them from a more overarching perspective. In an attempt to illustrate and substantiate this perception, I would like to make two main observations.

### **I. Recognising the Potential Benefits of the Securitisation of Wildlife Trafficking in Armed Conflicts**

To begin with, the emergence of these conflict minerals governance regimes serves as a quite clear indication for the potential influence exercised by, as well as normative consequences resulting from, the phenomenon and approach of what is frequently referred to as “securitisation”. Primarily discussed and theorised in the field of political science, this concept is in particular guided by the perception that security issues are not always based on objective findings of threats existing in reality but often also – or even exclusively – socially constructed through

example *Nowrot*, in: Feichtner/Krajewski/Roesch (eds.), *Human Rights in the Extractive Industries – Transparency, Participation, Resistance*, 51-75; *Vlaskamp*, *Cooperation and Conflict* 54 (2019), 407-425; *Voland/Daly*, *Journal of World Trade* 52 (2018), 37-64.

<sup>88</sup> See thereto also already for example *Peters*, *American Journal of International Law Unbound* 111 (2017), 252 (252-253); *de Hemptinne*, *American Journal of International Law Unbound* 111 (2017), 272 (275).

discursive claims.<sup>89</sup>

Against this background, securitisation is understood as a “more extreme version of politicization”<sup>90</sup> and refers to a process by which securitising actors, commonly among them “political leaders, bureaucracies, governments, lobbyists, and pressure groups”,<sup>91</sup> present a certain issue or development as a fundamental threat to a reference subject or object and thus portray it as a matter of security; a strategy in the sense of a “securitizing move” that will result in a successful securitisation “if and when the audience accepts it as such”.<sup>92</sup> The primary motivation for, and “reward” to be expected from, a successful securitisation concerns the frequently more substantial political attention and superior financial resources associated with issues related to national and international security challenges.<sup>93</sup>

Viewed from a normative perspective, these assets have also the potential to translate into new governance instruments as demonstrated by the more recently created conflict minerals regimes. It is probably no exaggeration to assume that adding a securitisation context to the sourcing of, and transboundary trade in, minerals from conflict areas has strongly, if not even decisively, contributed to the establishment of quite effective soft law instruments like the Kimberley Process Certification Scheme and their incorporation into hard law<sup>94</sup> as well as in particular also to the adoption of legally binding regulations such as the Dodd-Frank Act and the EU Conflict Minerals Regulation; governance regimes that ultimately also serve other public interests aside from addressing security concerns.<sup>95</sup>

In light of these findings, it seems not too optimistic and far-fetched to predict that the increasingly visible recognition, not the least also in the practice of the UN Security Council,<sup>96</sup> of linkages between conflict prevention and containment on the one hand and the need for effectively combatting wildlife trafficking on the other hand – and thus the ongoing securitisation of global illegal wildlife trade – has in principle a quite notable potential to result in an, perhaps in particular also legal, enhancement of the protection provided to wild animals

89 See thereto for example *Wæver*, in: Lipschutz (ed.), *On Security*, 46 (54); *Buzan/Wæver/de Wilde*, *Security – A New Framework for Analysis*, 23-40; *Balzacq*, *European Journal of International Relations* 11 (2005), 171-201.

90 *Buzan/Wæver/de Wilde*, *Security – A New Framework for Analysis*, 23.

91 *Buzan/Wæver/de Wilde*, *Security – A New Framework for Analysis*, 40.

92 *Buzan/Wæver/de Wilde*, *Security – A New Framework for Analysis*, 25. For an example of a rather unsuccessful securitisation attempt in the form of the concept of human security see *Nowrot*, *Journal of International Law of Peace and Armed Conflict* 30 (2017), 27 (34-35).

93 See also, e.g., *Khong*, *Global Governance* 7 (2001), 231 (232) (“The policy rationale for securitizing any given issue – the environment and individuals, for example – is to inform relevant audiences (one’s own bureaucrats and citizens, the so-called international community, as well as the victims of environmental degradation) that an issue has priority and that it is high on the policymakers’ agenda. [...] A priority issue is thus one that gets special attention, better resources, and a higher chance of satisfactory resolution.”); *Mack*, in: Brzoska/Croll (eds.), *Promoting Security: But How and For Whom?*, 47 (49) (“The attraction of ‘securitization’ is that it is a means of gaining political attention and material resources that might otherwise not be available.”).

