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MAPPING OF THE ISSUES CONCERNING THE ILLEGAL TRADE IN
WILDLIFE, INCLUDING THE INTERNET TRADE AND SUGGESTIONS
FOR A BETTER APPROACH

(titel opgeven zoals goedgekeurd DOOR DE FACULTEITSRAAD)

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LIST OF ABBREVIATIONS

COP	Conference of the Parties
COSP	Conference of State Parties
CND	Commission on Narcotics Drugs
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ECD	E-Commerce Directive
ECEC	Environmental Compliance and Enforcement Committee
ECOSOC	Economic and Social Council
ECOWAS:	Economic Community of West-African States
EnviCrimeNet	European Environmental Crime Network
EU	European Union
Europol	European Law Enforcement Organization
GA	General Assembly
GC	Governing Council
GDP	Gross Domestic Product
ICWC	International Consortium on Combating Wildlife Crime
IEG	International Environmental Governance
IFAW	International Fund for Animal Welfare
Interpol	International Criminal Police Organization
IPO	Intellectual Property Rights Owner
ILO	International Labor Organization
IUCN	International Union for Conservation of Nature
MEA	Multilateral Environmental Agreement
NCB	National Central Bureau
NEST	National Environmental Security Taskforce
NGO	Nongovernmental organization
VeRo Program	Verified Rights Owner Program
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCHE	United Nations Conference on the Human Environment
UNEO	United Nations Environment Organization
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
UNODC	United Nations Office for Drugs and Crime
UNTOC	United Nations Convention on Transnational Organized Crime
WCO	World Customs Organization
WHO	World Health Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

LIST OF INTERVIEWEES

1. Edward Van-Ash Associate Programme Management Officer, CITES Secretariat, and Support Officer for the International Consortium on Combating Wildlife Crime, Switzerland, interview 25-04-2017, Skype.
2. Elke Malfait, Attaché at Federal Public Service: Health, Food Chain Safety and Environment, CITES, Belgium, interview 25-04-2017, telephone.
3. Marjanneke Vijge, Post-doctoral researcher MDRI-CESD, UNDP-UNEP Poverty-Environment Initiative, Myanmar, interview 11/03/2017, Skype.

INTRODUCTION

Nowadays, international wildlife trade operates at the same level as the biggest illegal markets in the world, namely drugs, weapons and human trafficking.¹ Yet, it does not get similar attention.² This is illustrated by the extensive scope of illegal trade. What was seen as some small time criminals evolved into an extensive, powerful involvement of organized criminal groups. There is more profit (pound per pound) in exotic animals than in cocaine. They are worth more than their own weight in gold.³ It's very difficult to know what the exact price is, because few is known about this kind of illegal trade. It is estimated that this industry has a profit from 5 to 20 billion dollars a year.⁴

In this thesis, wildlife will be defined as “any wild plant or animal, whether it is indigenous or exotic, and any derivative thereof”⁵. Trade contains “the collection, harvesting, possession, processing, acquiring, or transporting of wildlife for the purpose of purchasing, importing, exporting, selling, bartering, or exchanging”⁶. Wildlife trafficking or the illegal wildlife trade is “the specific name of the green crime that involves the illegal trade, smuggling, poaching, capture, or collection of endangered species, protected wildlife (including animals or plants that are subject to harvest quotas and regulated by permits), derivatives, or products thereof.”⁷

¹ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat'l L.* 2003, Vol.36, 1659; J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 199; A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 3 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>); European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, *87 Final*, 7 (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF).

² N. SOUTH and T. WYATT, “Comparing illicit trades in wildlife and drugs : An exploratory study”, *Routledge Taylor & Francis Group* June 2013, 557 (available at : <http://www.tandfonline.com/doi/abs/10.1080/01639625.2010.483162>).

³ A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, (1) 2 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>); ‘The Globalisation of crime – A Transnational Organized Crime Threat Assessment’, United Nations Office on Drugs and Crime, June 2010, 152. (available at https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf)

⁴ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat'l L.* 2003, Vol.36, 1659; K. LAWSON and A. VINES, “Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion”, *The Royal Institute of International Affairs* February 2014, ix (available at : <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0214Wildlife.pdf>); A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 2 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>); J. HAKEN, “Transnational Crime in the Developing World”, *Global Financial Integrity* February 2011, 10 (available at : http://www.gfintegrity.org/storage/gfip/documents/reports/transcrime/gfi_transnational_crime_web.pdf) ; European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, *87 Final*, 7 (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF).

⁵ N. SOUTH and T. WYATT, “Comparing illicit trades in wildlife and drugs : An exploratory study”, *Routledge Taylor & Francis Group* June 2013, 546.

⁶ *Ibid.*

⁷ *Ibid.*

The purpose of this thesis is to investigate the methods and effects of illegal wildlife trade on a global level, to identify the existing efforts and to make recommendations for a better approach in the future.

This thesis consists of two parts: the illegal trade and the internet trade in wildlife. In the first part, methods of illegal wildlife traffickers are explained as well as the effects on a social and environmental level. Further, a comprehensive analysis of the relevant treaties and international organisations, as well as their efforts is presented. Finally, recommendations are proposed on three levels: how to bring more harmonization, how to arrest the illegal wildlife traffickers more effectively and how to prosecute and sanction them.

The second part starts by explaining the extent of wildlife cybercrime, as well as the consequences for biodiversity, the animals' welfare, economic losses and human diseases. Further, a comprehensive analysis is made of the relevant initiatives and efforts taken on different levels. Finally, recommendations are made for more harmonizing cybercrime laws on international level. The liability of intermediary service providers, such as eBay, is examined in the area of online counterfeiting by relevant jurisprudence and by explaining what this could mean for wildlife cybercrime.

PART ONE: THE ILLEGAL TRADE IN WILDLIFE

1.1 Criminal organization in wildlife trafficking: motivation, *modus operandi* and the consequences

The growing illegal trade market of wildlife products is due to the lucrative business.⁸ There is a huge demand, which leads to high prices. It is a worldwide problem, but one can distinguish patterns. Developed countries mostly are the demanding side and the developing countries tend to supply.⁹ Most problems occur in Sub-Saharan Africa and South-East Asia. They have species that are unique in their regions and they tend to have a weak law and border enforcement.¹⁰ The largest demand comes from China, the United States of America and the European Union. The growing demand in South-East Asia, especially China, Vietnam and Thailand is due to a booming population, economic development and disposable incomes that lead to a major market destination.¹¹ There are three categories of demand. First, there is the Traditional Chinese Medicine: ivory, tigers, pangolins, civets and bears are of important medicinal value. Second, you have the commercial products. Consumers buy illegal wildlife for clothing and accessories, canned hunting, etc. Finally, wildlife is kept as exotic pets or collector items.¹² Consumers do not always know if it is illegal or not. The more rare some species are, the more they are willing to pay. Internet offers new markets, wildlife species easily can be bought online.¹³

Another reason for this booming market is the ease and low risks.¹⁴ Various modern transport facilities make global transport easier. They even can incorporate this trade in other types of illegal trade, especially narcotics.¹⁵ They use the existing smuggling routes, conceal their drug shipments in animals or use them as physical carriers.¹⁶ Laws are weak, the enforcement is poor

⁸ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1669; J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, (191) 199.

⁹ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1669; P. PATHAK, "International Environmental Crime : A Growing Concern of International Environmental Governance", *US-China L. Rev.* 2016, Vol.13, 387.

¹⁰ J. HAKEN, "Transnational Crime in the Developing World", *Global Financial Integrity* February 2011, 12.

¹¹ A.S. AKELLA and C. ALLAN, "Dismantling wildlife crime : executive summary", X 2012, 2 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>).

¹² J. HAKEN, "Transnational Crime in the Developing World", *Global Financial Integrity* February 2011, 10-12; K. LAWSON and A. VINES, "Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion", *The Royal Institute of International Affairs* February 2014, 11.

¹³ J. HAKEN, "Transnational Crime in the Developing World", *Global Financial Integrity* February 2011, 12.

¹⁴ J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, 199; K. LAWSON and A. VINES, "Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion", *The Royal Institute of International Affairs* February 2014, 9; 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 17. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

¹⁵ *Ibid*; J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, 200.

¹⁶ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1672; J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, 200.

and penalties are low.¹⁷ National environmental law is sparse or non-existent.¹⁸ Developing countries do not have the methods, resources and/or the willingness to combat this problem. Criminal organized groups do have the money and means, especially with the development of technology. They use the internet for their illegal transactions instead of meeting face to face.¹⁹

To enforce environmental legislation is difficult, it discourages the authorities and decision makers who already lack interest.²⁰ Effective enforcement is hard due to lack of resources (inadequacy of budget, personnel and equipment), lack of capacity (they don't have the technical skills, tools and forensic expertise) and poor corporation and integration between jurisdictions and responsibilities.²¹ Lack of transparency is also a very important factor.²² Organized criminal groups have a huge amount of profits and are facing underpaid local officers. The profit can outweigh their annual salary, which makes them very susceptible to bribery.²³ In that way they encourage corruption, undermine political stability and threaten national stability.²⁴ Encumbering political and legal systems weakens the democracy.²⁵ It even has an impact on the economy of a country.²⁶ Traffickers want to prevent those countries to develop economically and structurally. They undermine their effort to manage the national resources which results in loss of future profits.²⁷ Also, the unique ecology and exotic wildlife draws tourists to those countries. This trade has a negative impact on those profits too.²⁸

In the illegal wildlife trade, we distinguish three categories of traders.²⁹ At the bottom, you have the local farmers, who harvest or collect wildlife in order to survive. By selling them, they can increase their incomes and make a real living.³⁰ But not all of them are poor. Wealth and greed

¹⁷ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1670.

¹⁸ J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, 199; K. LAWSON and A. VINES, "Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion", *The Royal Institute of International Affairs* February 2014, 9.

¹⁹ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1671.

²⁰ *Ibid.*, 1673; A.S. AKELLA and C. ALLAN, "Dismantling wildlife crime : executive summary", X 2012, 8 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

²¹ A.S. AKELLA and C. ALLAN, "Dismantling wildlife crime : executive summary", X 2012, 8 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

²² *Ibid.*, 8.

²³ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1673.

²⁴ *Ibid.*, 1673.

²⁵ A.S. AKELLA and C. ALLAN, "Dismantling wildlife crime : executive summary", X 2012, 4 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

²⁶ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1661.

²⁷ K. LAWSON and A. VINES, "Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion", *The Royal Institute of International Affairs* February 2014, 7.

²⁸ J. HAKEN, "Transnational Crime in the Developing World", *Global Financial Integrity* February 2011, 13.

²⁹ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1668.

³⁰ N. SOUTH and T. WYATT, "Comparing illicit trades in wildlife and drugs : An exploratory study", *Routledge Taylor & Francis Group* June 2013, 547; J. LIN, "Tackling Southeast Asia's illegal wildlife trade", *S.Y.B.I.L.* 2005, Vol.9, 200.

also are main factors.³¹ This occurs on an individual basis.³² Then you have “middle-men”, these mafia-style groups purchase species from impoverished peasants and sell it with a huge profit. You find them mostly in developing countries.³³ The third category are the major international smuggling rings, of which many are also involved in other illegal trade.³⁴ The last category is the biggest threat and is the category that will be discussed in this thesis.

Transnational organized crime almost has the same characteristics. It involves at least three persons, there is continuity of operations, the motivation is power or profit and they are committing serious criminal offences (such as corruption and a tendency towards violence).³⁵

An organized criminal group, trading in illegally obtained species, works as follow. First, they have to recruit and pay poachers. They need vehicles, supplies and training.³⁶ Another way of obtaining species is buying them from peasants who work on an individual basis as mentioned above. Secondly, they have to smuggle the ‘product’ out of the source country into the destination country. Normally, they have a few borders to cross. This requires significant expertise and financial resources.³⁷ Sophisticated criminals seek out and exploit gaps in the surveillance and enforcement of the legal frameworks.³⁸ Because countries implement the existing treaties differently and criminal law is not harmonized or sometimes non-existent, they can exploit this situation by moving from one country to another with the weakest wildlife criminal legislation or extradition policies.³⁹ Further, the online sales in wildlife are thriving. Wildlife criminals apparently can advertise legally obtained species without providing legal documents. They advertise on auction sites, forums and classified lists. They can even try to sell those species using acronyms and pseudonyms. On the internet, the dealers are hard to trace. They sometimes even sell illegally obtained wildlife on the “deep web”, on websites that are not to be found by traditional search engines and their identity, location and communications are protected.⁴⁰

³¹ K. LAWSON and A. VINES, “Global impacts of the illegal wildlife trade : The costs of crime, insecurity and institutional erosion”, *The Royal Institute of International Affairs* February 2014, 7.

³² N. SOUTH and T. WYATT, “Comparing illicit trades in wildlife and drugs : An exploratory study”, *Routledge Taylor & Francis Group* June 2013, 547; J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 200.

³³ J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 200.

³⁴ *Ibid.*, 200-201.

³⁵ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1667; J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 199.

³⁶ J. HAKEN, “Transnational Crime in the Developing World”, *Global Financial Integrity* February 2011, 13.

³⁷ *Ibid.*

³⁸ K. E. ABOTSI, P. GALIZZI and A. HERKLOTZ, “Wildlife crime and degradation in Africa : an analysis of the current crisis and prospects for a secure future”, *Fordham Envtl. L. Rev.* 2015-2016, Vol. 27, 414.

³⁹ European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, 87 *Final*, 5 (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF).; J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Envtl. L. & Pol’y Rev.* 2009-2010, Vol. 34, (965) 970.

⁴⁰ K. E. ABOTSI, P. GALIZZI and A. HERKLOTZ, “Wildlife crime and degradation in Africa : an analysis of the current crisis and prospects for a secure future”, *Fordham Envtl. L. Rev.* 2015-2016, Vol. 27, 414-415.

Smuggling wildlife is possible in many ways. First, they can make a legal industry where they launder illegally obtained products or hide illegal obtained products underneath their legal counterparts. Or even mix them when the difference between the species is hard to detect.⁴¹ Criminal organizations can also use captive breeding programs to launder wild-caught specimens.⁴² Or individuals buy mature adults on the black market to sell their offspring, which appears to be legal to ignorant customers.⁴³ Secondly, they can forge paperwork so that illicit trade appears to be legal.⁴⁴ Finally and the most common way, is that they hide their “products”. They can be hidden in their transportation means (ships, cargo trucks,...), even in luggage or on people themselves.⁴⁵ Here is a strong link with the narcotics trade. Criminal organizations combine illegal shipments of drugs and wildlife and often use the same smuggling routes, as they do with other illegal commodities.⁴⁶ Bribery also makes most things possible. Bribed officials often do not search in certain parts or don’t inspect at all at the borders.⁴⁷ Sometimes they do not even have to bribe, because law enforcement is so poor and use of violence will do. They also can have connections with persons of power (politicians, governors, etc) which makes them untouchable.⁴⁸ After the smuggling, the “product” enters the destination country and reaches the consumer. Hence, they make a lot of money, so they are more than willing to do all the effort.⁴⁹

Illegal wildlife trafficking has large implications, socially and environmentally.⁵⁰ The environmental problem is the obvious one. It has a huge impact on biodiversity. Many plant and animal species have disappeared at a very high rate. WWF conducted a study ‘Living Planet Report 2016’ which estimates that their monitored species population have declined with 58 per cent between 1970 and 2012. If we continue the same way, 67 per cent will disappear by 2020.⁵¹ We are facing a sixth mass extinction caused by humans.⁵² The illegal trade is not the only culprit, more causes contribute to this problem. For example, unsustainable agriculture, destruction of natural habitat, pollution, etc.⁵³ Yet we cannot ignore that the illegal wildlife trade has an important role to play. Sharp declines in population of some protected species can

⁴¹ *Ibid.*, 416; N. SOUTH and T. WYATT, “Comparing illicit trades in wildlife and drugs : An exploratory study”, *Routledge Taylor & Francis Group* June 2013, 549.

⁴² K. E. ABOTSI, P. GALIZZI and A. HERKLOTZ, “Wildlife crime and degradation in Africa : an analysis of the current crisis and prospects for a secure future”, *Fordham Envtl. L. Rev.* 2015-2016, Vol. 27, 436.

⁴³ *Ibid.*, 408.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 549-550.

⁴⁶ *Ibid.*, 417.

⁴⁷ *Ibid.*, 549-550.

⁴⁸ A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 4 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

⁴⁹ J. HAKEN, “Transnational Crime in the Developing World”, *Global Financial Integrity* February 2011, 13.

⁵⁰ *Ibid.*, 1660.

⁵¹ ‘Living Planet Report 2016 : Risk and resilience in a new area’, World Wide Fund For Nature (2016), 12. (available at: <https://wwf.be/nl/living-planet-report-2016/>)

⁵² X, “Living Planet Report 2016”, WWF, X, https://wwf.be/nl/living-planet-report-2016/?gclid=CjwKEAju-uDABRDPz4-0tp6T6IMSJADNoyPbJzMHJGZzo-O_bx6yuzz7BITCrIPg7-yj-Munu1y2ohoCIS_w_wcB (Last consulted on 15/11/2016)

⁵³ ‘Living Planet Report 2016 : Risk and resilience in a new area’, World Wide Fund For Nature (2016), 12. (available at: <https://wwf.be/nl/living-planet-report-2016/>)

be attributed to the heavy exploitation.⁵⁴ They harvest and kill species that are already endangered at high rate.⁵⁵ Not only declining of biodiversity raises huge problems, smuggling live animals leads to introduction of unfamiliar or even invasive species in existing ecosystems. This can result in destruction of the native species which leads to economic and environmental damage.⁵⁶ It can even cause health problems, due to the spreading of animal-borne diseases.⁵⁷ Some animals are smuggled beyond borders without the necessary sanitarian controls, which jeopardizes the public health.⁵⁸ Secondly, social problems occur from this illegal trade. Most traders harvest their “products” in less developed or developing countries (because they have the most exotic/endangered species). This has a huge impact on those countries as well. They threaten legitimate governments and the civil society because they are not afraid to use violence to get what they want.⁵⁹

1.2 Link between illegal wildlife trade and terrorism and/or other armed groups

The link between illegal wildlife trade and terrorism is becoming more and more clear. Most evidence is anecdotal which points in the direction of terrorist groups who are desperately searching for incomes to fund their activities.⁶⁰ The most critical task for terrorist groups is this funding.⁶¹ They turn to organized criminal groups and even join in the criminals’ exploits as a source.⁶² As mentioned in the previous chapter, organized criminal groups mixed up in drugs trade and others become more and more involved with the illegal wildlife trade, as it is easy money.⁶³ Terrorist organizations require a constant and dependable source. Wildlife trafficking

⁵⁴ A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 3 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

⁵⁵ X, “The Living Planet Report 2016 : threats, pressures and addressing the challenges”, ZSL Institute of Zoology, 26th of November 2016, <https://www.zsl.org/science/whats-on/the-living-planet-report-2016-threats-pressures-and-addressing-the-challenges> (last consulted on 15/11/2016)

⁵⁶ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1674; A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 4 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>)

⁵⁷ A.S. AKELLA and C. ALLAN, “Dismantling wildlife crime : executive summary”, X 2012, 4 (available at <http://www.changewildlifeconsumers.org/wp-content/uploads/2016/03/Dismantling-Wildlife-Crime.pdf>); J. HAKEN, “Transnational Crime in the Developing World”, *Global Financial Integrity* February 2011, 13.

⁵⁸ European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, 87 *Final*, 4. (available at http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF).

⁵⁹ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1672.

⁶⁰ R.K.L. PANJABI, “For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century”, *Ga. J. Int’l & Comp. L.* 2014, Vol.43, 65.

⁶¹ M.L. HUMMEL, “Internet terrorism”, *Homeland Security Rev.* 2008, Vol. 2, 119.

⁶² C.D. GUYMON, “International legal mechanisms for combating transnational organized crime : The need for a multilateral convention”, *Berkeley Journ. Int’l L.* 2000, Vol. 18 issue 1, 64; M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1673-1674.

⁶³ R.K.L. PANJABI, “For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century”, *Ga. J. Int’l & Comp. L.* 2014, Vol.43, 66; J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 192.

constitutes as such a source of funding. The animals are defenceless against modern weapons and are fairly easy accessible.⁶⁴ Killing of wildlife leads to killing of human beings and creating terror.⁶⁵

To prove the link between the two is hard, because terrorist organizations are known for operating in a secret world, with hidden identities, revenue streams that are almost impossible to trace and killing everybody who forms a threat.⁶⁶ Even though, extremist groups are identified in African Countries.⁶⁷ The Somali Warlords, Janjaweed, Al Qaeda, Lord's Resistance Army and others tend to poach for ivory.⁶⁸

In 2014, the Security Council of the United Nations adopted resolution 2195⁶⁹ to urge international action in order to break the link between terrorism and transnational organized crime.⁷⁰ They recognize that terrorist organizations benefit from transnational organized crime, including the illicit trade in wildlife.⁷¹

The European Union (EU) recognized the link between wildlife trafficking and financing terrorism. In 2016, the European Parliament and the Council adopted 'the EU action plan on the fight against terrorism financing'⁷². In this action plan, the illicit trade in wildlife is recognized as a source of funding terrorist and other related activities.⁷³ In the same year, the European Parliament adopted a resolution on EU action plan against wildlife trafficking, where this link was again established and it urges the Member States to deal with the problem.⁷⁴

The very first 'World Wildlife Crime Report', drafted by the United Nations Office for Drugs and Crime (UNODC) in 2016 agrees on the increasing recognition of the dangers of wildlife

⁶⁴ E. BALAZS, "From poaching to financing terrorism. Thoughts on poaching endangering society", *J. E.-Eur. Crim. L.* 2016, 193.

⁶⁵ *Id.*

⁶⁶ R.K.L. PANJABI, "For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century", *Ga. J. Int'l & Comp. L.* 2014, Vol.43, 65.

⁶⁷ WWF and TRAFFICK, "Illicit wildlife trafficking : an environmental, economic and social issue", *Perspectives* 2014, Issue No. 14, 3. (available on : <http://www.wildlex.org/literature/illicit-wildlife-trafficking-an-environmental-economic-and-social-issue>); K. E. ABOTSI, P. GALIZZI and A. HERKLOTZ, "Wildlife crime and degradation in Africa : an analysis of the current crisis and prospects for a secure future", *Fordham Envtl. L. Rev.* 2015-2016, Vol. 27, 419.

⁶⁸ *Ibid.*; P. KAHUMBU and A. HALLIDAY, "Case proven : ivory trafficking funds terrorism", *The Guardian*, 30 August 2015, <https://www.theguardian.com/environment/africa-wild/2015/aug/30/case-proven-ivory-trafficking-funds-terrorism> (last consulted on 30/3/17).

⁶⁹ Resolution 2195 of the General Assembly of the United Nations (19 December 2014, *UN Doc. S/RES/2195* (2014)).

⁷¹ *Ibid.*, 1.

⁷² European Commission, 'Communication from the Commission to the European Parliament and Council on an Action Plan for strengthening the fight against terrorist financing', 2016, *50 Final*. (available at: http://eur-lex.europa.eu/resource.html?uri=cellar:e6e0de37-ca7c-11e5-a4b5-01aa75ed71a1.0002.02/DOC_1&format=PDF)

⁷³ *Ibid.*, 12.

⁷⁴ Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), *P8_TA-PROV* (2016)0454, (30).

crime and fuelling conflict and terrorism.⁷⁵ However, this report says that the link between terrorist and rebel groups in the African continent and the poaching for ivory is difficult, if not impossible to prove. Because the conflict is going on for several years, the areas where the rebel groups are established are nowadays elephant-poor in comparison with areas at peace. This cannot constitute as a reliable source of funding although it has been one in the past.⁷⁶ The fieldwork conducted for this report also reveals that a large share of the illicit trade in rosewood is sourced by rebel groups, since they can profit from instability.⁷⁷

At the same time, Interpol and the United Nations Environment Programme (UNEP) drafted the ‘Strategic Report Environment, Peace and Security: a convergence of threats’.⁷⁸ With this report, they wanted to explore the link between environmental crimes and a wide range of criminal activities, such as terrorism.⁷⁹ Interpol sent questionnaires to national agencies with the aim of identifying current and emerging trends, with a response rate of 36 per cent among State Parties.⁸⁰ From the questionnaires, Interpol found out that twelve per cent of environmental crimes converges with terrorism.⁸¹ The report recognizes that Janjaweed and the Lord’s Resistance Army are poaching for ivory. However, there is limited evidence to prove a clear link between the illicit trade in wildlife and terrorist organizations and rebel groups. Wildlife trafficking plays a significant smaller role than the trade in natural resources, which can constitute as a primary financial source of income.⁸² This means illicit trade in minerals such as gold, coltan and diamonds.⁸³ Further, there is evidence that terrorist and armed groups have links with the illicit trade in charcoal⁸⁴, illegal logging⁸⁵, fisheries⁸⁶, illegal mining⁸⁷ and other environmental crimes⁸⁸.

The involvement of terrorist and other armed organizations in this kind of trade also suggests human rights abuses. This can range from forced labour and sexual exploitation to kidnapping and murder. This is inherent in the methods they use.⁸⁹ Further, it threatens peace and security around the world.⁹⁰ The evidence is mostly anecdotal and it is hard to prove a clear link between terrorist organizations and wildlife trafficking, nevertheless it should not be minimized. Globally, there is so much at stake that every source of funding has to be exposed, how small and uncertain it might be.

⁷⁵ ‘World Wildlife Crime Report : trafficking in protected species’, UNODC (2016), 3 (available at : https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf)

⁷⁶ *Ibid.*, 19.

⁷⁷ *Ibid.*, 20.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 2.

⁸⁰ *Ibid.*, 19.

⁸¹ *Ibid.*, 22.

⁸² *Ibid.*, 41.

⁸³ *Ibid.*, 59.

⁸⁴ *Ibid.*, 45.

⁸⁵ *Ibid.*, 46.

⁸⁶ *Ibid.*, 48.

⁸⁷ *Ibid.*, 52.

⁸⁸ *Ibid.*, 57.

⁸⁹ *Ibid.*, 59.

⁹⁰ *Ibid.*

1.3 Relevant international treaties and initiatives

1.3.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora⁹¹, known as CITES, entered into force on the first of July 1975.⁹² As of December 2016, the Convention has 183 Member States⁹³, making CITES is the oldest, most comprehensive⁹⁴, most important⁹⁵ and one of the most widely ratified⁹⁶ international environmental agreements.⁹⁷

CITES' aim is that "international trade in specimens of wild animals and plants does not threaten their survival".⁹⁸ They want sustainable trade and find a balance between the interests of preserving wildlife and the interests of nations for economic development.⁹⁹ They try to find a balance between legitimate trade interest in renewable resources and protecting endangered species.¹⁰⁰ This treaty is legally binding, but it does not replace the national laws.¹⁰¹ Simply put, the provisions are not self-executing and the member states have to implement them in national law in order to enforce them.¹⁰² It provides a framework which constitutes four basic requirements for all Member States : (1) Establishment of a Management and Scientific Authority; (2) Enacting laws that prohibit trade in violation of CITES; (3) Enacting penalties for this trade; (4) Confiscation of specimens illegally traded or possessed.¹⁰³

⁹¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973, Washington D.C., <https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>.

⁹² M.V. MANLEY, "The (inter)national strategy : An ivory trade ban in the United States and China", *Fordham Int'l L.J.* 2015, Vol. 38, 1526; R.K.L. PANJABI, "For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century", *Ga. J. Int'l & Comp. L.* 2014, Vol.43, 14.

⁹³ X, "CITES", Wikipedia, X, <https://en.wikipedia.org/wiki/CITES> (last consulted on 12/05/17).

⁹⁴ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1662.

⁹⁵ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 13. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

⁹⁶ J. SHAW, "CITES : A toothless tiger in the black market for traditional Chinese medicines", *Dalhousie J. Legal Stud.* 2003, Vol.12, 143.

⁹⁷ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1662.

⁹⁸ M.V. MANLEY, "The (inter)national strategy : An ivory trade ban in the United States and China", *Fordham Int'l L.J.* 2015, Vol. 38, 1526.

⁹⁹ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1662.

¹⁰⁰ G. BARRIE, "CITES : a 2005 assessment", *J. S. Afr. L.* 2006, 186.

¹⁰¹ X, "What is CITES?", CITES, X, <https://www.cites.org/eng/disc/what.php> (last consulted on 15/11/2016)

¹⁰² M.V. MANLEY, "The (inter)national strategy : An ivory trade ban in the United States and China", *Fordham Int'l L.J.* 2015, Vol. 38, 1526; C-R HAN and H. NELEN, "Decoupling policy and practise in the fight against wildlife smuggling", *Brit. J. Criminol* October 10 2015, 5. (available at :

<http://bjc.oxfordjournals.org/content/early/2015/10/09/bjc.azv109.abstract>)

¹⁰³ *Ibid.*

CITES only controls international trade and works with a permit system.¹⁰⁴ If you want to export, import or re-export wildlife, you have to get a permit. Each Member State has to assign a “Management Authority” who is responsible for administering the permits and a “Scientific Authority” who will examine the impact of trade on the species.¹⁰⁵ For issuing permits they check if the required conditions are fulfilled and that granted permits comply with those conditions.¹⁰⁶ The treaty itself has established three Appendixes of wildlife species based on species’ risk of extinction.¹⁰⁷ Appendix I includes species who are threatened with extinction. They have a very stringent regulation based upon the double control system: you need an import and export permit.¹⁰⁸ It is almost impossible to get a permit to trade in those species, only in exceptional circumstances but never for commercial purposes. Appendix II includes species who will become threatened with extinction if we do not control their trade. You only need an export permit and you will obtain the permit by the Managing Authority, once the examination of the Scientific Authority concludes that the commercial trade does not influence the survival of those species.¹⁰⁹ Appendix III includes species that are protected in at least one Member State and ask other states for assistance in controlling the trade.¹¹⁰ You only need an export permit and the exporting state’s Management Authority has less stringent criteria to consider than for species listed in Appendix II.¹¹¹ In order to get a permit, you have to see in which appendix your species belong. The ease of getting a permit depends on which Appendix it is classified, they all have different criteria. In general, the Management Authority will examine if the species is obtained legally and transferred in a manner adequate not to harm them. The Scientific Authority has to examine whether the trade will not harm their survival.¹¹²

In order to work efficiently, CITES established different organs. First, you have the Conference of Parties (COP). They meet every two years and a half to review the treaty. They are responsible for amendments (especially the amendments of the Appendices I and II), recommendations of the effectiveness for the treaty and reviewing international and national progress. The COP have established four permanent committees: Standing Committee (overseeing the Secretariat’s budget and providing policy advise on the implementation), Animals and Plants Committee (experts, reviewing the categorization of all the species) and Nomenclature Committee (ensures standardization of names for the species listed in the three

¹⁰⁴ M.V. MANLEY, “The (inter)national strategy : An ivory trade ban in the United States and China”, *Fordham Int’l L.J.* 2015, Vol. 38, 1526-27

¹⁰⁵ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1663.

