

**HORN TO BE WILD FOR SPECIES CONSERVATION: EXAMINING THE EXTENT TO WHICH CITES
RESPONDS TO ILLEGAL WILDLIFE TRADE VIA A CASE STUDY ON RHINOCEROS HORN
TRAFFICKING**

PHD BY PUBLICATION

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II SUMMARY

The illegal wildlife trade ('IWT') constitutes an increasingly prevalent and serious challenge to species survival, with virtually every country implicated along illicit supply chains representing billions of dollars. This thesis employs rhinoceros horn trafficking as a case study to examine the extent to which the *Convention on the International Trade in Endangered Species of Wild Fauna and Flora* ('CITES') addresses IWT to support species conservation. Informed by broader concepts of conservation ethics and green criminology, this thesis draws on interdisciplinary inputs in executing its central doctrinal legal analysis of the Convention. The research contained in this thesis consolidates a decade of expertise in the field of wildlife crime, including two chapters published in peer-reviewed journals. Chapter I provides the background and scope for this research by outlining the IWT problem, including key definitional parameters. Chapter II contextualises IWT as a conservation challenge in the present era of biodiversity loss. After analysing the theoretical field of conservation discourse, Chapter II serves to define both 'conservation' and 'species,' and endorses a schema for the case study. Chapter III chronicles an interdisciplinary analysis of the trade in rhinoceros horn from historical, cultural, and scientific dimensions, and offers updated data on each of the five extant species threatened with extinction. Chapter IV analyses the development of 'international wildlife conservation law' and situates the emergence of CITES as one of the 'Big Five' instruments governing humankind's relationship with nature. Chapter V adopts the rules of treaty interpretation in reading down the purpose and operation of CITES with reference to its origins in the preceding Chapter coupled with the Convention's text and subsequent development of soft law. Chapter VI analyses CITES' role in combating IWT and constructs an original critical chronology of the Convention's treatment of rhino horn trafficking from its entry into force in the 1970s through to CoP19 in 2022. Lastly, Chapter VII examines the securitisation of IWT in reflecting on the appropriate framing required to tackle it into the future. This thesis concludes that CITES is limited in how it may address IWT within its mandate. While CITES has progressively broadened its approach to regulating legal trade by evoking the language of wildlife crime, it nevertheless remains a multilateral environmental agreement governing trade largely through trade-related environmental measures ('TREM's'). While this approach is consistent with the expression of conservation ethics in international wildlife conservation law (notably through its recognition of sustainable use), it has not abated the threat of IWT as a driver of species endangerment for many species, including rhinos.

III STATEMENT OF ORIGINALITY

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Date:

20 / 11 / 2023

Signed:

Candidate Name:

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V TABLE OF COMMONLY USED ACRONYMS, INITIALISMS, AND COMMON NAMES

Acronym/Initialism/Common Name	Expansion
AC	Animals Committee
AITR	Annual illegal trade report
ASEAN	Association of Southeast Asian Nations
CAR	Central African Republic
CBD	Convention on Biological Diversity
CCPCJ	United Nations Commission on Crime Prevention and Criminal Justice
CITES	Convention on the International Trade in Endangered Species of Wild Fauna and Flora
CMS (or 'Bonn Convention')	Convention for the Conservation of Migratory Species of Wild Animals
CoP	Conference of the Parties
COVID-19	Coronavirus disease 2019 (referring to the disease caused by SARS-CoV-2, ie Severe acute respiratory syndrome coronavirus 2)
CTE	Committee on Trade and Environment
DRC	Democratic Republic of the Congo
DSB	Dispute Settlement Body
ECOSOC	United National Economic and Social Council
ERM	Environmental Resources Management
ETIS	Elephant Trade Information System
FARDC	Armed Forces of the Democratic Republic of the Congo
FAO	Food and Agriculture Organisation
GATT	General Agreement and Tariffs and Trade

GFI	Global Financial Integrity
ICCWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Criminal Police Organization
IOPN	International Office for the Protection of Nature
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IUCN	International Union for Conservation of Nature
IUPN	International Union for the Protection of Nature
IWT	Illegal wildlife trade
LRA	Lord's Resistance Army
MEA	Multilateral environmental agreement
MFN	Most-favoured-nation
NDF	Non-detriment finding
NGO	Non-government organisation
NLP	National Legislation Project
OECD	Organisation for Economic Co-operation and Development
PC	Plants Committee
Ramsar (or 'Ramsar Convention')	Convention on the Conservation of Wetlands of International Importance especially as Waterfowl Habitat
RENAMO	Mozambican National Resistance
RST	Review of Significant Trade
SADC	Southern African Development Community
SC	Standing Committee
SDG	Sustainable Development Goal

SSC	Species Survival Commission
'Stockholm Conference'	United Nations Conference on the Human Environment
TRAFFIC	The Wildlife Trade Monitoring Network as founded by WWF and IUCN
TREM	Trade-related environment measure
UN	United Nations
UNCED (or 'the Rio Conference' or 'the Earth Summit')	United Nations Conference on Environment and Development
UNEA	United Nations Environment Assembly
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNITA	National Union for the Total Independence of Angola
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNTOC	United Nations Convention against Transnational Organized Crime
VCLT	Vienna Convention on the Law of Treaties
WJC	Wildlife Justice Commission
'World Heritage Convention'	Convention for the Protection of the World Cultural and Natural Heritage
World WISE	World Wildlife Seizure database (of the UNODC)
WSSD (or 'the Johannesburg Summit')	World Summit on Sustainable Development

WTO	World Trade Organization
WWF	World Wide Fund for Nature (formerly World Wildlife Fund)

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I CONTEXT AND RESEARCH QUESTION

No organisation on its own, no country on its own, can effectively stop the illegal wildlife trade that knows no borders. Only through our collective efforts, continued collaboration across borders can we stamp out this cruel and devastating trade, wildlife trafficking. Together we simply must. Otherwise, the effects will be so devastating that entire ecosystems will collapse, and future generations will never know the joy of going out to see some of these extraordinary animals, and trees, and plants in the wild.

- Dr Jane Goodall DBE¹

When Earth's last male northern white rhinoceros (*Ceratotherium simum cottoni*) died on 19th March 2018, it was not at the hand of poachers but rather in the company of vigilant carers at Kenya's Ol Pejeta Conservancy. The rhino, named Sudan for the country of his birth, became an internationally recognised symbol for the current era of biodiversity loss, aided in no small part by a viral photograph taken in his final moments by Ami Vitale.² The tenderness of Sudan's passing juxtaposes the increasingly coordinated and at times clinical brutality of the latest megafauna poaching crisis that now sees fewer than 27,000 rhinos remaining across five species.³ White rhinos have been the hardest hit by poaching mortalities, declining by approximately 12% between 2018 and 2022.⁴ These mortalities are the most visible indicator of the threat posed by rhino horn trafficking which has long been recognised as part of the global illegal wildlife trade ('IWT') despite the international ban on trade in rhino horn under the auspices of the *Convention on the International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention') commencing in 1977.⁵

¹ Jane Goodall, 'Day 1 Virtual 31st Meeting of the INTERPOL Wildlife Crime Working Group' (Speech, INTERPOL Wildlife Crime Working Group, 25-27 November 2020).

² National Geographic, 'Last of His Kind', *Photo of the Day* (Web Page) <<https://www.nationalgeographic.com/photo-of-the-day/media-spotlight/northern-white-rhino-death>>.

³ International Rhino Foundation, '2022 State of the Rhino Report' (August 2022) <<https://rhinos.org/wp-content/uploads/2022/09/IRF-State-of-the-Rhino-2022.pdf>>; IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC, 'African and Asian Rhinoceroses – Status, Conservation and Trade' as contained in *Report of the CITES Secretariat and Standing Committee*, CoP19 Doc.75 (Rev. 1) Annex 4.

⁴ Ibid.

⁵ *Convention of International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

IWT presents a litany of complex and compounding challenges to domestic and international legal frameworks. As highlighted by Dr Jane Goodall DBE above in her Keynote Address to the 2020 meeting of the INTERPOL (International Criminal Police Organization) Wildlife Crime Working Group, the transnational dimension of illegal trade requires a response involving collaboration across international borders.⁶ Collaboration extends not only to the setting of standards by which legal trade is permitted and regulated, but further into the realm of crime control, monitoring, and law enforcement. The latter includes criminalising certain trade, intelligence acquisition and dissemination, provision of technical assistance towards enhancing detection, management of seized wildlife and wildlife products (living or otherwise), apprehension of perpetrators and disposal of matters through legal processes, and recovery of proceeds of crime.⁷ Despite the prevalence of assumptions in public discourse characterising IWT as an 'African' problem exclusively driven by markets in Asia, IWT is a global phenomenon.⁸ In its 2020 assessment drawing on data from nearly 180,000 seizures across 149 countries and territories, the United Nations Office on Drugs and Crime ('UNODC') found that almost 6,000 species were seized between 1999 and 2018, no single country was the source of more than 9% of the total number of seized shipments, and suspected traffickers belonged to some 150 nationalities.⁹ The UNODC report also offered insight into the wide range of species affected by IWT, with no single species accounting for more than 5% of seizures examined.¹⁰

Currently, 'virtually every country'¹¹ is involved in IWT, be it in supply, transit, or demand along chains of custody, and the situation appears to be worsening due to several factors. These include: increased international travel, the use of wildlife as conflict resources in some regions, online marketing and trade, and 'rising affluence in regions such as the Middle Eastern Gulf states, India, China and Eastern Europe'.¹² This evidence of IWT's ubiquity, both in its geographic

⁶ Goodall (n 1).

⁷ See, eg, United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018) 1 ('*Drafting Legislation Guide*').

⁸ Stephen F Pires and William D Moreto, 'The Illegal Wildlife Trade' in Oxford Handbooks Editorial Board (ed), *Oxford Handbooks Online: Criminology and Criminal Justice: Scholarly Research Reviews* (Oxford University Press, 7 July 2016) <<https://doi.org/10.1093/oxfordhb/9780199935383.013.161>> ('*The Illegal Wildlife Trade*'). See also Roland Kays, 'Can Asia end its uncontrolled consumption of wildlife? Here's how North America did it a century ago', *The Conversation* (online, 12 June 2020) <<https://theconversation.com/can-asia-end-its-uncontrolled-consumption-of-wildlife-heres-how-north-america-did-it-a-century-ago-137343>>.