94 See, e.g., Council Regulation (EC) No. 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds, OJ EC L 358/28 of 31 December 2002.

95 See in this connection for example respective excerpts from the preamble of the EU Conflict Minerals Regulation (“(3) Human rights abuses are common in resource-rich conflict-affected and high-risk areas and may include child labour, sexual violence, the disappearance of people, forced resettlement and the destruction of ritually or culturally significant sites. [...] (26) Preventing the profits from the trade in minerals and metals being used to fund armed conflict through due diligence and transparency will promote good governance and sustainable economic development.”). Generally on the functions and importance of preambles from the perspective of treaty interpretation, see for example ICJ, *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v. Malaysia), Judgment of 17 December 2002, ICJ Reports 2002, 625 (652, para. 51); ICJ, *Asylum Case* (Colombia v. Peru), Judgment of 20 November 1950, ICJ Reports 1950, 266 (282); ICJ, *Case Concerning Rights of Nationals of the United States of America in Morocco* (France v. USA), Judgment of 27 August 1952, ICJ Reports 1952, 176 (196); European Court of Human Rights, *Golder v. United Kingdom*, Application No. 4451/70, Judgment of 25 February 1975, para. 34; *Gardiner*, *Treaty Interpretation*, 205 *et seq.*; *Dörr*, in: *Dörr/Schmalenbach* (eds.), *Vienna Convention on the Law of Treaties, A Commentary*, Article 31, para. 49.

96 See thereto already *supra* section A.

during armed conflicts; a potential that – despite possible challenges that might also arise in this connection<sup>97</sup> – arguably will and should be further developed and exploited more fully in the foreseeable future.

## **II. Broadening the Compliance Focus and Diversifying the Implementation Mechanisms of International Wildlife Treaties in Wartime**

However, it is not merely, and perhaps not even primarily, the potential benefits of a continued securitisation that should attract our attention when taking a closer look at the more recently emerging conflict minerals regimes in the present context. Rather, we might also learn some useful lessons from the regulatory approaches foreseen in these instruments. Most of these governance structures do not predominantly focus on the conflict-affected countries where the extraction activities take place directly, but first and foremost address the subsequent supply chain by formulating normative expectations or even creating legally binding obligations for consumer countries as well as in particular for importers, manufacturers as well as other “downstream” businesses.

Bearing in mind the considerable challenges to effectively enforcing the transnational regime for wildlife trafficking in wartime as far as the conflict-affected countries themselves are concerned,<sup>98</sup> it is submitted that a comparable broadening and shifting of the compliance focus of international wildlife regimes to the whole chains of supply and demand of the legal as well as in particular also the illegal wildlife trade, combined with a diversification of the respective implementation mechanisms, can be regarded as a promising enforcement strategy for making the international normative framework for preventing and combatting wildlife trafficking more responsive to the specific circumstances of armed conflicts and thus also more effective to the benefit of the animals concerned. Such a broader and more diversified regulatory approach that does not primarily concentrate its compliance facilitation and enforcement efforts on the conflict-affected source countries but rather takes into account the supply and demand chain in its entirety allows the governance structures (and their creators) to identify and normatively address all of the – voluntary and involuntary – actors involved in, or concerned with, legal as well as illegal wildlife trade.<sup>99</sup>

And indeed, it seems appropriate to emphasise that respective approaches are most certainly not entirely unknown to the current international regime dealing with wildlife trafficking. Recent years have borne witness to a number of related efforts, both within and outside the framework of individual international wildlife agreements. All of them have in common that they are aimed at more holistically and thus also more effectively preventing as well as combatting illegal trade in wildlife and, in this regard, focusing on other segments of, and public as well as private actors in, the supply chain aside from the source countries.