¹⁰⁶ G. BARRIE, “CITES : a 2005 assessment”, *J. S. Afr. L.* 2006, 184.

¹⁰⁷ M.V. MANLEY, “The (inter)national strategy : An ivory trade ban in the United States and China”, *Fordham Int’l L.J.* 2015, Vol. 38, 1527; X, “How CITES works”, CITES, X, <https://www.cites.org/eng/disc/how.php> (last consulted on 15/11/2016)

¹⁰⁸ J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 193.

¹⁰⁹ *Ibid.*, 194.

¹¹⁰ X, “How CITES works”, CITES, X, <https://www.cites.org/eng/disc/how.php> (last consulted on 15/11/2016) ; M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1664; M.V. MANLEY, “The (inter)national strategy : An ivory trade ban in the United States and China”, *Fordham Int’l L.J.* 2015, Vol. 38, 1527-28.

¹¹¹ J. LIN, “Tackling Southeast Asia’s illegal wildlife trade”, *S.Y.B.I.L.* 2005, Vol.9, 194.

¹¹² M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1663.

Appendices).¹¹³ The Secretariat is responsible for the administration and general coordination.¹¹⁴ Finally, nongovernmental organizations (NGOs) are very crucial in the working of CITES. Three NGOs are connected with CITES: WWF, International Union for Conservation of Nature (IUCN) and TRAFFIC. They have responsibilities and functions that Member States will or cannot perform. For example, they conduct scientific studies, legal analyses, gather information and do active monitoring of state trade practices. Thus, they enable the Secretariat to identify problems and take countermeasures where necessary.¹¹⁵

Even though CITES is a very important international treaty, it has many flaws. First, CITES only stipulates the endangered species which should be protected from cross-border trade. Yet it fails to establish common principles on how the custom administrations should work to protect those species at the border. That is why many customs neglect their responsibilities.¹¹⁶ Custom administrations are a core component in the enforcement of the treaty. They examine if the permit is legally obtained from the Management Authorities.¹¹⁷ International cooperation between the Member States, especially those who share borders is necessary. CITES fails to encourage adequate collaboration. It does not mention anything about extradition either.¹¹⁸ Second, CITES is not self-executing. Consequently, the effectiveness of CITES depends on the implementation in national laws and law enforcement.¹¹⁹ The treaty gives guidelines but lacks an effective institutional mechanism for enforcement. One state cannot possibly know if the other state is in compliance with the treaty. For example, CITES is incorporated in European law. But still, differences exist in how the Member States enforce these common rules. This is an opportunity for criminals to abuse in their advantage.¹²⁰ The Secretariat does not have the ability to punish Member States which do not implement the treaty properly.¹²¹ As a result, some Member States have ratified the treaty, but have not implement this in national law due to lack of political will.¹²² Many developing countries do not have the financial resources and lack the means or capacity and cannot afford to implement the programs necessary to be effective. Corruption occurs very often, which makes it even harder to enforce the legislation.¹²³ Thirdly, the decisions of COP are non-binding and there is a reservation system. The COP can formally object to a listing without a specified motivation and then they are not bound by it.

¹¹³ *Ibid.*, 1664.

¹¹⁴ *Ibid.*

¹¹⁵ G. BARRIE, "CITES : a 2005 assessment", *J. S. Afr. L.* 2006, 184.

¹¹⁶ C-R HAN and H. NELEN, "Decoupling policy and practise in the fight against wildlife smuggling", *Brit. J. Criminol* October 10 2015, 4.

¹¹⁷ *Ibid.*, 5.

¹¹⁸ J. B. IZZO, "PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies", *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 970-971.

¹¹⁹ *Ibid.*

¹²⁰ EU Action Plan, 9.

¹²¹ J. P. KAZMAR, "The international illegal plant and wildlife trade : Biological genocide?", *U. C. Davis J. Int'l L. & Pol'y* 2000, Vol.6, 113.

¹²² J. SHAW, "CITES : A toothless tiger in the black market for traditional Chinese medicines", *Dalhousie J. Legal Stud.* 2003, Vol.12, 147.

¹²³ K. E. ABOTSI, P. GALIZZI and A. HERKLOTZ, "Wildlife crime and degradation in Africa : An analysis of the current crisis and prospects for a secure future", *Fordham Env'tl. L. Rev.* 2015-2016, Vol.27, 425; J. B. IZZO, "PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies", *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 984.

This raises uncertainty and undermines the objective of the convention.¹²⁴ Fourthly, Member States have the obligation to submit annual reports on domestic trade in listed species to the Secretariat. Compliance in this regard is poor: late, incomplete submitting of an annual report or even complete omitting. The Secretariat lacks power to combat this problem.¹²⁵ Fifthly, CITES protection only becomes active when species are rare or almost extinct. Maybe it is more effective if those species never reached this dangerous threshold.¹²⁶ Furthermore, CITES only regulates the international commercial trade. If a Member States' domestic law permits to trade in Appendix I species, CITES cannot handle it, which affects the survival of those species.¹²⁷ Sixthly, CITES encourages Member States to enact penalties for violations of the treaty, but fails to establish guidelines for minimum penalties. The consequence is that penalties vary widely among the Member States.¹²⁸ In most cases the penalty is not in accordance with the financial potential. Criminals are attracted to this trade, because of the high profits and low risks. Finally, CITES wants to regulate and control the legal trade, yet the illegal trade is booming. This treaty is not designated to combat the problem.¹²⁹

CITES is not a failure and the most effective treaty that exists to combat illicit trade in wildlife. CITES takes on many initiatives. For example, on 23th November 2010, together with Interpol, UNODC, the World Bank and the World Customs Organization (WCO), CITES established the International Consortium on Combatting Wildlife Crime (ICWC).¹³⁰ Their aim is to support the development of law enforcement that acts in defense of natural resources.¹³¹ They coordinate global, regional and national events on critical issues related to wildlife and forest crime. They develop and deliver special training events to increase the use of specialized investigations and provide investigative assistance to support law enforcement efforts, etc.¹³²

¹²⁴ G. BARRIE, "CITES : a 2005 assessment", *J. S. Afr. L.* 2006, 185.

¹²⁵ *Ibid.*

¹²⁶ J. SHAW, "CITES : A toothless tiger in the black market for traditional Chinese medicines", *Dalhousie J. Legal Stud.* 2003, Vol.12, 147.

¹²⁷ *Ibid.*, 153.

¹²⁸ *Ibid.*, 155-56.

¹²⁹ *Ibid.*

¹³⁰ X, "International Consortium on Combating Wildlife Crime", CITES, X, <https://cites.org/eng/prog/icwc.php> (last consulted on 15/11/2016)

¹³¹ *Ibid.*; X, "Brochure : International Consortium on Combating Wildlife Crime", ICCWC, X, https://cites.org/sites/default/files/eng/prog/icwc/icwc_brochure.pdf, 2.

¹³² *Ibid.*

1.3.2 United Nations Convention against Transnational Organized Crime¹³³

The United Nations Convention against Transnational Organized Crime (UNTOC) – also known as The Palermo Convention - is the main tool in the fight against transnational organized crime.¹³⁴

The convention was adopted by resolution 55/25 of the General Assembly on 15th November 2000 and came into force on 29 September 2003. As of December 2016, it counts 187 parties.¹³⁵ It has three additional protocols, but not all parties are part of this. UNODC acts as the guardian of this convention and its protocols.¹³⁶ It is an organ of the UN, established in 1997 with the aim to assist in the fight against drugs, criminality, international terrorism and corruption. They do research, advise and give support to national governments and assist in draft and application of different kinds of conventions.¹³⁷

Because of the growing transnational criminality, the General Assembly (GA) found it important to create a tool to combat these kind of crimes.¹³⁸ They find that these criminals take advantage of the expanding international community. They approach countries with weak institutions, use violence and exploit the people and government. The more profit they make, whilst not being stopped, the more powerful they get. There is a political will to answer this global challenge with a global answer.¹³⁹ The aim is expressed in article 2 of the convention: “(...) to promote cooperation and to prevent and combat transnational organized crime more effectively.”

UNTOC is not self-executing. The provisions have to be implemented in national law according to the fundamental principles of domestic law, for which Member State have to take the necessary measures.¹⁴⁰ UNODC has established a legislative guide, which helps Member States by laying down the basic requirements, the addressing issues and options on how to implement

¹³³ United Nations Convention against Transnational Organized Crime of 29 September 2003, *United Nations Treaty Series*, Vol. 2225, 209. (available at : <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>) (Hereinafter : ‘UNTOC’)

¹³⁴ Y. VAN DAMME and W. DE BONDT, “UNTOC : Sterk universeel wapen tegen mensenhandel en mensensmokkel vandaag?”, *Wereldbeeld Tijdschrift Voor Verenigde Naties* 2010, jaargang 54 nr. 154, 20. (available at : <https://biblio.ugent.be/publication/1177705/file/6726438>); R.K.L. PANJABI, “For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century”, *Ga. J. Int’l & Comp. L.* 2014, Vol.43, 17; M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1688.

¹³⁵ ‘12. United Nations Convention against Transnational Organized Crime’, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en (last consulted on 21/11/2016)

¹³⁶ *Ibid.*

¹³⁷ X, “United Nations Office on Drugs and Crime”, Wikipedia, last modified on 15 March 2013, https://nl.wikipedia.org/wiki/United_Nations_Office_on_Drugs_and_Crime (last consulted on 15/11/2016); X, “About UNODC”, United Nations Office on Drugs and Crime, X, <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> (last consulted on 15/11/2016)

¹³⁸ UNTOC, iv.

¹³⁹ UNTOC, iii.

¹⁴⁰ Art 34 UNTOC

this in national law.¹⁴¹ However, these efforts do not suffice. In order to ensure, promote and review implementation, a Conference of Parties was established. To gain information, questionnaires have to be answered by State Parties.¹⁴² This system has many flaws and is not representative or effective at all. The COP cannot do a verification or publicity of the reports or an on-site visit.¹⁴³ Further, the COP has to establish supplemental review mechanisms.¹⁴⁴ The latter still has not been achieved, particularly because of budgetary implications. Real information about the implementation done by states is not available, so we do not know if the states really are combatting transnational organized crime or just are pretending to do so.¹⁴⁵

The convention applies to all different kinds of crimes, which fits three criteria.¹⁴⁶ There has to be an organized criminal group¹⁴⁷, the crime has to be transnational¹⁴⁸ and it has to be a serious crime¹⁴⁹. A serious crime is an offence that is punishable by a maximum deprivation of liberty of at least four years or a more severe penalty. Wildlife trafficking domestically is not punished with high sentences. If they are punished, it is usually a fine and thus a low risk.¹⁵⁰ Four years imprisonment is a rarity. Nevertheless, the resolution of the General Assembly in establishing the Palermo Convention¹⁵¹ stressed out the importance of combatting wildlife trafficking. They were strongly convinced that this would be an effective tool to combat these kind of crimes and all the related problems, such as corruption, money laundering, etc.¹⁵²

The convention contains four specific types of crime that Member States are obliged to criminalize in their domestic law: participation in an organized group (article 5), money laundering (article 6), corruption (article 8) and obstruction of justice (article 23).¹⁵³

¹⁴¹ UNODC, 'Legislative guide to the United Nations Convention against Transnational Organized Crime and the Protocols thereto', <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html> (last consulted on 21/11/2016)

¹⁴² Art 32 (1); (3)(d)(e); (4) UNTOC; N. BOISTER, "The cooperation provisions of the UN Convention Against Transnational Organized Crime : a 'toolbox' rarely used?", *Int'l Crim. L. Rev.* 2016, Vol.16, 47-48.

¹⁴³ O. BRUNELLE-QURASHI, "Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis", *Notre Dame J. Int'l & Comp. L.* 2011-2012, Vol.2, 158.

¹⁴⁴ Art 32 (1); (3)(d)(e); (4) UNTOC; N. BOISTER, "The cooperation provisions of the UN Convention Against Transnational Organized Crime : a 'toolbox' rarely used?", *Int'l Crim. L. Rev.* 2016, Vol.16, 47-48.

¹⁴⁵ *Ibid.*, 48.

¹⁴⁶ G. BORGSTEDE, "Cultural property, the Palermo Convention, and transnational organized crime", *I. J. C. P.* 2014, Vol.21, 283.

¹⁴⁷ Article 2 (a) UNTOC

¹⁴⁸ Article 3.2 UNTOC

¹⁴⁹ Article 2 (b) UNTOC

¹⁵⁰ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 44. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

¹⁵¹ Resolution 55/25 of the General Assembly of the United Nations (8 January 2001), *UN Doc. A/RES/55/25* (2001)

¹⁵² UNTOC, 2;

¹⁵³ SHERLOCK UNODC, 'Legislative guide to United Nations Convention against Transnational Organized Crime, (56). (available at : https://www.unodc.org/cld/v3/sherloc/legislative-guide/index.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22guideline.toc-ref0_s1%22,%22value%22:%22III%22%7D,%7B%22fieldName%22:%22-guideline.toc-ref1_s1%22,%22value%22:%22%5B%20TO%20*%5D%22%7D%5D,%22sortings%22:%22%22%7D)

Corruption also is a very big problem in the wildlife trade, because most of the time they harvest their species in developing countries.¹⁶⁴ The officials are underpaid, their family is starving and if criminals offer a huge price, morals are not important anymore. It is all about surviving. But it appears also in higher levels of government. The risk of being caught is low, there is lack of transparency, etc.¹⁶⁵ Article 8 of the convention deals with this problem. States are required to criminalize three forms of corruption in the public sector: active bribery (offering), passive bribery (acceptance) and participation as an accomplice.¹⁶⁶ It also encourage states to criminalize other forms of corruption. During the negotiations it was agreed that corruption has to be dealt with in the Palermo Convention, but is far too complex to be exhaustively covered by this convention. That is why there are limited provisions in this treaty. An effective international treaty was urged, operating independently from the Palermo Convention.¹⁶⁷ A few years later, the UN Convention against Corruption came into force (see *infra*).

Article 11 of UNTOC mentions that Member States should punish those crimes in accordance with the gravity of the offence. States should take appropriate measures and any discretionary legal power has to do its best to comply with the convention. The problem of differences in punishment still exists in wildlife trade.¹⁶⁸ As mentioned previous in this chapter, a few crimes will fall under the scope of this convention, due to lack of severe punishment. Some countries have severe punishments long imprisonments, others just give a small fine.¹⁶⁹ This challenges the multilateral efforts, because in some Member States these crimes fall under the scope of this convention, others do not. In order to achieve an effective convention, sanctions must outweigh the benefits. An international deterrence must be established.¹⁷⁰ To create effective international cooperation, a minimum harmonization of sanctions is necessary.¹⁷¹ There is a positive

¹⁶⁴ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1669; P. PATHAK, "International Environmental Crime : A Growing Concern of International Environmental Governance", *US-China L. Rev.* 2016, Vol.13, 387.

¹⁶⁵ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 54. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf).

¹⁶⁶ SHERLOCK UNODC, 'Legislative guide to United Nations Convention against Transnational Organized Crime, (193). (available at : https://www.unodc.org/cld/v3/sherloc/legislative-guide/index.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22guideline.toc-ref0_s1%22,%22value%22:%22III%22%7D,%7B%22fieldName%22:%22-guideline.toc-ref1_s1%22,%22value%22:%22%5B%*%20TO%20*%5D%22%7D%5D,%22sortings%22:%22%22%7D)

¹⁶⁷ O. BRUNELLE-QURASHI, "Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis", *Notre Dame J. Int'l & Comp. L.* 2011-2012, Vol.2, 105.

¹⁶⁸ SHERLOCK UNODC, 'Legislative guide to United Nations Convention against Transnational Organized Crime, (306). (available at : https://www.unodc.org/cld/v3/sherloc/legislative-guide/index.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22guideline.toc-ref0_s1%22,%22value%22:%22III%22%7D,%7B%22fieldName%22:%22-guideline.toc-ref1_s1%22,%22value%22:%22%5B%*%20TO%20*%5D%22%7D%5D,%22sortings%22:%22%22%7D).

¹⁶⁹ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 44. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

¹⁷⁰ SHERLOCK UNODC, 'Legislative guide to United Nations Convention against Transnational Organized Crime, (306). (available at : https://www.unodc.org/cld/v3/sherloc/legislative-guide/index.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22guideline.toc-ref0_s1%22,%22value%22:%22III%22%7D,%7B%22fieldName%22:%22-guideline.toc-ref1_s1%22,%22value%22:%22%5B%*%20TO%20*%5D%22%7D%5D,%22sortings%22:%22%22%7D).

¹⁷¹ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 45. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf); R.K.L. PANJABI, "For

evolution in this regard. In 2013, the Economic and Social Council (ECOSOC) of the United Nations adopted a resolution on crime prevention and international responses to illicit trafficking in protect species of wild fauna and flora.¹⁷² The United Nations General Assembly (UNGA) adopted its first resolution on the trafficking in wildlife¹⁷³ and the European Parliament enacted ‘the EU Action Plan against Wildlife Trafficking’¹⁷⁴. These stress out the importance of countries to make illicit trafficking in protected species punishable with at least four years of imprisonment in order to fall under the scope of UNTOC.¹⁷⁵ The significance of UNTOC in the fight against wildlife trade is thus recognized and seen as an effective tool. Hopefully these initiatives will have its effect.

Most of the time, illegal trade in wildlife trafficking is about an organization, not individuals who operate just for themselves. Criminalize the conduct or severe punishment is not always enough. Since these organizations have a lot of servants, it is important to catch the big players. Like they do with the narcotics trade.¹⁷⁶ Because sovereignty prohibits unilateral use of law enforcement of one State Party in another, international cooperation is key.¹⁷⁷ The Palermo Convention contains a minimum procedural framework emphasizing on international cooperation, especially in criminal matters, as well as provisions promoting international cooperation.¹⁷⁸

The convention establishes provisions of extradition, transfer of sentenced persons, mutual legal assistance, joint investigations, special investigative techniques, etc.¹⁷⁹ An important set of provisions are the confiscation and seizure proceeds of the crime. Wildlife traffickers are only attracted by large profits. By taking away these profits, criminals are hurt in a more severe way. And the countries from which this money is taken, mostly developing countries, can recover everything.¹⁸⁰ The problem however is that this has to be implemented in national law.

trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century”, *Ga. J. Int’l & Comp. L.* 2014, Vol.43, 74.

¹⁷² Resolution 2013/40 of the Economic and Social Council of the United Nations (25 July 2013), *UN Doc. E/RES/2013/40* (2013).

¹⁷³ Resolution 69/314 of the General Assembly of the United Nations (30 July 2015), *UN Doc. A/RES/69/314* (2015).

¹⁷⁴ European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, *87 Final*, 7 (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF). (hereinafter : EU Action Plan)

¹⁷⁵ Resolution 2013/40 of the Economic and Social Council of the United Nations (25 July 2013), *UN Doc. E/RES/2013/40* (2013), 3 (3-4); Resolution 69/314 of the General Assembly of the United Nations (30 July 2015), *UN Doc. A/RES/69/314* (2015), 2-3; European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, *87 Final*. (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF)

¹⁷⁶ R.K.L. PANJABI, “For trinkets, tonics, and terrorism : International wildlife poaching in the twenty-first century”, *Ga. J. Int’l & Comp. L.* 2014, Vol.43, 56.

¹⁷⁷ Art 4 UNTOC; N. BOISTER, “The cooperation provisions of the UN Convention Against Transnational Organized Crime : a ‘toolbox’ rarely used?”, *Int’l Crim. L. Rev.* 2016, Vol.16, 46.

¹⁷⁸ X, “International cooperation”, UNODC, X, <https://www.unodc.org/unodc/en/organized-crime/international-cooperation.html> (last consulted on 21/11/2016) ; N. BOISTER, “The cooperation provisions of the UN Convention Against Transnational Organized Crime : a ‘toolbox’ rarely used?”, *Int’l Crim. L. Rev.* 2016, Vol.16, 46.

¹⁷⁹ Art 16-20 UNTOC

¹⁸⁰ J. HADSHARD, “Combatting transnational crime in Africa : problems and perspectives”, *J. Afr. L.* 2006, Vol.50, 153.

This means different kinds of interpretation, different gravity of the offences while the State Parties have to balance between the seriousness of an offence and the level of cooperation offered by a requested state. Today, cooperation is necessary if we want to combat extremely flexible organizational offenders which even can undermine the mutual trust.¹⁸¹ The Palermo Convention can be used to frame cooperation, if a bilateral or regional agreement already exists, or as a basis for cooperation. Member States do not always want to deal with states they have little affairs with. They often miss the legal means or the political will to cooperate with Member States.¹⁸²

1.3.3 United Nations Convention against Corruption¹⁸³

Corruption is a traitorous plague that effects all countries in the world. But the magnitude of corruption in developing countries is far greater, hence more destructive. It undermines democracy and the rule of law, weakens good governance and can even cost lives.¹⁸⁴ It also channels terrorism and organized crime, even wildlife trafficking.¹⁸⁵ Corruption has evolved from a local problem to a transnational phenomenon which makes international cooperation necessary.¹⁸⁶ Therefore, a global response to a global problem is required.¹⁸⁷

The Member States of the United Nations started negotiating and on 31 October 2003, the United Nations Convention Against Corruption (UNCAC) was adopted by the UNGA by Resolution 58/4.¹⁸⁸ UNCAC entered into force in 2005 and as of December 2016, it counts 181 parties.¹⁸⁹ With this convention, member states want to make clear that betrayal of public trust will no longer be tolerated.¹⁹⁰

¹⁸¹ N. BOISTER, "The cooperation provisions of the UN Convention Against Transnational Organized Crime : a 'toolbox' rarely used?", *Int'l Crim. L. Rev.* 2016, Vol.16, 46-47.

¹⁸² *Ibid.*, 70.

¹⁸³ United Nations Convention against Corruption, *United Nations Treaty Series*, Vol. 2349, 41. (available at : https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf) (Hereinafter 'UNCAC')

¹⁸⁴ *Ibid.*, iii; J. SANDAGE, "Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption", *Osgoode Hall L. J.* 2015-2016, Vol.53, (7) 12.

¹⁸⁵ O. BRUNELLE-QURASHI, "Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis", *Notre Dame J. Int'l & Comp. L.* 2011-2012, Vol.2, 105.

¹⁸⁶ UNCAC, 5.

¹⁸⁷ U4 Anti-Corruption Resource Centre, 'UNCAC in a nutshell : A quick guide to the United Nations Convention Against Corruption for embassy and donor agency staff', U4 Brief September 2010:6, 1. (available at : <http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>); X, "United Nations Convention Against Corruption", Wikipedia, last modified on 5 October 2016, https://en.wikipedia.org/wiki/United_Nations_Convention_against_Corruption#Signatures.2C_ratifications_and_entry_into_force (last consulted on 15/11/2016)

¹⁸⁸ X, "United Nations Convention Against Corruption", Wikipedia, last modified on 5 October 2016, https://en.wikipedia.org/wiki/United_Nations_Convention_against_Corruption#Signatures.2C_ratifications_and_entry_into_force (last consulted on 15/11/2016)

¹⁸⁹ 'United Nations Convention against Corruption Signature and Ratification Status as of 12 December 2016', UNODC, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>. (last consulted on 12/05/17).

¹⁹⁰ UNCAC, iii.

The purpose of the treaty is threefold : (a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) to promote integrity, accountability and proper management of public affairs and public property.¹⁹¹

To achieve these purposes, the treaty contains a mixture of mandatory and optional provisions.¹⁹² The treaty is not self-executing, domestic action is acquired in order to implement these provisions.¹⁹³ Some provisions use the term “shall”, which means that the State Parties must implement this in national law. But this is mostly followed by the sentence “in accordance with the fundamental principles of its legal system”.¹⁹⁴ This stresses out that Member States should work within the principles of their national law.¹⁹⁵ Unfortunately, this can open the door for different approaches. It looks like a result-based obligation, but this is subject to each Member States existing legal structure. This may cause uneven implementation among parties.¹⁹⁶ With optional provisions, you risk to create all different kinds of laws and regulations.¹⁹⁷ Which is not favourable for strengthening international cooperation.

The first chapter of the convention is dedicated to the prevention of corruption, applicable to both public and private sectors. This goes way above any other previous anti-corruption treaty.¹⁹⁸ It requires Member States to introduce effective and efficient anti-corruption practises and policies that address corruption directly and indirectly.¹⁹⁹ The Member States must review their existing provisions in order to strengthen the promotion of the principles of the rule of

¹⁹¹ Art 1 UNCAC

¹⁹² M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 2 (available at : <http://www.lcilp.org/wp-content/uploads/2015/02/Guide-to-the-UN-Convention-Against-Corruption-Martin-Polaine.pdf>); M. JOUTSEN and A. GRAYCAR, “When experts and diplomats agree : Negotiating peer review of United Nations Convention Against Corruption”, *Global Governance* 2012, Vol.18, 425; UNCAC in a nutshell : A quick guide to the United Nations Convention Against Corruption for embassy and donor agency staff, *U4 Anti-Corruption Resource Centre*, U4 Brief September 2010:6, 1. (available at : <http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>)

¹⁹³ M. JOUTSEN and A. GRAYCAR, “When experts and diplomats agree : Negotiating peer review of United Nations Convention Against Corruption”, *Global Governance* 2012, Vol.18, 426.

¹⁹⁴ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 108.

¹⁹⁵ UNCAC in a nutshell : A quick guide to the United Nations Convention Against Corruption for embassy and donor agency staff, *U4 Anti-Corruption Resource Centre*, U4 Brief September 2010:6, 1. (available at : <http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>)

¹⁹⁶ *Ibid.*; O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 108.

¹⁹⁷ M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 2.

¹⁹⁸ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 107; J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 14.

¹⁹⁹ *Ibid.*; M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 3.

law, proper management of public affairs and public property, integrity, transparency and accountability.²⁰⁰ They should raise more public awareness of the threats and the effective methods to combat this problem.²⁰¹ Article 6 requires Member States to establish a specialist anti-corruption body to implement those policies and, where necessary, oversee and coordinate implementation. It also has to increase and disseminate knowledge about prevention of corruption.²⁰² The importance of such bodies cannot be underestimated. They are the intermediary between governments and the public opinion. In order to do work efficiently, they have to be independent. In that way they can criticise government actions without being removed or demoted. There has to be absence of any undue influence. They also have to be transparent and held accountable to the public.²⁰³

The second chapter is about criminalization and law enforcement. Which is the core of the convention. To criminalize corruption, one has to define it. Yet, corruption is difficult to define and could lead to enforcement difficulties.²⁰⁴ So UNCAC uses a different approach. The Convention does not give a definition of corruption, but it contains a number of specific acts of corruption.²⁰⁵ It puts corruption in a wider context: bribery and bribery related offences.²⁰⁶ State Parties must adopt legislative measures for supply and demand bribery of public officials. The definition of public officials is semi-autonomous. It is defined regardless of national law, but it allows consideration of local definitions.²⁰⁷

Bribery of foreign public officials is also criminalized, however it is slightly different. Only for the supply side Member States require to adopt measures. For the demand side they are “considered” to do so.²⁰⁸ This is unfortunate, but a little step forward, because in the past the latter did not get much attention due to legal issues, such as enforcement, implementation and jurisdiction. It is tougher to control the actions of a foreign public officer, than to try and control the offering of a bribe.²⁰⁹ By eliminating the opportunities, you eliminate the crime itself. In practice, it is never that simple. The officials own the power. If there is a persistent demand for bribery, they encourage the supply of it.²¹⁰ Because of outsourcing and privatization, the line

²⁰⁰ M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 3.

²⁰¹ J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 14.

²⁰² Art 6 UNCAC

²⁰³ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 108.

²⁰⁴ J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 8; O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 130.

²⁰⁵ J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 10.

²⁰⁶ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 110.

²⁰⁷ *Ibid.*, 112.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, 112-113.

²¹⁰ *Ibid.*, 113.

between the public and private sector becomes more blurry. This can create opportunities for bribery and fraud.²¹¹ UNCAC criminalizes the supply and demand side, but non-mandatory. This is also a missed opportunity. Nevertheless the EU is a pioneer in this matter and many countries can and will follow their lead.²¹²

Section II also contains interpretive and law enforcement measures, this for promoting harmonisation among Member States.²¹³ Intent is a required element for bribery, which is a subjective fault element that has to prove that a defendant intended a particular outcome or knew a particular fact.²¹⁴ With the difficulty of obtaining evidence, the heavy burden of proof (presumption of innocence) and different interpretations of “intent” among the State Parties²¹⁵, UNCAC is the first anti-corruption convention explaining how to interpret this term.²¹⁶ Article 28 declares that to prove knowledge, intent or purpose, the prosecutors may take into account objective factual circumstances. This slightly lightens the burden of proof.²¹⁷

Article 30 deals with the sanctions of the offences. Article 30 (1) stipulates that “each State Party shall make the commission of an offence established in accordance with this convention liable to sanctions that take into account the gravity of that offence.” UNCAC nowhere defines what gravity means. Is it the act itself or the consequence? This results in a non-harmonisation of this part of the convention due to many different interpretations.²¹⁸

Article 30 (2) stipulates that a Member State must search for a balance between the immunities of officials and prosecution in accordance with this convention. This gives Member States too much discretionary power and may lead to a barrier for prosecution of certain officials.²¹⁹

Article 41 (1) says that State Parties have jurisdiction when the offence is committed on the territory of a Member State; by or against a State official or against the state itself.²²⁰ This again is a missed opportunity, because the offences are mostly committed in more than one jurisdiction. They should have anticipated this scenario.²²¹

²¹¹ *Ibid.*, 114.

²¹² *Ibid.*, 115.

²¹³ *Ibid.*, 116.

²¹⁴ ‘Wildlife and forest crime : Analytic Toolkit (revised version)’, United Nations Office on Drugs and Crime (2012), 32. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

²¹⁵ M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 33.

²¹⁶ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 116.

²¹⁷ *Ibid.*, 117; ‘Wildlife and forest crime : Analytic Toolkit (revised version)’, United Nations Office on Drugs and Crime (2012), 32. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf).

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*; M. POLAIN, “Guide to the United Nations Convention Against Corruption (UNCAC)”, *London Centre of International Law Practice* February 2015, 37.

²²⁰ *Ibid.*, 118.