⁹ United Nations Office on Drugs and Crime, *World Wildlife Crime Report – Trafficking in protected species* (United Nations, 2020) ('*Wildlife Crime Report*') 9-10.

¹⁰ *Ibid* 9.

¹¹ *Ibid* 9-10.

¹² Leo R Douglas and Kelvin Alie, 'High-value natural resources: Linking wildlife conservation to international conflict, insecurity, and development concerns' (2014) 171 *Biological Conservation* 270, 272.

reach and permeation of the entire web of life,¹³ may well run contrary to public perception as campaigning and education on the issue sees predominantly charismatic terrestrial mammalian species such as tigers and elephants drawing focus.¹⁴ While leveraging the profile of these animals raises public awareness of IWT, to do so often comes at the expense of understanding the complexity of issues and impacts on the range of species impacted (ie including non-mammals, plants, and fungi, ecosystems, and human communities).

While often viewed as victimless crimes, wildlife crimes including IWT contribute to a broad range of harms, including the destruction of wild resources and ecosystems, desertification, environmental degradation, as well as the reduction and elimination of species.¹⁵ In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ('IPBES') concluded that approximately 25 percent of species assessed are threatened, suggesting that around one million species face extinction unless urgent action to mitigate the intensity of biodiversity loss drivers occurs.¹⁶ The direct exploitation of organisms (including illegal extraction through poaching)¹⁷ was found to be the second-most significant direct driver of change in nature next to changes in land and sea use (with trade noted as a well-established indirect driver).¹⁸ IWT also presents risks to public health and good governance,¹⁹ as well as a major challenge for law enforcement given the degree of crime convergence with other activities including human

¹³ Tanya Wyatt, 'Does the Convention on International Trade in Endangered Species of Wild Fauna and Flora Protect Wildlife?' *YouTube* (Web Video, 9 April 2021) <<https://www.youtube.com/watch?v=NervZEGgQns>>.

¹⁴ Jacob Phelps, Duag Biggs and Edward L Webb, 'Tools and Terms for Understanding Illegal Wildlife Trade' (2016) 14(9) *Frontiers in Ecology and the Environment* 479; see also Tanya Wyatt, 'Does the Convention on International Trade in Endangered Species of Wild Fauna and Flora Protect Wildlife?' *YouTube* (Web Video, 9 April 2021) <<https://www.youtube.com/watch?v=NervZEGgQns>>.

¹⁵ United Nations Office on Drugs and Crime, *Drafting Legislation Guide* (n 7).

¹⁶ Andy Purvis, 'How did IPES Estimate "1 Million Species at Risk of Extinction" in #Global Assessment Report' (Explanatory Note, IPBES, 22 May 2019) <<https://ipbes.net/news/how-did-ipbes-estimate-1-million-species-risk-extinction-globalassessment-report>>. Note this estimate may be conservative: 'Genetic data are showing that many of the species we recognise at the moment actually contain multiple – often many – lineages that have not exchanged genes with each other for a very long time (sometimes millions of years). These could be called species, and would increase the numbers considerably (this is where the estimates over 100 million mostly come from). Doing so would increase not only the number of species that are threatened but also the proportion, because many of the newly-recognised species would have very narrow distributions making them more likely to meet the Red List criteria for being threatened.'

¹⁷ Patricia Balvanera et al, 'Chapter 2.1. Status and Trends – Drivers of Change' in Eduardo Brondizio et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services* (IPBES, 2019) 113, 129.

¹⁸ Sandra Diaz et al, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the International Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES, 2019); 'Indicators and a Monitoring Framework', *Sustainable Development Solutions Network* (Web Page) <<https://indicators.report/targets/15-7/>>: The need to take urgent action to end poaching and trafficking of protected species of flora and fauna has also been recognized in the *United Nations Sustainable Development Goals Target 15.7*.

¹⁹ Steven Greenfield and Diogo Veríssimo, 'To What Extent Is Social Marketing Used in Demand Reduction Campaigns for Illegal Wildlife Products? Insights From Elephant Ivory and Rhino Horn' (2019) 25(1) *Social Marketing Quarterly* 40, 40.

trafficking, drug manufacturing and money laundering.²⁰ On the specific point of public health, IWT increases the risk of zoonotic disease transmission, with the IPBES estimating some 1.7 million undiscovered viruses thought to exist in wild animals, of which approximately half could spill over to humans.²¹

Seeking to quantify the scale of IWT, researchers have sought to demonstrate the relative value of IWT against other forms of transnational crime commodities. Rankings have varied based on the interpretation of datasets, with some of the most common being: ‘the fourth largest global illegal trade after narcotics, humans and counterfeit products’,²² ‘fourth most lucrative type of transnational crime after illegal narcotics, humans and armaments’,²³ ‘the third most valuable illicit commerce behind drugs and arms’,²⁴ and ‘the second largest form of blackmarket commerce, behind drug smuggling and just ahead of illegal arms trade’.²⁵ Irrespective of the precise ranking capable of being evidenced at a given point in time, IWT remains a dynamic and resilient phenomenon through which billions of dollars flow.

CITES²⁶ is the central multilateral environmental agreement (‘MEA’) governing the international trade in wildlife. Rather than adopting an approach to criminalise illegal trade, CITES seeks to control the environmental harms associated with international wildlife trade through a permit-based regulatory approach to promote ‘legal, sustainable, and traceable’ trade.²⁷ While wildlife crime does not sit squarely within the Convention’s mandate, it nonetheless is the most frequently referred to by scholars as the most relevant to combatting IWT.²⁸ The persistence of IWT and continuing threat of species extinction, such as the threat rhino horn trafficking to the survival of rhinos, raises the question as to whether the current regime is fit-for-purpose. It is from this baseline understanding of the global ubiquity, harm, value, and complexity of IWT that this doctoral thesis locates its research question and corresponding case study:

²⁰ United Nations Office on Drugs and Crime, *Drafting Legislation Guide* (n 7) 1.

²¹ Peter Daszak et al, *IPBES Workshop Report on Biodiversity and Pandemics* (IPBES, 2020).

²² See, eg, Tom Maguire and Cathy Haenlein, *An Illusion of Complicity: Terrorism and the Illegal Ivory Trade in East Africa* (Royal United Services Institute, 2015) 1; World Wildlife Fund and Dalberg Global Development Advisors, *Fighting Illicit Wildlife Trafficking: A Consultation with Governments* (WWF International, 2012) 9.

²³ See, eg, Tom Milliken, *Illegal Trade in Ivory and Rhino Horn: An Assessment to Improve Law Enforcement Under the Wildlife TRAPS Project* (USAID & TRAFFIC, 2014) 1.

²⁴ See, eg, Charles Bergman, ‘Wildlife Trafficking’ *Smithsonian Magazine* (December 2009).

²⁵ See, eg, Greg L Warchol, ‘The Transnational Illegal Wildlife Trade’ in Rob White (ed), *Transnational Environmental Crime: The Library of Essays on Transnational Crime* (Routledge, 2017); Francis T Cullen and Pamela Wilcox (eds), *The Oxford Handbook of Criminological Theory* (Oxford University Press, 2015) 636.

²⁶ CITES (n 5).

²⁷ CITES, ‘CITES Trade: A Snapshot’ <<https://cites.org/sites/default/files/common/docs/CITES-trade-snapshot-eng.pdf>>.

²⁸ Tanya Wyatt, *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* (Palgrave Macmillan, 2013) 2 (‘Wildlife Trafficking’).

To what extent does the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ('CITES' or 'the Convention') address illegal wildlife trade to support species conservation? As a case study, how has the Convention responded to rhino horn trafficking as a threat to rhinoceros conservation?

II SCOPE OF RESEARCH

The scope of this thesis is determined by two variables: first, setting out working definitions of core concepts within the research question; and second, the choice of CITES as the primary legal instrument related to the subject matter for analysis.

Turning to the first question regarding definitional parameters, the term 'illegal wildlife trade' is broadly defined as 'all unlawful activities associated with the commercial exploitation and trade of wildlife specimens (living organisms or harvested parts thereof)'.²⁹ As set forth in Chapter I, this definition is fleshed out by Wyatt and South's theoretical positioning of 'wildlife trafficking or the illegal wildlife trade' as a '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'.³⁰ The idea of a 'green crime' derives from green criminology which can be best conceptualised as a green perspective on crime (ie one that favours taking environmental crime or harm more seriously) rather than a specific criminological theory.³¹ The sorts of environmental crimes or harms included within the scope of green criminology include 'transgression that are harmful to humans, environments, and nonhuman animals, regardless of legality per se' and 'environment-related harms that are facilitated by the state, as well as corporations and other powerful actors, insofar as these institutions have the capacity to shape official definitions of environmental crime in ways that allow, condone, or excuse environmentally harmful practices'.³² 'Wildlife' is defined

²⁹ Michael 't Sas-Rolfe et al, 'Illegal Wildlife Trade: Scale, Process, and Governance' (2019) 44(1) *Annual Review of Environment and Resources* 201.

³⁰ Nigel South and Tanya Wyatt, 'Comparing illicit trades in wildlife and drugs: an exploratory study' (2011) 32(6) *Deviant Behavior* 538, 546.

³¹ Nigel South, 'A green Field for Criminology?: A Proposal for a Perspective' 2(2) *Theoretical Criminology* 211, cited in Rob White, 'The Conceptual Contours of Green Criminology' in Reece Walters, Diane Solomon Westerhuis and Tanya Wyatt, *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm* (Palgrave Macmillan, 2013) 22.

³² Rob White, 'The Conceptual Contours of Green Criminology' in Reece Walters, Diane Solomon Westerhuis and Tanya Wyatt, *Emerging Issues in Green Criminology: Exploring Power, Justice and Harm* (Palgrave Macmillan, 2013) 19-20.

as 'all non-human animals and plants that are not companion or domesticated animals'.³³ Under this conception, pets and livestock are excluded whereas zoo animals that may be farmed but are not truly domesticated are included (for example, cattle farmed for beef would be excluded whereas rhinoceroses farmed for their horns would qualify).