One quite prominent and important class of approaches targets the relevant transit routes and concentrates in this connection specifically also on the companies involved in the transportation sector.<sup>100</sup> In this regard, attention might for example be drawn to initiatives like the Reducing Opportunities for Unlawful Transport of Endangered Species (ROUTES) Partnership,

97 For a more skeptical perception see, e.g., *Elliott*, in: Elliott/Schaedla (eds.), *Handbook of Transnational Environmental Crime*, 68 (81-83).

98 See *supra* section C.

99 See thereto also already for example *Wiersema*, *Journal of International Wildlife Law & Policy* 20 (2017), 207 (215).

100 See thereto also for example *Wiersema*, *Journal of International Wildlife Law & Policy* 20 (2017), 207 (218-219).



financed by the United States Agency for International Development (USAID) and closely cooperating with the CITES Secretariat, that brings together transport and logistics companies, government agencies as well as civil society groups with the aim to combat wildlife trafficking by reducing the use of legal transportation supply chains.<sup>101</sup> In addition, the International Air Transport Association (IATA)<sup>102</sup> has concluded a memorandum of understanding with the CITES Secretariat in June 2015 intended to foster the cooperation in, among others, the fields of “the transport of CITES specimens for legal international trade and the combatting of illegal trade in CITES specimens”.<sup>103</sup>

Moreover, the 2016 IATA Annual General Meeting adopted a resolution on illegal wildlife trade that, *inter alia*, “calls on member airlines to increase passenger, customer, client, and staff awareness about the nature, scale, and consequences of the illegal wildlife trade”, “calls on airlines, airports, freight forwarders and all other stakeholders within the air transport sector to work proactively with enforcement agencies and conservation organizations to address the problem”, “calls on member airlines to consider the adoption of appropriate policies and procedures that discourage this illegal trade, taking into account the importance of awareness programs, information sharing and incident reporting systems” and “encourages member airlines to sign the United for Wildlife Transport Taskforce Buckingham Palace Declaration”.<sup>104</sup> The last mentioned encouragement refers to a declaration agreed upon in March 2016 by a diverse group of actors, among them CITES, the International Maritime Organization (IMO), UNDP, WCO, IATA, the World Wildlife Fund (WWF) UK as well as numerous transport industry associations and companies, that stipulates eleven commitments aimed at combatting the illegal trade in wildlife by focusing on the transit routes and in particular the role played by the transportation sector.<sup>105</sup>

Another type of governance approaches that attempts to address the issue of wildlife trafficking by taking into account other parts of the supply chain focusses on aspects related to the consumer countries. Two regulatory strategies seem particularly worth highlighting in this regard. One of them concerns and targets the role as well as potential consequences of legal domestic markets for endangered species. While traditionally considered to be outside the scope of application of CITES, the contracting parties to this wildlife treaty have more recently quite firmly taken up this issue; at least as far as the admittedly in many ways rather special case of (domestic) ivory markets is concerned. In the course of COP 17 in September/October 2016, they decided – despite concerns expressed by the CITES Secretariat – to amend CITES Resolution Conf. 10.10 (Trade in Elephant Specimens).<sup>106</sup> The resolution in its currently applicable version as last amended at COP 18 in August 2019 recalls the by now almost undisputed finding that “legal domestic markets for ivory may increase the risk to elephant populations and local communities, due to the opportunity it creates for the laundering of illegal ivory under

101 Additional information on ROUTES are available at: <<https://routespartnership.org/>> (last accessed on 6 April 2020).

102 Generally on this organization and its activities see, e.g., *Havel/Sanchez*, in: Tietje/Brouder (eds.), *Handbook of Transnational Economic Governance Regimes*, 755-763; *Haanappel*, International Air Transport Association (IATA), paras. 1 *et seq.*, in: Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <[www.mpepil.com/](http://www.mpepil.com/)> (last accessed on 6 April 2020); *Otte*, in: Tietje (ed.), *Internationales Wirtschaftsrecht*, § 7, paras. 137 *et seq.*

103 Memorandum of Understanding between the CITES Secretariat and IATA of 8 June 2015, para. 2.5, available at: <<https://www.iata.org/en/policy/environment/wildlife-trafficking/>> (last accessed on 6 April 2020).

104 72nd IATA Annual General Meeting 2016, Resolution on the Illegal Trade in Wildlife, paras. 2, 4, 5 and 6, available at: <<https://www.iata.org/en/policy/environment/wildlife-trafficking/>> (last accessed on 6 April 2020).