²²¹ *Ibid.*

The next chapter of the convention deals with international cooperation. UNCAC requires Member States to establish mutual legal assistance in investigations, prosecutions and judicial proceedings for the offences covered by the convention. It is based upon the Palermo convention, but sometimes goes beyond it and provides a more comprehensive legal framework.²²²

Chapter V deals with asset recovery. UNCAC is the first anti-corruption treaty that combats this issue, which is a major breakthrough.²²³ Member States are required to “afford one another the widest measure of cooperation and assistance in this regard”.²²⁴ “Stolen” assets can thus return to the country of origin. The convention adopted provisions with specific measures and mechanisms for cooperation, which is a very important tool.²²⁵

To assure implementation and enforcement, there is need for a review mechanism. Otherwise the convention can stay an empty box, because states may not properly implement obligations under the convention.²²⁶ The convention first established a Conference of State Parties (COSP).²²⁷ They review implementation by the Member States and make necessary recommendations for improvement.²²⁸ But there was a need for more. COSP negotiated and eventually they established a “peer review mechanism”.²²⁹ This is a cooperative monitoring mechanism, where one State Party is reviewed by two other State Parties. The reviewing states appoint experts to do so.²³⁰ UNCAC itself cannot penalize Member State for non-compliance.²³¹ It is not because UNCAC could sanction Member States, that they will eventually comply. This could have a reversed effect.²³² Such “peer review mechanism” can encourage cooperation whilst the reputation of a Member State is at stake.²³³

As stated above, wildlife trafficking and corruption go hand in hand. The convention can be an important tool to combat this.²³⁴ EU is suggesting that Member States of CITES ratify UNCAC

²²² J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 19.

²²³ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 122; J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 19.

²²⁴ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 124.

²²⁵ J. SANDAGE, “Keynote speech : Global corruption and the universal approach of the United Nations Conventions against Corruption”, *Osgoode Hall L. J.* 2015-2016, Vol.53, 19.

²²⁶ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 134-135.

²²⁷ Article 63 UNCAC

²²⁸ O. BRUNELLE-QURASHI, “Assessing the relevancy and efficacy of the United Nations Convention Against Corruption : a comparative analysis”, *Notre Dame J. Int’l & Comp. L.* 2011-2012, Vol.2, 135.

²²⁹ *Ibid.*, 136.

²³⁰ *Ibid.*, 137-138.

²³¹ *Ibid.*, 140.

²³² *Ibid.*, 141.

²³³ *Ibid.*, 143.

²³⁴ ‘Wildlife and forest crime : Analytic Toolkit (revised version)’, United Nations Office on Drugs and Crime (2012), 18. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf)

if they have not done this.²³⁵ It is the only way to combat corruption in wildlife trade more efficiently and effectively. The preventive measures can help to curb corruption in the agencies involved in the fight against wildlife trafficking, while they promote the principles of the rule of law, transparency, accountability and integrity.²³⁶

1.3.4 The International Criminal Police Organization

The idea of creating an international law enforcement institution to combat crimes at international level was born in the beginning of the 20th century. The International Crime Police Organization (Interpol) in its present form was created in 1956.²³⁷ Interpol counts approximately 190 Member States. Each Member State has to establish a National Central Bureau (NCB), staffed by national police officers.²³⁸ These Bureaus connect a country's police force with the other Member States by sharing information on international crimes committed in other State Parties. Interpol makes sure that the States have access to a variety of high-tech tools, databases on persons, organizations and businesses of interest and resources in order to cooperate on solving crimes that cross borders.²³⁹ Interpol provides targeted training, expert investigation support, relevant data and secure communication channels.²⁴⁰ The main principles and rules are laid down in the Constitution of the ICPO-INTERPOL.²⁴¹ The aims are listed in article 2 :

- (1) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights";*
- (2) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.*

²³⁵ Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), P8_TA-PROV (2016)0454, (14); K. NOWAK, "CITES alone cannot combat illegal wildlife trade", South African Institute of International Affairs September 2016, <http://conservationaction.co.za/resources/reports/cites-alone-cannot-combat-illegal-wildlife-trade/> (last consulted on 15/11/2016); 'Speech by the Deputy Executive Director of UNODC Mr. Aldo Lale-Demoz', World Wildlife Day, March 2015, http://wildlifeday.org/content/speeches?field_year_speech_value%5Bvalue%5D%5Byear%5D=&=Apply (last consulted on 15/11/2016)

²³⁶ 'Wildlife and forest crime : Analytic Toolkit (revised version)', United Nations Office on Drugs and Crime (2012), 19. (available at : https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf).

²³⁷ K. TOMKINS, "Police, law enforcement and the environment", *Current Issues Crim.* 2004-2005, Vol. 16, (294) 269; X, "History", INTERPOL, X, <https://www.interpol.int/About-INTERPOL/History> (last consulted on 22/12/2016).

²³⁸ K. TOMKINS, "Police, law enforcement and the environment", *Current Issues Crim.* 2004-2005, Vol. 16, 269; X, "What is INTERPOL?", INTERPOL, X, <https://www.interpol.int/ipsgapp/educational/what-is-interpol.html> (last consulted on 22/12/2016).

²³⁹ *Id.*

²⁴⁰ X, "About INTERPOL : Overview", INTERPOL, X, <https://www.interpol.int/About-INTERPOL/Overview> (last consulted on 22/12/2016).

²⁴¹ Constitution of the ICPO-INTERPOL, I/CONS/GA/1956(2008), available at : <https://www.interpol.int/>.

While in the past, the appropriate response to environmental crime were administrative / civil actions, criminal enforcement is now seen as an essential factor in deterring and preventing environmental violations. Interpol has actively been involved in this area since 1993, by establishing an Environmental Crime Committee.²⁴² This Committee tries to identify the various problems that arise in connection with environmental crime investigations and find possible solutions.²⁴³ In 2012, the Environmental Crime Committee was replaced by the Environmental Compliance and Enforcement Committee (ECEC). ECEC keeps assisting Interpol in identifying emerging patterns and trends in the field of environmental crime enforcement. It acts as a forum, where law enforcement officials discuss new strategies and practices, share experience and expertise and build up international cooperation.²⁴⁴ To support ECEC in its function, it has established three working groups: Fisheries Crime Working Group, Pollution Crime Working Group and Wildlife Crime Working Group. The Wildlife Crime Working Group joins specialized criminal investigators from around the world to work on project-based activities on international level, such as combating the poaching, trafficking or possession of legally protected fauna and flora. This Working Group tries to maximize the global impact of current projects and devises new initiatives.²⁴⁵

Interpol recognizes the seriousness of the growing international problem of environmental crime and finds itself uniquely qualified to lead the efforts to combat this type of crime, since it is the only organization with a mandate to share and process sensitive criminal information globally.²⁴⁶ In 2009, Interpol launched a Programme: ‘Environmental Crime Programme – Strategic Plan’.²⁴⁷ The aim of this Programme is to help Interpol assist Member States in the effective enforcement of national and international environmental laws and treaties. This Programme attempts to enhance and support the global environmental intelligence management process and assists Member States in overcoming conflicts of interest in intelligence sharing.²⁴⁸ As well as in enhancing and developing the ability of Member States in deterring, investigating, apprehending and prosecuting environmental criminals and coordinating international cases and operations.²⁴⁹ This Environmental Crime Programme closely works together with the ECEC, investigators and decision-makers from Member States, working under Interpol’s auspices.²⁵⁰ The Programme recommends State Parties to establish National Environmental Security Task Forces (NESTs). In order to approach organized transnational crime with a coordinated, collaborative and international response.²⁵¹ NESTs involves all agencies

²⁴² K. TOMKINS, “Police, law enforcement and the environment”, *Current Issues Crim.* 2004-2005, Vol. 16, 269; Interpol, ‘Environmental Crime Programme’, 2009-2010, 5 (available at <https://www.interpol.int/>)

²⁴³ *Id.*

²⁴⁴ X, “Committee and working groups”, INTERPOL, X, <https://www.interpol.int/Crime-areas/Environmental-crime/Committee-and-Working-Groups/Wildlife-Crime-Working-Group> (last consulted on 22/12/2016).

²⁴⁵ *Id.*

²⁴⁶ X, “Environmental Crime”, INTERPOL, X, <https://www.interpol.int/Crime-areas/Environmental-crime/Environmental-crime> (last consulted on 22/12/2016).

²⁴⁷ ‘Environmental Crime Programme’, Interpol (2009-2010), 5 (available at <https://www.interpol.int/>)

²⁴⁸ O. ANDRADE, “Environmental Crime Summit”, *Envtl. Pol’y & L.* 2012, Vol. 42, 160.

²⁴⁹ X, “Bringing compliance and enforcement agencies together to maintain environmental”, *Glob. Env’tl. L. Ann.* 2013, 61.

²⁵⁰ *Id.*

²⁵¹ *Id.*, 59.

responsible for a countries' environmental law enforcement (including police, customs, judiciary and environmental agencies) together with scientific and civil society communities²⁵² with expertise, knowledge and access to resources.²⁵³ NESTs allow national agencies to collaborate in a coordinated, cooperative and centralized way. It maintains contact with the Environmental Crime Programme to ensure international coordination and collaboration on information exchange, operation and training programs. In that way, NEST can investigate high profile national and international environmental cases.²⁵⁴ It is recommended that the NEST becomes an integral part of the NCB, if not possible, there should be daily communication between the two. They work together perfectly, due to the NCB's secure international communication channels, access to Interpol's databases and the ability to bring together different national agencies for addressing environmental compliance and enforcement.²⁵⁵

Interpol also cooperates with the UNEP. UNEP's aim is to provide leadership and encourage partnerships in caring for the environment. One of the most important functions is the promotion of environmental science and information.²⁵⁶ UNEP provides Interpol the resources to implement and comply efforts by facilitating communication and data exchange.²⁵⁷ Together, they released a report in 2016: 'The rise of environmental crime – A growing threat to natural resources, peace, development and security'.²⁵⁸ With this report, Interpol and UNEP want to emphasise on the growing problem and related consequences of environmental crime. As mentioned above, Interpol also takes an active role in the establishment of the International Consortium on Combating Wildlife Crime (ICWC). In close cooperation with this Consortium, Interpol launched 'Operation Thunderbird' in the beginning of 2017. This operation involved police, customs, border agencies, environment, wildlife and forestry officials from 43 countries and resulted in the identification of nearly 900 suspects and 1.300 seizures.²⁵⁹ This serves as an example of what can be achieved when countries invest in the fight against this trade through coordinated efforts and transnational law enforcement collaboration.²⁶⁰

After Interpol, regional initiatives occurred. In 1992, the European Law Enforcement Organization (Europol) was established in the Maastricht Treaty. The Europol Convention

²⁵² For example: NGO's, research and academic institutions, environmental and security think tanks, scientific institutions and facilities, etc.

²⁵³ X, "Bringing compliance and enforcement agencies together to maintain environmental", *Glob. Env'tl. L. Ann.* 2013, 63.

²⁵⁴ *Id.*, 75.

²⁵⁵ *Id.*, 79.

²⁵⁶ X, "United Nations Environment Programme", UNEP, X, <http://www.fao.org/gtos/sponsors/unepinfo.html> (last consulted on 22/12/2016).

²⁵⁷ K. TOMKINS, "Police, law enforcement and the environment", *Current Issues Crim.* 2004-2005, Vol. 16, 296.

²⁵⁸ 'The rise of environmental crime – a growing threat to natural resources, peace, development and security', UNEP and INTERPOL (2016) (available at : http://unep.org/documents/itw/environmental_crimes.pdf).

²⁵⁹ X, "Anti-wildlife trafficking operation results in global arrests and seizures", INTERPOL, 2 March 2017, <https://www.interpol.int/News-and-media/News/2017/N2017-022> (last consulted on 29/03/17)

²⁶⁰ *Ibid.*

came into force in 1998, when it was ratified by all EU Member States.²⁶¹ Europol's aim is to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of organized crime. In 2001, Europol's mandate was extended to environmental crimes.²⁶² Europol finds illicit trafficking in endangered species one of the most serious environmental crimes, where the EU is a major transit point. Europol works together with a number of partner agencies. For example, in 2015 they supported Operation Cobra III. This was the largest coordinated international law enforcement operation targeting the illegal trade in endangered species. Europol facilitated operational information exchange and coordinated the activities of the police, customs, forestry and other law enforcement authorities from 25 Member States.²⁶³ Europol also collaborated with the European Environmental Crime Network (EnviCrimeNet). This Network's first meeting took place in 2011. Its aim is to be an informal network, connecting police officers and other crime fighters in the field of environmental crime.²⁶⁴ Europol and EnviCrimeNet finished their report on Environmental Crime in Europe in 2015. The project's aim was to increase the knowledge on types of environmental crime impacting the Member States to identify the involvement of organized crime groups and threat to the EU and to develop recommendations on how to improve the situation.²⁶⁵

1.3.5 World Custom Organization

The World Custom Organization (WCO) is an intergovernmental organization, established in 1952 as a Customs Co-operation Council. It is the only international organization with competence in customs matters and counts approximately 181 Custom Administrations around the world. Its mission is to enhance the effectiveness and efficiency of those administrations.²⁶⁶ The WCO develops and maintains standards for customs procedures, it promotes international cooperation by sharing information and best practices, and it provides technical and capacity resistance.²⁶⁷

The WCO identified multiple gaps that strongly need to be improved in the field of wildlife trafficking. First, awareness must be raised among governments, citizens and consumers. Wildlife trafficking cannot be seen as a victimless crime. It has major consequences and must be addressed. If international and local communities become aware of the devastating effects,

²⁶¹ X, "History of Europol", X, X, <http://people.exeter.ac.uk/watupman/undergrad/pollard/html/history.htm> (last consulted on 22/12/2016).

²⁶² K. TOMKINS, "Police, law enforcement and the environment", *Current Issues Crim.* 2004-2005, Vol. 16, 298.

²⁶³ X, "Illicit trafficking in endangered animal species", Europol, X, <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/environmental-crime/illicit-trafficking-in-endangered-animal-species> (last consulted on 22/12/2016).

²⁶⁴ X, "EnviCrimeNet", Environmental Crime Network, X, <http://envicrimenet.eu/EN/> (last consulted on 22/12/2016).

²⁶⁵ 'Report on Environmental Crime', EnviCrimeNet (2016), 3. (available at : <http://envicrimenet.eu/EN/images/docs/envicrimenet%20report%20on%20environmental%20crime.pdf>).

²⁶⁶ X, "WCO in brief", WCO X, <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx> (last consulted on 21/03/2017).

²⁶⁷ K. MIKURIYA, "Illicit wildlife trade and the role of customs", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 55.

governments might treat it as a priority issue.²⁶⁸ Secondly, there is lack of capacity among border control officials. This problem derives from the first one. Customs must engage in analysing data, determine which way is best to intervene, use information technology and adequate training in this field.²⁶⁹ Thirdly, more collaboration with other law enforcement agencies and judicial authorities is necessary. This makes it easier to uncover the whole supply chain and bring criminals to justice.²⁷⁰ Finally, awareness must be raised among the private sector to partner up and try to bring compliance and prevent the movement of illicit species.²⁷¹

The WCO engaged to fight against the illicit trade in wildlife. In 2010, it joined the ICCWC and brought coordinated support to national wildlife enforcement agencies and regional networks.²⁷² In 2012, it launched the Environmental Programme. The WCO recognized that customs play an important role in the implementation of the Multilateral Environmental Agreements (MEA) and the fight against environmental crime, especially the illegal trade in wildlife. On annual basis, the Environmental Programme releases the Illicit Trade Report to inform about their workings.²⁷³ With this Programme, the WCO is constantly trying to collaborate with other organizations in the fight against wildlife trade. It has signed a Memorandum of Understanding with CITES Secretariat, UNEP and TRAFFIC.²⁷⁴ It has developed ENVIRONET and CLiKC!, a communication tool for exchange of information and data and the latter being an e-learning facility containing courses on environmental crime. The WCO also coordinates international operations, which are aimed to provide training on the evaluation of risks and use of intelligence, to raise awareness and enhance collaboration and communication with other wildlife enforcement agencies and businesses.²⁷⁵

In 2014, WCO launched the Inama Project, which strengthens the custom enforcement agencies in selected countries of the Sub-Saharan Africa. In the same year, it adopted the WCO Declaration on the Illegal Wildlife Trade, where it is determined to serve as an efficient and effective deterrent.²⁷⁶ In 2016, the WCO signed the United Wildlife Transport Taskforce Buckingham Palace Declaration. With this declaration, the WCO committed to tackle the illegal trade in wildlife and encouraged the transport industry to follow their lead.²⁷⁷

²⁶⁸ *Ibid.*, 56.

²⁶⁹ *Ibid.*, 57.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*, 58.

²⁷³ X, "Environmental Programme", WCO, X, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/environmental-programme.aspx> (last consulted on 29/03/17).

²⁷⁴ *Ibid.*

²⁷⁵ K. MIKURIYA, "Illicit wildlife trade and the role of customs", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 60.

²⁷⁶ United for Wildlife Transport Taskforce Buckingham Palace Declaration, WCO, Brussels, 15 March 2016, <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/environmental-crime/united-for-wildlife/ufw-transport-taskforce-buckingham-palace-declaration.pdf?la=en> (last consulted on 29/03/17).

²⁷⁷ *Ibid.*

The efforts of WCO are innovative. A major breakthrough is the collaboration with other organizations and a unified approach across the globe. Unfortunately, the existing efforts of the WCO are not enough to tackle the big smuggling rings and bring the criminals to justice.

1.4 Proposed solutions to combat the illegal trade in wildlife more effectively

Finding solutions to combat the transnational organized networks in the illicit trade in wildlife is hard. It mostly depends on the political willingness of the countries as well as finding the required resources. The solutions put forward in the first part of this thesis can be divided in three problematic areas. The first chapter will examine if a top-down approach is possible to bring more harmonization by upgrading UNEP to a UN specialized agency. There is need for more harmonization within the wildlife trade and even more in the environmental governance. With harmonization, international cooperation between states increases, which benefits the fight against this illicit trade. Furthermore, it is harder for criminals to exploit the existing gaps in the current legal frameworks. The second chapter will explore how states can arrest wildlife traffickers in a more effective and efficient way. This still remains a weak area, which explains why this trade attracts so many criminals. The final chapter will examine how the prosecution and sanctioning of wildlife traffickers can be done more comprehensively. If criminals are arrested but not prosecuted effectively, the trade is not stopped, or even slowed down.

1.4.1 Upgrading UNEP to a specialized agency of the United Nations: harmonization and other benefits

1.4.1.1 The rationale for a United Nations Environment Organization

Harmonization in environmental law is now more than ever needed. The MEAs keep on growing and tend to be not so effective as wanted. They often establish inadequate targets and commitments, permissive compliance and verification mechanisms and ineffective sanctions. The existing environmental institutions often lack formal competence or real power and are poorly funded. The environmental principles are increasing (precautionary principle, sustainable development, ...) but are rarely implemented in an effective way.²⁷⁸ Specifically for the conservation of wildlife, there exist over 150 MEAs working separately from one another.²⁷⁹ As mentioned *supra* title 1.3, the implementation at national level is mostly incorrect

²⁷⁸ L. ELLIOT, "The United Nations' record on environmental governance : an assessment", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, 27.

²⁷⁹ N. GOETEYN and F. MAES, "The clustering of multilateral environmental agreements : Can the clustering of the chemicals-related conventions be applied to the biodiversity and climate change conventions?", in F. MAES,

or incomplete which constitutes in different laws to protect wildlife all over the world. To combat the illegal trade in species, harmonisation is needed. States must implement provisions in an effective and similar way which will facilitate the cooperation to arrest and prosecute the wildlife criminals. This thesis will evaluate if a top down approach is realistic to bring more harmonisation in the international environmental governance (IEG), especially in the field of wildlife crimes.

In 1972, the United Nations Conference on the Human Environment (UNCHE) took place. More than ever there were public calls and proposals for the establishment of an international organization for the environment.²⁸⁰ During this conference, there was strong opposition from ‘The Group of Brussels’²⁸¹. This group was not excited about the creation of a new costly and unwieldy administration.²⁸² Even the developing countries were not happy with this idea, because they feared it would only benefit the Northern environmental agendas and could become a burden to their own development.²⁸³ Furthermore, a number of (at that time) communist countries stayed away from UNCHE in order to boycott the event.²⁸⁴ They gathered to decide whether the new central unit should be a UN Programme or a UN Specialized Agency. There are major differences between the two. (1) While a UN Specialized Agency derives its legal responsibility directly from a founding document, a UN Programme is a subsidiary organ of the UNGA and its decision has to be adopted by the UN General Assembly (UNGA) to be legal. They are established through a resolution by the UNGA, which regulates the mandate, functions, decision-making and relationship with UNGA. (2) The funding of a Specialized Agency is done by a mandatory contribution based on the national income of UN Member States (assessed contributions) and additionally with trust funds and voluntary contributions. The funding of a Programme’s staff cost is done by the UN regular budget. Other revenues have to come from trust funds and voluntary contributions. (3) In most cases, Specialized Agencies have a formal plenary meeting in which all Member States are represented. They have central decision-making power and deal with day-to-day working issues of the agency.²⁸⁵

A. CLIQUET, W. DU PLESSIS and H. MCLEOD-KILMURRAY (eds), *Biodiversity and climate change : Linkages at international level, national and local levels*, Northampton, Edward Elgar Pub., 2013 (147), 170.

²⁸⁰ *Ibid.*, 32.

²⁸¹ This group consisted of the governments of Belgium, France, Germany, Italy, the Netherlands, UK and later the United States.

²⁸² N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 36 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁸³ *Ibid.*, 52; L. ELLIOT, “The United Nations’ record on environmental governance : an assessment”, in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (27), 32.

²⁸⁴ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 36 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁸⁵ *Ibid.*, 40-44; Article 22 UN Charter

1.4.1.2 Establishment of the United Nations Environment Programme and consequences

As stated *supra*, there was fierce resistance about creating a UN specialized agency, despite of the multiple advantages. UNCHE decided to start up a UN Programme, because there used to arise big questions about the effectiveness and efficiency of those agencies. It was also considered that a new agency would only be “one of the many” which would impose an unnecessary burden on the decision-making process to have all governments of the members represented.²⁸⁶

The General Assembly established the United Nations Environmental Programme (UNEP) in its Resolution 2997.²⁸⁷ Its form is a UN Programme (based upon article 22 of the UN Charter). It has a Governing Council (GC), that serves as the central plenary body with the competence to determine the policy. GC has universal membership since the 2012 UN Conference on Sustainable Development (Rio +20). This means that all UN regions are represented in its meetings, and have universal participation, meaning that all countries are encouraged to participate in the negotiations. As mentioned before, the decisions of GC have to be adopted by the UNGA, which means that all UN Member States are entitled to have their proper opinion. Further, UNEP has a secretariat as its main executive power.²⁸⁸

UNEP’s objective is “to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and people to improve their quality of life without compromising that of future generations”. It does not have sanction powers nor norm setting abilities. It was intended to promote international co-operation in environmental fields. It has to respect the sovereign rights of states and its tasks are more effective when performed on national or regional level.²⁸⁹

After Rio +20, financing UNEP has increased, while in the concluding document ‘The Future We Want’ “secure, stable, adequate and increased financial resources” were promised.²⁹⁰ The costs of servicing the GC and the Secretariat are paid with the Regular Budget of the United Nations. In December 2013, an increased budget has been approved by the UNGA.²⁹¹ The UNGA also set up the “Environment Fund”, based upon voluntary contributions of the Member

²⁸⁶ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis, published*, PhD dissertation Law UGent, 2012, 46 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁸⁷ Resolution 2997 (XXVII) from the General Assembly of the United Nations (15 December 1972), *UN Doc. A/RES/27/2997* (1972).

²⁸⁸ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis, published*, PhD dissertation Law UGent, 2012, 45 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁸⁹ *Ibid.*, 48-49.

²⁹⁰ F. BIERMANN, *Earth System Governance : World Politics in the Anthropocene*, Cambridge, MIT Press, 2014, 70.

²⁹¹ X, “Funding for UN environment – Regular budget”, UNEP, X, <http://web.unep.org/about/funding/about/funding/our-funding/regular-budget-0> (last consulted on 29/03/17).

States. Intention was to stimulate the flexibility and to allow the largest polluters to contribute more.²⁹² Unfortunately, it resulted in annual budget fluctuations and counts less than most UN Specialized Agencies and some of the larger environmental NGOs.²⁹³ Since Rio +20, voluntary funding showed an increase, but still has to depend on hardly 10 donors for 80 per cent of their overall funding.²⁹⁴

UNEP's headquarter is established in Nairobi, Kenya. It was more logical to locate UNEP close to other existing UN negotiation headquarters, yet it was a tactical choice at that time.²⁹⁵ Major downside is that the headquarter often faces problems of scarce electricity, communications, water and personal safety. These conditions are far from perfect to work in.²⁹⁶

In the following years, after the establishment of UNEP, the environmental degradation did not slow down, on the contrary. This led to heavy criticism on UNEP and proposal for reformation.²⁹⁷ UNEP, with its limited mandate, persistent underfunding, the '1972 background', its low status in the UN bureaucracy, its disadvantageous location in Nairobi and detachment from many of the MEA can nevertheless be seen as successful. Despite these big flaws and problems, it reached great accomplishments. It established a strong environmental information and knowledge base, coordinated international negotiations on ozone depletion, biodiversity and desertification, and forged partnerships with World Meteorological Organization (WMO), IUCN, Interpol, etc.²⁹⁸ UNEP reports environmental problems to nations and suggests solutions through consensus building and common agreements. But it cannot

²⁹² N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 50 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁹³ L. ELLIOT, "The United Nations' record on environmental governance : an assessment", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (27), 33.

²⁹⁴ R. MUTTUKUMARU, 'Towards enhancing core (unrestricted) funding to the UN Development system in the post-2015 period: a report prepared for the United Nations Department of Economic and Social Affairs for the 2016 Quadrennial Comprehensive Policy Review', 2016 QPCR. (available at: <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/qcpr/qcpr-2016-desk-review-core-funding-paper.pdf>)

²⁹⁵ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 52 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁹⁶ J. J. KIRTON, "Generating effective global environmental governance : the North's need for a World Environment Organization", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (145), 157.

²⁹⁷ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 54 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

²⁹⁸ L. ELLIOT, "The United Nations' record on environmental governance : an assessment", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (27), 32-33; N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 71 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>); S. CHARNOVITZ, "Toward a World Environment Organization : Reflections upon a vital debate", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (87), 93-94.

oblige states to take action.²⁹⁹ UNEP was designed to fail from the beginning, yet it reached the maximum reachable outcome of a political process in the early seventies.³⁰⁰

Because of the continuing environmental degradation, the debate for more initiatives has not ceased since the creation of UNEP.³⁰¹ The present state of global environmental governance shows three major shortcomings. The first shortcoming is coordination. When UNEP was established in 1972, its mandate was clear. But since then the growing number of MEAs caused a considerable fragmentation of the system. Norms and standards are made up in each area, without taking into account other policy fields or the repercussion of those principles. Specialized international organizations and bodies of the UN, related to the environment, have developed their own programmes which made everything even more splintered.³⁰² Secondly, there is the deficiency in the process of capacity building in developing countries. Many causes of environmental problems lay within developing countries, as with the illegal wildlife trade. It is important that the problem is solved at its core. One of the most essential purposes of global environmental regimes must be strengthening the capacity of developing countries so they can deal with global and domestic environmental problems. When biodiversity policies are to be implemented in developing countries and it has to be enforced in a proportionate way, financial and technological transfer will be necessary.³⁰³ Finally, the major problem exists in the deficiencies in the implementation and further development of international environmental standards.³⁰⁴ As mentioned *supra* title 1.3, implementation of treaties who want to address wildlife crime is far from perfect. Developing countries do not always have the means to implement correctly or lack political will.

1.4.1.3 Evaluating advantages of a United Nations Environment Organization

There is strong need for another organization. When advocating for a new organization, one has to take into account that the mission in the present environmental protection system has to be clearly defined and explained.³⁰⁵ The project itself has to be realistic. If states are unwilling

²⁹⁹ D. MARSHALL, "An organization for the world environment : Three models and analysis", *Geo. Int'l Env'tl. L. Rev.* 2002-2003, Vol. 15, 81-82.

³⁰⁰ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 74 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

³⁰¹ *Ibid.*, 75.

³⁰² F. BIERMANN, "The case for a World Environment Organization", *Environmental Science and Policy for Sustainable Development*, November 2000, 3 (available at https://www.researchgate.net/publication/266001968_The_Case_for_a_World_Environment_Organization)

³⁰³ *Ibid.*, 4-5.

³⁰⁴ *Ibid.*, 5.

³⁰⁵ S. CHARNOVITZ, "Toward a World Environment Organization : Reflections upon a vital debate", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (87), 91; N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 77-79 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

to cooperate or do not see the benefits of the system as a whole, the entire operation is fruitless.³⁰⁶

This thesis follows Frank Biermann's view of upgrading UNEP to a specialized agency of the United Nations, namely the United Nations Environment Organization (UNEO). This approach is preferred in the UN, because the serious environmental problems facing the international community have a global / trans-border reach that requires collective action. The UN is the only multilateral organisation being almost universal in its membership and global in its scope.³⁰⁷ This model is most likely to succeed and to be approved by the Member States.³⁰⁸

The establishment of a UN Environment Organization, through upgrading UNEP to a UN specialized agency will have certain functions which will lead to numerous advantages, as well for the international environmental governance as for the fight against wildlife trafficking. First, subcommittees under UNEO's auspices can negotiate treaties, drafted by the General Assembly. These draft treaties would be open for signature within UNEO's headquarters. It could strengthen global norm-building and institutionalisation. The International Labour Organization (ILO) could constitute as a model. ILO has developed a comprehensive body of "ILO Convention". By qualified majority vote, UNEO can also approve certain regulations which are binding for all members, comparable to the World Health Organization (WHO).³⁰⁹ It would help the fight against wildlife trafficking if draft treaties and binding regulations can be made up within one organization. If UNEO would have universal membership, the same rules could be applied all over the world (or at least a big part of it). It is true that UNEP Governing Council can already initiate intergovernmental negotiations and draft treaties, but the major downside is that these draft treaties must pass the UNGA before having any legal effect.³¹⁰

Secondly, UNEO could improve coordination in the fight against illegal wildlife trafficking. Today, many programs, organizations, alliances between different organisations exist to tackle this problem, yet they do not cooperate. Working together could help the special interests of individual programs and organizations and could limit duplication, overlap and inconsistencies, which would lead to more efficiency and better use of limited resources. This coordination could achieve that treaties and organization established to protect wildlife, could make alliances with others in the field of drugs, transnational organized crime and corruption. These alliances

³⁰⁶ N. GOETEYN, *Decision-making, compliance and international environmental governance : a legal analysis*, published, PhD dissertation Law UGent, 2012, 80-81 (available at <https://biblio.ugent.be/publication/2986625/file/4336068.pdf>)

³⁰⁷ L. ELLIOT, "The United Nations' record on environmental governance : an assessment", in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (27), 28.