'Species conservation' comprises two components. Commencing with the more contested of the terms, 'conservation' is analysed in Chapter II as having both ethical and ecological dimensions operating as an expression of human values as it pertains to non-human nature. This fundamental premise was best articulated by Alexander in amalgamating the insights offered by Adams,³⁴ Jepson and Canney,³⁵ and Cole-King:³⁶

Nature conservation is an expression of a relationship between people and nature: it is something that we do, a human or anthropogenic activity. We are the only species that engages in this activity. No other species presumes to make decisions about our environment or the fate of the other species that inhabit this earth.³⁷

Indeed, international wildlife conservation law itself (ie that specific body of international instruments in which this thesis is located) is created and maintained as an expression of humankind's relationship with nature in terms of what activities and regulated, for what purposes, and to what ends. Chapter II goes to some length to deliberate on the competing and/or complementary values (eg intrinsic and instrumental values) and approaches (eg traditional and new conservation) in conservation, arriving ultimately at the conclusion that it is precisely because conservation is an expression of human values that it be better conceived as a heterogenous, multidisciplinary, and inclusive area of inquiry, with the most appropriate approaches applied being informed by a given problem and context.

³³ Wyatt, *Wildlife Trafficking* (n 28) 111-112.

³⁴ See William Adams, *Future Nature: A Vision for Conversation* (Routledge, 2003) cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111: 'A personal relationship, a matter of decisions about human actions in the light of their implications for nonhuman nature. I believe that perhaps the most critical element in conservation is the form of human engagement with non-human nature.'

³⁵ See Paul Jepson and Susan Canney, 'Values-led conversation' (2003) 12(4) *Global Ecology and Biogeography* 271, 271: 'Nature conservation can be thought of as a social movement working to develop or reassert certain values in society concerning the human-nature relationship.'

³⁶ See Adam Cole-King, *Personal Communication* (2005), cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111: 'Nature conservation is a highly organized system for expressing environmental preferences.'

³⁷ Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111. Noting, however, that there are some examples of species 'conserving' others – including for example, Bell Miners – maintaining populations of psyllids through sustainable feeding and protection from predation by other birds. The author thanks Professor Ed Couzens for this specific observation.

The term 'species' is used compatibly in both its singular use and contextual use in the combined term 'species conservation'. With respect to the former, owing to its scientific meaning, 'species' denotes a basic unit of classification and taxonomic rank for living things. With respect to the latter, conservation has and continues to orient towards species rather than individual members of a species as its focal point of concern. A distinction may thus be drawn between conservation (as it pertains broadly to the survival of wild species and ecosystems and preservation of overall biodiversity and geodiversity) and animal welfare (ie how well an animal survives in its surrounds with reference to indicia including observed behaviour, physiology, reproduction, and longevity).³⁸ The term 'species conservation' is used throughout this thesis to make this distinction explicit in its scope.

The scope of doctrinal analysis in this thesis is situated in the development of international wildlife conservation law as an evolving body of legal principles, instruments and mechanisms concerning wildlife conservation (see Chapter IV). However, the scope of inquiry is narrowed further to examine the principal instrument identified in the literature³⁹ responding to IWT: the *Convention on the International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention').⁴⁰ Together with increasing involvement by intergovernmental agencies and non-state actors, member state compliance with and enforcement of CITES offers the primary means to governing wildlife trade to ensure that it does not threaten species survival.⁴¹ The choice of CITES as the primary instrument for analysis is confirmed beyond scholarly literature as its relevance is recognised by other primary sources of international law, notably the suite of five 'tackling illicit trafficking of wildlife' resolutions passed by the United Nations General Assembly ('UNGA') in 2015,⁴² 2016,⁴³ 2017,⁴⁴ 2019,⁴⁵ and most recently in 2021⁴⁶ respectively, which expressly recognised 'the legal framework provided by and the important role of CITES as the primary mechanism for regulating international trade in species of wild fauna and flora listed in

³⁸ David Fraser, 'Toward a synthesis of conservation and animal welfare science' (2010) 19(2) *Animal Welfare* 121.

³⁹ See, for instance, in 2013, Wyatt contended that 'the main international agreement to combat wildlife trafficking is the Convention on the International Trade in Endangered Species of Wild Fauna and Flora': Wyatt, *Wildlife Trafficking* (n 28) 111-112.

⁴⁰ CITES (n 5). The Convention currently has 184 parties.

⁴¹ 't Sas-Rolfe et al (n 29).

⁴² *Tackling Illicit Trafficking in Wildlife*, GA Res 69/314, UN Doc A/RES/69/314 (19 August 2015, adopted 30 July 2015).

⁴³ *Tackling Illicit Trafficking in Wildlife*, GA Res 70/301, UN Doc A/RES/70/301 (23 September 2016, adopted 9 September 2016).

⁴⁴ *Tackling Illicit Trafficking in Wildlife*, GA Res 71/326, UN Doc A/RES/71/326 (28 September 2017, adopted 11 September 2017).

⁴⁵ *Tackling Illicit Trafficking in Wildlife*, GA Res 73/343, UN Doc A/RES/73/343 (20 September 2019, adopted 16 September 2019).

⁴⁶ *Tackling Illicit Trafficking in Wildlife*, GA Res 75/311, UN Doc A/RES/75/311 (26 July 2021, adopted 23 July 2021).

its appendices' in their Preambles. It must be noted, however, that while CITES endeavours to ensure that international wildlife trade is legal, traceable, and sustainable, it is not an instrument that criminalises IWT. This distinction is central to this thesis as discussed below.

III SIGNIFICANCE, METHODS AND AIMS OF RESEARCH

In one of the first research monographs on IWT, published in 2013, Wyatt observed that the nature and extent of IWT was not adequately addressed in scholarship or the global law and policy-making agenda.⁴⁷ To be precise, Wyatt described IWT as remaining 'on the fringes of both academia and policy'.⁴⁸ In the decade that followed, IWT saw a flux in attention across disciplines and from multiple points of emphasis,⁴⁹ including through the lens of mass extinction and biodiversity loss, as well as the role of wildlife trade in zoonotic disease emergence since the start of the COVID-19 pandemic. With respect to the transnational crime angle, the standard position appears to be that while the extent of the problem and impacts of IWT are significant, 'bolder steps'⁵⁰ are required to prevent, detect, and disrupt actors along illicit supply chains. In 2016, an assessment by the United Nations Environment Programme ('UNEP') and INTERPOL found the growth rate in environmental crimes, including IWT, may indeed be two to three times that of the global economy.⁵¹ In its *Guide on Drafting Legislation to Combat Wildlife Crime*, published in September 2018, the UNODC maintained its position that IWT is increasing internationally, stating:

[d]espite considerable efforts in recent years, wildlife crime remains a growing problem worldwide. Once described as an emerging threat, wildlife crime has evolved into one of the most

⁴⁷ Wyatt, *Wildlife Trafficking* (n 28) 9.

⁴⁸ *Ibid*; see also Pires and Moreto, *The Illegal Wildlife Trade* (n 8).

⁴⁹ 't Sas-Rolfe et al (n 29) offer a non-exhaustive list of disciplinary perspectives including those from conservation biologists (see: Adam Dutton et al, 'Tackling unsustainable wildlife trade' in David MacDonald and Katherine Willis (eds), *Key Topics in Conservation Biology 2* (Wiley, 2013) 74); resource economists (see: Carolyn Fischer, 'Does Trade Help or Hinder the Conservation of Natural Resources?' (2010) 4(1) *Review of Environmental Economics and Policy* 103); policy analysts (see: United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (United Nations, 2016); Vanda Felbab-Brown, *The Extinction Market: Wildlife Trafficking and How to Counter It* (Oxford University Press, 2017)); legal scholars (see: Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010); Geoffrey Wandesforde-Smith, 'Looking for Law in All the Wrong Places? Dying Elephants, Evolving Treaties, and Empty Threats' (2016) 19(4) *Journal of International Wildlife Law & Policy* 365); and criminologists (see: Daan P van Uhm, *The Illegal Wildlife Trade: Inside the World of Poachers, Smugglers and Traders* (Springer, 2016); Justin Kurland et al, 'Wildlife Crime: A conceptual integration, literature review, and methodological critique' (2017) 6(4) *Crime Science* <<https://doi.org/10.1186/s40163-017-0066-0>>.

⁵⁰ Ricardo Jorge Lopes, Juliana Machado Ferreira, and Nadia Moraes-Barros, 'Bolder steps to fight global wildlife illegal trade' (2019) 33(1) *Conservation Biology* 7.

⁵¹ United Nations Environment Programme, *The Rise of Environmental Crime: A growing threat to natural resources peace, development and security* (United Nations, 2016) ('UNEP').

significant transnational criminal activities and has major economic, social and environmental impacts... It remains challenging to quantify the full scale of the problem, but it has become clear that the billions of dollars generated by this illegal business are linked to corruption, money-laundering and violence.⁵²

From an international law and governance perspective, increasing IWT presents a pointed and under-served question regarding whether the current legal framework is fit-for-purpose given the Convention's entry into force in 1975.⁵³ Phrased differently, it would be both useful and timely to consider whether CITES is the most appropriate legal framework to contend with cross-border IWT, particularly for the trafficking of those species bearing the indicia for transnational organised crime, rather than defaulting to the status quo.

This is not to say that there is a gap in the literature on CITES broadly. The most exhaustive literature review on IWT, co-ordinated by the Oxford Martin Program on the Illegal Wildlife Trade in 2019, observed that most reviews on the subject tend to be CITES-focused, with much of the discussion regarding the instrument's effectiveness and legitimacy focusing on charismatic terrestrial megafauna.⁵⁴ Rather, the gap in the literature is one of applied methodology, specifically two elements:

- I. the application of doctrinal legal analysis utilising the rules of treaty interpretation; and
- II. execution of such an analysis with interdisciplinary inputs towards a more holistic and contextualised understanding of the problem and prospective solutions.

Accordingly, this thesis aims to integrate both elements.

The application of doctrinal legal methodology in this field would itself be considered an original and significant contribution to the existing literature. The notable absence of doctrinal legal methodology in application to conservation was most aptly described by Trouwborst et al, in 2017, who observed that '[d]espite the widespread recognition of the importance of law to wildlife conservation, legal methodology is still a relatively unfamiliar feature within the multidisciplinary conservation literature and among conservation practitioners'.⁵⁵ More

⁵² United Nations Office on Drugs and Crime, *Drafting Legislation Guide* (n 7) 1.