105 Additional information on the United for Wildlife Transport Taskforce Buckingham Palace Declaration and its signatories are available at: <<https://www.unitedforwildlife.org/the-buckingham-palace-declaration/>> (last accessed on 6 April 2020).

106 See thereto also *Wiersema*, *Journal of International Wildlife Law & Policy* 20 (2017), 207 (221), with additional references.

the guise of legality”.<sup>107</sup> Against this background, the resolution, *inter alia*, recommends that “that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency”.<sup>108</sup>

The second – and somehow related – regulatory strategy that focusses on the role of consumer countries attempts to tackle one of the, if not even the, central factor contributing to the phenomenon and profitability of wildlife trafficking, namely demand in the legal as well as in particular also the illegal consuming markets. The issue of demand and its potential for negatively influencing treaty compliance have most certainly been identified and recognised as a very important driver for illegal wildlife trade already a long time ago.<sup>109</sup> Moreover, the overall importance of, among others, public awareness campaigns is indeed emphasised in a number of more recently concluded international wildlife agreements. Respective examples in this regard are provided by Art. 4 (7) Lusaka Agreement as well as Art. 7 (7) lit. a SADC Protocol. However, respective efforts specifically aimed at reducing the demand in consumer countries have – for a variety of different reasons<sup>110</sup> – traditionally not been undertaken under the framework of CITES and also only rather cautiously taken recourse to by other relevant actors like civil society.

Nevertheless, there are more recently clear indications that the situation is beginning to change. Campaigns initiated by NGOs in various important consumer countries have gained momentum, in particular since the middle of the previous decade.<sup>111</sup> In addition, the UN General Assembly has more recently supported this approach by explicitly urging “Member States to increase efforts and resources to raise awareness about and address the problems and risks associated with the supply and transit of and demand for illegal wildlife products, including by improving cooperation with all relevant stakeholders, engaging consumer groups and tackling the drivers of demand, and to more effectively reduce the demand, including by using targeted and evidence-based strategies in order to influence consumer behaviour, by leading behaviour change campaigns, and create greater awareness of laws prohibiting illegal trade in wildlife and associated penalties”.<sup>112</sup>

Moreover, the “Sustainable Development Goals”, the “successor” to the so-called “Millennium Development Goals” of September 2000<sup>113</sup> adopted as the central part of the 2030 Agenda for Sustainable Development on 25 September 2015, include as their target 15.7 the commitment to take “urgent action to end poaching and trafficking of protected species of flora

107 Preamble of CITES Resolution Conf. 10.10 (Trade in Elephant Specimens) as last amended at COP 18 in August 2019. On this concern see also, e.g., *Wiersema*, University of Pennsylvania Asian Law Review 12 (2016), 65 (81-83); *Wiersema*, Journal of International Wildlife Law & Policy 20 (2017), 207 (221).

108 CITES Resolution Conf. 10.10 (Trade in Elephant Specimens) as last amended at COP 18 in August 2019, para. 3. See, however, also for respective challenges in this regard for example *Sand*, Journal of International Wildlife Law & Policy 21 (2018), 221-238; *Whitfort*, Journal of International Wildlife Law & Policy 22 (2019), 342-372.

109 See for example *Sand*, European Journal of International Law 8 (1997), 29 (52) (“compliance also requires behavioural changes in wildlife consuming countries”); *Cheung*, Pacific Rim Law & Policy Journal 5 (1995), 125 (152-153). See thereto more recently also, e.g., *Burgess*, TRAFFIC Bulletin 28 (2016), 65-73; *Janssens/Trouwborst*, Journal of International Wildlife Law & Policy 21 (2018), 146 (148); *Felbab-Brown*, The Extinction Market – Wildlife Trafficking and How to Counter It, 219-239; *Ayling*, Journal of International Wildlife Law & Policy 16 (2013), 57 (79).

110 See thereto for example *Conrad*, Tropical Conservation Science 5 (2012), 245 (249-250); *Wiersema*, Journal of International Wildlife Law & Policy 20 (2017), 207 (219).