³⁰⁸ F. BIERMANN, "Reforming global environmental governance : The case for a United Nations Environment Organization (UNEO)", *Stakeholder Forum*, SDG2012, 7. (available at: <http://www.stakeholderforum.org/fileadmin/files/WEO%20Biermann%20FINAL.pdf>)

³⁰⁹ F. BIERMANN, "Reforming global environmental governance : The case for a United Nations Environment Organization (UNEO)", *Stakeholder Forum*, SDG2012, <http://www.stakeholderforum.org/fileadmin/files/WEO%20Biermann%20FINAL.pdf>, 8.

³¹⁰ *Ibid.*, 8; Interview Marjanneke Vijge, Post-doctoral researcher MDRI-CESD, UNDP-UNEP Poverty-Environment Initiative, 11/03/2017.

will be more effective if there is coordination on the side of the wildlife crime. Further, it would help to bring coordination in the IEG itself. In each area of environmental governance, many norms and standards exist by distinct legislative bodies, who do not have any respect for repercussions and links with other fields. Governments could empower UNEO to coordinate multilateral environmental agreements. The constitutive treaty could establish general principles and coordinating rules. The World Trade Organization (WTO) can constitute as a model.³¹¹ The GATT has been successful in multiple multilateral and bilateral agreements. With the establishment of the WTO, these agreements kept on growing without hindering their performance. This shows that it can be possible to efficiently manage and streamline many MEA and would have long lasting benefits in helping future generations.³¹² The UNEO Plenary Organ can establish a common reporting system for all MEA's. This will lower the burden on the countries and they will be more willing to report effectively about the problems in the wildlife trade. The UNEO Plenary Organ can establish common dispute settlement systems, mutually agreed guidelines for environmental activities of the World Bank and for environmentally-related conflicts regulated under the WTO dispute settlement system and a joint capacity-building system for developing countries along with financial and technological transfers.³¹³ Especially the latter will be important to combat wildlife trafficking. The problem needs to be solved at its core, so supporting the developing countries is key.

Third, UNEO could improve the overall implementation of the MEA's, which may be the most important feature. Now, there are no efficient efforts to implement the treaties. A reporting system is the only way a MEA can see the implementation progress. There are no binding or hard measures to convince or pursue countries to complete and correct implementation. The reports are not sufficient, because few countries take time to deliver the different kinds of reports. This can be due to lack of means to fulfil all the existing report systems, or due to lack of political will since this is not seen as a priority. The overall implementation can be improved with a comprehensive reporting system on the state of the environment and on the state of implementation in the different countries for the different treaties, each in one single report within one single body. It could provide a level of streamlining and harmonization that can reduce the present administrative burden. This burden exists because numerous MEA's have different reporting needs and formats. It can try to achieve a stronger public awareness.³¹⁴

Forth, UNEO can make developing countries' participation stronger and more effective. This is also an important function, because many problems occur due to lack of resources in developing countries. Individual environmental agreements often are negotiated in various places. Smaller developing countries do not have the means to send well-qualified or specialized diplomats to all the negotiations. These countries often need to rely on the local

³¹¹ *Ibid.* 9.

³¹² G. MURPHY, "Upgrading the United Nations Environmental Programme to the needs of the 21th century", *E-International Relations*, May 24, 2016, <http://www.e-ir.info/2016/05/24/upgrading-the-united-nations-environmental-programme-to-meet-the-needs-of-the-21st-century/>

³¹³ F. BIERMANN, "Reforming global environmental governance : The case for a United Nations Environment Organization (UNEO)", *Stakeholder Forum*, SDG2012,

<http://www.stakeholderforum.org/fileadmin/files/WEO%20Biermann%20FINAL.pdf>, 9.

³¹⁴ *Ibid.*, 9-10.

embassy staff to negotiate highly complex technical regulations. Or developing countries are paid to attend certain conferences to voice the same opinion as the countries or NGOs who paid them.³¹⁵ With a UNEO, it would have a permanent seat, which can be established in a developing country (like UNEP). Developing countries could build up “environmental embassies” at that seat so that their diplomats do not have to travel around the world. The same counts for non-governmental organizations. The decision-making procedure can also be a positive evolution for the developing countries. It would contain a developed-developing world parity. This means a double-weighted majority system, requiring the assent of two-third of the members of a simple majority in developing and developed countries.³¹⁶ The distinction between the two would be based upon self-definition.³¹⁷ Another advantage for developing countries is that UNEO could assist in the build-up of environmental capacities in order to deal with global and domestic environmental problems. In the field of wildlife crimes, this support is more than ever needed. Developed countries must assist developing countries in tackling the problem, they cannot do this on their own. Wildlife traffickers have specialized weapons, technology, etc. The developing countries do not stand a chance at this present. The UNEO could be empowered to coordinate various financial mechanisms and administer the funds of sectoral regimes in trust. This makes the transfer of technology and financial aid more effective, efficient, would reduce bureaucratic overlap and assist in preventing conflicts with other environmental problems.³¹⁸ Lastly, some multinational corporations that are located in developing countries make more money than the total gross domestic product (GDP) of that country. In a certain way they have more power and undermine the sovereignty by not respecting the laws. The same can be said of wildlife traffickers. They gain so much profits and become so powerful that they do not obey the rules of a developing country and can get away with it by for example bribery. An UNEO can empower and increase the sovereignty by holding heavy polluters or wildlife traffickers accountable for their acts if they violate the environmental agreements or rules.³¹⁹

1.4.1.4 Drawback of a United Nations Environment Organization

Despite the numerous advantages and benefits of upgrading UNEP to a UNEO, this system is not without flaws. These need to be worked out, in order to move forward. This thesis follows the conclusion of Nils Goeteyn and Marjanneke Vijge. A UNEO will only be established if a large group of governments and stakeholders wants this. Unfortunately, Rio +20 Conference

³¹⁵ Interview Elke Malfait, Attaché at Federal Public Service: Health, Food Chain Safety and Environment, CITES, 25/04/2017.

³¹⁶ *Ibid.*, 10.

³¹⁷ D. MARSHALL, “An organization for the world environment : Three models and analysis”, *Geo. Int’l Env’tl. L. Rev.* 2002-2003, Vol. 15, 95.

³¹⁸ F. BIERMANN, “The rationale for a World Environment Organization”, in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (117), 126 & 135.

³¹⁹ G. MURPHY, “Upgrading the United Nations Environmental Programme to the needs of the 21st century”, *E-International Relations*, May 24, 2016, <http://www.e-ir.info/2016/05/24/upgrading-the-united-nations-environmental-programme-to-meet-the-needs-of-the-21st-century/>

on Sustainable Development serves as a great example. Some states requested the upgrading of UNEP to a UNEO. The outcome of this proposal was not as expected. The many opponents of a UNEO³²⁰ won and in paragraph 88 of the outcome document ‘The future we want’,³²¹ promised increased funding, universal membership and expansion of UNEP’s mandate.³²² Lesson learned from Rio +20 is that the US will be unwilling to ratify the “constitution” of a UNEO and that there is great resistance on the level of G77.³²³ On the side of advocating for such an organization, coherence is missing. It is important that those who stand behind this idea are on the same side and try to find out why UNEP is failing and what is causing this, why a UNEO would do a better job, what the specific mission is, if and how it would support developing countries and work out all the existing flaws.³²⁴ Nils Goeteyn does not believe in the idea anymore, states are not ready for something supranational. The question can be asked, if the US does not change its mind, if such an organization would be worthwhile without their support.³²⁵ Marjanneke Vijge is convinced that this will not happen in the near future, but says not knowing what will happen in the long run. It is important that the big players, such as USA and China stand behind this proposal and persuade the other actors. Incentives for businesses must be worked out. The World Business Council for Sustainable Development has worked out such an organization in a paper. But it is not in their interest to invest a lot of effort, time and money. The same can be said of NGOs. UNEP itself does not have a loud voice in all of this. UNEP cannot discuss upgrading themselves, they cannot influence states and other actors.³²⁶ Nevertheless, the argument that the current environment regime is the best possible solution, is the easy way out. The disorganization with hundreds of agencies and treaties operating unlinked to each other is far from perfect. It is easy to say that an UNEO is the “organization of the impossible”. The ones that advocate for such an organization must work out a coherent concept, which can be presented to the opponent countries. There must be incentives for the relevant stakeholders in order to pursue them to join. If businesses would stand behind the idea, maybe it would be easier to persuade the governments.

³²⁰ The United States, Canada, Japan, (...) (L. KEMP, “Realpolitik and reform at Rio +20 : The politics of reforming United Nations Environment Programme”, *Earth System Governance* May 2014, No. 30, 4)

³²¹ ‘The Future We Want’, United Nations Conference on Sustainable Development (2012) (available at: http://www.un.org/disabilities/documents/rio20_outcome_document_complete.pdf)

³²² Resolution 67/213 of the General Assembly of the United Nations (21 December 2012), *UN Doc. A/RES/67/2012* (2012); L. KEMP, “Realpolitik and reform at Rio +20 : The politics of reforming United Nations Environment Programme”, *Earth System Governance* May 2014, No. 30, 4.

³²³ L. KEMP, “Realpolitik and reform at Rio +20 : The politics of reforming United Nations Environment Programme”, *Earth System Governance* May 2014, No. 30, 16.

³²⁴ S. CHARNOVITZ, “Toward a World Environment Organization : Reflections upon a vital debate”, in F. BIERMANN and S. BAUER (eds), *A World Environment Organization – Solution or threat for effective international environmental governance?*, Cornwall, Ashgate, 2005, (87), 104-105.

³²⁵ L. KEMP, “Realpolitik and reform at Rio +20 : The politics of reforming United Nations Environment Programme”, *Earth System Governance* May 2014, No. 30, 21.

³²⁶ Interview Marjanneke Vijge, Post-doctoral researcher MDRI-CESD, UNDP-UNEP Poverty-Environment Initiative, 11/03/2017

1.4.1.5 What a United Nations Environment Organization can mean for illegal wildlife trade

A UNEO can be the solution for illegal trade in wildlife in the long run, to bring more harmony and coherence. Unfortunately, an urgent solution is needed. Simply advocating for such an organization will not help wildlife right now. The top down approach is not useful, but nevertheless UNEO advocates must keep defending this concept, as it would bring numerous advantages. Not only for wildlife but for the whole environment.

For the illegal trade, the emphasis must be on capacity building, international cooperation, the correct implementation and enforcement of the existing treaties. In other words, a bottom-up approach is needed. There are many recommendations³²⁷ to bring more harmonisation, yet this has not occurred. Marjanneke Vijge does not believe in the idea of making binding recommendations. States will not stand behind this. Climate deals can constitute as an example. If a binding treaty was to be the final goal, there would not have been an agreement. States are more willing to act on a voluntary basis, with positive incentives. Of course, there are a lot of pros and cons. But in the end, a non-binding agreement is better than none. To encourage states to comply with the recommendations, more awareness is needed. Not only of the existing problem, but especially of the consequences if there is lack of action. The states form a crucial part of the solution in the fight against the illegal trade in wildlife.

1.4.2 How to arrest wildlife traffickers more efficiently

Arresting and catching the wildlife traffickers is still a weak point which urgently needs to be improved. The Global Initiative against Transnational Organized Crime is a network of experts (for example law enforcement officials) who sit together and discuss how organized crime can be tackled in more innovative ways.³²⁸ Global Initiative recognises the problem of organized crime in the wildlife trade and published in 2014 a report: 'Policing the trafficking of wildlife : is there anything to learn from law enforcement responses to drug and firearms trafficking?'. The law enforcement community has been engaged for years in the war against narcotics and firearm trafficking. As mentioned before, these trades have many of the same features as wildlife trafficking. This report wants to assess the initiatives and strategies used in the war against narcotics and firearms and examine if illegal trade in wildlife can be addressed in the same way.³²⁹ It reveals numerous painful areas where improvement is necessary. This thesis will discuss the most important ones, focussing on the comparison with drugs trafficking.

³²⁷ See *supra*, for example EU that wants to persuade their Member States to punish wildlife crime with a sentence of at least 4 year imprisonment in order that these crimes fall under the scope of UNTOC. Yet, inside the EU there hasn't occurred any harmonisation. Still, many Member States doesn't reach this threshold.

³²⁸ X, "What is the Global Initiative?", Global Initiative Against Transnational Organized Crime, X, <http://globalinitiative.net/about/> (last consulted on 30/3/17).

³²⁹ 'Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?' The Global Initiative Against Transnational Organized Crime (2014), 1-2. (available at : <http://globalinitiative.net/wildlifecrime/>)

1.4.2.1 Data collection and analysis

The lack of data collection and analysis is a major problem. It is non-existent on international level and on national level only a few countries, from which the data is not treated or analysed as a distinct crime-type, are engaged.³³⁰

The narcotics trade is way ahead on this part. Most countries maintain detailed and accurate records and at an international level, UNODC annually publishes a very comprehensive ‘World Drug Report’. So does WCO. Interpol’s data collection is more operational and intelligence led.³³¹

In comparisons, at international level, CITES established the Elephant Trade Information System.³³² This database is hosted by TRAFFIC. The problem here is that this is hosted by a NGO and thus restricted in the storage of confidential information. This means countries do not give information or details on persons who are involved in the seizure. This information can only be provided to enforcement agencies.³³³ Furthermore, the WCO and INTERPOL engage in establishing a database for wildlife seizures. WCO has CENcomm, “a tool that facilitates the exchange and use of data in a timely, reliable and secure manner with direct access available 24 hours a day”³³⁴. ENVIRONET is a CENcomm tool, but exclusively dedicated to environmental protection, which includes wildlife crime.³³⁵ INTERPOL has I-24/7, “a secure network linking all INTERPOL member countries and (...) it enables authorized users to share sensitive and urgent police information (...) around the globe”³³⁶ and countries report to Interpol through an ECO-message, “an intelligence data reporting system for the many different law enforcement agencies concerned in the fight against environmental crime”³³⁷. The different tools are used for different purposes. For example, CENcomm is primarily used to exchange information in a timely manner between relevant authorities to counter specific cross border crimes such as illegal wildlife trade. I-24/7 enables users to share sensible information across the world and data is incorporated into relevant Interpol databases. Efforts are underway to ensure the information obtained through one system are integrated in the other, where appropriate.³³⁸ However, the Member States do not necessarily provide all the data and consequently neither Interpol nor WCO regularly publishes its findings due to incompleteness.³³⁹

³³⁰ *Ibid.*, 15.

³³¹ *Ibid.*, 13-14.

³³² Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking? The Global Initiative Against Transnational Organized Crime (2014), 15-16.

³³³ *Ibid.*

³³⁴ X, “Tools”, CITES, X, <https://www.cites.org/eng/prog/iccwc.php/Tools> (last consulted on 29/04/17).

³³⁵ *Ibid.*

³³⁶ *Ibid.*

³³⁷ *Ibid.*

³³⁸ Interview Edward Van-Ash Associate Programme Management Officer, CITES Secretariat, and Support Officer for the International Consortium on Combating Wildlife Crime, 25/04/2017.

³³⁹ Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking? The Global Initiative Against Transnational Organized Crime (2014), 15-16.

At EU level, the EU Commission has introduced EU Trade in Wildlife Information eXchange (EU-TWIX) which tries to store the data of seizures from EU Member States.³⁴⁰

*This database contains information on animals commonly sought after, seizure methods, prices of wildlife, and other information helpful to monitor and combat the illicit wildlife trade. The intranet encourages international cooperation by including sharing of resources, information, training and identification techniques, and expertise. Only designated enforcement officials with access codes can use the database, so it can remain secure.*³⁴¹

The problem occurs as with the Elephant Trade Information System. This database too is hosted by TRAFFIC, thus restricted in the storage of confidential information.³⁴²

Moreover, as mentioned *supra* title 1.2, UNODC (with the support of ICCWC) recently published the first World Wildlife Crime Report about trafficking in protected species.³⁴³ This Report is based on the global seizure database World WISE, which generates its data from the State Parties of CITES and the Customs Enforcement Network of WCO, and contains over 164.000 seizures from 120 countries.³⁴⁴ These seizures reveal that illegal wildlife trafficking is a global problem and that continued efforts are needed, both nationally and internationally, to combat it. It also highlights that more research in this kind of trade is needed. However this is a positive evolution, this report is not enough.

Harmonization is happening on an international level, to obtain information regarding the illicit trade in wildlife trafficking. The CITES Enforcement Authorities Forum, where the CITES Secretariat used to reach out to the law enforcement community by posting alerts, manuals, handbooks and enforcement-related messages for registered users, was integrated into the WCO ENVIRONET as of 2015.³⁴⁵ The Secretariat believed that “the ENVIRONET library contains comprehensive information on CITES and other related matters, (...) offers a more user-friendly, comprehensive and secure platform, (...) avoid unnecessary duplication of information on different platforms”³⁴⁶.

³⁴⁰Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking? The Global Initiative Against Transnational Organized Crime (2014), 15.

³⁴¹J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Envtl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 983.

³⁴²Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking? The Global Initiative Against Transnational Organized Crime (2014), 15.

³⁴³ ‘World Wildlife Crime Report : trafficking in protected species’, UNODC (2016), https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf

³⁴⁴ *Ibid.*, 13.

³⁴⁵ CITES, ‘Notification to the Parties: Integration of the CITES Enforcement Authorities Forum with WCO’s ENVIRONET’, 25 June 2015, No. 2015/039. (available at: <https://cites.org/sites/default/files/notif/E-Notif-2015-039.pdf>)

³⁴⁶ *Ibid.*

More harmonization is needed to understand this trade fully. Data information from around the world must be combined in one international database.³⁴⁷ An intranet, similar to EU-TWIX but more comprehensively, must be established globally. This can constitute as a more frequent form of communication and assistance between countries.³⁴⁸ On every level, enforcement agencies must share information on specific crimes, smuggling routes, vessels, individuals, etc. This could lead to more enforcement cooperation, countries could share relevant expertise, best techniques and practices. Technical assistance and equipment can be provided to the ones who need it.³⁴⁹ This database could also include mechanisms for coordinating financial institutions in order to monitor money laundering and facilitate asset confiscation and recovery.³⁵⁰

It would be preferable to appoint one international agency to take responsibility. To obtain confidential information about persons, groups, businesses involved, this agency has to be a recognised enforcement body with appropriate data protection protocols and authority. The submission of data must be done more frequently and preferably in real-time. This data collection has to be contextualised and nuanced with qualitative metrics. It is not enough to know about seizures and flow levels, the extent of the impact of that crime on local level and environmental level must also be provided.³⁵¹

On 31 October 2017, State Parties of CITES will submit their first annual illegal trade reports. This report is mandatory, as the Member States of the CITES treaty have to submit information regarding the illegal trade. When data is not provided, Parties should deliver a rationale for its absence. The data collected will be shared among the members of ICCWC, but will not always be publicly available, as it may contain information about ongoing enforcement procedures.³⁵² In the past, submission of data containing information about illegal trade in CITES-listed species was voluntary and not part of the reporting requirements under CITES. Recently, however, CITES Parties requested more information to become available so that an in depth analysis can be conducted and targeted recommendations can be made, highlighted the need to submit data on the illegal wildlife trade as part of their reporting requirements. While this reporting system is not subject to compliance measures, it is a positive evolution that countries themselves want to cooperate and initiatives are taking place.³⁵³ In the future, this could lead to the establishment of one international database.

³⁴⁷ 'Empty Threat 2015 : Does the law combat illegal wildlife trade?', DLA PIPER (2015), 8 (available at : <https://www.dlapiper.com/~media/Files/News/2015/05/IllegalWildlifeTradeReport2015.pdf>).

³⁴⁸ J. B. IZZO, "PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies", *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 994.

³⁴⁹ 'Tightening the net : Towards a global legal framework on transnational Organized Environmental Crime' Global Initiative Against Transnational Organized Crime (2015), 40-41.

³⁵⁰ *Ibid.*, 41.

³⁵¹ Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?' The Global Initiative Against Transnational Organized Crime (2014), 16.

³⁵² CITES, 'Notification to the Parties: New illegal trade report', 5 February 2016, No. 2016/007. (available at: <https://cites.org/sites/default/files/notif/E-Notif-2016-007.pdf>)

³⁵³ Interview Edward Van-Ash, , Associate Programme Management Officer, CITES Secretariat, and Support Officer for the International Consortium on Combating Wildlife Crime, 25/04/2017.

1.4.2.2. Investigations

This international database also needs to contain information on the exposed wildlife criminal organizations and their working. Publication of judicial decisions and prosecution statistics relating to wildlife crime are necessary.³⁵⁴ In order to obtain such information, the investigations in wildlife crimes need urgent improvement. Also in this field, wildlife falls way behind in comparison with the narcotics trade. Due to the absence of political will and lack of direction from policy-makers. The necessary resources and attention are not being given. Law enforcement bodies are either ill-equipped, inadequately-trained or not efficiently resourced to combat wildlife crimes. There is no exchange of information and intelligence, nor on national nor on international level. Suspects and detainees are not questioned effectively, interceptions of contraband are not followed-up effectively. On the field of the drugs trade, the fullest range of investigative techniques is employed by the enforcement community. Every stage of the trafficking chain is profiled and targeted. The lack of investigation measures at wildlife level can only be solved if there is enough political will to use the techniques of drugs trafficking. It is very important that the whole chain is targeted. Not only the person who has been caught trading endangered species, but to investigate who has given the assignment, with who he works and to whom the species were going.³⁵⁵ When countries start engaging in this, they can learn how wildlife traffickers work and share this information with one another.

Marcus A. Asner, a federal prosecutor in the United States, published an article on the case *United States v Bengis*. The first step, is to think like a wildlife trafficker. Trafficking rings are very complex but mostly are organized and legal enterprises that engage in money laundering operations.³⁵⁶ They try to find gaps in regulations around the world, bribe officials and move their illegal money to a place where it cannot be found.³⁵⁷ This case shows the importance of cooperation between countries. The wildlife traffickers used different export and import documents, while they thought that South-Africa (where they got their species from) and the United States would never sit together and compare.³⁵⁸ Witnesses are very useful in trying to find pieces of the puzzle, especially co-conspirators.³⁵⁹ To make witnesses talk, heavy penalties are a good incentive. By deterring them that if they do not talk, they will have to pay a huge fine or several years in imprisonment, they will be more willing to tell something. Witnesses, especially co-conspirators can help identifying all the players involved.³⁶⁰ By doing better investigations, more deterrence will be established. This is only one case study, but it already reveals useful information about how wildlife rings operate. Imagine this at global level, that every case is published and analysed in one database where enforcement official have access to.

³⁵⁴ 'Empty Threat 2015 : Does the law combat illegal wildlife trade?', DLA PIPER (2015), 8.

³⁵⁵ 'Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?' The Global Initiative Against Transnational Organized Crime (2014), 21-22.

³⁵⁶ M. A. ASNER, "To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 20.

³⁵⁷ *Ibid.* 14.

³⁵⁸ *Ibid.*, 9.

³⁵⁹ *Ibid.*, 10.

³⁶⁰ *Ibid.*, 17.

1.4.2.3 Capacity building

Capacity building is important in the fight against wildlife trafficking. Awareness, understanding and technical capacity are key. For example, techniques are needed to detect forged permits within a good permit system. Or specialized and sufficient personnel that receives proper training in this regard.³⁶¹ Problem is that specialized enforcement agencies find it difficult to see the bigger picture. They do not always understand how their nations feature as a country of origin, transit or destination. Sometimes seeing rare fauna and flora is so custom that protecting it is not their top priority. They do not understand the consequences of this trade and the extent of organized crime. Because the illegal trade in wildlife is not seen as a priority, there is lack of effort and budget.³⁶²

Capacity building to invest in specialized training is needed, while only a few developed countries is already doing this. They train in illegal hunting or fishing or references to multi-national environmental agreements.³⁶³ Enforcement officials specialized in the wildlife trade are rare. Most of the time, they are not even familiar with the relevant environmental laws and standards.³⁶⁴ Developing countries do not have the required budget and even if they did, they would rather spend it on other priorities. They miss the necessary equipment for such trainings, there is absence of holding cells, computers for intelligence-sharing, data storage, personnel shortage or ill-equipment. Basic training differs from one country to another.³⁶⁵ The NGO community is promoting capacity building which is mostly uncoordinated and often donor-driven. The donors historically adopted policies of refusing to provide firearms or ammunition to national enforcement bodies, while this form of capacity-building is so badly needed.³⁶⁶ WCO, Interpol and UNODC are engaging in capacity-building, but the funds are also given by donors. Without the donors' help, there is too less core budget to help wildlife. Problem with WCO and Interpol is that they deliver short, tightly-focussed courses due to limited human and financial resources. UNODC is the only organization which engages in mid- and long-term capacity building. It tends to deliver to a wider audience and has regularly training materials translated into local languages. But because this capacity-building is also donor-driven, it sometimes leads to sporadic, haphazard and occasionally duplicative efforts.³⁶⁷ The donor community must act in a more coordinated and collaborative manner and must seek guidance from experts. There is need of suitable trained personnel in the relevant agencies. They have to learn on-the-job training, must attend relevant courses and learn from experienced colleagues.

³⁶¹ X, "Bringing compliance and enforcement agencies together to maintain environmental security", *Glob. Evtl. L. Ann.* 2013, 42 & 44.

³⁶² 'Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?' The Global Initiative Against Transnational Organized Crime (2014), 23.

³⁶³ *Ibid.*, 24.

³⁶⁴ 'Tightening the net : Towards a global legal framework on transnational Organized Environmental Crime' Global Initiative Against Transnational Organized Crime (2015), 39. (available at : https://www.unodc.org/documents/congress/background-information/NGO/GIATOC-Blackfish/GIATOC_-_Tightening_the_Net.pdf)

³⁶⁵ 'Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?' The Global Initiative Against Transnational Organized Crime (2014), 24-25.

³⁶⁶ *Ibid.*, 24.

³⁶⁷ *Ibid.*, 25-26.

Countries must identify the most suitable recipients for each training and use new or enhanced skills. Due to lack of political will, this is very hard at present. UNEP tries to raise awareness among prosecutors and judiciary, but still a lot has to be realised in this area.³⁶⁸

Furthermore, there is more need for technological resources and forensic laboratories. One of the few forensic laboratories, specialized in wildlife crime matters, is established in the United States. It has entered a Memorandum of Understanding with the CITES Secretariat to provide support to any Member State, but very few parties have used this option. Member States could, free of charge, access the most advanced ballistic technology, yet no single Party has done so. Further, expert guidance in detecting fraud, DNA profiling and sniffer dogs are key features. South Korea's custom authorities use a sniffer dog unit, which have trained dogs to detect wildlife by-products usually smuggled throughout Asia via the Seoul airport.³⁶⁹ TRAFFIC assists enforcement agencies in training and implementing sniffer dogs across the globe.³⁷⁰ Still, extra resources are necessary to employ this method at every crucial trade point. In Australia, legislation states that if a keeper of a certain type of endangered snake wants to obtain a licence, every imported or bred species must have a microchip and a DNA sample.³⁷¹ This makes investigations of illegally obtained snakes much easier. A popular manner for wildlife traffickers is to exploit legal breeding programs. They claim their species are originating from such program, while in fact they are captured from the wild. It is extremely hard to prove it, but with this technique it is easy to detect if the snake is an offspring of the legally bred species or captured from the wild. Such legislation is necessary at global level, to make it harder for wildlife traffickers to abuse the legal system. This is only one example of how forensic research can benefit the fight against wildlife trafficking. To keep up with the newest techniques is hard for most of the countries, due to lack of resources or political will. Therefore it is necessary that investigators are partners with universities, museums and other research institutes in order to stay in contact with the forensic practitioners.³⁷² By publishing the existing forensic techniques, deterrence is established.³⁷³ These techniques can be used worldwide, if developed countries are willing to share technology with developing countries. Unfortunately, most developing countries who have the wildlife hotspots, do not dispose of the resources to prosecute these techniques. Furthermore, the techniques already used in the narcotics trade, can also be used in the wildlife trade. Poaching sites must be treated like crime scenes to collect and preserve evidence and submit it to laboratories for examination.

³⁶⁸ *Ibid.*, 26-27.

³⁶⁹ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1682.

³⁷⁰ X, "How dogs are tackling wildlife crime", WWF, X, <http://tigers.panda.org/news/sniffer-dogs/> (last consulted on 30/3/2017).

³⁷¹ S. CIAVAGLIA, H. DRIDAN, K. P. KIRKBRIDE and A. LINACRE, "Current issues with the investigation of wildlife crime in Australia : Problems and opportunities for improvement", *J. Int'l Wildlife L. & Pol.* 2015, Vol. 18 Issue 3, 259-260.

³⁷² *Ibid.*, 260-261

³⁷³ *Ibid.*, 258-259.

1.4.2.4. Strengthening custom administrations

While the WCO has done some impressive efforts in the fight against wildlife trade, still more needs to be done. Major gaps still occur in the system, which lead to abuse by wildlife traffickers. As mentioned *supra*, the case *United States v Bengis*, it became clear that Customs administrations do not communicate that often regarding illegal trade in wildlife. As an exporting country, if one comes across a particular shipment, it must become routine to contact the importing country on this matter and exchange information.³⁷⁴ To make it more efficient, the WCO could adopt a uniform computer system to enable custom officials to exchange information.³⁷⁵ Further, people should declare more precisely what they are shipping, instead of using general terms, such as “frozen fish”. It has to become routine to open up and inspect containers transporting wildlife trafficking in order to learn more about this trade. By exchanging information, or report this to the WCO which can launch a report, custom officials will learn more about suspicious shipments and will eventually know what to look for.³⁷⁶

1.4.2.5. Technological and financial support to developing countries

When evaluating the current areas that need improvement and the suggested solutions, a frequently upcoming bottleneck is the lack of resources in the developing countries, in the technology and financially. If countries really want to tackle the illegal wildlife trade, international cooperation must be established. Developed countries must assist developing countries by sharing resources, information and financial support.³⁷⁷ CITES has a Trust Fund that exists of contributions by the State Parties. With this Fund, CITES pays for the administrative costs of the Secretariat, the COP and other bodies or committees.³⁷⁸ But due to lack of political will and enforcement power of the Secretariat to collect the payments, many countries do not fulfil their obligations.³⁷⁹ Further, CITES has an external fund. Positive evolution can be seen in this regard. The contributions from the period 2016-2017 are approximately 6.000.000 US dollars, the European Union paid for half of this amount.³⁸⁰ With this external fund, State Parties assist programs of CITES. In every resolution adopted at the Conference of the Parties, budgetary implications are mentioned regarding the required capacity building, employment of new technologies, best practices, etc. Based upon these implications,

³⁷⁴ M. A. ASNER, “To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking”, *U. Pa. Asian L. Rev.* 2016, Vol. 12, 14.