⁵³ Michael Harfoot et al, 'Unveiling the Patterns and Trends in 40 Years of Global Trade in CITES-Listed Wildlife' (2018) 223 *Biological Conservation* 47. CITES entered into force on 1 July 1975, 90 days after the 10th ratification. See *CITES* (n 5) art Article XXII(1).

⁵⁴ 't Sas-Rolfe et al (n 29).

⁵⁵ Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784, 788 citing Eric Freyfogle, 'Conservation Biology and Law: Only a Start' (2006) 20 *Conservation Biology* 679 and Guillaume Chapron et al, 'Bolster legal boundaries to stay within planetary boundaries' (2017) 1(3) *Nature Ecology and Evolution* 86.

precisely, this area of inquiry stands to benefit from a more detailed treatment of CITES as a treaty under public international law, accordingly interpreted with reference to the *Vienna Convention on the Law of Treaties* ('VCLT').⁵⁶

While the VCLT binds parties by consent, its rules may extend in application to non-parties as many of the provisions contained therein were effectively drafted to codify existing rules of customary international law and have developed since.⁵⁷ Even though CITES entered into force in 1975, prior to the VCLT's entry into force on 27 January 1980, the latter codified the rules of treaty interpretation identified as already being in existence during its drafting.⁵⁸ Therefore, the rules contained in the VCLT may be employed to interpret instruments predating it. Part 3, Section 3 of the VCLT provides base provisions for the interpretation of treaties from which the general rule in Article 31(1) expresses a purposive approach, ie 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.⁵⁹ This interpretation of the VCLT's purposive approach is confirmed by its *travaux préparatoires*,⁶⁰ with Article 32 further providing that the *travaux préparatoires* of an instrument may be used in determining its purpose.

Having regard to the above, an analysis of CITES therefore requires an understanding of where it sits within the broader development of international wildlife conservation law (as executed in Chapter IV) to properly comprehend its purpose and objectives as formative to interpreting its operation (as conducted in Chapter V). In doing so, the thesis seeks to clarify the purpose and scope of CITES and analyse the implications of this construction on its legitimate operation vis-à-vis its mandate broadly and IWT specifically. As to the case study on rhino horn trafficking, the

⁵⁶ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered in force 27 January 1980) ('VCLT'); there are currently 116 parties.

⁵⁷ *United Nations Conference on the Law of Treaties – Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, 2nd sess, 12th plen mtg, UN Doc A/CONF/39/11/Add.1 (12 May 1969) 104 [37].

⁵⁸ *United Nations Conference on the Law of Treaties – Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, 2nd sess, 31st plen mtg, UN Doc A/CONF/39/11/Add.1 (20 May 1969) 197 [44].

⁵⁹ *Ibid* art 31. Articles 31(2)-(3) qualify how the context for the purpose of interpretation of a treaty is to be established, for example, having regard to not only the text, including preamble and annexes of a treaty but also agreements made between all parties in connection with the conclusion of the treaty and subsequent agreements between parties as to the interpretation of the treaty or application of its provisions. Article 31(4) provides that 'special meaning shall be given to a term if it is established that the Parties so intended'.

⁶⁰ See, eg, 'Draft articles on the law of treaties with commentaries' (1966) II *Yearbook of the International Law Commission* 187. The commentaries refer to an earlier resolution of the Institute of International Law from 1956 which, among its basic principles of treaty interpretation, include giving some weight to 'the declared or apparent objects and purposes of the treaty' (at page 218). That is not to say that evidence of 'object and purpose' may supplant the primacy of the treaty text to the point of departure from or conflict with the original intentions expressed in the text. Rather, 'when a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted' (at page 219).

analysis of primary sources presented in Chapter VI constitutes an entirely original critical chronology including rhino-related resolutions and decisions from CoP1 Bern (Switzerland) 2 – 6 November 1976 to CoP19 Panama City (Panama) 14 – 25 November 2022. All proposals to amend the rhino listings on the Appendices are analysed referencing contemporaneous records from the Committees with carriage, as are discussions around the passage of resolutions and decisions pertinent to rhino conservation. The extraction of six key hallmarks of the Convention’s response to rhino horn trafficking from this chronology provides further original thematic insight spanning the entirety of CITES’ period of operation.

A doctrinal analysis of CITES falters in its utility if it occurs in a vacuum divorced from the realities beyond the four corners of the treaty text. Legal scholars analysing CITES have tended towards claims of the treaty’s success, holding it out to be one of the most successful international conservation treaties based simply on the numbers of parties acceding to the treaty rather than with reference to external indicators of success, notably conservation outcomes or its capacity to combat transnational organised crime.⁶¹ This thesis aims to differentiate itself by carrying out a legal analysis of CITES integrating interdisciplinary perspectives. Interdisciplinarity features in key aspects of this thesis’s methodology relate to framing the problem and analytical approach, characterisation of supported values and identification of desired outcomes. Chapter III applies an interdisciplinary lens by investigating the trade in rhino horn from historical, scientific, and cultural dimensions to position the case study as a vehicle for analysis in this thesis, thereby highlighting the range of factors driving the IWT and challenging species conservation. Similarly, this thesis is informed by Wyatt’s green criminological conception of the dimensions of harm of IWT (human, environmental, economic, and security) and offers commentary on all elements. Green criminology inspired this thesis as it critically examines environment-related criminal activities in a manner that more completely accounts for the harms associated with illicit activity beyond the more restrictive legal parameters of traditional criminal justice,⁶² and encourages the use of diverse sources, such as seizure data and network analyses of implicated actors, to inform findings. Lastly, execution of the doctrinal analysis of CITES in this thesis builds on a theoretical analysis of conservation as an essentially contested concept in Chapter II, which contextualises

⁶¹ See eg, Michael Bowman, ‘A Tale of Two CITES: Divergent Perspectives upon the Effectiveness of the Wildlife Trade Convention’ (2013) 22(3) *Review of European, Comparative & International Environmental Law* 228; Elisabeth M McOmber, ‘Problems in Enforcement of the Convention on International Trade in Endangered Species’ (2002) 27(2) *Brooklyn Journal of International Law* 673, 674.

⁶² See also Pires and Moreto, *The Illegal Wildlife Trade* (n 8); Rob White, *Crimes Against Nature: Environmental Criminology and Ecological Justice* (Willan, 1st ed, 2008); Michael J Lynch and Paul B Stretsky, ‘The meaning of green: Contrasting criminological perspectives’ (2003) 7(2) *Theoretical Criminology* 217.

the underpinning values and desired outcomes of the regime as an expression of human preferences. Taken together, this thesis aims to answer the resounding call in the literature for informed interdisciplinary perspectives⁶³ on IWT towards a fuller understanding of the existing international regulatory regime, challenges raised by IWT, and prospective solutions for species conservation.

Rhino horn trafficking was selected as the case study commodity through which the general thesis question could feasibly be examined for several reasons. By way of setting the context for this choice, it is important to note the guidance of the UNODC in cautioning that wildlife crime is a global phenomenon involving many related but distinct markets bearing their respective drivers and dynamics, 'each of which must be independently assessed for its unique characteristics'.⁶⁴ The deployment of rhinoceros horn as a case study is not to suggest that it is an appropriate example from which to make generalisations about *all instances* of IWT. Rather, the case study is positioned as a vehicle to explore how the current legal framework operates to support species conservation as the desired aim and to demonstrate how IWT may be addressed where the species in question attracts significant political will. To state it plainly, a case study on rhino horn trafficking tests the limits of what *may* be achieved under the existing legal framework. By way of pragmatism, the rhino's status as charismatic megafauna has afforded it greater attention in academic and civil society circles, resulting in a critical mass of literature from which this thesis draws, including population and poaching statistics and commentary thereon.⁶⁵ By way of valuation, rhino horn has been reported to rival gold and platinum in value per kilogram,⁶⁶ which was not only a point of interest but signalled that market data was available for analysis. Indeed, as articulated by Kamieniecky, 'rhino products are a significant sub-market of the global illegal species trade...in terms of monetary value per unit of weight, rhino horn is one of the most valued

⁶³ See Nafeesa Esmail et al, 'Emerging illegal wildlife trade issues: A global horizon scan' (2020) 13(4) *Conservation Letters* <<https://doi.org/10.1111/conl.12715>>; Caroline S Fukushima et al, 'Challenges and perspectives on tackling illegal or unsustainable wildlife trade' (2021) 263 *Biological Conservation* <<https://doi.org/10.1016/j.biocon.2021.109342>>; Pedro Cardoso, 'Scientists' warning to humanity on illegal or unsustainable wildlife trade' (2021) *Biological Conservation* <<https://doi.org/10.1016/j.biocon.2021.109341>>.

⁶⁴ United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (United Nations, 2016) 16.

⁶⁵ Nafeesa Esmail et al, 'Emerging illegal wildlife trade issues: A global horizon scan' (2020) 13(4) *Conservation Letters* <<https://doi.org/10.1111/conl.12715>> 7-8. See also Donna Lu, 'We seem to find larger animals more charismatic than small ones', *NewScientist* (online, 27 November 2020) <<https://www.newscientist.com/article/2261107-we-seem-to-find-larger-animals-more-charismatic-than-small-ones/>>.

⁶⁶ Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Horn Trade* (Zebra Press, 2012) ix. See also Julian Rademeyer, *Tippling Point: Transnational organised crime and 'war' on poaching* (The Global Initiative Against Transnational Organised Crime, 2016) 3; Julian Rademeyer, *Beyond Border: Crime, conservation and criminal networks in the illicit rhino horn trade – Part 2 of a 2-part investigation into rhino horn trafficking in Southern Africa* (The Global Initiative Against Transnational Organised Crime, 2016) 3.

natural resources'.⁶⁷ More recent valuations of illicit rhino horn markets are offered in Chapter VI along with updated information on seizures and trends. Further, rhino horn offers a case example of a commodity traded for a range of uses and users across markets, thus making for a richer examination of how measures undertaken under the auspices of an international agreement such as CITES impacts trade, crime, and conservation dynamics in implicated and affected regions. The uses for rhino horn are characterised briefly in Chapter I as including its use in luxury goods, items of religious or cultural significance, and extensive history in traditional medicine, with more detailed treatment in Chapters III and VI accordingly. In addition to this analysis of established uses for rhinoceros horn, Chapter VI interrogates the use of wildlife commodities, such as rhino horn and elephant ivory as 'conflict resources,' offering another angle from which to examine CITES' response: IWT at the conservation-security nexus.