111 For respective examples see, e.g., *Wiersema*, Journal of International Wildlife Law & Policy 20 (2017), 207 (220); *Persaud*, Journal of International Wildlife Law & Policy 20 (2017), 295 (319-320).

112 UN General Assembly Res. 73/343, UN Doc. A/RES/73/343 (2019) of 20 September 2019, para. 13; see also already for example UN General Assembly Res. 69/314, UN Doc. A/RES/69/314 (2015) of 19 August 2015, para. 7.

113 UN General Assembly Resolution 55/2, United Nations Millennium Declaration, UN Doc. A/RES/55/2 of 18 September 2000.

and fauna and address both demand and supply of illegal wildlife products”.<sup>114</sup> And last, but surely not least, also the contracting parties of CITES have taken the quite remarkable step of adopting at COP 17 in September/October 2016 the CITES Resolution Conf. 17.4 (Demand reduction strategies to combat illegal trade in CITES listed species), thereby explicitly and rather comprehensively addressing the issue of demand reduction as a notable and promising strategy to prevent and combat illegal trade in wildlife.<sup>115</sup>

It is quite notable that these regulatory and other activities aimed at addressing the problem of illegal trade in wildlife from a more holistic perspective by focusing on the whole supply chain, and thus in particular also on transit and consumer countries as well as the various public and private actors involved, have primarily been initiated or at least considerably intensified only in the previous decade. Already this finding serves as an indication that the emerging securitisation of wildlife trafficking in armed conflicts<sup>116</sup> has, most certainly together with other factors and motives, exercised a considerable influence on the progressive development of compliance efforts in this field. Moreover, it seems not too far-fetched to predict that the continued influence of this phenomenon has a considerable potential to lead to quantitatively and qualitatively even more intensified actions in the foreseeable future.

Finally, and more specifically addressing the prospective role of CITES in this context, another conceivable enforcement approach vis-à-vis transit and consumer countries concerns the possibility of applying the CITES Compliance Procedure, in particular including the option, granted to the Standing Committee of the COP, to recommend on the basis of Art. XIII (3) CITES the adoption of trade sanctions,<sup>117</sup> more frequently and rigorously to respective contracting parties that do not sufficiently fulfil, among others, their obligations under Art. VIII (1) CITES; an enforcement approach that seems in principle quite promising, in particular also as far as combatting wildlife trafficking in the present context of wartime is concerned, but has until now not been taken recourse to in CITES treaty practice in anything even close to a comprehensive and determined way. Indeed, it seems quite astonishing – and, taking into account the important role played by considerations of fairness and thus, among others, equal treatment of the contracting parties for the continued acceptability and viability of a treaty regime, most certainly also potentially worrisome – that until now more than ninety percent of the CITES parties targeted by respective trade embargoes were third world “source countries”.<sup>118</sup> This at least at first sight rather surprising empirical finding<sup>119</sup> has already been criticised as potentially revealing a kind of “inherent hidden bias in the system as currently practiced” and thus pointing at a major structural and legitimacy challenge for CITES as a

114 UN General Assembly Resolution 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 of 21 October 2015, p. 25.

115 CITES Resolution Conf. 17.4 (Demand reduction strategies to combat illegal trade in CITES listed species) of September/October 2016. See in this connection also for example CITES Resolution Conf. 10.10 (Trade in Elephant Specimens) as last amended at COP 18 in August 2019, para. 7 lit. d.

116 See thereto *supra* section D.I.

117 Generally on this approach see already *supra* section B.II.2.

118 See thereto as well as for a rightly critical assessment of this finding *Sand*, Review of European Community & International Environmental Law 22 (2013), 251 (261) (“Even accounting for the fact that world trade flows in wildlife and wildlife products run predominantly South-to-North (from ‘suppliers’ in developing countries to ‘consumers’ in industrialized countries), one would expect the global CITES system to represent a balance of export, transit and import controls – with corresponding compliance failures and loopholes likely to show up at both ends.”); *Sand*, Asia Pacific Journal of Environmental Law 20 (2017), 5 (22-23) (“Past ‘infraction reports’ by the CITES Secretariat and by non-governmental organization (NGO) observer groups certainly indicate that infringements of treaty rules and Conference resolutions are in no way the sole prerogative of wildlife-exporting countries; so there must be other explanations for the skewed geographical distribution of trade embargoes as currently practiced.”).