³⁷⁵ *Ibid.*, 16.

³⁷⁶ *Ibid.*, 16.

³⁷⁷ J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 984.

³⁷⁸ X, “How is CITES financed?” CITES, X, <https://www.cites.org/eng/disc/fund.php> (last consulted on 20/03/2017).

³⁷⁹ J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 985.

³⁸⁰ ‘CITES External Trust Fund (QTL) 2016-2017 – Status of contributions as of 29 February 2017 (in US dollars), CITES, https://cites.org/sites/default/files/eng/disc/funds/status_of_external_contributions_to_the_CITES_External_Trust_Fund.pdf (last consulted on 30/03/17)

funding is sought and mostly found in CITES' external fund.³⁸¹ Furthermore, species-specific funds already exist. For example the African Elephant Fund and International Timber Trade Organization that works with donor countries to fund their capacity building project.³⁸²

While this is positive, there is a need for a fund to help exclusively the poorer countries, in order to assist them in deploying legislation, programs and policies in the fight against wildlife trafficking.³⁸³ Implementation of the existing provisions are an important first step to more harmonization around the world. Such fund would help realizing this goal. While mentioned *supra* title 1.4.1.3, the establishment of a UNEO would help to solve this problem. Meanwhile, UNEP or CITES can establish a fund especially for wildlife trafficking that encourages developing countries to invest more in forensic research, investigations, etc. Private initiatives are already operating in this matter. For example, the Netherlands Forensic Institute, which has a laboratory devoted to wildlife forensics and which offers specialized wildlife crime forensic advice to governments worldwide, wants to support forensic laboratories in Africa to make the newest technology available.³⁸⁴ A fund hosted by UNEP or CITES could coordinate the regional, private and species-specific funds. If developing countries have assistance and effective prosecutions occur, they will even get more money which can constitute in a positive virtuous circle. When developing countries become aware of this progression, they will be more willing to funnel their own resources to combat wildlife crime, much like finding resources to fight the narcotics trade.³⁸⁵

1.4.2.7. Conclusion

One can easily conclude that still a lot needs to be done, to combat the illegal trade in wildlife effectively. Though there are lots of databases and different communication channels, establishing one international and centralised database would result in a great tool to combat these crimes. It would help avoid unnecessary duplication and create a more user-friendly platform which in its turn would make communication and cooperation more effective. This database should contain all information on animals commonly sought after as well as the seizure methods and the prices of wildlife. It might encourage international communication channels and lead to cooperation, by sharing details on persons involved in seizures, by sharing resources and training methods and it could explain which are the best practices and identification

³⁸¹ Interview Elke Malfait, Attaché at Federal Public Service: Health, Food Chain Safety and Environment, CITES, 25/04/2017.

³⁸² J.C. VASQUEZ, "African Elephant Fund launched at CITES meeting", CITES, 19 August 2011, https://cites.org/eng/news/pr/2011/20110819_SC61.php (last consulted on 07/05/17); X, "ITTO-CITES Programme on tree species", CITES, X, <https://cites.org/eng/prog/itto.php> (last consulted on 07/05/17).

³⁸³ B. IZZO, "PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies", *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 987-988.

³⁸⁴ X, "CSI Wildlife: Kenyan Wildlife Service's wildlife forensic lab", *Agroberichten*, 30 November 2016, <http://www.agroberichtenbuitenland.nl/kenia/csi-wildlife-kenyan-wildlife-services-wildlife-forensic-lab/> (last consulted on 07/05/17).

³⁸⁵ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1682.

techniques by experts. Quite like EU-TWIX, only more comprehensive. It has to be hosted by an enforcement body, able to obtain confidential information on suspects in the illegal trade of wildlife. How a wildlife trafficker is thinking and handling should be analysed to see if there are similarities in order to obtain effective methods and techniques to apprehend them.

As stated above, steps towards harmonization in this regard are being taken. The CITES Enforcement Authorities Forum is integrated in the ENVIRONET of WCO. State parties of CITES recognize the lack of information and knowledge about illegal trade. Therefore, countries agreed to submit information. The data is to be shared by countries so that an analysis can be conducted by ICCWC, whereby countries can benefit from the information they provided. This is a positive evolution, showing that State Parties are open to the idea and want to do more. After conducting further research on ICCWC, I learned it serves as a platform between the five organizations and does not have a legal status of its own, nor is it an enforcement body per se. Concluding that more efforts should be made to promote ICCWC being the host of an international database. Realizing this option is not for the near future, but something to take in mind.

Although sharing techniques and resources, best practices and training through an international database would be helpful, a big part of the problem is the lack of trained personnel, the expert guidance needed to detect fraud, DNA profiling and sniffer dogs. Best practices should be applied worldwide. In Australia, for example, every snake species that is imported or bred must have a microchip and a DNA sample in order to facilitate the investigations. To make such best practices and techniques available to developing countries, help is needed. A fund, hosted by UNEP or CITES, could be established to coordinate private initiatives in the area. This way, people would be more willing to provide resources as they tend to stay away from major organizations with big projects, being not sure how their money is spent. As capacity building is promoted, developing countries would be able to invest more in forensic research etc.

1.4.3. Prosecution and sanctioning of wildlife crimes

It will be a great step forward, if the initiatives proposed in the previous chapter will be achieved. However, without an effective prosecution, there is not much about arresting criminals. Major gaps in the current systems occur that urgently need to be improved.

1.4.3.1. National legislation and the demand for more severe penalties

The most obvious weak area are the legal frameworks throughout the world. Coherence is mostly missing and manufacture, sale and consumption of one substance can be allowed in one

place but illegal in another.³⁸⁶ With drugs trafficking, this problem does not exist because many (if not most) countries have regulated and prohibited the use and trade of narcotics for decades.³⁸⁷ According to the previous mentioned report ‘Policing the trafficking of wildlife: is there anything to learn from law enforcement responses to drug and firearms trafficking?’, most nations have laws regulating fauna and flora. Unfortunately, these regulations are outdated and thus inadequate to combat organized wildlife trafficking.³⁸⁸ For example, the parties of the CITES treaty have implemented rules to comply, yet there are no rules to enable enforcers and prosecutors to respond to serious exploitation. In the context of 1970s, when the treaty was adopted, it does not reflect the existing sophisticated and significant levels of organized wildlife trafficking.³⁸⁹ As mentioned *supra* title 1.3, most treaties that want to address these organized crimes are not self-executing. This means that member states must implement the provisions in national law in order to be effective. It would help the countries if CITES adopts “model legislation” that is adapted to the current situation.³⁹⁰ The resolutions and decisions adopted at the COP already contain provisions and guidelines establishing best practices. However, this is not efficient to look up and gain an oversight. When CITES would adopt a “model legislation”, it would be more accessible. This legislation can constitute of the best practices around the world and can even rely on the existing national provisions on the narcotics trade.³⁹¹ State Parties can base on this legislation while drafting their national laws and CITES can give them guidance where necessary.³⁹²

Furthermore, there are no provisions that oblige member states to punish these crimes severely. Since many individuals engage in wildlife trafficking because of the low risk and high profits, deterrence must be established. There have been many resolutions and recommendations³⁹³ to states in order to persuade them to punish the felony with at least four years of imprisonment. When these crimes fall under the scope of UNTOC, more cooperation and measures become available to tackle this trade. But still, even within the EU many Member States do not punish

³⁸⁶ ‘Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?’ The Global Initiative Against Transnational Organized Crime (2014), 5.

³⁸⁷ *Ibid.*, 6.

³⁸⁸ *Ibid.*, 6.

³⁸⁹ *Ibid.*, 7.

³⁹⁰ J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Envtl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 993.

³⁹¹ ‘Empty Threat 2015 : Does the law combat illegal wildlife trade?’, DLA PIPER (2015), 7; M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1677.

³⁹² J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Envtl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 993.

³⁹³ Resolution 69/314 of the General Assembly of the United Nations (30 July 2015), *UN Doc. A/RES/69/314* (2015); Resolution 2013/40 of the Economic and Social Council of the United Nations (25 July 2013), *UN Doc. E/RES/2013/40* (2013); European Commission, ‘EU Action Plan against Wildlife Trafficking’, 2016, 87 *Final*. (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF); Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), *P8_TA-PROV* (2016)0454. (available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0454+0+DOC+XML+V0//EN>)

these crimes severe enough.³⁹⁴ Furthermore, there is a huge gap between the penalties available in their legislation, and the applied penalties.³⁹⁵ This is due to the lack of serious infringements occurring in the judiciary.³⁹⁶ More awareness must be raised on this matter.

At EU level, the European Parliament and the Council have adopted Directive 2008/99/EC on the protection of the environment through criminal law.³⁹⁷ The aim of this directive is to set minimum rules on defining of environmental crime throughout the European Union and make sure that the Member States adopt “effective, proportionate and dissuasive criminal penalties”³⁹⁸. In 2016, the European Parliament adopted a resolution on the EU action plan against wildlife trafficking. It summons the Commission to assess the directive and monitor its implementation, especially regarding penalties in wildlife crime, and give guidance when necessary.³⁹⁹ Further, the Commission must review the effectiveness of the directive in the light of the wildlife trade. According to article 83 TFEU⁴⁰⁰, the Commission can establish common minimum rules concerning the definition of criminal offenses and sanctions related to wildlife trafficking.⁴⁰¹ It is important that the Commission focuses on the penalties and even make binding provisions. If the penalties are harmonized at EU level, the institutions can focus on campaigns to raise awareness in other countries to do the same.

At international level, recommendations are made to establish a fourth protocol to UNTOC concerning “illicit trade in wildlife, including fisheries and forest crime”.⁴⁰² This protocol can set out harmonized definitions and standards that specifically intend to target transnational organized wildlife crime. The text can be a compromise of the best practices around the world.

³⁹⁴ Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, ‘Wildlife crime’, 2015, PE 570.008, 74-84. (available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/570008/IPOL_STU\(2016\)570008_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/570008/IPOL_STU(2016)570008_EN.pdf))

³⁹⁵ *Ibid.*

³⁹⁶ Interview Elke Malfait, Attaché at Federal Public Service: Health, Food Chain Safety and Environment, 25/04/2017.

³⁹⁷ Dir.Parl.Council no.2008/99/EC, 19 November 2008 on the protection of the environment through criminal law, *Pb.L.* 6 December 2008, afl. 328/28.

³⁹⁸ Article 5 Directive 2008/99/EC

³⁹⁹ Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), P8_TA-PROV (2016)0454, (31). (available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0454+0+DOC+XML+V0//EN>)

⁴⁰⁰ “The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: (...) organised crime.” (Article 83 (1) TFEU)

⁴⁰¹ Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), P8_TA-PROV (2016)0454, (31). (available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0454+0+DOC+XML+V0//EN>)

⁴⁰² WWF and TRAFFICK, “Illicit wildlife trafficking : an environmental, economic and social issue”, *Perspectives* 2014, Issue No. 14, 8; ‘Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?’ The Global Initiative Against Transnational Organized Crime (2014), 7; ‘Tightening the net : Towards a global legal framework on transnational Organized Environmental Crime’ Global Initiative Against Transnational Organized Crime (2015), 34; F. DEL CASTILLO, “The European Union’s approach in the fight against wildlife trafficking : Challenges ahead”, *J. Int. Wildlife L. & Pol.* 2016, Vol. 19, issue 1, 15.

While these provisions must also be implemented into national law, the protocol itself is binding.⁴⁰³ The downside is that this is a “top-down” approach. This can and most certainly will be a lengthy process and is not the answer for a short-term solution, but there will be great benefits at long-term.⁴⁰⁴

1.4.3.2. Lawsuit

To make the prosecution effective within the judiciary, wildlife has to be treated as a priority.⁴⁰⁵ Even if the countries would have a legislation that punishes these crimes more severe, it still has to be translated into practice.⁴⁰⁶ Wildlife crime is not treated the way it should because judges see those crimes as victimless.⁴⁰⁷ This mind-set must be abandoned. Educational campaigns must be organized in transnational crime rings that exist in wildlife trade with devastating consequences. It would be beneficial if a small number of judges were trained and specialized in this area and hearing relevant cases, while a national environmental court hardly exist.⁴⁰⁸

To fall under the scope of UNTOC, wildlife crime has to be punished nationally with at least an imprisonment of four years. Further, the defendant, who is accused of participation in an organized group, intentionally has to agree.⁴⁰⁹ This can be very subjective in many legal systems and it has to be proven what a person was thinking when he committed the crime. Fortunately, the convention stipulates that objective circumstances can be taken into account.⁴¹⁰ Still, defendants can escape prosecution by arguing that they did the crime with innocence.⁴¹¹

To target everybody, from the online buyer / seller to a participator in a sophisticated transnational organized crime network, more “intention requirements” must be made available, with taking into regard the seriousness of the committed crime. To persuade mankind to be more aware of the endangered species they buy, especially online, a “reckless liability” has to be put into place. This means that critical research is necessary before selling or buying species. This standard protects the innocent buyer / seller and targets the ones who carelessly engage in

⁴⁰³ ‘Policing the trafficking of wildlife : Is there anything to learn from law enforcement responses to drugs and firearms trafficking?’ The Global Initiative Against Transnational Organized Crime (2014), 7.

⁴⁰⁴ *Ibid.*, 8.

⁴⁰⁵ ‘Tightening the net : Towards a global legal framework on transnational Organized Environmental Crime’ Global Initiative Against Transnational Organized Crime (2015), 39.

⁴⁰⁶ Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, ‘Wildlife crime’, 2015, PE 570.008, 73. (available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/570008/IPOL_STU\(2016\)570008_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/570008/IPOL_STU(2016)570008_EN.pdf))

⁴⁰⁷ S. CIAVAGLIA, H. DRIDAN, K. P. KIRKBRIDE and A. LINACRE, “Current issues with the investigation of wildlife crime in Australia : Problems and opportunities for improvement”, *J. Int’l Wildlife L. & Pol.* 2015, Vol. 18 Issue 3, 254.

⁴⁰⁸ *Ibid.*, 254-255.

⁴⁰⁹ Article 5(1) UNTOC

⁴¹⁰ Article 5 (2) UNTOC

⁴¹¹ J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Env’tl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 991.

the (internet) trade. For participating in an organized network, strict liability must be applied.⁴¹² If someone engages in such activity, they have to be responsible for their actions and cannot liberate themselves by arguing they didn't know. This relieves the government of the heavy burden of proof and allows them to prosecute all the members of the organization equally.⁴¹³ With the establishment of a fourth protocol to UNTOC, this can become reality. Until then, model legislation offered by CITES or at EU level have to take this into account.

In the previous mentioned *US v Bengis case*, the federal prosecutor Marcus A. Asner, calls upon judges to punish wildlife crimes severe in practice (when national legislation allows it). Further, he finds it necessary that criminals are not only punished, but that their illegal obtained profits are taken away. Otherwise, deterrence will not be established. If a criminal makes a profit of approximately one million euros, and the only downside, if he is caught, is that he has to pay a fine and maybe spend a few years in prison, the trade will continue.⁴¹⁴

In addition to the fine and forfeiting the proceeds of the wildlife crime, restitution must be paid to the victims.⁴¹⁵ These victims can be the state where the species were taken from, individuals or the species itself. In the relevant case, the United States did the prosecution because the defendants' financial resources and presence were beyond the reach of the South African authorities. But the United States sentenced criminals to pay restitution to South Africa.⁴¹⁶ The restitution to the appropriate victims is important. It reflects the reality that wildlife has an economic value to local communities and gives them power to work together to abandon this kind of illegal trade.⁴¹⁷ Furthermore, restitution should be given to the relevant species. Whatever happens to the species, they have to be put into a zoo or sanctuary or be prepared to release them back into the wild. The criminal has to cover all the costs regarding the particular species, as established as a guideline in the annex of the CITES Resolution 'Disposal of confiscated animals'.⁴¹⁸ The wildlife hotspots almost always are located in developing countries. To grant the species a humane life, they have to go back to the country of export. Many export countries do not have the financial means and are unwilling to cover the expenses of the transport.⁴¹⁹ To combat the euthanize of endangered species, which is unfortunately a

⁴¹² J. B. IZZO, "PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies", *Wm. & Mary Env'tl. L. & Pol'y Rev.* 2009-2010, Vol. 34, 991-992.

⁴¹³ M. ZIMMERMAN, "The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade", *Vand. J. Transnat'l L.* 2003, Vol.36, 1679.

⁴¹⁴ M. A. ASNER, "To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 18.

⁴¹⁵ *Ibid.*, 18-19.

⁴¹⁶ "(...) US convicted Bengis and one of his associates (...) forfeiture of \$ 13,300,000 USD to the United States, and a payment of almost \$30,000,000 USD in restitution to South Africa" ('Tightening the net : Towards a global legal framework on transnational Organized Environmental Crime' Global Initiative Against Transnational Organized Crime (2015), 43)

⁴¹⁷ M. A. ASNER, "To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 19.

⁴¹⁸ Resolution 10.7 of the Conference of the Parties on Disposal of confiscated live specimens of species included in the Appendices (March 2010, Rev COP15) (available at: <https://cites.org/eng/res/all/10/E10-07R15.pdf>)

⁴¹⁹ CITES WORLD – Official Newsletter of the Parties, Issue Number 16 – December 2005, 5. (available at : <https://cites.org/sites/default/files/eng/news/world/16.pdf>)

common practice⁴²⁰, and to grant them a comfortable and humane life, even if they cannot be released into the wild again, this additional restitution is necessary.

1.4.3.3. Corruption

Corruption is a traitorous plague for effective enforcement of national legislation, especially in developing countries. At the seventeenth COP of CITES, in 2016, the first resolution concerning corruption was adopted, recognizing the link with illegal wildlife trade.⁴²¹ Corruption can take place at every chain of the trade. Criminals can pay off the local game warden, official, prosecutor or even the judge.⁴²² It facilitates many crimes, from poaching to trafficking to bribing law enforcement and thus undermines all the efforts that have been done. It is therefore an essential part in the fight against illegal wildlife trafficking.⁴²³

UNCAC is an effective tool to combat this problem, but not all CITES parties have ratified the convention and because it is not self-executing, the problem in lack of implementation exist.⁴²⁴ Aside from this convention, transparency and independent oversight must be established. There must be access to information regarding a government agency's process and results. Appointing leaders within the organization who have accountability would help too. Agencies cannot monitor themselves since this leaves the door open for corruption. This must be done by auditing services and tools that are sourced externally.⁴²⁵ Zero tolerance policies towards corruption practices have to be adopted and countries should preferably report the measures and legislation in place to curb this practice in order to establish 'best practices' where other countries can learn from.⁴²⁶

Further, many officials can be bribed because they are not paid enough. They mostly have to work in a dangerous environment and deserve to be rewarded for it. They have to receive

⁴²⁰ *Ibid.*, 11.

⁴²¹ Resolution 17.6 of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (September 2016) (available at: <https://cites.org/sites/default/files/document/E-Res-17-06.pdf>)

⁴²² M. A. ASNER, "To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking", *U. Pa. Asian L. Rev.* 2016, Vol. 12, 15; Draft resolution of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (2016), *COP17 Doc. 28.* (available at: <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-28.pdf>)

⁴²³ Draft resolution of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (2016), *COP17 Doc. 28.* (available at: <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-28.pdf>)

⁴²⁴ Resolution 17.6 of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (September 2016) (available at: <https://cites.org/sites/default/files/document/E-Res-17-06.pdf>)

⁴²⁵ X, "Bringing compliance and enforcement agencies together to maintain environmental security", *Glob. Env'tl. L. Ann.* 2013, 51.

⁴²⁶ Resolution 17.6 of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (September 2016) (available at: <https://cites.org/sites/default/files/document/E-Res-17-06.pdf>)

adequate salary and benefits in order to live comfortably with their family.⁴²⁷ It would help if the fines were proportionally allocated to enforcement agencies that are involved in detecting and prosecuting that specific crime. Bonuses and benefits if catching criminals, could persuade to do the right thing.⁴²⁸ Furthermore, expertise and funds to enable anti-corruption measures have to be provided when a country requests it.⁴²⁹

To stop the bribery within the judiciary, the role of NGOs must be put forward. If a criminal is found and prosecuted, NGOs must be all over it. If they track down low-level prosecutions and make this public, it will be hard for the criminal to bribe his way out.⁴³⁰

1.4.3.4. Extradition

As stated above, prosecution can be hard because obtaining certain species can be illegal in one country, while it is legal in another. If the criminal has left the country of export and entered the country of import, not much can be done. Extradition requires double criminality. Even if both countries are parties of the CITES convention, this does not assure that the country has criminal penalties for certain violations.⁴³¹ The organized groups serve great benefit for this huge gap.

CITES needs an extradition policy, while these criminal groups act transnational.⁴³² On international level, to guide states in drafting extradition policies, the UN has prepared a Model Treaty on Extradition.⁴³³ This Model Treaty also suggests double criminality and a period of imprisonment of at least one year. The imprisonment of one year is better than “listing” the crimes, while this is not flexible enough and would not evolve with the patterns of criminal activity.⁴³⁴ It may be even better to lower the standard, to be certain that the transnational organized groups cannot exploit any gaps in the system.

The double criminality - requirement has to be replaced. This in order to make prosecution more effective and give criminals not a chance to move to another country to avoid prosecution. The Lacey Act in the United States is a good example of how to solve this problem. This Act was

⁴²⁷ *Ibid.*, 52.

⁴²⁸ *Ibid.*, 51.

⁴²⁹ Resolution 17.6 of the Conference of the Parties on Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (September 2016) (available at: <https://cites.org/sites/default/files/document/E-Res-17-06.pdf>)

⁴³⁰ M. A. ASNER, “To catch a wildlife thief : Strategies and suggestions for the fight against illegal wildlife trafficking”, *U. Pa. Asian L. Rev.* 2016, Vol. 12, 15.

⁴³¹ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1680.

⁴³² J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Env’tl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 993.

⁴³³ Resolution 45/116 of the General Assembly of the United Nations (14 December 1990), *UN Doc. A/RES/45/116* (1990).

⁴³⁴ M. ZIMMERMAN, “The Black market for wildlife : combating transnational organized crime in the illegal wildlife trade”, *Vand. J. Transnat’l L.* 2003, Vol.36, 1681.

amended in 1948, to make it unlawful to “import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce – any fish or wildlife taken, possessed, transported or sold (...) in violation of any foreign law”⁴³⁵. In 2008, the scope of the Lacey Act has been expanded to plants as well.⁴³⁶ Consequently, individuals can be prosecuted in the United States for violating a foreign law regarding wildlife. It can solve the problem of a country that is unable or unwilling to prosecute. The *US v Bengis case* constitutes as a great example. The United States prosecuted the criminal organization, the research was done in cooperation with South Africa. In return, compensation was paid to South Africa. Yet for this system to work, cooperation and mutual legal assistance is necessary. Sovereignty of the developing country has to be respected and thus it is not intended to be used by developed countries as an excuse to undermine their authority.⁴³⁷

Many countries will not be pleased with an extra provision on extradition in the CITES convention. Therefore, CITES can include this in its “model legislation” in order to persuade states to enact a similar legislation, or try to make it binding with an opt-out system if there are sovereign, constitutional or privacy concerns should occur.⁴³⁸

1.4.3.5. Conclusion

National legal frameworks are still missing harmonization. The most important task is to ensure wildlife traffickers are punished with at least four years of imprisonment, to fall under the scope of UNTOC. To mediate this situation, the Commission could adopt a directive based on article 83 TFEU to establish common minimum rules concerning the definition of criminal offenses and sanctions related to wildlife trafficking. On an international level, a forth protocol to UNTOC, named “Illicit trade in wildlife, including fisheries and forest crime”, could be adopted containing a compromise of best practices around the world. While this is a lengthy process and not a short-term (or even mid-term) solution, I was wondering if it could be possible for CITES to adopt “model legislation”. At the Conference of the Parties, resolutions and decisions are adopted to keep up with emerging trends and to establish provisions and guidelines containing best practices among the State Parties. This method however, is not user-friendly. If CITES would adopt “model legislation”, it could be reviewed with every new Conference of the Parties and would make it more accessible for countries. It could contain annexes, for relevant legislation to certain countries or regions. This “model legislation” could be a compromise of best practices of the state parties and could rely on existing (effective and relevant) national legislation on narcotics trade. Furthermore, it could contain a provision regarding the extradition, as this is still a huge problem being currently absent in the treaty. In my opinion, it

⁴³⁵ Lacey Act, 16 U.S.C. §3372(2)(A) (2012)

⁴³⁶ T. KROST, “The world’s laws in American justice : the foreign law provisions of the 2008 Lacey Act Amendments”, *J. Env’tl. Publ. Health L.* 2013, Vol. 8, Issue 1, 56.

⁴³⁷ Interview Elke Malfait, Attaché at Federal Public Services: Health, Food Chain Safety and Environment, CITES, 25/04/2017.

⁴³⁸ J. B. IZZO, “PC pets for a price : Combating online and traditional wildlife crime through international harmonization and authoritative policies”, *Wm. & Mary Env’tl. L. & Pol’y Rev.* 2009-2010, Vol. 34, 994.

would be desirable to adopt a provision based on the US Lacey Act, enabling to pursue a person who performed an illegal act in a foreign country. Developed countries, who have a part in an investigation, could take over the case and cooperate with other countries that are involved. However, one should be careful that a “superstate” does not take over without the consent of the developing country, as state sovereignty still has to be respected. A major downside to this approach, is that countries are expected to know legislation all around the world, making cooperation and effective communication necessary to avoid any oversight or malpractices.

The legal framework being more effective and harmonized does not solve the problem. The judiciary have to become aware of the problem of illegal wildlife trafficking through educational campaigns, as they do not punish severe and often see these crimes as victimless. One could go further and train a number of judges to become specialist in this field in order to hear those cases. As criminals make a lot of money with this trade, rigid punishment is not enough. It is important that illegal profits are taken away and the “money trail” is followed and exposed. Furthermore, restitution has to be paid to the victims and relevant species to make sure that they have a chance to go back to their country of origin and can maintain a comfortable, humane life.

Finally, there is the problem of corruption. At the seventeenth COP of CITES, the first resolution was adopted concerning corruption in wildlife trafficking. This is a big step forward. Zero tolerance policies have to be implemented towards these practices. State parties of CITES have to share their best practices as it is important to have transparency and independent oversight on the field. The officers, dealing with wildlife trafficking, have to obtain an adequate salary to live comfortable and should get bonuses and benefits when they catch criminals to eliminate the possibility of being bribed. To tackle this situation within the judiciary, the role of NGOs cannot be underestimated. Cases on wildlife trafficking should be public to avoid bribery.

PART TWO: THE INTERNET TRADE IN WILDLIFE

2.1 Mapping the problems concerning wildlife cybercrime

Illegal wildlife trade is gaining more and more ground on the internet.⁴³⁹ Illegal traders use e-commerce to facilitate and enhance communication in order to expand their networks and consumer base. It also allows new traders and small businesses to establish themselves globally at relatively low cost. Increased anonymity is another major benefit.⁴⁴⁰

The International Fund for Animal Welfare (IFAW) performed a lot of research and published numerous reports to raise awareness on this matter. In this thesis, some of them will be discussed.

In March 2004, IFAW published its report 'Elephants on high streets: an investigation into ivory trade in the UK'⁴⁴¹. This report revealed that ivory is sold illegally over the internet, not only in the UK but on international scale.⁴⁴² To learn more about this internet trade and its extent, in 2005 IFAW published a second report 'Caught in the web: Wildlife trade on the internet'⁴⁴³. The monitoring would not only focus on ivory, for several months IFAW monitored on English language sites, the nature and scale of five types of wildlife: live primates, elephant products, turtle and tortoiseshell products, other reptile products and wild cat products.⁴⁴⁴ The results were horrifying: every week, thousands of animals and animal parts, legally prohibited or strictly regulated, are offered for sale over the internet.⁴⁴⁵ This poses new challenges to legislators and enforcement agencies.⁴⁴⁶ Due to the limited scale of the research, this is unfortunately the tip of the iceberg. In light of this report, IFAW met national eBay website representatives in Europe and recommended them to take measures to fight this kind of trade: a ban on all wildlife products for it is nearly impossible to distinguish the legal from illegal products, more public awareness and more monitoring and enforcement techniques.⁴⁴⁷

⁴³⁹ J. WU, "Wildlife trade on the internet", CITES, X, <https://cites.org/eng/news/world/19/6.php> (last consulted on 19/04/17)

⁴⁴⁰ A. HINSLEY, T.E. LEE, J.R. HARRISON and D.L. ROBERTS, "Estimating the extent and structure of trade in horticultural orchids via social media", *Conservation Biology* 2016, Vol. 30 No. 5, 1039.

⁴⁴¹ 'Elephants on high streets : an investigation into ivory trade in the UK', International Fund for Animal Welfare (2004), available at <http://www.ifaw.org/united-states/node/6338>

⁴⁴² 'Caught in the web : Wildlife trade on the internet', International Fund for Animal Welfare (2005), 5 (available at

<http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>

⁴⁴³ 'Caught in the web : Wildlife trade on the internet', International Fund for Animal Welfare (2005), available at <http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>

⁴⁴⁴ *Ibid.*, 3.

⁴⁴⁵ *Ibid.*, ii.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ 'Bidding for extinction', International Fund for Animal Welfare (2007), 1 (available at <http://www.ifaw.org/sites/default/files/Report%202007%20Bidding%20for%20Extinction.pdf>)

The follow-up report of IFAW in 2007, 'Bidding for extinction'⁴⁴⁸, monitored national eBay websites in eight countries⁴⁴⁹, particularly related to ivory trade. This in order to test the effectiveness of the rules, the monitoring and the initiatives eBay had taken so far.⁴⁵⁰ Again, the results were horrifying. IFAW concluded that eBay had to take responsibility and establish more stringent policies, instead of vague and confusing rules on wildlife trade.⁴⁵¹

In 2008, IFAW published its fourth and most comprehensive report 'Killing with Keystrokes'⁴⁵². The investigation lasted for three months. 183 publicly accessible websites in eleven countries and both wildlife products and live animal trade in primates, birds, reptiles, big cats, bears, elephants, rhinoceros, sharks, Tibetan antelopes and sturgeon were monitored.⁴⁵³ The problem of internet trade in endangered species is more significant than expected. IFAW found advertisements worth 3.871.201 USD in CITES' Appendix I protected species.⁴⁵⁴ Despite the announced ban on cross-border trade in ivory by eBay in 2007, this report shows that eBay accounts for 83 per cent of all ivory identified and 63 per cent of all trade in this investigation. One has to conclude that a strong policy is not enough, effective enforcement is key.⁴⁵⁵

Finally, in 2014 IFAW published its last comprehensive study 'Wanted – Dead or alive: Exposing online wildlife trade'.⁴⁵⁶ For two weeks, IFAW investigated the trade in endangered species on 280 online marketplaces in sixteen countries. A total of 33.006 endangered wildlife and wildlife parts and products offered for sale were revealed, estimated to be worth approximately 10.708.137 USD.⁴⁵⁷

Over a decade IFAW did research and tried to raise awareness. This last report shows that the current measures and initiatives taken by online websites as well as governments and enforcement agencies, are far from effective.