In response to the general research question ('*to what extent does the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ('CITES') address illegal wildlife trade to support species conservation?*') this thesis argues that the Convention is not fit-for-purpose to address IWT. The Convention has not abated the threat of IWT as a driver of species endangerment for many species, including rhinos. While wildlife crime is 'a roadblock to CITES' and its core strategic aim 'that international trade is legal, sustainable, and traceable',⁶⁸ it is neither up to the task nor the appropriate legal framework to respond to criminality, especially where transnational organised crime materialises.

This thesis confines its scope to a strict examination of the treaty rather than a comparison of potential options for reform. Drawing up an alternative regime goes beyond the scope of this research, however the possibility of an additional *Protocol to the United Nations Convention against Transnational Organized Crime*⁶⁹ ('UNTOC') is foreshadowed as a potential future direction in the concluding chapter, which is one option for reform gaining momentum at the time of writing.⁷⁰ Turning to the case study ('*as a case study, how has the Convention responded*

⁶⁷ Gilbert Benjamin Kamieniecky, 'Multilateral Wildlife Conservation Policy: A Political-Economic Analysis Of The Trade ban On African Rhinoceros Products' (Master Thesis, University of Cambridge, 2007) 14.

⁶⁸ Ivonne Higuero, 'CITES Secretary-General's Keynote Address' (Speech, CITES Financial Action Task Force High-Level Conference 2021, 7 December 2021) <https://cites.org/eng/news/sg/fatf_high-level_conference_2021_remarks_of_cites_sg_07122021>.

⁶⁹ *United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003).

⁷⁰ 'UN Report Reveals Growing Momentum for Global Agreement Against Wildlife Trafficking' (Press Release, Global Initiative to End Wildlife Crime, 5 May 2023) <<https://endwildlifecrime.org/wp-content/uploads/2023/05/PRESS-RELEASE-UN-Report-Reveals-Growing-Momentum-for-Global-Agreement-Against-Wildlife-Trafficking.pdf>>; Commission on Crime Prevention and Criminal Justice, *Strengthening the international legal framework for international cooperation to prevent and combat illicit trafficking in wildlife*, UN Doc E/CN.15/2023/CRP.3 (5 May 2023).

to rhino horn trafficking as a threat to rhinoceros conservation?') this thesis extracts six hallmarks, including: the primacy of the Convention's mandate; the emergence of a collaborative evidence-informed decision-making architecture; tensions between range states and non-state actors; demand reduction as a key element in supporting trade controls; the emergence of a whole-of-chain approach expanding focus to include territories of transit in addition to supply and demand; and an increasing focus on transnational organised crime. The sixth hallmark features several sub-components: emphases on profiling and responding to transnational organised crime as defined under UNTOC; the interaction between trade controls and black-market values; the impacts of law enforcement measures by parties on crime displacement; and the impact of online trade. Moreover, the case study demonstrates that while the Convention has embraced the language of countering transnational organised crime with respect to restricting trade in rhino horn, the increasing sophistication and resilience of actors implicated in rhino horn trafficking requires treatment well beyond that which can be retrofitted into a regime envisioned to regulate legal trade.

All references to 'at the time of writing' in the thesis limits the scope of analysis to June 2023.⁷¹

A more detailed summary of each Chapter and what each contributes to the overall thesis, is provided at the end of this introduction.

IV RESEARCH ENGAGEMENT AND IMPACT

The expertise accrued over the course of candidature has contributed to research engagement and impact activities, including but not limited to:

- I. The author led two submissions to the Parliamentary Joint Committee on Law Enforcement inquiry into the trade in elephant ivory and rhino horn on behalf of the Centre for Environmental Law (Submission #39) and Jane Goodall Institute Australia (Submission #38).⁷²

⁷¹ Some limited additional material has been introduced by request by supervisors and examiners. Where relevant, a month and year is provided to specify timing.

⁷² Zara Bending, Submission No 38 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Trade in Elephant Ivory and Rhino Horn* (3 July 2018); Zara Bending, Submission No 39 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Trade in Elephant Ivory and Rhino Horn* (3 July 2018).

- II. The author then served as an expert witness in two sessions before the Committee on Tuesday, 3 July 2018⁷³ and is cited in the Committee's Final Report,⁷⁴ which recommended a domestic ban.
- III. In 2018, the author joined a research project run by the Oxford Martin Programme on the Illegal Wildlife Trade. The project produced the first horizon scan on the topic of IWT and uses empirical methods to rank and score emerging issues based on their novelty, plausibility, and potential magnitude of impact. The author co-presented the preliminary results of the scan at an academic conference⁷⁵ preceding the UK Government conference on the Illegal Wildlife Trade (11-12 October 2018), which she also attended. She is one of 25 co-authors of the resulting journal article as published in *Conservation Letters*⁷⁶ and further co-authored a policy briefing to inform future CITES policy decisions.⁷⁷
- IV. In 2019, the author assisted the Crown in *R v Kennedy* through the provision of an expert report.⁷⁸ Mr Kennedy had attempted to import and export protected wildlife into and out of Australia during 2016 and 2017. Specimens seized included alligator snapping turtles, snake head fish, shingleback lizards, and neotropical stingrays. Upon appeal to the Court of Criminal Appeal, Mr Kennedy was sentenced to four years imprisonment for the illegal exportation and possession of wildlife and dealing with property reasonably suspected of being proceeds of crime. Payne JA and Fullerton J referred to the conduct of the offender as 'some of the most serious offending of its kind which has come before the court',⁷⁹ with Adamson J agreeing with the reasons of Payne JA and Fullerton J, and further emphasising 'general deterrence to be a highly significant factor

⁷³ Evidence to the Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, Sydney, 3 July 2018, 3 (Zara Bending); Evidence to Parliamentary the Joint Committee on Law Enforcement, Parliament of Australia, Sydney, 3 July 2018, 5 (Zara Bending).

⁷⁴ Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into the Trade in Elephant Ivory and Rhinoceros Horn* (Final Report, September 2018).

⁷⁵ 'Evidence to Action' was jointly held by the Oxford Martin Programme on the Illegal Wildlife Trade, BIOSEC University of Sheffield, Lancaster Environment Centre, the Durrell Institute of Conservation Ecology, and the Zoological Society of London.

⁷⁶ Nafeesa Esmail et al, 'Emerging illegal wildlife trade issues: A global horizon scan' (2020) 13(4) *Conservation Letters* <<https://doi.org/10.1111/conl.12715>>.

⁷⁷ Nafeesa Esmail et al, *Horizon Scanning for Illegal Wildlife Trade: A Strategic Approach to Inform Future CITES Policy Decisions* (Policy Briefing, August 2019) ('*Horizon Scanning for Illegal Wildlife Trade*').

⁷⁸ *R v Kennedy* (2019) 101 NSWLR 121.

⁷⁹ *Ibid* 139.

in the present case'.⁸⁰ The Judgment is reported in the New South Wales Law Reports and serves as a guideline judgment.

- V. With respect to news media, the author has authored news articles with local and international readership, including through institutional content channels⁸¹ and *The Conversation*,⁸² and is sought for expert comment and fact-checking on wildlife trade matters by journalists working for publications that include *ABC Science*⁸³ and the *Australian Associated Press*.⁸⁴ The author also appeared on Australian and New Zealand radio to discuss wildlife trade matters.⁸⁵
- VI. The author's research has been presented in collaboration with colleagues at academic conferences with interdisciplinary synergies including the 4th Annual ANZSIL International Peace and Security Interest Group Workshop in 2018⁸⁶ and the ANZSOC 13th Annual Postgraduate & Early Career Researcher Conference in 2019.⁸⁷
- VII. The author has also delivered workshops in capacity-building programmes operated by the Centre for Environmental Law and funded by the Department of Foreign Affairs and

⁸⁰ Ibid 141.

⁸¹ See, eg, Zara Bending, 'Public pressure must end the ivory trade in Australia', *The Lighthouse* (online, 8 May 2018) <<https://lighthouse.mq.edu.au/article/when-will-we-stop-the-ivory-trade-in-australia>>; Zara Bending, 'From Tiger King to COVID-19, can't tigers catch a break?', *The Lighthouse* (online, 21 April 2020) <<https://lighthouse.mq.edu.au/article/april-2020/From-Tiger-King-to-COVID-19,-cant-tigers-catch-a-break>>; Zara Bending, 'Why the notorious pangolin deserves our compassion', *The Lighthouse* (online, 10 February 2021) <<https://lighthouse.mq.edu.au/article/february-2021/Why-the-notorious-pangolin-deserves-our-compassion>>.

⁸² See, eg, Zara Bending, 'Why we need to protect the extinct woolly mammoth', *The Conversation* (online, 28 August 2019) <<https://theconversation.com/why-we-need-to-protect-the-extinct-woolly-mammoth-122256>>; Zara Bending, 'Before you hit "share" on that cute animal photo, consider the harm it can cause', *The Conversation* (online, 6 January 2020) <<https://theconversation.com/before-you-hit-share-on-that-cute-animal-photo-consider-the-harm-it-can-cause-126182>>.

⁸³ Len Gordon and James Purtill, 'From tigers to chimpanzees, how cute social media videos could be driving the exotic pet trade', *ABC News* (online, 8 May 2021) <<https://www.abc.net.au/news/science/2021-05-08/cute-social-media-videos-normalising-exotic-pet-trade/100101262>>; Zoe Kean, 'Mammoth tusk mining in the Arctic, and the price of "ethical ivory"', *ABC News* (online, 6 February 2022) <<https://www.abc.net.au/news/science/2022-02-06/woolly-mammoth-mining-siberia-ethical-ivory/100763684>>.

⁸⁴ AAP Factcheck, 'Taken to tusk: Elephant and rhino "pink dye" pics are wildly misleading', (Web Page, 21 May 2021) <<https://www.aap.com.au/factcheck/taken-to-tusk-elephant-and-rhino-pink-dye-pics-are-wildly-misleading/>>.