119 For a certainly not entirely implausible explanation see, e.g., *Sand*, Asia Pacific Journal of Environmental Law 20 (2017), 5 (26) (“For diplomatic reasons, other Member States will inevitably think twice before antagonizing such a heavy-weight member country by allegations of non-compliance [...]”).

whole.<sup>120</sup>

Such a negative perception of the current sanctions practice is in principle obviously not without merits. Nevertheless, a more optimistic view might again, and thus also in this connection, draw attention to the potential benefits of a continued securitisation of wildlife trafficking in armed conflicts in the sense of providing a stronger incentive, for developing and developed contracting parties alike, to address this structural enforcement challenge and provide for a more balanced and thus also more legitimate and effective application of the CITES Compliance Procedure to the benefit of the conflict-affected animals concerned.

## **E. Conclusion**

The present contribution has made an attempt to illustrate that, whereas armed conflicts undoubtedly add another deplorable dimension to the already in peacetime still rather well-developed trade in wildlife and its products, the in principle often quite sophisticated implementation and compliance mechanisms for preventing as well as combatting wildlife trafficking as foreseen in the respective international treaty regimes or developed in practice are in general not well suited to promote and ensure the protection of animals in the present context of wartime as far as they are applied to the conflict-affected countries themselves and the activities taking place on their territory. In order to adequately address and remedy these enforcement challenges, it has been suggested that, and hopefully convincingly illustrated why, some useful lessons can be learned from the more recently emerging instruments dealing with conflict minerals that focus on the whole supply chain; an approach that can lead to notable improvements of the regime for wildlife trafficking in general and thus might even have the potential to also result in more effectively preventing and combatting the illegal trade in wildlife during peacetime. After all, what works for diamonds and gold, might very well also work with regard to precious living “jewels”.

120 *Sand*, Review of European Community & International Environmental Law 22 (2013), 251 (261).

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# Rechtswissenschaftliche Beiträge der Hamburger Sozialökonomie

ISSN 2366-0260 (print) / ISSN 2365-4112 (online)

Bislang erschienene Hefte

## Heft 1

*Felix Boor*, Die Yukos-Enteignung. Auswirkungen auf das Anerkennungs- und Vollstreckungssystem aufgehobener ausländischer Handelsschiedssprüche

## Heft 2

*Karsten Nowrot*, Sozialökonomie als disziplinäre Wissenschaft. Alternative Gedanken zur sozialökonomischen Forschung, Lehre und (Eliten-) Bildung

## Heft 3

*Florian Hipp*, Die kommerzielle Verwendung von frei zugänglichen Inhalten im Internet

## Heft 4

*Karsten Nowrot*, Vom steten Streben nach einer immer wieder neuen Weltwirtschaftsordnung. Die deutsche Sozialdemokratie und die Entwicklung des Internationalen Wirtschaftsrechts

## Heft 5

*Karsten Nowrot*, Jenseits eines abwehrrechtlichen Ausnahmecharakters. Zur multidimensionalen Rechtswirkung des Widerstandsrechts nach Art. 20 Abs. 4 GG

## Heft 6

*Karsten Nowrot*, Grundstrukturen eines Beratungsverwaltungsrechts

## Heft 7

*Karsten Nowrot*, Environmental Governance as a Subject of Dispute Settlement Mechanisms in Regional Trade Agreements

## Heft 8

*Margaret Thornton*, The Flexible Cyborg: Work-Life Balance in Legal Practice

## Heft 9

*Antonia Fandrich*, Sustainability and Investment Protection Law. A Study on the Meaning of the Term *Investment* within the ICSID Convention

## Heft 10

*Karsten Nowrot*, Of “Plain” Analytical Approaches and “Savior” Perspectives: Measuring the Structural Dialogues between Bilateral Investment Treaties and Investment Chapters in Mega-Regionals

## Heft 11

*Maryna Rabinovych*, The EU Response to the Ukrainian Crisis: Testing the Union’s Comprehensive Approach to Peacebuilding

## Heft 12

*Marita Körner*, Die Datenschutzgrundverordnung der Europäischen Union: Struktur und Ordnungsprinzipien

## Heft 13

*Christin Krusenbaum*, Das deutsche Krankenversicherungssystem auf dem Prüfstand – Ist die Bürgerversicherung die ultimative Alternative?