These previous investigations mainly focused on action sites, such as eBay. In 2014, TRAFFIC began its research on social media platforms. Dealers released photos and information on illegal wildlife products to attract and interact with consumers. In contrast to advertisements, dealers can choose their "audience". Only "recognized" members have access to the information and the dealer regularly checks his followers and blocks them if he thinks it is necessary. In that

⁴⁴⁸ 'Bidding for extinction', International Fund for Animal Welfare (2007), available at <http://www.ifaw.org/sites/default/files/Report%202007%20Bidding%20for%20Extinction.pdf>

⁴⁴⁹ Australia, Canada, China, France, Germany, the Netherlands, UK and USA.

⁴⁵⁰ *Ibid.*, 4.

⁴⁵¹ *Ibid.*, 15.

⁴⁵² 'Killing with Keystrokes', International Fund for Animal Welfare (2008), available at <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>

⁴⁵³ *Ibid.*, 2.

⁴⁵⁴ *Ibid.*, 16.

⁴⁵⁵ *Ibid.*, 3.

⁴⁵⁶ 'Wanted – Dead or alive : Exposing online trade in endangered species', International Fund for Animal Welfare (2014), available at <http://www.ifaw.org/sites/default/files/IFAW-Wanted-Dead-or-Alive-Exposing-Online-Wildlife-Trade-2014.pdf>

⁴⁵⁷ *Ibid.*, 4.

way, sellers are more protected and monitoring is even harder. Some even use “agents” to repost information into their own social media platform to extend their audience. If a person wants to buy from the agent, the agent buys from the dealer and sells at a higher price to the consumer. This makes transactions even faster, more anonymous and raises considerable challenges on the monitoring end.⁴⁵⁸

In 2016, two reports were published on the illegal wildlife trade on social media. First, TRAFFIC published a report ‘Trading faces: A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’⁴⁵⁹. TRAFFIC monitored fourteen Facebook groups in Peninsular Malaysia over 50 hours during a five month period. These groups contain approximately 70.000 members, the majority of them are “closed”, meaning that only members can see the content.⁴⁶⁰ This illustrates that the trade on social media has a large client base and can expand rapidly through its viral nature.⁴⁶¹ This report exposed that 236 individual posts on live wild animals were offered for sale from 106 unique sellers.⁴⁶² This proves that a lot of different people are involved in this trade.

The second report specifically focused on orchids and is the first large-scale investigation in this area.⁴⁶³ It recognizes that the benefits for businesses on social media are numerous and that websites focus on introducing easier ways to advertise and take payments.⁴⁶⁴ Their conclusion is that orchids are being traded openly through social media.⁴⁶⁵ Trade connections between Southeast Asia and key orchid-importing areas, such as the European Union, the United States and Australia do exist. Social media makes it even easier for those groups to connect.⁴⁶⁶ These trades take place in structured networks and links were found to other wildlife products.⁴⁶⁷

Finally, attention has to be given to Craigslist, which is seen as the major online platform for classified advertisements.⁴⁶⁸ Because this platform is classified, little information is available on the transactions, buyers, sellers, final prices, etc.⁴⁶⁹ IFAW published a report about the ivory that has been traded on Craigslist.⁴⁷⁰ While Craigslist has a strong policy prohibiting the sale of

⁴⁵⁸ ‘Trading faces : A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’, TRAFFIC (2016), 4 (available at http://www.trafficj.org/publication/16_Trading_Faces.pdf)

⁴⁵⁹ ‘Trading faces : A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’, TRAFFIC (2016), available at http://www.trafficj.org/publication/16_Trading_Faces.pdf

⁴⁶⁰ *Ibid.*, iv.

⁴⁶¹ *Ibid.*, v.

⁴⁶² *Ibid.*, iv-v.

⁴⁶³ A. HINSLEY, T.E. LEE, J.R. HARRISON and D.L. ROBERTS, “Estimating the extent and structure of trade in horticultural orchids via social media”, *Conservation Biology* 2016, Vol. 30 No. 5, 1038.

⁴⁶⁴ *Ibid.*, 1039.

⁴⁶⁵ *Ibid.*, 1044.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*, 1045.

⁴⁶⁸ ‘Elephant vs Mouse : An investigation of the ivory trade on Craigslist’, TRAFFIC (2015), 6 (available at <http://www.ifaw.org/sites/default/files/IFAW-craigslist-ivory-report-2015.pdf>)

⁴⁶⁹ *Ibid.*, 9.

⁴⁷⁰ ‘Elephant vs Mouse : An investigation of the ivory trade on Craigslist’, TRAFFIC (2015), available at <http://www.ifaw.org/sites/default/files/IFAW-craigslist-ivory-report-2015.pdf>

animal parts and especially ivory, broadcasting their policy is a major shortcoming.⁴⁷¹ Craigslist is organized geographically with 420 sub-sites.⁴⁷² IFAW performed a “snapshot investigation” of five days in 28 sub-sites.⁴⁷³ Investigators found 522 postings, which offered 456 ivory, 86 suspected ivory⁴⁷⁴ and 75 related wildlife products, worth approximately 1.429.151 USD.⁴⁷⁵ Most of these advertisements do not mention anything about the legality of ivory (if it is obtained before the ban on ivory). Because Craigslist is not a commerce or auction site, little is known about the actual transactions. Even if a small number of these advertisements are sold, it is in defiance of Craigslist’s policy and one can conclude that Craigslist facilitates the sale of ivory.⁴⁷⁶

Cybercrime is a growing area of concern, while enforcing the existing laws on the World Wide Web is difficult.⁴⁷⁷ Especially when one has to deal with third-parties who only serve as a platform for buyers and sellers to meet without being involved in the transactions, such as eBay and Craigslist.⁴⁷⁸ Attention has to be given to this area, because the extent of the illegal trade is beyond everything. E-commerce is booming and it enables individuals to communicate world-wide, regardless of their geographical position.⁴⁷⁹ Internet enables illicit traffickers to globally operate undercover with hidden identities and with relatively unseen online transactions.⁴⁸⁰ They reach a wide audience within a short time frame at relatively low costs.⁴⁸¹

A major problem is the existence of legal business in trading wildlife, which makes it even more difficult to distinguish one from the other, helping the illegal traffickers to hide even more.⁴⁸² Most of the time, when advertisements were found on wildlife products, there was no paperwork available to determine if the species or products were legally obtained. And even if there was, it was as good as impossible to know if it was valid or forged.⁴⁸³ Many websites facilitating the trade in wildlife do not have policies on the sale of wild products or guidance

⁴⁷¹ *Ibid.*, 7.

⁴⁷² *Ibid.*, 12.

⁴⁷³ *Ibid.*, 10.

⁴⁷⁴ “Where it was believed ivory was being mislabeled (or possibly disguised) as another product, investigators analyzed code words, price indicators, and the pictures provided to determine whether an item would be counted as ‘suspected ivory’”. (‘Elephant vs Mouse : An investigation of the ivory trade on Craigslist’, TRAFFIC (2015), 10.)

⁴⁷⁵ *Ibid.*, 13.

⁴⁷⁶ *Ibid.*, 26.

⁴⁷⁷ ‘Wanted – Dead or alive : Exposing online trade in endangered species’, International Fund for Animal Welfare (2014), 4.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ ‘Trading faces : A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’, TRAFFIC (2016), 1.

⁴⁸⁰ ‘Trading faces : A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’, TRAFFIC (2016), 1-2.

⁴⁸¹ *Ibid.*, iv.

⁴⁸² *Ibid.*, iv.

⁴⁸³ ‘Killing with keystrokes 2.0’, International Fund for Animal Welfare (2011), 14 (available at <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>)

legislation for consumers. The ones that have, still constitute a platform for illegal wildlife trade. Policies are thus non-existent or far from effective due to lack of enforcement.⁴⁸⁴

As explained in the first part of this thesis, national and international laws governing the trade in endangered species differ from one country to another and are far from harmonized, which makes it hard to tackle the illicit wildlife trade in general. Furthermore, these laws and regulations have been developed before the existence of the World Wide Web, which makes them incomplete.⁴⁸⁵ Even when laws do exist governing the internet, they are inadequate or not focused on wildlife trade.⁴⁸⁶

2.2 Consequences of wildlife cybercrime

The consequences of the trade in illicit wildlife species and products is explained more comprehensively *supra* *title 1.1*. It threatens the biodiversity and leads to the decline of populations or even the extinction of species. Further, there are the social implications. Because wildlife is harvested at a high rate, it undermines the legitimate government and civil society of developing countries.

Internet trade makes it easier for illicit traffickers to sell their “products”. As mentioned *supra* *title 2.1*, they have a global reach in a short time with hidden identities. This puts even more pressure on the population of species and plants. Overexploitation becomes more realistic⁴⁸⁷, since more people can engage and seller and buyer do meet without having to interact face-to-face. Internet trade entailed an explosion in wildlife trade. It can also eliminate several layers of middlemen.⁴⁸⁸

For the animals, declining population and risk for extinction are not the only consequences. The animals’ welfare is not secured when dealt by an illicit trafficker. Many animals die during capture, through poor conditions and treatment in captivity or during transport. This leads to a larger extent of capturing species to compensate for those losses.⁴⁸⁹ Traders do not care about the conditions animals have to live in, they only see profits.⁴⁹⁰ Furthermore, transactions with live animals, implicate they have to be smuggled from one place to another. Animals have to

⁴⁸⁴ *Ibid.*, 15.

⁴⁸⁵ *Ibid.*, 14.

⁴⁸⁶ ‘Killing with Keystrokes’, International Fund for Animal Welfare (2008), 4.

⁴⁸⁷ ‘Caught in the web : Wildlife trade on the internet’, International Fund for Animal Welfare (2005),33; A. HINSLEY, T.E. LEE, J.R. HARRISON and D.L. ROBERTS, “Estimating the extent and structure of trade in horticultural orchids via social media”, *Conservation Biology* 2016, Vol. 30 No. 5, 1039.

⁴⁸⁸ F. DIEP, “How the internet has made wildlife smuggling a ‘low-risk activity’”, *Pacific Standard*, 6 May 2016, <https://psmag.com/how-the-internet-has-made-wildlife-smuggling-a-low-risk-activity-7af7cac2cb30> (last consulted on 19/04/17).

⁴⁸⁹ ‘Caught in the web : Wildlife trade on the internet’, International Fund for Animal Welfare (2005), 6.

⁴⁹⁰ K. NOWAK, “The world has a chance to make the wild animal trade more humane”, *National Geographic*, 26 February 2016, <http://news.nationalgeographic.com/2016/02/160226-animal-trade-animal-welfare-exotic-pets-cites-wildlife-trafficking/> (last consulted on 19/04/17).

be concealed in order to pass the border without being noticed.⁴⁹¹ Some are sent by mail or express delivery services, such as DHL, FedEx, ...in horrifying ways.⁴⁹² For instance: in 2015, the Daily Mail published pictures of endangered cockatoos stuffed in plastic bottles.⁴⁹³ In 2016, a wildlife officer in South-Wales undermined an animal smuggling operation where reptiles were being mailed. They were put into cardboard boxes and sealed in small postage bags. These animals were packaged in bundles and were unable to breath.⁴⁹⁴

The explosion of illicit trade in endangered species also increases the introduction of invasive species.⁴⁹⁵ “Invasive species is a plant, fungus or animal species that is not native to a specific location (...), and which has a tendency to spread a degree believed to cause damage to the environment, human economy or human health.”⁴⁹⁶ Invasive species have an immense and usually irreversible effect on native species and ecosystems, similar to loss and degradation of habitats.⁴⁹⁷ It can lead to the extinction of native species as they are not prepared to defend themselves against the invaders.⁴⁹⁸ It also leads to the changing of composition and structure of ecosystems, which has a detrimental effect on the ecosystem services and affects economies and human health.⁴⁹⁹ Those invasive species can cause diseases, leading to human disease outbreaks or threatening livestock, international trade, etc. Outbreaks can lead to hundreds of billions of dollars of economic damage globally.⁵⁰⁰ Invasive species are linked to the global trade in wildlife.⁵⁰¹ In 2015, a study was published on the monitoring of global e-commerce in plants in order to determine if this is a pathway to invasion.⁵⁰² The study proved that invasive species were significantly overrepresented in plant auctions on eBay. Many recognized invasive species are offered for sale on the internet on a daily basis.⁵⁰³ This while data of this research may be an underestimation of the true e-commerce.⁵⁰⁴

⁴⁹¹ ‘Caught in the web : Wildlife trade on the internet’, International Fund for Animal Welfare (2005), 6.

⁴⁹² ‘Invasive species and E-Commerce’, Invasive Species Advisory Committee (2012), available at https://www.anstaskforce.gov/Meetings/2016_November/6a_%20NISC%20E-Commerce_White_Paper.pdf

⁴⁹³ J. AWFORD, “Bottled birds: How callous smugglers cram cockatoos into plastic bottles to get them through customs”, Mail Online, 4 May 2015, <http://www.dailymail.co.uk/news/article-3067691/Smugglers-birds-plastic-bottles-customs.html> (last consulted on 19/04/17)

⁴⁹⁴ E. PARKE, “‘Cruel’ Kimberley wildlife smuggling scheme condemned as man fined \$13,000”, ABC News, 8 November 2016, <http://www.abc.net.au/news/2016-11-07/kimberley-wildlife-smuggling-operation-condemned-man-fined/7999196> (last consulted on 19/04/17)

⁴⁹⁵ ‘Invasive species and E-Commerce’, Invasive Species Advisory Committee (2012), available at https://www.anstaskforce.gov/Meetings/2016_November/6a_%20NISC%20E-Commerce_White_Paper.pdf

⁴⁹⁶ X, “Invasive species”, Wikipedia, X, https://en.wikipedia.org/wiki/Invasive_species (last consulted on 19/04/17)

⁴⁹⁷ X, “Impact of invasive alien species”, WWF, X, http://wwf.panda.org/about_our_earth/species/problems/invasive_species/ (last consulted on 19/04/17)

⁴⁹⁸ *Ibid.*

⁴⁹⁹ X, “Invasive species”, IUCN, X, <https://www.iucn.org/theme/species/our-work/invasive-species> (last consulted on 19/04/17)

⁵⁰⁰ W.B. KARESH, R.A. COOK, E.L. BENNETT and J. NEWCOMB, “Wildlife trade and global disease emergence”, *Emerg. Infect. Dis.* 2005, Vol. 11, (1000) 1000. (available at <https://www.ncbi.nlm.nih.gov/pubmed/16022772>)

⁵⁰¹ *Ibid.*, 1000.

⁵⁰² F. HUMAIR, L. HUMAIR, F. KUHN and C. KUEFFER, “E-commerce trade in invasive plants”, *Conservation Biology* 2015, Vol. 29, No.6, 1659.

⁵⁰³ *Ibid.*, 1660 & 1663.

⁵⁰⁴ *Ibid.*, 1662.

The consequences of the increased engagement in illegal trade in wildlife, especially due to the internet trade, are devastating. For the species' survival and welfare. For the economic losses and human diseases. One cannot ignore this any longer. Initiatives have to be taken without further delay in order to combat the problem.

2.3 Existing initiatives and efforts to fight wildlife cybercrime

2.3.1 The European Convention on Cybercrimes

Cybercrime abuses the era of the World Wide Web. Jurisdictional issues have hampered the effective prosecution and sanctioning of such crimes. A generally recognized principal of international law is that "a state is not permitted to enforce its criminal law in another state's territory without the host state's permission".⁵⁰⁵ While the internet is global in its nature and a state's physical cyber assets located in its territory is connected to this global internet, it does not demolish the state's territorial sovereignty. Countries have sovereignty over the cyber assets within their territory, allowing them to restrict or protect the access and make assets subject to the state's legal and regulatory control.⁵⁰⁶ Three jurisdictional problems relate to cybercrimes: (1) lack of criminal statutes, while many states do not enact laws criminalizing cybercrimes; (2) lack of procedural powers, while states do not have the resources and necessary tools to investigate such crimes; (3) lack of enforceable mutual assistance provisions.⁵⁰⁷

With these problems in mind, the Council of Europe adopted the Convention on Cybercrime⁵⁰⁸, in 2001. It is the first and only international treaty on crimes committed via the internet and other computer networks aiming to establish a common criminal policy to protect the society against cybercrimes.⁵⁰⁹ Harmonization is necessary to reduce the "save heavens" and to establish effective cooperation between law enforcement agencies.⁵¹⁰ To achieve this aim, the Convention tries harmonizing the national laws, improving the investigative techniques and increasing cooperation between nations.⁵¹¹

⁵⁰⁵ 'Caught in the web : wildlife trade on the internet', International Fund for Animal Welfare (2005), 16. (available at :

<http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>)

⁵⁰⁶ C. LOTRIONTE, "State sovereignty and self-defense in cyberspace: a normative framework for balancing Legal rights", *Emory Int'l L. Rev.* 2012, Vol. 26, 852.

⁵⁰⁷ A.M. WEBER, "The Council of Europe's Convention on Cybercrime", *Berkeley Tech. L.J.* 2003, Vol.18, (425) 426-427.

⁵⁰⁸ Convention on Cybercrime of 23 November 2001, *European Treaty Series*, no. 185. (hereinafter 'Convention on Cybercrime')

⁵⁰⁹ Convention on Cybercrime, 2; A.M. WEBER, "The Council of Europe's Convention on Cybercrime", *Berkeley Tech. L.J.* 2003, Vol.18, 429.

⁵¹⁰ J. CLOUGH, "A world of difference : The Budapest Convention on Cybercrime and the challenges of harmonization", *Monash U. L. Rev.* 2014, Vol. 40, 701.

⁵¹¹ Council of Europe, 'Explanatory report to the Convention on Cybercrime', *European Treaty Series No. 185*, 4. (available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce5b>)

The treaty is open for signature for EU Member States and non-Member States which have participated in its elaboration.⁵¹² After coming into force, the Committee of the Ministers of the Council of Europe may invite another state to accede to the Convention.⁵¹³ As in December 2016, 53 states have ratified the treaty, among them Canada, the United States, South Africa and Japan.⁵¹⁴ The Convention exists of four chapters and will only supplement existing multilateral or bilateral treaties or arrangements between the Parties. Regarding general matters, the rule of interpretation is *lex specialis derogat legi generali*, with the convention being the *lex specialis*. When Member States want to enact new conventions, provisions have to be in line with the convention.⁵¹⁵

Chapter I explains the use of terms. Chapter II contains measures to be taken at national level, with section one “substantive criminal law”. In this section, the Convention obliges State Parties to criminalize nine specific conducts, structured into four categories and the attempt and aiding or abetting.⁵¹⁶ All these offences have to be committed “intentionally”, with the exact meaning left to national legislation.⁵¹⁷ Section two “Procedural law” enquires Parties to adopt procedural measures at national level for the purpose of the investigations, mentioned in the treaty, other criminal offences committed by means of a computer system and evidence in electronic form of a criminal offence.⁵¹⁸ While online illicit wildlife trade is not specifically mentioned in this section, it can be encompassed as “other criminal offences committed by means of a computer system”⁵¹⁹, which makes the convention applicable.

Section two aims at “permitting the obtaining or collection of data for the purpose of specific criminal investigations”⁵²⁰. The Convention wants to adapt traditional procedural measures to the new technological environment, as well as creating new measures to ensure that the traditional procedural measures remain effective in this new technological environment.⁵²¹

Section three of Chapter II contains a provision about the jurisdiction. It is based upon the principle of territoriality and on the principle of national jurisdiction when the dual criminality

⁵¹² Article 36 Convention on Cybercrime

⁵¹³ Article 37 Convention on Cybercrime

⁵¹⁴ ‘Chart of signatures and ratifications of treaty 185’, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures>

⁵¹⁵ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 56-57.

⁵¹⁶ *Illegal access; Illegal interception; Data interference; System interference; Misuse of devices; Computer-related forgery and fraud; Offences related to child pornography; Offences related to infringements of copyright and related rights* (Article 2-10 Convention on Cybercrime)

⁵¹⁷ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 8.

⁵¹⁸ Article 14 (2) Convention on Cybercrime

⁵¹⁹ Article 14 (2) b Convention on Cybercrime

⁵²⁰ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 21.

⁵²¹ *Ibid.*

is achieved.⁵²² This provision applies only for offences established in accordance with articles 2 through 11.⁵²³ This means it is not applicable to online wildlife trading.

Chapter III deals with international co-operation. State Parties have to establish international cooperation “to the widest extent possible”.⁵²⁴ The provisions in this chapter are applicable when a crime is committed by the use of a computer system or an ordinary crime involved with electronic evidence. It does not supersede provisions of other pre-existing international agreements on this issue.⁵²⁵

When drafting the Convention, the Committee wanted to add more content-related offences, other than child pornography. The possibility to supplement these offences with the distribution of racist propaganda was non-existent at that time due to lack of consensus. Because of the complexity of the issue, concerning the freedom of expression grounds, it was decided that the European Committee on Crime Problems would draw up an additional protocol to the Convention, which was adopted on November 7, 2002.⁵²⁶ “The purpose of this Protocol is to supplement (...) the provisions of the Conventions as regards the criminalization of acts of racist and xenophobic nature committed through computer systems.”⁵²⁷ The State Parties are not obliged to adopt this Protocol, however they do have to enact appropriate legislation to effectively enforce it since the provisions are mandatory.⁵²⁸ This Protocol establishes its own definitions and measures taken at national level. However many provisions of the Convention apply *mutatis mutandis* to this Protocol.⁵²⁹

The Convention on Cybercrime is very innovative and the most significant one in its area.⁵³⁰ Technology however is constantly changing and one has to be on top of this in order to combat such crimes. The ratification process is lengthy and amendments are difficult.⁵³¹ Today, it does

⁵²² *Ibid.*, 40-41.

⁵²³ Article 22 Convention on Cybercrime

⁵²⁴ Article 23 Convention on Cybercrime

⁵²⁵ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 41.

⁵²⁶ Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems of 28 January 2003, *European Treaty Series No. 189*. (hereinafter : Protocol Convention on Cybercrime); Council of Europe, ‘Explanatory report to the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems’, *European Treaty Series No. 189*, 2 (available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d37ae>); A.M. WEBER, “The Council of Europe’s Convention on Cybercrime”, *Berkeley Tech. L.J.* 2003, Vol.18, 431.

⁵²⁷ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 2.

⁵²⁸ *Ibid.*; A.M. WEBER, “The Council of Europe’s Convention on Cybercrime”, *Berkeley Tech. L.J.* 2003, Vol.18, 431.

⁵²⁹ Article 8 Protocol Convention on Cybercrime.

⁵³⁰ J. CLOUGH, “A world of difference : The Budapest Convention on Cybercrime and the challenges of harmonization”, *Monash U. L. Rev.* 2014, Vol. 40, 700.

⁵³¹ M. GERCKE, “10 years Convention on Cybercrime : Achievements and failures of the Council of Europe’s instrument in the fight against internet-related crimes”, *J. Information L. & Tech.* 2011, Vol. 12 Issue 5, 144; A.M. WEBER, “The Council of Europe’s Convention on Cybercrime”, *Berkeley Tech. L.J.* 2003, Vol.18, 443.

not encompass the existing best practices, while the Council of Europe has neither updated, nor amended the Convention in response to current developments.⁵³²

Due to privacy concerns, the measures in Chapter II, section two cannot be used pro-actively, only in an ongoing investigation.⁵³³ Regarding the internet trade it is important to monitor and search actively for prohibited listings of sales. This convention is not much of help in the realm of wildlife cybercrimes. It can be used in an ongoing investigation of exposing a network. But as mentioned in the previous part of this thesis, currently there exist few investigations concerning wildlife crime. If this should change in the future, the convention can be considered relevant. The treaty itself establishes a minimum standard that countries can go beyond. National legislation still differs from country to country so it could be helpful to look it up in order to know which measures can be used and how intrusive they can be.

2.2.2 The Convention on International Trade in Endangered Species of Wild Fauna and Flora

As mentioned *supra* title 1.3.1, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the oldest, most comprehensive and important and one of the most widely ratified international environmental agreements. Its aim is to make sure that “international trade in specimens of wild animals and plants does not threaten their survival”.⁵³⁴

CITES is getting more and more involved in the fight against wildlife cybercrime. At the fourteenth Conference of the Parties, in 2007, the Parties wanted to step up and face the development of the growing threat on the internet regarding CITES listed specimens. From then on, the CITES community paid more attention to this kind of trade in order to gain more understanding in how to tackle this problem.⁵³⁵ The Standing Committee organized a working group on e-commerce on the 58th meeting in 2009.⁵³⁶ They wanted to examine the issues related to the evolving e-commerce, based on information submitted by the State Parties.⁵³⁷ Unfortunately, only eleven per cent did so, mostly developed countries. This made it hard to indicate the scale of the illicit trade, facilitated by the internet.⁵³⁸ Nevertheless, many stakeholders were present such as WCO, eBay, EU Community, some developing countries,

⁵³² M. GERCKE, “10 years Convention on Cybercrime : Achievements and failures of the Council of Europe’s instrument in the fight against internet-related crimes”, *J. Information L. & Tech.* 2011, Vol. 12 Issue 5, 147.

⁵³³ Council of Europe, ‘Explanatory report to the Convention on Cybercrime’, *European Treaty Series No. 185*, 21.

⁵³⁴ M.V. MANLEY, “The (inter)national strategy : An ivory trade ban in the United States and China”, *Fordham Int’l L.J.* 2015, Vol. 38, 1526.

⁵³⁵ T. SALMON, “Past, present and future of the Working Group on E-Commerce of Specimens of CITES-Listed Species”, CITES, X, <https://cites.org/eng/news/world/19/2.php> (last consulted on 19/04/17)

⁵³⁶ Fifty-eighth meeting of the Standing Committee on E-Commerce of specimens of CITES-listed species (6-10 July 2009), *SC58 Doc.22*, available at <https://www.cites.org/eng/com/sc/58/E58-22.pdf>.

⁵³⁷ *Ibid.*, 1.

⁵³⁸ *Ibid.*

IFAW, TRAFFIC, etc.⁵³⁹ Presentations were given by relevant stakeholders divided into two working groups, each one examining another issue related to the e-commerce. There was no consensus for a complete ban on advertisements of Appendix-I species or reversal of burden of proof regarding the seller who had to prove animals were legally obtained.⁵⁴⁰ Drafting a resolution or decision on this matter was not possible at that time.⁵⁴¹

In 2010, at the fifteenth Conference of the Parties, they reviewed the resolution ‘Compliance and enforcement’ as an outcome of the workshop on e-commerce in order to recognize the problem in CITES listed specimens.⁵⁴² The recommendations given to the Parties are to establish a national unit dedicated to this trade, or incorporate it into the existing units to monitor more effectively, to review domestic law in order to make it sufficient to combat this kind of trade, coordinate the monitoring, more intelligence sharing about the existing methodologies, make sure there are sufficient resources, etc.⁵⁴³

In 2013, at the sixteenth Conference of the Parties, the resolution on ‘conservation of and trade in tigers and other Appendix-I Asian Big Cat species’ was reviewed.⁵⁴⁴ They recognize that online trade poses significant challenges on the enforcement and lacks adequate forensic tools and capacity.⁵⁴⁵ Zero-tolerance policies for online trading in certain countries, among which China, are considered as best practices and State Parties are encouraged to do the same, as well as working closely with major trading site companies and nongovernmental organizations.⁵⁴⁶ The challenge of enforcing trade bans in the online environment is also recognized as a working point.⁵⁴⁷

In 2016, the seventeenth Conference of the Parties is a major breakthrough regarding wildlife cybercrime. CITES has adopted its first resolution ‘Combating wildlife cybercrime’.⁵⁴⁸ The made recommendations are very important. First, the previous made recommendations have to be taken into account. Second, revisions must be made in the domestic legislation. If the relevant stakeholders, such as the online companies, governments and experts, work together, they can establish best practices which could form the basis for workshops regarding this

⁵³⁹ *Ibid.*, 3.

⁵⁴⁰ *Ibid.*

⁵⁴¹ *Ibid.*, 1.

⁵⁴² Resolution 11.3 of the Conference of the Parties on Compliance and Enforcement (March 2010, Rev COP14), 1. (available at <https://cites.org/sites/default/files/eng/res/all/11/E11-03R15.pdf>)

⁵⁴³ *Ibid.*, 5.

⁵⁴⁴ K.NOWELL and N. PERVUSHINA, “Review of implementation of Resolution Conf. 12.5 (Rev. COP16) on Conservation of and trade in tigers and other Appendix-I Asian big cat species: Report to the CITES Secretariat for the 65th meeting of the Standing Committee”, *SC65 Doc.38 Annex I*, available at https://cites.org/sites/default/files/eng/com/sc/65/E-SC65-38-A01_0.pdf.

⁵⁴⁵ *Ibid.*, 42.

⁵⁴⁶ *Ibid.*, 3 & 5.

⁵⁴⁷ *Ibid.*, 3.

⁵⁴⁸ Doc. 29 of the Conference of the Parties on Combating Wildlife Cybercrime (COP17, October 2016). (available at <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-29.pdf>)

matter. Finally, a centralized database is crucial for understanding this trade and to obtain the best practices.⁵⁴⁹

This shows that CITES is getting more and more involved in the internet trade. The first resolution is groundbreaking, as it brings together governments, enforcement agencies and online tech companies with a common mission.⁵⁵⁰ Hopefully, more initiatives will follow.

2.2.3. Online websites

2.2.3.4. eBay, example of an online auction site

This thesis will discuss the initiatives taken by eBay, since they are one of internet's biggest shop windows and play an important role in the published reports of IFAW. eBay has cooperated for over a decade to address wildlife cybercrime. One can learn from eBay and evaluate whether existing efforts are effective and what still needs to be done.

The first report 'Caught in the web', revealed that eBay played an important role in the internet trade. The auction platform prohibits the selling of live animals and has a two page explanation on which animal and wildlife products are not permitted to be listed for sale.⁵⁵¹ They encourage a reporting system of illegal wildlife listings, where users can tip off to eBay itself. eBay removes the listing and can contact relevant enforcement agencies where necessary.⁵⁵² IFAW checked the effectiveness of the reporting system. First of all, the page was difficult to find. Furthermore, only registered users could report and wildlife was not specifically listed, meaning that users had to select "prohibited items not listed". IFAW even reported three prohibited listings, which none of them were removed.⁵⁵³ At that time, eBay denied its responsibilities stating that it only serves as a platform, which means that they do not have control over the listed advertisements.⁵⁵⁴

As mentioned *supra* title 2.1, after this report, IFAW discussed the issue with national eBay representatives, as well as the initiatives that had to be made.⁵⁵⁵ In 2007, IFAW published the

⁵⁴⁹ *Ibid.*, 3.