⁸⁵ 'Spotlight on Australian Trade in Elephant Ivory and Rhino Horn', (2SER 107.3, 4 July 2018) <<https://2ser.com/spotlight-on-australian-trade-in-elephant-ivory-and-rhino-horn/>>; 'Protecting Animals on Social Media', *Breakfast* (Radio Adelaide, 9 January 2020) <<https://radioadelaide.org.au/2020/01/09/protecting-animals-on-social-media/>>; 'Think Twice Before Sharing Online Wildlife Content' (2SER 107.3, 7 January 2020) <<https://2ser.com/think-twice-before-sharing-online-wildlife-content/>>; 'World Pangolin Day', *ABC Radio Sydney* (Drive with Richard Glover, 17 February 2021).

⁸⁶ Shireen Daft and Zara Bending, 'War with nature: Wildlife as conflict resources examined through an international peace and security lens' (Conference Paper, Annual ANZSIL International Peace and Security Interest Group Workshop, 5-7 July 2018).

⁸⁷ Lauren Dundler and Zara Bending, 'Saving the "orphans" from poaching and plunder? Neutralisation techniques in social media profiles of exotic pet owners and antiquities collectors' (Conference Paper, ANZSOC 13th Annual Postgraduate & Early Career Researcher Conference, 10 December 2019).

Trade, Australian Government including a 2017 Fellowship Program aimed to build capacity in the Centre for Society and Culture, Indonesian Institute of Sciences (LIPI), for sustainable forest governance.⁸⁸

- VIII. As a resident expert on wildlife crime for the Jane Goodall Institute Global, the author's research has contributed to the success of a global anti-trafficking campaign called 'ForeverWild' since 2018, active in 20+ countries.⁸⁹
- IX. During the pandemic the author launched a series of international 'wildlife webinars' for the Jane Goodall Institute Global. Her webinar, 'The Illegal Wildlife Trade: what is it, how does it happen, and how can I help end it?' streamed on Wednesday 26th August 2020 at 1pm CEST.⁹⁰
- X. The author serves as the Institute's ongoing representative to the Global Initiative to End Wildlife Crime⁹¹ and represented the Institute in co-drafting Wildlife Conservation 20's declaration to the G20 Summit, Riyadh, 2020 as covered by *The Independent*.⁹²
- XI. The author presented a webinar to the Global network of the Institute to commemorate CITES at 50 for World Wildlife Day 2023 and authored an expert blog.⁹³
- XII. The author's research has underpinned the first two editions of the Jane Goodall Institute Anti Wildlife Trafficking Policy, together with its first policy on Wildlife Tourism. Further, the author created the first 'Global Anti-Wildlife Trafficking Handbook' for the Institute.
- XIII. The author has accepted an invitation to participate in the United Nations Office on Drugs and Crime Joint Constructive Dialogue on Technical Assistance and International Cooperation (2024).

⁸⁸ Zara Bending, 'Enforcement Challenges in Trans-National Crime and Corporate Malfeasance' (Conference Paper, Effective Government for Sustainable Development, 9 February 2017).

⁸⁹ Jane Goodall Institute, 'You can help stop wildlife trafficking', *Forever Wild* (Web Page, June 2020) <<https://www.thejanegoodallinstitute.com/foreverwild2020>>.

⁹⁰ Jane Goodall Institute, 'Our network of experts', *Our Experts* (Web Page) <<https://www.thejanegoodallinstitute.com/our-experts>>.

⁹¹ End Wildlife Crime, 'A Global Initiative: Addressing Serious Gaps in International Law', (Web Page) <<https://endwildlifecrime.org/>>; see also Jane Goodall Institute, 'Working to end wildlife trafficking', *Campaigns* (Web Page) <https://www.thejanegoodallinstitute.com/Ending_Wildlife_Trafficking>.

⁹² Emma Ledger, 'Conservationists applaud our message to world leaders to avert another pandemic', *The Independent* (online, 24 November 2020) <<https://www.independent.co.uk/world/conservationists-world-leaders-avert-pandemic-b1760808.html>>.

⁹³ Zara Bending, 'JGIG celebrates Partnerships for Conservation this World Wildlife Day 2023', (Web Page, 2 March 2023) <<https://www.thejanegoodallinstitute.com/jgig-celebrates-partnerships-for-conservation-this-world-wildlife-day-2023>>.

A Chapter I: An Introduction to the Illegal Trade in Wildlife: A Snapshot of the Illicit Trade in Rhinoceros Horn

Chapter I was published in the *Australian Journal of Environmental Law* in 2015,⁹⁴ and serves three purposes germane to the impetus for and methodology of this thesis. Firstly, it sets out the problem of IWT and provides definitional parameters. Secondly, it introduces green criminology as a theoretical framework for understanding the breadth of harms occasioned by the illegal trade, specifically referring to Wyatt's four interrelated dimensions of impact: environmental, economic, human, and national security. Lastly, it introduces rhinoceros horn as the case study commodity.

Chapter I highlights that the trade in rhino horn has a long and storied history under CITES (the primary legal instrument for analysis in this thesis), including a ban enacted in 1977,⁹⁵ prompting the critical examination of decades of legal developments in the light of relevant conservation and crime data.

A foreword to the published article was written to elaborate and update the Chapter, including a section on understanding IWT, which provides more contemporary insight into definitions, valuations, harms, and actors.

B Chapter II: Defining Conservation in the Era of Biodiversity Loss

Chapter II provides a critical review of conservation discourse. This ethics-laden line of inquiry is fundamental to an applied-theoretical understanding of not only the range of values and approaches employed in wildlife conservation regimes and interventions, but how success in species conservation is benchmarked. Despite decades of considered debate, 'conservation' remains an essentially contested term. Its meaning is 'more than just an academic question' or a matter of semantics, as conservation policies will prescribe 'what to conserve, where and how', which necessarily invites deliberation of how it is defined, 'implicitly or explicitly'.⁹⁶ In other

⁹⁴ Zara Bending, *An Introduction to the Illegal Trade in Wildlife: A snapshot of the illicit trade in rhinoceros horn* (2015) 2 *Australian Journal of Environmental Law* 123.

⁹⁵ At the time CITES entered into force, three species and one subspecies of rhino were listed on Appendix I with a fourth species subject to regulation under Appendix II. Presently, all five species are listed on the Appendices.

⁹⁶ Chris Sandbrook, 'What is Conservation' (2015) 49(4) *Oryx* 565, 565.

words, how conservation is theoretically conceived will have practical implications when applied to specific environmental dilemmas, such as IWT, as well as how these crises are to be contended with to improve conditions for species *in situ*, such as the five extant species of rhino across Africa and Asia profiled in Chapter III.

Part I, 'Contesting Conservation', reasons through a series of key questions ('Conservation by whom? Of what? Evoking what value(s)? And, actioned through what approaches?') and advances that while the definitional conservation debate has traditionally been framed as binary between intrinsic and instrumental valuers of nature, it is more desirable (to achieve inclusive, pragmatic, and more locally appropriate approaches) to consider conservation as a marketplace of ideas encompassing a growing range of inputs and solutions. Conservation is ultimately an applied expression the relationship between humans and nature. In practice, conservation decision-makers assign weight to ecological and ethical inputs in considering what is appropriate based on context. Accordingly, Part II considers what principles ought to guide the conservation of rhinos within the context of megafauna mass extinction, endorsing the schema co-authored by 43 conservation scientists in the 'Declaration to Save the World's Terrestrial Megafauna'.⁹⁷

C Chapter III: Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn

Situating the current exploitation of wild resources within the broader context of the Holocene mass extinction,⁹⁸ Chapter III was published as a feature article in *Environment and History* in 2018.⁹⁹ The article provides an in-depth multidisciplinary analysis of the scientific, historical, and cultural dimensions of the illegal trade in rhino horn, fleshing out a more complete and nuanced understanding of the case study commodity. An exhaustive approach to profiling the commodity was favoured as the value of many wildlife products does not hinge on a one-dimensional dollar amount. As foreshadowed in Chapter I, the value wildlife produces is inextricably linked to the cultural practices and historically-laden significance of both the commodity and its animal of origin. This Chapter reinforces the need for conservationists and the regimes in which they operate to recognise and respond to both legal and illegal aspects of trade to achieve better

⁹⁷ William Ripple et al, 'Saving the World's Terrestrial Megafauna' (2016) 66(10) *BioScience* 807.

⁹⁸ Gerardo Ceballos et al, 'Accelerated modern human-induced species losses: Entering the sixth mass extinction' (2015) 1(5) *Science Advances* doi:10.1126/sciadv.1400253; Michael Gross, 'Extinction in progress' (2022) 32(13) *Current Biology* R721.

⁹⁹ Zara Bending, 'Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn' (2018) 24 *Environment and History* 149.

outcomes. This requires cross-cultural understanding, and, in the case of rhino horn trade, drawing upon multidisciplinary sources from evolutionary biology, species ecology, cultural anthropology, biomedicine, biomaterial engineering as well as ancient and modern history.

Chapter III applies this approach in three parts. Part I clarifies the subject matter by providing an overview of rhinoceros taxonomy. It outlines the evolutionary history of the taxonomic family *Rhinocerotidae* and profiles each of the five species, including population statistics and threats. Part II draws together literary accounts of the rhinoceros to demonstrate the longitudinal human fascination with the animal and its horn, canvassing western and non-western accounts. Lastly, Part III undertakes a closer examination of the rhinoceros horn by investigating its morphology as well as historical and current uses across eastern and western cultures.

Chapter III analyses multiple dimensions of the problem posed to those lawmakers who seek to respond to rhino horn trafficking. In doing so, it sets the scene for the doctrinal analysis of the evolution of international wildlife conservation law from which CITES emerged in Chapter IV and is formative to the critique of the Convention's response in the remaining Chapters.

Chapter III emphasises that the trade in species is not a new phenomenon, and how its extensive history presents a double-edged sword: on the one hand, providing an opportunity to design strategies informed by a wealth of historical data to extrapolate market trends and evaluate the effectiveness of past counter-measures; on the other, driving home the stark reality that many practices associated with wildlife commodities derive from longstanding customs, which may be too culturally rooted to address in the brief window of extinction mitigation for many species. The chapter illustrates how the history between humans and rhinos is so entrenched that the international market in its horn persists decades after the 1977 CITES ban. Even if a decrease in horn use were to occur across any number of sovereign states, the danger would always remain that, like many cultural activities subject to fashion and trends, its use could return *in vogue* and initiate the next great extinction of the rhinoceros, assuming it survives the current megafauna poaching crisis.