## Heft 14

*Marita Körner*, Age Discrimination in the Context of Employment

## Heft 15

*Avinash Govindjee/ Judith Brockmann/ Manfred Walser*, Atypical Employment in an International Perspective

## Heft 16

*Cara Paulina Gries*, Gesetzliche Barrieren bei der Integration von geduldeten Flüchtlingen in den deutschen Arbeitsmarkt

## Heft 17

*Karsten Nowrot*, Aiding and Abetting in Theorizing the Increasing Softification of the International Normative Order - A Darker Legacy of Jessup’s *Transnational Law*?

## Heft 18

*Matti Riedlinger*, Das CSR-Richtlinie-Umsetzungsgesetz: Implementierung von Corporate Social Responsibility Berichtspflichten in nationales Recht

## Heft 19

*Karsten Nowrot*, “Competing Regionalism” vs. “Cooperative Regionalism”: On the Possible Relations between Different Regional Economic Integration Agreements

## Heft 20

*Karsten Nowrot*, The 2017 EU Conflict Minerals Regulation: An Effective European Instrument to Globally Promote Good Raw Materials Governance?

**Heft 21**

*Karsten Nowrot*, The Other Side of Rights in the Processes of Constitutionalizing International Investment Law: Addressing Investors' Obligations as a New Regulatory Experiment

**Heft 22**

*Karsten Nowrot/Emily Sipiorski*, Arbitrator Intimidation and the Rule of Law: Aspects of Constitutionalization in International Investment Law

**Heft 23**

*Karsten Nowrot*, European Republicanism in (Legitimation) Action: Public Participation in the Negotiation and Implementation of EU Free Trade Agreements

**Heft 24**

*Karsten Nowrot*, Non-Recognized Territorial Entities in the Post-Soviet Space from the Perspective of WTO Law: Outreach to Outcasts?

**Heft 25**

*Marita Körner*, Beschäftigtendatenschutz im Geltungsbereich der DSGVO

**Heft 26**

*Vladlena Lisenko/Karsten Nowrot*, The 2018 Pridnestrovian Law on State Support for Investment Activities: Some Thoughts on an Investment Statute in a Frozen Conflict Situation

**Heft 27**

*Marita Körner*, Die Rolle des Betriebsrats im Beschäftigtendatenschutz

**Heft 28**

*Nadia Kornioti/Karsten Nowrot*, Looking Back to Learn for the Future?: The Work of the ILA on the Issue of Human Rights in Times of Emergency in the 1980s

**Heft 29**

*Marita Körner*, Der Betriebsrat als datenschutzrechtlich verantwortliche Stelle

**Heft 30**

*Karsten Nowrot/Emily Sipiorski*, (De-) Constitutionalization of International Investment Law?: Narratives from Africa

**Heft 31**

*Felix Boor*, Die beschleunigte Landreform Mugabes vor deutschen Gerichten - der „Hamburger Kaffeestreit“

**Heft 32**

*Karsten Nowrot*, Corporate Legal and Social Responsibility as an Issue of International Investment Agreements: A Suitable Role Model for the WTO Legal Order?

**Heft 33**

*Julius Adler*, Der Grundsatz der „Full Protection and Security“ im internationalen Investitionsschutzrecht - Bedeutung in Theorie und Praxis

**Heft 34**

*Sebastian Barth*, Gefangenearbeit: Meilen- oder Stolperstein der Resozialisierung? Eine rechtliche Betrachtung von Gefangenearbeit in Bezug auf das Resozialisierungsziel

**Heft 35**

*Karsten Nowrot*, Das gesellschaftliche Transformationspotential der Sustainable Development Goals: Völkerrechtliche Rahmenbedingungen und außerrechtliche Nachhaltigkeitsvoraussetzungen