⁵⁵⁰ C. KASNOFF, "CITES Agreement to Fight Wildlife Cybercrime", *Tigers in Crisis*, 4 October 2016, <http://www.tigersin crisis.com/journal/cites-agreement-to-fight-wildlife-cybercrime.htm> (last consulted on 19/04/17)

⁵⁵¹ 'Caught in the web : Wildlife trade on the internet', International Fund for Animal Welfare (2005), 20 (available at <http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>); 'Beleid voor dieren en wildproducten', eBay, <http://pages.benl.ebay.be/help/policies/wildlife.html> (last consulted on 19/04/17)

⁵⁵² *Ibid.*, 20.

⁵⁵³ *Ibid.*, 21.

⁵⁵⁴ *Ibid.*, 22.

⁵⁵⁵ 'Bidding for extinction', International Fund for Animal Welfare (2007), 1 (available at <http://www.ifaw.org/sites/default/files/Report%202007%20Bidding%20for%20Extinction.pdf>)

report ‘Bidding for extinction’, solely focused on eBay to assess the effectiveness of their rules and monitoring systems regarding the ivory trade.⁵⁵⁶ The response on IFAW’s report differs from country to country, so the eBay websites of Australia, Canada, France, Germany, the Netherlands, the UK and the USA were examined.⁵⁵⁷ More than 2000 listings of illegal ivory were found in only seven days, which is problematic. IFAW concludes that the policies differ from country to country and are generally confusing and too vague. It summons on eBay to take responsibility.⁵⁵⁸ That same year, eBay banned cross-border sales of ivory.⁵⁵⁹ Nevertheless, the next report ‘Killing with keystrokes’, revealed that eBay was still accountable for 83 per cent of the identified ivory and for 63 per cent of the entire trade in this investigation.⁵⁶⁰ This meant that a strong policy is not enough, adequate enforcement is needed.⁵⁶¹

In 2009, eBay issued a total ban on ivory.⁵⁶² Only furniture or pianos which dated before 1900 and had ivory incorporated could still be sold.⁵⁶³ While other wildlife products are still listed on eBay, ‘Killing with keystrokes 2.0’ revealed that the ban on ivory is effective in the investigated countries⁵⁶⁴. The advertisements’ income dropped from 83 per cent (in 2008) to only 6.41 per cent.⁵⁶⁵ Sellers mostly try to evade eBay’s policy by using code words. eBay will use these results to develop and improve its mechanisms for better enforcement of its ivory ban in the future and trains its agents on the emerging new trends concerning sellers trying to circumvent the site’s filters.⁵⁶⁶ However, sellers are moving to websites that have less stringent policies and listing of wildlife products is still thriving on eBay, in 2015.⁵⁶⁷ eBay is willing to do things right and is removing every reported listing of illegal wildlife products.⁵⁶⁸ The reporting system specifically mentions wildlife products and is easy to work with, but is

⁵⁵⁶ *Ibid.*, 4.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Ibid.*, 14-15.

⁵⁵⁹ R. BREWER-HAY, “eBay to institute global ban on ivory sales”, eBay, 20 October 2008, <https://www.ebayinc.com/stories/news/ebay-to-institute-global-ban-on-ivory-sales/> (last consulted on 19/04/17)

⁵⁶⁰ “Killing with Keystrokes”, International Fund for Animal Welfare (2008), 3 (available at <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>)

⁵⁶¹ *Ibid.*

⁵⁶² R. BREWER-HAY, “eBay to institute global ban on ivory sales”, eBay, 20 October 2008, <https://www.ebayinc.com/stories/news/ebay-to-institute-global-ban-on-ivory-sales/> (last consulted on 19/04/17)

⁵⁶³ ‘Beleid voor dieren en wildproducten’, eBay, <http://pages.benl.ebay.be/help/policies/wildlife.html> (last consulted on 19/04/17)

⁵⁶⁴ Spain, Portugal, France, Germany and UK.

⁵⁶⁵ ‘Killing with keystrokes 2.0’, International Fund for Animal Welfare (2011), 11 (available at <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>)

⁵⁶⁶ *Ibid.*, 12.

⁵⁶⁷ *Ibid.*; T. WILLIAMS, “Illegal trade in endangered wildlife thriving on eBay despite controls”, The Guardian, 21 April 2015, <https://www.theguardian.com/environment/2015/apr/21/illegal-trade-in-endangered-wildlife-thriving-on-ebay-despite-controls> (last consulted on 19/04/17)

⁵⁶⁸ T. WILLIAMS, “Illegal trade in endangered wildlife thriving on eBay despite controls”, The Guardian, 21 April 2015, <https://www.theguardian.com/environment/2015/apr/21/illegal-trade-in-endangered-wildlife-thriving-on-ebay-despite-controls> (last consulted on 19/04/17)

unfortunately only accessible for registered members. Yet, this reporting system is not sufficient.

On August 12, 2016, eBay in accordance with other e-commerce companies and social media, such as Etsy, Gumtree, Microsoft, Yahoo and Tencent⁵⁶⁹, adopted a standardized, industry-wide policy framework on online wildlife trade.⁵⁷⁰ “This comprehensive policy simplifies shopping guidelines of consumers, helps educate users about product legality and eliminates loopholes (...)”⁵⁷¹. This policy is drafted with the support of TRAFFIC, IFAW and WWF and the companies are creating a coalition to fight wildlife cybercrime together. It serves as a standard template that can be adapted by the companies. This template prohibits the trade and promotion of wildlife and products, listed in Appendix I of CITES. Further, it establishes prohibitions for wildlife (and products) which are protected by national laws and any wildlife (and products) that are sourced illegally or traded in contravention of any law.⁵⁷²

This coalition is an important measure to fight this kind of crime, yet it is rather limited. After consulting the eBay website in Belgium and the United States, one can conclude that it is not easy to find the policy of restricted or prohibited items. In Belgium, the policy mentions that selling of live animals is prohibited and selling of CITES listed species is only permissible if the required documentation is presented.⁵⁷³ This is not helpful for consumers, for an average consumer does not know which species are endangered and which documentation is legal or forged. In the United States, the selling of certain live animals is permitted, among which tropical fishes.⁵⁷⁴ Endangered or threatened species and their parts are prohibited.⁵⁷⁵ They refer to a list by the Economic Community of West-African States (ECOWAS), which is not search-friendly. Over 1000 species are alphabetically listed by their Latin names.⁵⁷⁶ Non-endangered or threatened species are allowed, but one has to contact the U.S. Fish & Wildlife Services and follow applicable laws, not explained any further.⁵⁷⁷ eBay’s policy, in Belgium and the United

⁵⁶⁹ D. LUMB, “Ebay, Etsy, Microsoft and others vow to ban illegal wildlife trading”, Engadget, 8 December 2016, <https://www.engadget.com/2016/08/12/ebay-etsy-microsoft-and-others-vow-to-ban-illegal-wildlife-tra/> (last consulted on 19/04/17)

⁵⁷⁰ ‘Wildlife-Friendly Online Trade: Standardized Policy Framework for e-Commerce and Social Media Companies’, 12 August 2016, available at http://assets.worldwildlife.org/publications/924/files/original/NEWEST_Wildlife_Friendly_Online_Trade-Standardized_Wildlife_Policy_Framework_for_Online_Companies.pdf?1470937403&_ga=1.22705592.2035074545.1471004137

⁵⁷¹ *Ibid.*

⁵⁷² *Ibid.*

⁵⁷³ ‘Beleid voor dieren en wildproducten’, eBay, <http://pages.benl.ebay.be/help/policies/wildlife.html> (last consulted on 19/04/17)

⁵⁷⁴ ‘Animals and wildlife products policy’, eBay, <http://pages.ebay.com/help/policies/wildlife.html> (last consulted on 19/04/17)

⁵⁷⁵ *Ibid.*

⁵⁷⁶ ‘Species Search Results’, ECOS Environmental Conservation Online System, <https://ecos.fws.gov/ecp0/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&fcrithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals> (last consulted on 19/04/17)

⁵⁷⁷ ‘Animals and wildlife products policy’, eBay, <http://pages.ebay.com/help/policies/wildlife.html> (last consulted on 19/04/17)

States, mentions that listings have to comply with it, otherwise the listing can be removed or restrictions can be applied to the account, as well as suspension. It is positive that they want to punish infringements on their policy, however these policies are not consumer friendly and not effective in raising consumer awareness. Furthermore, it is unfortunate that only Appendix I – species are prohibited in the standard framework while they are already endangered. Prevention is necessary, not only repressive measures.

2.2.3.2 Tencent, example of social media

Tencent is a dominant player in the Chinese mobile and online market. Their services include instant messaging, online media, social apps, online advertising, interactive media service and much more.⁵⁷⁸ After publishing the report of TRAFFIC concerning the online sale of wildlife in China in February 2015⁵⁷⁹, it revealed that traffickers were switching from auction sites to social media. In May 2015, Tencent launched ‘Tencent for the planet’ in order to combat wildlife trafficking on Tencent’s WeChat⁵⁸⁰, QQ⁵⁸¹ and microblog platforms.⁵⁸² They established applications to raise awareness and motivate users to report suspected illegal wildlife trade. These applications rise in popularity nowadays. They also work together with Alibaba, China’s biggest e-commerce company, to remove illegal adds.⁵⁸³ In November 2015, they signed a Memorandum of Understanding with TRAFFIC on tackling illegal wildlife trade on WeChat and Tencent’s other social platforms.⁵⁸⁴ In August 2016, as mentioned above, they have adopted a standardized, industry-wide policy framework on online wildlife trade together with five other e-commerce companies.⁵⁸⁵ Finally, in September 2016 they co-hosted a side

⁵⁷⁸ P. BAJPAI, “What is Tencent?”, Investopedia, 30 November 2016, <http://www.investopedia.com/articles/insights/113016/what-tencent-baba-bidu.asp> (last consulted on 19/04/17)

⁵⁷⁹ ‘Trading faces : A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia’, TRAFFIC (2016), available at http://www.trafficj.org/publication/16_Trading_Faces.pdf (last consulted on 19/04/17).

⁵⁸⁰ “Weixin/WeChat is one of the world’s fastest growing social apps (...). The platform brings together messaging, social communication and games all within one easy-to-use app.”

<http://www.investopedia.com/articles/insights/113016/what-tencent-baba-bidu.asp>

⁵⁸¹ “QQ is a one-stop solution for all internet based instant messaging needs. It supports text messaging, video and voice chat as well as online (offline) file transmission.”

<http://www.investopedia.com/articles/insights/113016/what-tencent-baba-bidu.asp>

⁵⁸² S. ZHANG, “Tencent says no to online illegal wildlife trade”, TRAFFIC, 22 May 2015, <http://www.ifaw.org/united-states/news/tencent-says-no-online-illegal-wildlife-trade> (last consulted on 19/04/17)

⁵⁸³ S. LI, “Youth and internet giants speak out against wildlife cybercrime”, TRAFFIC, 3 March 2017, <http://www.traffic.org/home/2017/3/2/youth-and-internet-giants-speak-out-against-wildlife-cybercr.html> (last consulted on 19/04/19)

⁵⁸⁴ S. LI, “TRAFFIC and Tencent sign agreement to tackle illicit wildlife trade through social media networks”, TRAFFIC, 24 November 2015, <http://www.traffic.org/home/2015/11/24/traffic-and-tencent-sign-agreement-to-tackle-illicit-wildlif.html> (last consulted on 19/04/17)

⁵⁸⁵ ‘Wildlife-Friendly Online Trade: Standardized Policy Framework for e-Commerce and Social Media Companies’, 12 August 2016, available at http://assets.worldwildlife.org/publications/924/files/original/NEWEST_Wildlife_Friendly_Online_Trade-Standardized_Wildlife_Policy_Framework_for_Online_Companies.pdf?1470937403&_ga=1.22705592.2035074545.1471004137

event of CITES' seventeenth Conference of the Parties with Chinese government agencies to raise awareness and encourage them to take immediate action concerning this kind of trade.⁵⁸⁶

2.2.4 Regional and national initiatives

2.2.4.1 European Union

As mentioned *supra* title 1.3.2, the European Commission has issued an 'EU Action Plan against Wildlife Trafficking', in 2016.⁵⁸⁷ In the recommendations towards a better approach, the Commission wants to encourage business sector engagements by organizing sessions with the EU Wildlife Trade Enforcement Group and business players to talk about issues concerning the online trade.⁵⁸⁸ Furthermore, units dedicated to this trade must have more capacity building and communication channels with units specialized in cybercrime in specific cases.⁵⁸⁹ The resolution of the EU Parliament on EU action plan against wildlife trafficking calls on Member States and the Commission to work closely with the operators of social media platforms, search engines and e-commerce platforms, to strengthen control measures and develop effective policies.⁵⁹⁰ The EU Parliament calls on the Commission to develop guidelines on how to address this issue at EU level.⁵⁹¹

One year after issuing the EU action plan against wildlife trafficking, not many efforts have been dedicated since the European Union had to deal with terrorist attacks, the tragedy of immigrants and the Brexit.⁵⁹² Nevertheless, some progress is achieved by the EU Commission and Member States. On level of the Commission, no efforts have been made to combat wildlife cybercrime effectively. However, some Member States did put effort in the fight against this trade. Estonia, for example, raised public awareness by monitoring the e-commerce.⁵⁹³ Further, it established a unit in its custom authority dedicated to cyber offences.⁵⁹⁴ France has a unit within its customs dedicated to countering cybercrimes and dealing with social media and the

⁵⁸⁶ S. LI, "Youth and internet giants speak out against wildlife cybercrime", TRAFFIC, 3 March 2017, <http://www.traffic.org/home/2017/3/2/youth-and-internet-giants-speak-out-against-wildlife-cybercr.html> (last consulted on 19/04/19)

⁵⁸⁷ European Commission, 'EU Action Plan against Wildlife Trafficking', 2016, 87 *Final*. (available at : http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF).

⁵⁸⁸ *Ibid.*, 16.

⁵⁸⁹ *Ibid.*, 20.

⁵⁹⁰ Resolution (2016/2076(INI)) of the European Parliament (24 November 2016), P8_TA-PROV (2016)0454, 9. (available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0454+0+DOC+XML+V0//EN>)

⁵⁹¹ *Ibid.*, 10.

⁵⁹² E. PANELLA, "EU Wildlife trafficking action plan anniversary: Speed up implementation", IFAW, 22 February 2017, <http://www.ifaw.org/european-union/news/eu-wildlife-trafficking-action-plan-anniversary-speed-implementation> (last consulted on 19/04/17)

⁵⁹³ 'EU Action Plan against Wildlife Trafficking: One year after – Overview of actions and initiatives taken by the EU Member States and the European Commission, 7. (available at http://ec.europa.eu/environment/cites/pdf/Achievements_WAP_overview.pdf)

⁵⁹⁴ *Ibid.*, 13.

“darkweb” regarding CITES listed species. It even equipped and trained a specialized unit for the fight against wildlife crime, giving tools to carry out research on the internet.⁵⁹⁵ Hopefully, the European Union will put more time and effort in this trade, while this is a matter of great urgency. The biggest challenge that needs to be addressed is the political engagement. The illicit trade in wildlife has to be considered as high priority.⁵⁹⁶ Based on article 83 TFEU, the European Parliament and Council can adopt directives to establish minimum rules regarding definition and sanctions in the area of computer crimes. Even establishing guidelines to support the Member States in this fight can be helpful.

2.2.4.2 “Tigernet” in India

In 2009, <http://www.tigernet.nic.in/> was launched as “the first consolidated database in India on mortality and poaching related to tigers and other protected species within tiger reserves”⁵⁹⁷. The website was a collaborative effort between the National Tiger Conservation Authority (NTCA) and TRAFFIC. To assist the anti-poaching efforts, accurate information is key. This database allows enforcement officers to record information on mortalities and monitor patterns on where the poaching occurs. Automatic reminders are sent to enforcement officials to upload details about mortalities and incidents.⁵⁹⁸ Entering information is restricted to registered users, yet the information is available in public domain.⁵⁹⁹ NCTA wants to encourage citizens to enter an online submission form on the website regarding any obtained information.⁶⁰⁰

2.2.4.3 China

China and TRAFFIC organized a workshop on controlling online illegal wildlife trade. In the aftermath, fifteen of the leading e-commerce companies in China signed a declaration, in 2012, stating that they will adopt a zero tolerance policy, which requires that all buyers and sellers must comply with China’s Wild Animal Protection Law and CITES.⁶⁰¹ In 2015, a report of TRAFFIC⁶⁰² regarding the online trade in wildlife in China, revealed that the trade has shifted

⁵⁹⁵ *Ibid.*, 13.

⁵⁹⁶ E. PANELLA, “EU Wildlife trafficking action plan anniversary: Speed up implementation”, IFAW, 22 February 2017, <http://www.ifaw.org/european-union/news/eu-wildlife-trafficking-action-plan-anniversary-speed-implementation> (last consulted on 19/04/17)

⁵⁹⁷ CITES, ‘INFORMATION DOCUMENT ON TIGERNET’, COP15 2010, *Inf.71*. (available at <https://cites.org/common/cop/15/inf/C15i-71.pdf>)

⁵⁹⁸ X, “India launches Tigernet”, TRAFFIC, 7 January 2009, <http://www.traffic.org/home/2010/1/7/india-launches-tigernet.html> (last consulted on 19/04/17)

⁵⁹⁹ CITES, ‘INFORMATION DOCUMENT ON TIGERNET’, COP15 2010, *Inf.71*. (available at <https://cites.org/common/cop/15/inf/C15i-71.pdf>)

⁶⁰⁰ *Ibid.*

⁶⁰¹ X, “Chinese e-commerce companies crack down on illegal wildlife trade”, WWF, 8 June 2012, <http://wwf.panda.org/?205140/Chinese-e-commerce-companies-crack-down-on-illegal-wildlife-trade> (last consulted on 19/04/17)

⁶⁰² ‘Moving targets : Tracking online sales of illegal wildlife products in China’, TRAFFIC (2016), available at <http://static1.1.sqspcdn.com/static/f/157301/26245505/1432122394320/China-monitoring-report.pdf>

from online retailers to social media, where couriers play an important role.⁶⁰³ This led to seventeen leading courier companies which account for 95 per cent of the market share in China, signing a similar declaration stating a zero tolerance regarding online trade.⁶⁰⁴ In March 2017, the top three internet service providers created an industry-wide alliance to tackle wildlife cybercrimes together. They count hundreds of millions of global users and have a significant impact on daily life and consumption patterns. With this alliance, they want to share best practices, knowledge, understanding and go beyond their individual efforts to develop effective ways and initiate positive advocacy.⁶⁰⁵ Furthermore, the government of China is very stringent regarding illegal wildlife trade and is fully committed to implement and enforce CITES as much as possible. Their routine work consists of enhanced market inspection, domestic transport control and regulation of import, export and transaction on the internet.⁶⁰⁶ Finally, in December 2016, China stated there will be a total ivory ban by the end of 2017.⁶⁰⁷ The Chinese efforts are something most countries can learn from.

2.2.4.4 Czech Republic

As mentioned *supra* title 2.2.2, resolution on ‘Compliance and enforcement’ of CITES has been reviewed to address the upcoming e-commerce in endangered species. After this revision, the Czech Republic implemented legislation regarding the e-commerce in CITES listed species.⁶⁰⁸ When a seller wants to list an advertisement, it must be accompanied by the CITES-obligatory documents, in order to facilitate enforcement and raise consumer awareness. The CITES Management Authorities issue e-permits to facilitate this legislation and avoid forged documents. Sellers also have to inform the buyers about their obligation to register their species and about other legal provisions. The website owners / operators have to make sure that this obligatory information is made public for each species offered for sale in advertising. Finally, the Czech Environmental Inspectorate can forbid or delete advertisements if they do not comply.⁶⁰⁹

⁶⁰³ X, “CITES commends leading Chinese courier companies’ zero tolerance towards illegal wildlife trade”, CITES, 3 March 2015, https://cites.org/eng/courier_pledge_cn (last consulted on 19/04/17)

⁶⁰⁴ *Ibid.*

⁶⁰⁵ S. LI, “Youth and internet giants speak out against wildlife cybercrime”, TRAFFIC, 3 March 2017, <http://www.traffic.org/home/2017/3/2/youth-and-internet-giants-speak-out-against-wildlife-cybercr.html> (last consulted on 19/04/19) 113115

⁶⁰⁶ X, “CITES commends leading Chinese courier companies’ zero tolerance towards illegal wildlife trade”, CITES, 3 March 2015, https://cites.org/eng/courier_pledge_cn (last consulted on 19/04/17)

⁶⁰⁷ X, “China to ban ivory trade by the end of 2017”, The Guardian, 30 December 2016, <https://www.theguardian.com/environment/2016/dec/30/china-ban-ivory-trade-2017-elephants-wwf> (last consulted on 19/04/17)

⁶⁰⁸ ‘Project Web : An investigation into the ivory trade over the internet within the European Union’, Interpol and IFAW (2013) , 16 (available at <http://www.ifaw.org/united-states/resource-centre/project-web-investigation-ivory-trade-over-internet-within-european-union>)

⁶⁰⁹ *Ibid.*

2.3 Proposed solutions to combat wildlife cybercrime more effectively

Wildlife cybercrime is a big problem for the conservation of wildlife species. It is a relatively new area and more and more attention is given to it. When assessing the regional and national initiatives, there already exist certain best practices that can constitute as an example for other countries who do not know how to deal with this. Still, in cybercrimes in general, there exist a huge lack of harmonization. The European Convention of Cybercrime is the only “international” treaty addressing these problems and is limited in its scope and Parties. The first chapter will evaluate if a top-down approach can be achieved to address the harmonization problem in cybercrimes. To tackle wildlife cybercrimes, this is relevant while it falls under the broad scope and more priority is given to this area. The second chapter will evaluate the liability of intermediary service providers (ISP), with as great example eBay. In the realm of counterfeiting goods sold on eBay, two landmark cases will be explained. Based on the study of liability of ISP in counterfeiting goods, it will be examined if these judgements can be helpful for the fight against wildlife cybercrime and what more needs to be done.

2.3.1 Harmonization of the cybercrime laws

As mentioned *supra* title 2.2.1, states have sovereignty over the cyber assets within their territory, providing them the right to restrict or protect the access and make these assets subject to the state’s legal and regulatory control.⁶¹⁰ In other words, territorial sovereignty exist in cyberspace. This means that a state exercises full and exclusive authority and jurisdiction over its territory and thus its cyberspace.⁶¹¹ Law enforcement and criminal justice fall within this exclusive domain, which means that criminal jurisdiction is linked to geographical territory.⁶¹²

Between fifty and hundred per cent of cybercrimes encountered by the police involved a transnational element and presents unique international cooperation challenges.⁶¹³ To tackle cybercrimes, a global response is needed.⁶¹⁴ Some degree of harmonization between the states is essential to eliminate or reduce the incidence of “save heavens” and is crucial for effective cooperation between law enforcement agencies.⁶¹⁵

The European Convention on Cybercrimes wanted to address these issues by harmonizing cybercrime laws and assuring the existence of procedural mechanisms to assist in successful

⁶¹⁰ C. LOTRIONTE, “State sovereignty and self-defense in cyberspace: a normative framework for balancing Legal rights”, *Emory Int’l L. Rev.* 2012, Vol. 26, 852.

⁶¹¹ W. HEINTSCHELL VON HEINEGG, “Territorial sovereignty and neutrality in cyberspace”, *Int’l L. Stud. Ser. US Naval War. Col. i* 2013, Vol. 89, 124.

⁶¹² ‘Comprehensive study on cybercrime’, United Nations Office on Drugs and Crime (2013), 184. (available at: https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf)

⁶¹³ *Ibid.*, 183.

⁶¹⁴ *Ibid.*.

⁶¹⁵ J. CLOUGH, “A world of difference : The Budapest Convention on Cybercrime and the challenges of harmonization”, *Monash U. L. Rev.* 2014, Vol. 40, 701.

prosecution of cyber criminals.⁶¹⁶ While containing interesting provisions, the Convention is hampered by reservation acts and the lack of universal participation.⁶¹⁷ As mentioned *supra*, this convention can only be used in an ongoing investigation, while there was no consensus for a more pro-active approach such as an obligation for service providers to routinely collect and retain traffic data for a certain fixed period of time.⁶¹⁸ This leads to the conclusion that while this convention is innovating in its nature, it is not sufficient enough to globally harmonize national legislation and to tackle wildlife cybercrime as such.

Questions arose if such convention should not be adopted in the realm of the United Nations, to obtain (almost) universal participation. The major downside is that it would take a country at least five years to ratify. There exist no guarantee that a consensus will be reached for a more proactive approach and in a continually changing technology, there is no certainty that this convention would be of increased importance.⁶¹⁹ Another proposal is to establish a model cybercrime code, while it could be more easily changed to developing technologies. However, worldwide harmonization based on such code would take even longer and provisions are necessary to establish cooperation between states. This code would replicate much content of the Convention on Cybercrime.⁶²⁰ A top-down approach will not be achievable, certainly not in a timely manner. For worldwide harmonization of cybercrimes, the Convention is a good starting point and when investigations more occur for the big players in wildlife cybercrime, the Convention will be of great use.

Until then, best practices, technologies, etc. concerning wildlife cybercrime have to be shared, preferably through an international database as explained in the previous chapter. This database could not only contain information of the illicit trade in wildlife as such, but incorporate the internet trade, while it is an essential part. Since the latest Conference of the Parties at CITES, in 2016, State Parties have expressed their concerns about the lack of harmonization and knowledge.⁶²¹ At the 69th meeting of the Standing Committee, a working group will be formed that includes producer and consumer countries, large internet companies, NGOs with expertise and other relevant experts. This working group will prepare guidance and manuals for CITES Parties and private companies on how to tackle wildlife cybercrime.⁶²²

⁶¹⁶ A.M. WEBER, "The Council of Europe's Convention on Cybercrime", *Berkeley Tech. L.J.* 2003, Vol.18, 425

⁶¹⁷ *Ibid.*, 443.

⁶¹⁸ Council of Europe, 'Explanatory report to the Convention on Cybercrime', *European Treaty Series No. 185*, 21. (available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce5b>)

⁶¹⁹ J. CLOUGH, "A world of difference : The Budapest Convention on Cybercrime and the challenges of harmonization", *Monash U. L. Rev.* 2014, Vol. 40, 726-729.

⁶²⁰ A.M. WEBER, "The Council of Europe's Convention on Cybercrime", *Berkeley Tech. L.J.* 2003, Vol.18, 444-445.

⁶²¹ Doc. 29 of the Conference of the Parties on Combating Wildlife Cybercrime (COP17, October 2016). (available at <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-29.pdf>).

⁶²² CITES, 'Decision 17.94 directed to: Standing Committee', and 'Decision 17.95 directed to: Standing Committee', <https://www.cites.org/eng/dec/valid17/81840> (last consulted on 07/05/17)

2.3.2 Liability of intermediary service providers in the area of counterfeiting

2.3.2.1 Relevance of counterfeiting to wildlife cybercrime

Except for the many reports of IFAW, the efforts in the area of wildlife cybercrime are as good as non-existent. It is relevant to investigate if an auction site, such as eBay, generating a social platform, can be held liable for the offered illegal listings. Wildlife cybercrime is not only thriving, the internet facilitates the counterfeiting market. In the last two decades, the counterfeit market has risen with 10.000 per cent, as the internet made this kind of trade global.⁶²³ This is hurting the intellectual property rights owners and someone has to be held accountable.⁶²⁴ Many suits from major fashion companies against eBay and other intermediary service providers (ISP) around the world have been filed.⁶²⁵ This thesis will discuss two “landmark” cases. *Tiffany Inc. v. eBay Inc.*, was the first case in the United States concerning an online auction site investigating whether or not the site could be held liable for contributory trademark infringement, since counterfeit products were listed on their website.⁶²⁶ Tiffany, after receiving many complaints from its customers and starting an own investigation, demanded eBay to remove all Tiffany listings offering counterfeit merchandise and to take appropriate and continuing measures to eliminate the sale of counterfeit merchandise in the future by banning the sale of silver Tiffany jewelry and prevent sellers to list more than 5 items at once.⁶²⁷ The same happened with the *L’Oréal v eBay* case. L’Oréal wanted eBay to take action for the multiple infringements on their intellectual property rights but found that they did not do enough effort. They filed several suits in Member States of the European Union, among which the United Kingdom. The United Kingdom’s High Court of Justice asked a preliminary question to the European Court of Justice concerning the E-Commerce Directive and the extension and interpretation of article 14 (1) concerning an ISP that generates as a host by storing information for third parties.

These cases show similarities with the IFAW investigative study in its report ‘Bidding for extinction’, in 2007. While no property rights were infringed, this report revealed that ivory was sold on eBay. Later reports made clear that eBay was facilitating the illegal market in endangered species, seeing many illegal wildlife species and products being offered for sale. IFAW recommended eBay to ban the trade of endangered species and their products, to establish close cooperation with enforcement agencies, tighten its policies and devote sufficient

⁶²³ C.L. TRIPOLI, “Fashion forward: The need for a proactive approach to the counterfeit epidemic”, *Brook. J. Int’l L.* 2015-2016, Vol. 41, 876.

⁶²⁴ *Ibid.*, 877.

⁶²⁵ District Court (US) 14 July 2008, 576 F. Supp.2d 463 (*Tiffany v eBay*); Tribunal de Commerce de Paris (FR) 30 June 2008, *SA Louis Vuitton Malletier v. eBay*; Bundesgerichtshof (DE) 11 March 2004, Case No. I ZR 30401, dejure.org (*Rolex v. auction site*)

⁶²⁶ M. PANTALONY, “Contributing to infringement: Intermediary liability after *Tiffany v. eBay* and *Louis Vuitton v. Akanoc*”, *Trademark Rep.* 2015, Vol. 105, 711.