The published Chapter is preceded by an introduction providing updated conservation data, with more recent poaching and seizure data provided in Chapter VI.

International wildlife law has evolved within the broader framework of international environmental law but has only recently received treatment as its own recognisable body of instruments as applying to wildlife as the central legal subject. This may be seen most prominently in *Lyster's International Wildlife Law* (now in second edition)¹⁰⁰ and paper by Trouwborst et al, entitled *International Wildlife Law: Understanding and Enhancing Its Role in Conservation* published in *Bioscience* in 2017.¹⁰¹ Coined by the latter, the term 'Big Five' now has a dual meaning in wildlife conservation circles, referring both to the 'Big Five' game animals of Africa (lion, leopard, rhino, buffalo, and elephant) and the five central pillars of international wildlife law, which comprise the *Convention on the Conservation of Wetlands of International Importance especially as Waterfowl Habitat* (ie the 'Ramsar Convention'),¹⁰² *Convention for the Protection of the World Cultural and Natural Heritage* (or simply, the 'World Heritage Convention'),¹⁰³ CITES,¹⁰⁴ *Convention for the Conservation of Migratory Species of Wild Animals* (ie the 'CMS' or 'Bonn Convention'),¹⁰⁵ and the United Nations *Convention on Biological Diversity* (commonly abbreviated to the 'CBD').¹⁰⁶ Given the centrality of conservation to this body of international wildlife law, this thesis will go one step further and adopt the nomenclature of 'international wildlife conservation law' in describing its development.

Chapter IV plots the development of international wildlife conservation law, effectively tracing the emergence of key agreements and the influence of seminal actors in drafting, negotiating, and lobbying for new legal frameworks within institutions and forums that were themselves novel at the time. Within this analysis, this Chapter performs two lines of inquiry pertinent to the thesis: firstly, it situates and explains the origins of CITES (effectively commencing the more in-depth doctrinal analysis of the instrument's capacity to regulate legal trade and respond to illegal trade); and secondly, it examines thematically how sustainable development, and more recently express references to 'sustainable use' of natural resources, emerged as core considerations in

¹⁰⁰ Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010).

¹⁰¹ Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784.

¹⁰² *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975) ('Ramsar Convention').

¹⁰³ *Convention for the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) ('World Heritage Convention').

¹⁰⁴ CITES (n 5).

¹⁰⁵ *Convention on the Conservation of Migratory Species of Wild Animals*, opened for signature 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983) ('CMS').

¹⁰⁶ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 69 (entered into force 29 December 1993) ('CBD').

framing wildlife conservation in implementing international law and policy. This will be elaborated further in relation to the purpose and operation of CITES in Chapter V.

E Chapter V: The Operation of CITES: Towards Conservation and Sustainable Use

Chapter V adopts the rules of treaty interpretation in reading down the purpose and operation of CITES with reference to its origins in the preceding chapter coupled with the Convention's text and subsequent soft law. Chapter V underscores CITES' dual-objectives whereby species conservation and sustainable use are deemed to be compatible aims within the Convention's mandate. It outlines the functions of the Convention's governing organs, the Appendices and licensing system central to the Convention's operation and critiques the primary compliance mechanisms.

Chapter V's doctrinal analysis of CITES as the central multilateral environmental agreement governing the international trade in wildlife applies the rules of treaty interpretation. This method of doctrinal analysis is appropriate given CITES' status as a treaty, with the purposive approach evident in Part 3, Section 3 of the VCLT dictating the imperative to confine assessments of a treaty's performance firmly within its mandate. Rather than adopting an approach to criminalise illegal trade, CITES seeks to control the environmental harms associated with international wildlife trade through a permit-based regulatory approach to promote 'legal, sustainable, and traceable' trade. This Chapter examines how CITES operates to achieve its mission in three parts.

Part I sets the parameters for applying a purposive analysis of CITES' operation by examining the objectives of CITES as informed by a joint textual analysis of the Convention's Preamble and most recent Strategic Vision.¹⁰⁷ Three key observations are made. Firstly, as relating back to the prior conceptual discussion of conservation in Chapter II, the Convention's approach to conservation evokes both intrinsic and instrumental values of nature in advancing multiple imperatives for species conservation, however as a wildlife trade instrument tends towards instrumental valuation on balance. Secondly, in continuing the analysis of CITES' origins within international wildlife conservation law in Chapter IV, such a textual analysis confirms that CITES expressly aims to achieve conservation and sustainable use objectives. And, thirdly, this part explains how elevation of the language of sustainable use as a core component of CITES' mission and

¹⁰⁷ *CITES Strategic Vision: 2021-2030*, CITES Resolution Conf. 18.3.

interpretation serves to reverse previous assumptions that CITES operates to facilitate trade that is not unsustainable, but rather intends to promote trade that is sustainable.

Part II reads down the operative clauses core to the functioning of CITES regulatory regime in five sub-parts:

- I. CITES Governing Bodies: Conference of the Parties, Secretariat, and Committees;
- II. Appendices and Licensing System;
- III. Interaction with other international agreements;
- IV. Reservations and Exemptions; and
- V. Dispute Resolution.

Following Part II's deconstruction of the CITES operative framework as informed by its purpose in Part I, Part III critically analyses the mechanisms by which compliance with the treaty's provisions have been employed. A more detailed analysis of treaty enforcement is conducted in Chapter VI as this more closely aligns with a discussion of wildlife crime law enforcement. For present purposes, the Chapter concludes that the CITES compliance system, while commendable in being one of the first MEAs with an information system built into the operative clauses of the Convention itself as well as continued development through Resolutions and Decisions, is not without valid criticism. Notably, it highlights the pervasiveness of data availability and quality issues as anathema to timely and appropriate decision-making and oversight (including in reporting and in the permit system itself). With reference to the standards of the National Legislation Project ('NLP'), a substantial number of parties are either Category 2 ('includes those Parties whose legislation that is believed generally not to meet all the requirements for the implementation of CITES') or Category 3 ('includes Parties whose legislation that is believed generally not to meet the requirements for the implementation of CITES'). Further, the Review of Significant Trade ('RST'), considered by some to be the proverbial teeth of the Convention, has not improved implementation as intended with limited demonstrated benefit for species conservation, including for those species who have undergone the RST process multiple times. This Chapter serves to not only outline the treaty's operation but foreshadow some of its limitations in prefacing the following Chapter's analysis of its capacity to combat wildlife crime within its mandate.

F *Chapter VI: An Examination of CITES' Capacity to Counter IWT: Dancing on a Horn's Edge*

Chapter VI goes to the heart of the thesis' critique of whether CITES, as the current principal international instrument and forum where IWT is discussed, has been fit-for-purpose in rising to the challenge to support species conservation.

Part I examines the rise of IWT and the Convention's response, particularly in relation to national enforcement efforts, in three sub-parts. The first examines information gathering within the Convention's operation. The second explores enforcement obligations under Article VIII of the Convention. Thirdly, this Part outlines the Secretariat's contribution as a core collaborator in tackling wildlife crime, including through interagency efforts such as the International Consortium on Combating Wildlife Crime ('ICCWC').

Part II employs the case study of rhino horn trafficking as a vehicle to critically analyse how CITES has responded to illegal trade. Developments since the 1977 trade ban are analysed through an original critical chronology of rhino-related resolutions and decisions from CoP1 Bern (Switzerland) 2 – 6 November 1976 to CoP19 Panama City (Panama) 14 – 25 November 2022. All proposals to amend the rhino listings on the Appendices are analysed with reference to contemporaneous records from the Committees with carriage, as are discussions around the passage of resolutions and decisions pertinent to rhino conservation. While the materials analysed draw dominantly from those concerning *Rhinocerotidae* species-specific matters, broader discourse from CoPs concerning the operation of the treaty, demand reduction; and efforts to combat crime through compliance and enforcement are introduced to provide context and elaboration where relevant.

Part III draws on the original chronology of the Convention's treatment of rhinos in Part II to conclude that CITES is limited in addressing IWT to support species conservation. It does so through an integrated analysis highlighting two aspects. The first examines whether the Convention's response to the crises facing rhino species is consistent with the conservation schema provided in the 'Declaration to Save the World's Terrestrial Megafauna' as discussed in Chapter II. The second extracts and reflects on six key hallmarks of CITES' approach to rhino horn trafficking as a case study of its capacity to respond to IWT which grounds the findings presented in this thesis's conclusion.

Critical analysis of the precise relationship between armed conflict and wildlife as high-value natural resources has come to the fore in recent years as rhetoric around the 'war for biodiversity', 'green militarisation', 'poacher-as-terrorists', and 'conflict ivory' abounded in academic circles, political discourse, and popular media. As noted by 't Sas-Rolfes et al, this discourse demonstrates a 'conflation of global security concerns with biodiversity loss'.¹⁰⁸ This thesis has examined how IWT transcends conventional characterisation as a conservation challenge, with the involvement of criminal actors requiring a more fit-for-purpose international architecture to combat wildlife crime, such as rhino horn trafficking. In considering how enforcement ought to be guided in tackling IWT, this final chapter is divided into three parts. Part I reflects on the conservation-security nexus, including consideration within CITES, as formative to Part II, which turns to the question of wildlife as 'conflict resources' (referencing Le Billon's classification)¹⁰⁹ and the novel practice of the United Nations Security Council ('UNSC') where actors within its purview have engaged in wildlife trafficking. Part III situates the ultimate conclusions of this Chapter as they pertain to the rhetoric that has fed and been fuelled by the securitisation of conservation. Specifically, it canvasses the discourse on 'poachers-as-terrorists', 'war talk' and 'green militarisation'. Discussion of ivory and rhino horn trafficking is employed to aid in the examination of concepts as well as the political and legal responses to their manifestation in specific examples throughout the Chapter.

This Chapter favours the dominant conception of the global IWT as a problem of transnational organised crime rather than as a threat to global peace and security. While IWT threatens security through the presence of organised crime and the corruption that enables it (ie in undermining good governance and the rule of law which may contribute to civil conflict), it is important not to become pre-occupied with militarised responses and instead focus efforts and resources towards disrupting the larger-scale criminal networks which may, from time to time, benefit from goods acquired by armed groups. In the vastly more limited circumstances where armed groups are involved in illegal trade, recourse may be sought through the UNSC in light of its novel practice in the last decade. By and largely, militarised responses are neither desirable nor effective in response to the exploitation of wildlife. In framing the current crisis, this Chapter proposes that

¹⁰⁸ 't Sas-Rolfe et al (n 29) 209.