⁶²⁷ A. LEHRER, “Note: *Tiffany v. eBay*: its impact and implications on the doctrines of secondary trademark and copyright infringement”, *B.U. J. SCI. & TECH. L.* 2012, Vol. 18, 393-395; X, “*Tiffany Inc. v. eBay Inc.*”, Wikipedia, 3 November 2016, https://en.wikipedia.org/wiki/Tiffany_Inc._v._eBay,_Inc. (last consulted on 27/04/17).

resources to do effective site monitoring. They even recommended eBay to ban all wildlife products at once, if the previous initiatives should not be implemented effectively.⁶²⁸ In 2017, eBay has tightened its policy which still is insufficient, as mentioned *supra* title 2.2.3.1. There is no monitoring on the auction site, only the removal of illegal listings, when reported. There is no information available on eBay having close contacts with enforcement agencies concerning wildlife cybercrime, whether if they report illegal listings or if there is any further investigation regarding this matter. Furthermore, eBay has not banned wildlife products, not even the endangered species. In Belgium, CITES listed species are permitted if the seller publishes the requested documentation.⁶²⁹ The United States' version of eBay uses species that are endangered and prohibited to be offered for sale. Aside from this list, one has to contact the U.S. Fish and Wildlife Service.⁶³⁰ A complete ban on wildlife products would be better. Based on the precautionary principle, states cannot postpone measures to prevent environmental damages due to lack of scientific certainty when threats are cause of serious or irreversible damage.⁶³¹ It could be possible that a complete ban on selling wildlife online can be based on this precautionary principle, as species are becoming endangered or even extinct due to the widespread reach and lack of control on the internet. However, more research has to be done in this area. This thesis will not investigate this issue but it is something to consider.

This thesis will investigate if eBay can be held liable for illegal listings. Since cooperation is better than litigation, this could be used as leverage, as an incentive to act in a more effective way.

2.3.2.2. Two “landmark” cases in counterfeiting regarding the liability of eBay

a) Tiffany Inc. v. eBay Inc.

Tiffany Inc. is the famous “blue box” jeweler and constitutes as a luxury brand known for its divine quality.⁶³² In 2004, Tiffany became aware of the fact that many counterfeiting products were sold on eBay. They conducted two surveys and discovered that three quarters of their goods sold on eBay were counterfeit. Tiffany confronted eBay with this information and wanted them to take action in order to curtail the sale of such items. While Tiffany was not happy with the initiatives taken by eBay, they filed suit against the online auction site for contributory trademark infringement.⁶³³

⁶²⁸ ‘Bidding for extinction’, International Fund for Animal Welfare (2007), 16.

⁶²⁹ ‘Beleid voor dieren en wildproducten’, eBay, <http://pages.benl.ebay.be/help/policies/wildlife.html> (last consulted on 19/04/17)

⁶³⁰ ‘Animals and wildlife products policy’, eBay, <http://pages.ebay.com/help/policies/wildlife.html> (last consulted on 19/04/17)

⁶³¹ ‘The RIO Declaration on Environment and Development’, The United Nations Conference on Environment and Development (1992), principle 15. (available at: http://www.unesco.org/education/pdf/RIO_E.PDF)

⁶³² E. MERCADO, “As long as “IT” is not counterfeit: Holding eBay liable for secondary trademark infringements in the wake of *LMVH* and *Tiffany Inc.*”, *Cardozo Arts & Ent. L.J.* 2010-2011, Vol. 28, 130.

⁶³³ K.M. SAUNDERS and G. BERGER-WALLISER, “The liability of online markets for counterfeit goods: A comparative analysis of secondary trademark infringement in the United States and Europe”, *Nw. J. Int’l L. & Bus.* 2011-2012, Vol. 32, 46; C.L. TRIPOLI, “Fashion forward: The need for a proactive approach to the

Tiffany asserted that eBay facilitates the advertisement and sale of counterfeiting jewelry on its auction site, despite its knowledge about this issue.⁶³⁴ eBay promotes the availability of Tiffany's goods by purchasing sponsored-link advertisements on various search engines. Tiffany complained to eBay about this practice. While eBay promised to stop this, it later on appeared they continued doing it through a third party.⁶³⁵ According to them, eBay is subject to the *inwood* test:

*If a manufacturer or distributor (...) continues to supply its product to one whom it knows or has reason to know is engaging in trademark infringement, the manufacturer or distributor is contributorily responsible for any harm done as a result of the deceit.*⁶³⁶

Tiffany argued that eBay fails the *inwood* test because they continue to provide their services while eBay knows or has to know that sellers are infringing Tiffany's trademark. eBay counter-pleaded that it is not their duty to monitor auctions for counterfeit items. According to them, this duty rests solely on the trademark owner.⁶³⁷

eBay merely brings seller and buyer together for enabling the transaction, without obtaining physical possession of the goods.⁶³⁸ Even when eBay were in a position to inspect the goods, the District Court considers they do not have the expertise to distinguish counterfeiting goods from the real ones. eBay engaged in the fight against this trade by employing several tools and programs, such as Verified Rights Owner (VeRo) Program. This VeRo Program enables intellectual property owners to report listings which infringe their rights to make sure that eBay takes those listings down. Further, eBay removes listings after giving notice of trademark infringements.⁶³⁹ The court stated that eBay is taking steps to improve its technology and develop anti-fraud measures.⁶⁴⁰

The District Court ruled that the *inwood* test applies to a service provider exercising "sufficient control". eBay falls under this scope, while it has sufficient control over transactions and listings on its website. However, the Court disagreed with Tiffany.⁶⁴¹

counterfeit epidemic", *Brook. J. Int'l L.* 2015-2016, Vol. 41, 893; J. A. KREDER and J. NINTRUP, "Antiquity meets the Modern Age: eBay's potential criminal liability for counterfeit and stolen international antiquity sales", *Case W. Res. J.L. Tech. & Internet* 2014, Vol. 5, 166.

⁶³⁴ K.M. SAUNDERS and G. BERGER-WALLISER, "The liability of online markets for counterfeit goods: A comparative analysis of secondary trademark infringement in the United States and Europe", *Nw. J. Int'l L. & Bus.* 2011-2012, Vol. 32, 46.

⁶³⁵ J. A. KREDER and J. NINTRUP, "Antiquity meets the Modern Age: eBay's potential criminal liability for counterfeit and stolen international antiquity sales", *Case W. Res. J.L. Tech. & Internet* 2014, Vol. 5, 167.

⁶³⁶ *Ibid.*

⁶³⁷ E. MERCADO, "As long as "IT" is not counterfeit: Holding eBay liable for secondary trademark infringements in the wake of *LMVH* and *Tiffany Inc.*", *Cardozo Arts & Ent. L.J.* 2010-2011, Vol. 28, 130-131.

⁶³⁸ *Ibid.*, 131.

⁶³⁹ *Ibid.*

⁶⁴⁰ J. A. KREDER and J. NINTRUP, "Antiquity meets the Modern Age: eBay's potential criminal liability for counterfeit and stolen international antiquity sales", *Case W. Res. J.L. Tech. & Internet* 2014, Vol. 5, 166-167.

⁶⁴¹ A. LEHRER, "Note: Tiffany v. eBay: its impact and implications on the doctrines of secondary trademark and copyright infringement", *B.U. J. SCI. & TECH. L.* 2012, Vol. 18, 395.

The District Court found that eBay indeed has a general knowledge about the counterfeiting goods that are sold on their auction site. Nonetheless, this knowledge is insufficient under the *inwood* test to impose an affirmative duty on eBay to remedy this problem.⁶⁴² To establish liability, Tiffany has to prove that eBay knew or had reason to know of specific instances of actual infringements and failed to act. Tiffany failed to meet this requirement.⁶⁴³

In appeal, the Second Circuit Court of Appeals agrees with the District Court that general knowledge is insufficient to meet the standard of the *inwood* test. They further argue that if eBay is “willfully blind” for selling counterfeiting items on their website, the threshold “reason to know” would be satisfied and eBay would be liable. “Willfully blind” means that eBay suspects wrongdoing and deliberately fails to investigate. eBay is taking initiatives to tackle this problem and has an incentive to deal with this, while they want to maintain a community of satisfied buyers.⁶⁴⁴

The burden to police the infringements lies entirely with the intellectual property rights owner (IPRO). The intermediary is not liable when they are good faith users of the trademark and act on specific infringements, pointed out by the IPRO.⁶⁴⁵ This vision does not remedy the problem of the counterfeiting epidemic. Even when a website has a general knowledge that trademark infringements are plaguing their platform, it is up to the owner of the trademark to report every single one and only that one will be removed. Furthermore, the removal of listings is not required by law and thus would not lead automatically to liability. The courts have imposed an unduly obligation on the owners, while intermediaries are given a broad protection.⁶⁴⁶

b) L’Oreal v eBay International (C-324/09)⁶⁴⁷

L’Oréal is a manufacturer and supplier of perfumes, cosmetics and hair-care products. The company operates at a closed selective distribution network.⁶⁴⁸ L’Oréal became aware of the problem of counterfeit products and expressed its concern about the widespread transactions on eBay’s European websites that were infringing their intellectual property rights. Not happy with the answer from eBay, the company sued eBay in various Member States of the European Union, among which the United Kingdom.⁶⁴⁹

⁶⁴² K.M. SAUNDERS and G. BERGER-WALLISER, “The liability of online markets for counterfeit goods: A comparative analysis of secondary trademark infringement in the United States and Europe”, *Nw. J. Int’l L. & Bus.* 2011-2012, Vol. 32, 46.

⁶⁴³ J. A. KREDER and J. NINTRUP, “Antiquity meets the Modern Age: eBay’s potential criminal liability for counterfeit and stolen international antiquity sales”, *Case W. Res. J.L. Tech. & Internet* 2014, Vol. 5, 168.

⁶⁴⁴ A. LEHRER, “Note: Tiffany v. eBay: its impact and implications on the doctrines of secondary trademark and copyright infringement”, *B.U. J. SCI. & TECH. L.* 2012, Vol. 18, 397-398.

⁶⁴⁵ C.L. TRIPOLI, “Fashion forward: The need for a proactive approach to the counterfeit epidemic”, *Brook. J. Int’l L.* 2015-2016, Vol. 41, 894.

⁶⁴⁶ *Ibid.*, 895-896.

⁶⁴⁷ ECJ 12 July 2011, No. C-324/09, ECLI:EU:C:2011:474.

⁶⁴⁸ *Ibid.*, §26-27.

⁶⁴⁹ *Ibid.*, §32-33.

The action of l'Oréal appealed before the High Court of Justice in the United Kingdom, and the Court found it necessary to ask some prejudicial questions.⁶⁵⁰ This thesis will discuss one relevant question that deals with the interpretation of article 14(1) of the E-Commerce Directive⁶⁵¹ (ECD):

Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of the recipient of the service, on condition that:

- (a) The provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or*
- (b) The provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or disable access to the information*

The European Court of Justice rules that articles 12 to 15 of the ECD are adopted to protect ISP from liability, they govern as a 'safe heaven'.⁶⁵² eBay facilitates relations between buyers and sellers of goods and can be seen as an internet service for the purposes of ECD.⁶⁵³ Each time a customer opens a selling account and provides data concerning its offers for sale, eBay stores this data in its service memory and receives a remuneration when the transaction is completed.⁶⁵⁴ However, this ground is not sufficient to conclude that eBay falls within the scope of article 14 ECD.⁶⁵⁵

The European Court concluded, for a service provider to fall within the scope of article 14, the provider has to be an intermediary. This means they cannot play an active role in the "knowledge of or control over" data.⁶⁵⁶ A service provider does not play an active role when it stores offers for sale on its server, sets the terms, provides general information to customers and is remunerated for its services.⁶⁵⁷ An active role consist in the service provider optimizing the presentation of the offers for sale or promoting them. In such circumstances, the service provider will not be able to rely on the exemption given by article 14 ECD.⁶⁵⁸

⁶⁵⁰ *Ibid.*, §34; §50.

⁶⁵¹ Dir.ParlCouncil nr.2000/31/EC, 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), *Pb. L.* 17 June 2000 afl. 178/1

⁶⁵² ECJ 12 July 2011, No. C-324/09, ECLI:EU:C:2011:474, §107

⁶⁵³ *Ibid.*, §109

⁶⁵⁴ *Ibid.*, §110

⁶⁵⁵ *Ibid.*, §111

⁶⁵⁶ *Ibid.*, §113

⁶⁵⁷ *Ibid.*, §115

⁶⁵⁸ *Ibid.*, §116

The European Court does argue that eBay processes the data, entered by its customers and in some cases optimizes the presentation or even promotes certain offers for sale.⁶⁵⁹ It is for the national court to decide whether the ISP, *in casu* eBay, plays an active role.⁶⁶⁰

When the national court should decide that eBay did not play an active role, eBay has (a) to meet the conditions or (b) has to be exempted from liability.⁶⁶¹ The European Court interprets ‘aware of facts or circumstances’ that a diligent economic operator should have identified the illegality in question. If the economic operator becomes aware of his actual knowledge, he must act expeditiously to remove or disable access to the information.⁶⁶²

This case is of great importance concerning the liability of ISP. Up until then, several European courts as well as the United States defended the view that websites such as eBay could do more to protect intellectual property owners, however the law was not forcing them to do so. This decision of the European Court takes on a restrictive interpretation of article 14, aiming to limit the liability of intermediaries hosting third party content. The European Court takes the side of intellectual property owners, which means that eBay, if the national court rules that it does play an active role, has to do more than they have done so far. They have to tighten their controls or will be facing unpleasant surprises in the future when it comes to a litigation.⁶⁶³ In 2014, L’Oréal and eBay settled their disputes and came to the conclusion that cooperation is better than litigation.⁶⁶⁴

2.3.2.3. Consequences of the two “landmark” cases for online counterfeiting

These two cases show eBay needs an incentive to do more in the fight against counterfeiting goods. Only paying the damages caused by counterfeiting won’t end this abuse. But with its liability at stake, eBay is more cooperative, as shown with the settlement of L’Oréal’s action against eBay.

eBay has done many efforts to combat the counterfeiting epidemic. They have established extensive partnerships with law enforcement officials. They inform them about the site and how to contact eBay to obtain information for investigation. To assist the officials, eBay has a

⁶⁵⁹ *Ibid.*, §114

⁶⁶⁰ *Ibid.*, §117

⁶⁶¹ *Ibid.*, §118

⁶⁶² *Ibid.*, §120 & §124

⁶⁶³ C. RIEFA, “CJEU Case C 324/09 L’Oreal v eBay: The end of online auction intermediary liability as we know it”, *Recent Developments in European Consumer Law*, 18 July 2011, <http://recent-ecl.blogspot.be/2011/07/cjeu-case-c-32409-loreal-v-ebay-end-of.html> (last consulted on 27/04/17); R. MONTAGNON and J. SMITH, “L’Oréal v. eBay: good news for brand owners”, *Thomson Reuters Practical Law*, 28 July 2011, [https://uk.practicallaw.thomsonreuters.com/9-507-0026?_lrTS=20170421145843352&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-507-0026?_lrTS=20170421145843352&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) (last consulted on 27/04/17).

⁶⁶⁴ D.S. DUNNE, L.A. HENRY and M.M. MCDONOUGH, “L’Oréal and eBay settle dispute over counterfeit sales” *Lexology*, 24 January 2014, <http://www.lexology.com/library/detail.aspx?g=0a5c9de7-f277-472a-a333-ad9a03717bca> (last consulted on 27/04/17).

dedicated team that collects and analyses evidence. In 2013, eBay launched an anti-counterfeit campaign to inform users to avoid buying counterfeit goods.⁶⁶⁵

Furthermore, eBay announced the launch of “eBay Authenticate” by the end of 2017.⁶⁶⁶ This authentication program will focus on fashion, such as high-end handbags. If an item is sold, a professional authenticator will review the authenticity before the item is shipped to the buyer. It is an opt-in system, nothing is obligatory. If the seller chooses to opt-in, he has to pay a fee and in return their listings will highlight that this good will be reviewed. When the seller has not chosen this option, a suspicious buyer can opt-in and take the fee for his account.⁶⁶⁷ They launched this program since many customers lost faith in eBay and were afraid of buying high-end fashion. With “eBay Authenticate”, the auction site wants to restore the buyers confidence.⁶⁶⁸

2.3.2.4. How efforts against online counterfeiting correlate to wildlife cybercrime

Wildlife cybercrime is an area where efforts are kept to a minimal and initiatives are scarce. Investigating what has been done in other areas, could be very fruitful. The lessons learned from the counterfeiting epidemic that ravages eBay, can be helpful to combat wildlife cybercrime. As do the initiatives taken to fight this epidemic. The L’Oréal case before the European Court is very important, because now eBay can be held liable for illegal listings on their site. As mentioned *supra*, litigation is not the answer. Yet it is a nice incentive if eBay would not want to cooperate any further. The measures that were taken in the past to curb counterfeit goods, can be applied to wildlife cybercrime. The standardized policy framework⁶⁶⁹ they have applied taking on since 2016 is very limited, as mentioned *supra* title 2.2.3.1. “eBay Authenticate” can be used parallel for wildlife, if it appears to be a success. Some moderations will be necessary. Such program can work but has to be obligatory for the seller, meaning that the seller will have to take the additional fee for his account. eBay will not ban all wildlife products, despite the recommendation made by IFAW. A condition to sell wildlife products is

⁶⁶⁵ X, “eBay drives commitment to fight counterfeiting and piracy”, eBay, 28 October 2014, <https://www.ebayinc.com/stories/press-room/uk/eBay-drives-commitment-to-fight-counterfeiting-and-piracy/> (last consulted on 27/04/17).

⁶⁶⁶ eBay News Team, “eBay to boost consumer confidence with launch of eBay Authenticate”, eBay, 12 January 2017, <https://www.ebayinc.com/stories/news/eBay-to-boost-consumer-confidence-with-launch-of-eBay-authenticate/> (last consulted on 27/04/17).

⁶⁶⁷ X, “Introducing eBay Authenticate: a service powered by a network of professional authenticators”, eBay, X, <http://pages.ebay.com/authentication/?afsrc=1&rmvSB=true> (last consulted on 27/04/17).

⁶⁶⁸ B.F. RUBIN, “Is that Hermes real? With eBay Authenticate you’ll know for sure”, CNET, 12 January 2017, <https://www.cnet.com/news/eBay-authenticate-is-that-hermes-rolex-real-fake-counterfeit/> (last consulted on 27/04/17).

⁶⁶⁹ ‘Wildlife-Friendly Online Trade: Standardized Policy Framework for e-Commerce and Social Media Companies’, 12 August 2016, available at http://assets.worldwildlife.org/publications/924/files/original/NEWEST_Wildlife_Friendly_Online_Trade-Standardized_Wildlife_Policy_Framework_for_Online_Companies.pdf?1470937403&_ga=1.22705592.2035074545.1471004137

that sellers will have to comply to this program. However, it will not be used to distinguish authentic goods from counterfeit, but to distinguish legal from illegal wildlife products.

Sellers nowadays being obliged by eBay's policy to make the required documentation public is a step ahead. A resolution is adopted concerning CITES e-permits⁶⁷⁰, but as to this day, it is not a widespread practice. Sellers who want to list illegal advertisements, make forged permits or do not even bother having them available for the customer. Consumer awareness could help customers to report such listings.

Pop-ups could notice consumers with guidelines and common practices of forged documents or illegal listings and how to distinguish them.⁶⁷¹ This way, consumer awareness is raised and the reporting of listings will become more routine.⁶⁷² But to draft guidelines, more knowledge and insight has to be gained in this trade.⁶⁷³ Furthermore, removing listings is not enough. eBay has to have close relation with enforcement agencies and, as they do with counterfeiting goods, help them in their investigation.⁶⁷⁴ To counter the illegal trade in wildlife, more investigations have to be made. If an illegal listing is reported or the professional found a forged document, enforcement officials have to search to whom this listing belongs and if those listings are frequently offered for sale; to whom he has sold illegal listings; for whom he works and if he can be connected to an illegal trading network. This would facilitate the fight against wildlife crime in general and improve ongoing investigations, as well as starting up new ones. eBay can constitute as a pioneer in this area. If this is successful, legally binding code of practice can be drafted for all auction sites that sell wildlife products.⁶⁷⁵ Preferably, such code has to be drafted at international level. Unfortunately, states find no consensus to participate in a binding document regarding wildlife trade and is a lengthy process for an urgent matter.

Awaiting such measures, CITES can draft "model legislation" about this type of crime. This is not binding, but can constitute as an example for countries to adopt legally binding codes for such websites in their national legislation. Such codes can consist provisions that oblige sellers to make required documentation public, as well as informing the consumers about the legal status of the wildlife species or product concerned. The burden of proof has to be reversed, making it obligatory for the seller to prove that the listing contains legally obtained wildlife species or products, if there is doubt about the legality.⁶⁷⁶ Furthermore, a program similar to "eBay Authenticate", but moderated for wildlife species and products, as explained *supra*, has to become obligatory for those who want to sell wildlife species or products on the internet. Pop-up notices on all wildlife listings should inform the consumer about the ongoing illegal

⁶⁷⁰ Resolution 12.3 of the Conference of the Parties on Permits and certificates (March 2010, Rev. COP15). (available at: <https://cites.org/eng/res/all/12/E12-03R15.pdf>)

⁶⁷¹ 'Wanted – Dead or alive: Exposing online wildlife trade', International Fund for Animal Welfare (2014), 24.

⁶⁷² *Ibid.*; 'Killing with keystrokes', International Fund for Animal Welfare (2008), 17.

⁶⁷³ 'Caught in the web: Wildlife trade on the internet', International Fund for Animal Welfare (2005), 34.

⁶⁷⁴ *Ibid.*; 'Bidding for extinction', International Fund for Animal Welfare (2007), 16; 'Trading faces: A rapid assessment on the use of Facebook to trade wildlife in Peninsular Malaysia', TRAFFIC (2016), vi.

⁶⁷⁵ 'Caught in the web: Wildlife trade on the internet', International Fund for Animal Welfare (2005), 34.

⁶⁷⁶ 'Wanted – Dead or alive: Exposing online wildlife trade', International Fund for Animal Welfare (2014), 24; 'Killing with keystrokes', International Fund for Animal Welfare (2008), 17.

practices of forged documents and of the most popular illegally obtained endangered species to sell/buy and where to find listings of prohibited species.⁶⁷⁷ To put more pressure on the consumer to do extra research and find out if the listing is illegal, consumer liability can be added. Consumers who knowingly or had means to know that the wildlife product was illegal can be punished with fines.⁶⁷⁸ Further, reporting systems have to become obligatory, or the establishment of a national hotline, similar to online child pornography.⁶⁷⁹ Consumer awareness has to be raised and one can persuade them to report suspicious listings, making the reporting system more effective. The website not only has to take down the illegal listing, but has to report this to enforcement officials with relevant documentation and transactions of this customer on their website. Enforcement officials should investigate more on this matter. The internet facilitates the illegal trade in wildlife species but can also track down wildlife criminals and their networks.

Since the COP17 of CITES, parties are engaged in this matter. Several decisions are adopted, motivating parties to seek input of professionals, engage with social media platforms, search engines and e-commerce platforms and share best practices.⁶⁸⁰ At the 69th meeting of the Standing Committee, a working group will be formed that includes producer and consumer countries, large internet companies, NGOs with expertise and other relevant experts. This working group will prepare guidance and manuals for CITES Parties and private companies on how to tackle this problem.⁶⁸¹ While it can take time to adopt international or regional legal binding codes for ISP and social media, national legislation based upon guidelines and recommendations is key.

⁶⁷⁷ 'Wanted – Dead or alive: Exposing online wildlife trade', International Fund for Animal Welfare (2014), 24.

⁶⁷⁸ C.J. ORSCHELN, "Bad new Birkins: Counterfeit in luxury brands", *J. MARSHALL REV. INTELL. PROP. L.* 2015, Vol. 14, 263-264.

⁶⁷⁹ 'Bidding for extinction', International Fund for Animal Welfare (2007), 16; 'Caught in the web: Wildlife trade on the internet', International Fund for Animal Welfare (2005), 34.

⁶⁸⁰ CITES, 'Decision 15.57 directed to: Parties', 'Decision 17.92 directed to: Parties' and 'Decision 17.93 directed to: Secretariat', <https://www.cites.org/eng/dec/valid17/81840> (last consulted 07/05/17).

⁶⁸¹ CITES, 'Decision 17.94 directed to: Standing Committee' and 'Decision 17.95 directed to: Standing Committee', <https://www.cites.org/eng/dec/valid17/81840> (last consulted on 07/05/17)

CONCLUSION

It is impossible to conclude that no efforts are made to end trafficking of illegal wildlife. Steps are being taken, but are insufficient. This thesis proposes some solutions that could mediate the situation, but would require a lengthy process being thus more long-term solutions. The establishment of a UNEO would, if executed perfectly, bring about harmonization between the different links in the chain to stop wildlife trafficking. It is a way to enhance all existing efforts by uniting them within one organisation and the establishment should support developing countries. Another long-term solution is the adoption of a fourth protocol to UNTOC, named “illicit trade in wildlife, including fisheries and forest crime”, specifically focusing on the issue of transnational organized crime in illegal wildlife trade. This protocol could set out harmonized definitions and standards. The text could be a compromise of best practices in the world and would be binding for its State Parties, however not self-executing. Another long-term solution is proposed on European level. The Commission (or European Parliament and/or Council) could adopt a directive to establish common minimum rules concerning the definition of criminal offenses and sanctions related to wildlife trafficking based on article 83 TFEU, to make sure that binding provisions are in place, obliging Member States of the European Union to punish these crimes more severely and bring more harmonization.

To counter wildlife cybercrime more effectively in the long run, one could create a model cybercrime code. This code should harmonize cybercrime laws internationally, encourage international cooperation and eliminate the “save heavens” for cybercriminals. It would take over a lot of content from the European Convention on Cybercrime but could easily be adapted to the constantly changing technology. A legally binding code for intermediary service providers would be beneficial, specifically focusing on rules and conditions in order to sell wildlife and their products online.

These long-term solutions have in common, that they rely on the willingness of states. These top-down approaches are binding and states are not in favour of such agreements. It takes time to achieve these solutions and would eventually be a compromise, making them not that effective as wanted. Illegal market in wildlife as well as wildlife cybercrime is booming and urgently needs to be addressed. Meanwhile it will not help wildlife right now. I think a bottom-up approach is thus preferred, which can be realized in a (relatively) short period of time.

I am convinced that one of the most important steps, is the establishment of an international, centralized database. This database can contain all information on illegal wildlife trafficking, as well as wildlife cybercrimes in order to gain insight in these issues and to know how to train officials and judges more effectively. The State Parties of CITES support this idea, while at COP17 a resolution concerning wildlife cybercrime was adopted, recommending the establishment of a centralized database. However, the same mistake regarding EU-TWIX cannot be made. It has to be hosted by an enforcement body, to obtain confidential and sensitive information about criminals. In my opinion, ICCWC is the best option to host the database. A

lot needs to be done to make this concept work, as ICCWC merely constitutes as a platform between the five organizations without a legal status of its own.

In my opinion, another important step is for CITES, to adopt “model legislation” which is adapted to the current issue of illegal wildlife trafficking, as wildlife cybercrime. This legislation will be not binding, but a guidance for State Parties. It can be reviewed at every new Conference of the Parties to keep up with emerging trends and can contain annexes when provisions are only mend for specific countries or regions where certain species occur. This legislation could contain provisions, compromising best practices around the world. This legislation could even establish provisions concerning penalties, obligating illegal wildlife traffickers to pay compensation to relevant victims, be a guidance to “follow the money trail”, define new intention requirements, corruption, extradition, etc.

Finally, I think a fund hosted by CITES or UNEP is necessary to assist developing countries. The newest techniques can be deployed and investigations can be done more effectively. This could constitute a positive virtuous circle, as illegal wildlife traffickers are obliged to pay compensation for all the damages caused. Developing countries could funnel this compensation, as arresting such criminals could become routine. What could mean that developing countries start to support themselves in this regard.

It remains an illusion and a lot still needs to be done to make this work. However, every link in the chain is needed: all the three solutions correlate, if one is left out, it will not work. For example, if CITES publishes its “model legislation” but developing countries do not have the resources or the means to implement such laws in their national legislation, it is not much of a use. In the end, it all depends on the willingness of the states. I believe they already recognize the problem, now they have to consider it as a priority. Nevertheless, these short-term solutions could be achievable and would mean the start of a different way of thinking and acting towards wildlife in general.

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ANNEX I: DUTCH SUMMARY OF THIS THESIS

Het doel van deze thesis is de methoden en gevolgen van de illegale handel in wilde plant- en diersoorten te onderzoeken op globaal niveau, de bestaande inspanningen weergeven en aanbevelingen geven voor een betere aanpak in de toekomst.

Het eerste deel gaat over de illegale handel in wilde plant- en diersoorten in het algemeen. Het eerste hoofdstuk legt de gebruikte methodes van de illegale wildhandelaars bloot, alsook de effecten op sociaal en ecologisch niveau. Verder wordt een uitgebreide analyse van de bestaande verdragen en internationale organisaties weergegeven, alsook hun geleverde inspanningen in dit gebied. Als laatste worden er aanbevelingen gegeven op drie niveaus: het bereiken van meer harmonisatie, het efficiënter arresteren van de illegale wildhandelaars en hoe hun vervolging en bestraffing beter kan gebeuren.

Het tweede deel gaat over de illegale internet handel in wilde plant- en diersoorten. Het eerste hoofdstuk geeft een overzicht van de problemen gerelateerd aan deze “wildlife cybercrimes”, gevolgd door een hoofdstuk die de gevolgen verduidelijkt. Het derde hoofdstuk geeft een uitgebreide analyse van de bestaande initiatieven en inspanningen op alle niveaus weer. Ten laatste worden er aanbevelingen gegeven om meer harmonisatie te bekomen in de wetgeving rond cybercrime in het algemeen. Verder wordt de aansprakelijkheid van “intermediary service providers” onderzocht aan de hand van de online namaak-epidemie, om na te gaan of deze gebruikte methodes en inspanningen parallel kunnen worden toegepast bij “wildlife cybercrimes”.

Deze thesis besluit dat meer harmonisatie nodig is, maar een top-down benadering is moeilijk te realiseren op korte termijn. Om de wildhandelaars efficiënter te arresteren is er meer internationale coöperatie nodig. Om ontwikkelingslanden financieel en technologisch te kunnen ondersteunen, dient een internationale database ontwikkeld te worden. Op deze manier kan ook de know-how gedeeld worden. De rechters moeten beter geëduceerd worden, compensatie moet betaald worden aan alle betrokken slachtoffers, middelen om corruptie tegen te gaan moeten worden uitgewerkt en er is nood aan beter beleid voor uitleveringen. CITES kan een “model wetgeving” uitvaardigen om hun lidstaten hierin te begeleiden. Een top-down benadering voor harmonisatie rond de wetgeving van cybercrime in het algemeen is tevens uit den boze. Bij voorkeur incorporeert CITES deze artikelen in hun “model wetgeving”. Wat betreft de aansprakelijkheid van “intermediary service providers”, zal een bindende code moeilijk tot stand gebracht worden, aangezien consensus ver te zoeken is bij staten hieromtrent. Ook deze code zou kunnen geïncorporeerd worden in CITES’ “model wetgeving”.