¹⁰⁹ Philippe le Billon, 'Diamond Wars? Conflict Diamonds and Geographies of Resource Wars' (2008) 98 *Annals of the Association of American Geographers* 345, 348-349; see also Philippe le Billon, *Wars of Plunder: Conflicts, Profits and the Politics of Resources* (Columbia University Press, 2012).

the emphasis ought to favour 'crime' rather than 'war', thereby strengthening the case for a global agreement on wildlife crime to complement CITES' regulation of legal trade.

H Thesis Conclusion

This Chapter concludes with reflections on the Convention 'at tipping point' as it celebrates its 50th anniversary in 2023. It concludes that while CITES has progressively broadened its approach to regulating legal trade to evoke the language wildlife crime, it remains a MEA governing trade largely through trade-related environmental measures ('TREM's') and is thus limited in how it may address IWT within its mandate. While CITES' approach is consistent with the expression of conservation ethics in international wildlife conservation law (notably its recognition of sustainable use), it has not abated the threat of IWT as a driver of species endangerment for many species, including rhinos. While wildlife crime is 'a roadblock' to CITES' core strategic aim 'that international trade is legal, sustainable, and traceable',¹¹⁰ the Convention is neither up to the task nor the appropriate legal framework to respond to criminality. A prospective new protocol to the UNTOC on wildlife trafficking may be the other side to the coin needed to secure a future for legal trade while tackling the transnational organised criminal actors that benefit from its subversion. The hallmarks of CITES' response to rhino horn trafficking as a threat to the survival of rhinos are broadly consistent with the engagement emphasised in the Declaration on Megafauna, which is further informed by the Convention's expression of intrinsic and instrumental values of nature advancing a multifaceted justification for species conservation. The longitudinal treatment of rhinoceros species under CITES is further illustrative of the clash of perspectives on the Convention's operation which has seen tensions between range states and non-state actors boil over, leaving open the question as to whether multilateralism itself may be threatened with extinction.

¹¹⁰ Higuero (n 68).

Chapter I was published in the second volume of the *Australian Journal of Environmental Law* in 2015.¹ Written after the 2014 International Union for Conservation of Nature ('IUCN') World Parks Congress in Sydney, the article serves three functions germane to this thesis. Firstly, it offers context by setting out the problem of the illegal wildlife trade ('IWT') and key definitional parameters to frame the research question. Secondly, it introduces green criminology as a theoretical framework relevant to this line of inquiry, stressing that while wildlife crime has been a traditionally underserved area in academic and policy circles, it nonetheless has wide-ranging dimensions of harm worthy of response. As such, it sets up this thesis's interdisciplinary examination of IWT, touching on its environmental, economic, human, and security implications. Lastly, it introduces rhinoceros horn as the case study commodity, which is presented in greater detail in Chapter III. By way of setting the context for this choice, it is important to note the guidance of the United Nations Office on Drugs and Crime ('UNODC') in cautioning that wildlife crime is a global phenomenon involving many related but distinct markets bearing their respective drivers and dynamics, 'each of which must be independently assessed for its unique characteristics'.² The deployment of rhinoceros horn as a case study is not to suggest that it is an appropriate example from which to make generalisations about *all instances* of IWT. Rather, the case study is positioned as a vehicle to explore how the current legal framework operates to support species conservation as the desired aim and to demonstrate how IWT *may* be addressed where the species in question attracts significant and sustained political will.

The rhino's status as charismatic megafauna has afforded it greater attention in academic and popular circles, resulting in a critical mass of literature from which this thesis draws, including reliable population and poaching statistics and associated commentary. In terms of valuation, while possessing no intrinsic value, rhino horn has been reported to rival gold and platinum in value per kilo,³ which was not only a point of interest but signalled that market data was available for analysis. This direction was confirmed upon reading commentary from Kamieniecky who

¹ Zara Bending, *An Introduction to the Illegal Trade in Wildlife: A snapshot of the illicit trade in rhinoceros horn* (2015) 2 *Australian Journal of Environmental Law* 123.

² United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (United Nations, 2016) 16.

³ Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Horn Trade*, (Zebra Press, 2012) ix. See also Julian Rademeyer, *Tipping Point: Transnational organised crime and 'war' on poaching – Part 1 of a 2-part investigation into rhino horn trafficking in Southern Africa* (The Global Initiative Against Transnational Organised Crime, 2016) 3; Julian Rademeyer, *Beyond Border: Crime, conservation and criminal networks in the illicit rhino horn trade – Part 2 of a 2-part investigation into rhino horn trafficking in Southern Africa* (The Global Initiative Against Transnational Organised Crime, 2016) 3.

articulated that ‘rhino products are a significant sub-market of the global illegal species trade...in terms of monetary value per unit of weight, rhino horn is one of the most valued natural resources’.⁴ More recent valuations of illicit rhino horn markets are offered in Chapter VI, and while investigations highlight that values are much lower than those figures reported in media, it remains nonetheless lucrative for criminals involved. Further, rhino horn offers a case example of a commodity traded for multiple reasons across markets, including its use in luxury goods, items of religious or cultural significance, and extensive history in traditional medicine. These uses will be placed into both historical and contemporary context in Chapters III and VI respectively. Lastly, Chapter I highlights that the international trade in rhino horn has a long and storied history under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (‘CITES’ or ‘the Convention’),⁵ the primary legal instrument for analysis in this thesis, including a ban enacted in 1977, which will be more extensively deconstructed and analysed in Chapter VI. A case study on rhino horn trafficking tests the limits of what *may* be achieved under the existing legal framework.

In sum, Chapter I sets the stage for an interdisciplinary analysis of IWT utilising the trafficking of rhino horn as a case study. An updated elaboration on some of the material is provided below to be read in tandem with the original publication.

I UNDERSTANDING THE ILLEGAL WILDLIFE TRADE: DEFINITIONS, VALUATIONS, HARMS, AND ACTORS

While there is no universally accepted definition of IWT, it may be defined as ‘unlawful activities associated with commercial exploitation and trade of harvested specimens of wild organisms’.⁶ This includes a range of behaviours, such as the ‘illegal trade, smuggling, poaching, capture or collection of endangered species, protected wildlife (including animals and plants that are subject to harvest quotas and regulated by permits), derivatives or products thereof’.⁷ As to general trends, Elliott observes that IWT is primarily demand-driven and provides a general (ie not universal) crime-type typology involving: extraction crimes (eg poaching and/or other forms of

⁴ Gilbert Benjamin Kamieniecky, ‘Multilateral Wildlife Conservation Policy: A Political-Economic Analysis Of The Trade ban On African Rhinoceros Products’ (Master Thesis, University of Cambridge, 2007) 14.

⁵ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) (‘CITES’). At the time CITES entered into force, three rhino species as well as one subspecies were listed on Appendix I with another species subject to regulation under Appendix II. Presently, all five species are listed on the Appendices with three split listings into Appendix II as of CoP19 in 2022.

⁶ Michael ‘t Sas-Rolfe et al, ‘Illegal Wildlife Trade: Scale, Process, and Governance’ (2019) 44(1) *Annual Review of Environment and Resources* 201, 203.

⁷ Nigel South and Tanya Wyatt, ‘Comparing illicit trades in wildlife and drugs: an exploratory study’ (2011) 32(6) *Deviant Behavior* 538, 546.

capture), transportation crimes (taking the specimen from source to market), production crimes (eg wild meat butchering or rhino horn carving), enabling crimes (eg fraud, bribery and illegal advertising) and profit-related crimes (eg activities related to money laundering).⁸

Recorded global valuations of IWT generally range between USD5 billion and USD23 billion on average annually;⁹ however, estimates should be treated with caution due to longstanding issues with sourcing, interpreting, and presenting data (these extend beyond the usual problems associated with the reliability of self-reported state data, let alone those concerning profitable clandestine activities).¹⁰ For example, some degree of circular reporting has resulted in reported global value ranges remaining largely unchanged over the past decade despite significant growth in the market. This can be evidenced by comparing the 2017 and 2011 global valuations issued by Global Financial Integrity ('GFI'), wherein a significant proportion of the 22 sources upon which the 2017 report bases its estimate (USD5 billion to USD23 billion) trace their valuation back to the 2011 report.¹¹ Upon closer inspection, the primary cause for variation in estimates published between 2011 and 2016 appears to be whether authors chose to include or exclude the 2011 GFI estimates for 'illegal, unreported and unregulated fishing' (USD4.2 to 9.5 billion) and 'illegal timber trade' (USD7 billion) in their total for IWT (USD7.8 to 10 billion excluding the aforementioned).¹² This finding is supported, in part, by a 2016 report by the United Nations Environment Programme ('UNEP') and International Criminal Police Organization ('INTERPOL') which provides a global estimate in the range of USD7 to USD23 billion with the caveat that the estimate 'is somewhat confounded with forestry data, hence original estimate is kept but needs revision'.¹³ Other anomalies affecting the reliability of estimates during this period include: errors

⁸ Lorraine Elliott, Submission No 64 to Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into the trade in elephant ivory and rhinoceros horn* (June 2018) 7.

⁹ Channing May, *Transnational Crime and the Developing World* (Global Financial Integrity, 2017) 53.

¹⁰ Shannon M Barber-Meyer, 'Dealing with the clandestine nature of wildlife-trade market surveys' (2010) 24(4) *Conversation Biology* 918.

¹¹ Jeremy Haken, *Transnational Crime in the Developing World, Global Financial Integrity*, (Global Financial Integrity, 2011).

¹² For example, the highly circulated report by WWF & Dalberg (2012) and accompanying 'Key Findings' documents chose to combine these three components: World Wildlife Fund and Dalberg, *Fighting illicit wildlife trafficking: A consultation with governments* (2012) <http://assets.worldwildlife.org/publications/508/files/original/WWFFightingIllicitWildlifeTrafficking_LR.pdf> 9; World Wildlife Fund and TRAFFIC, *Fighting Illicit Wildlife Trafficking: A Consultation with Governments – Key Findings and Recommendations* (2012) <https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/FightingIllicitWildlifeTrafficking_KeyFindings.pdf>.

¹³ United Nations Environmental Programme and INTERPOL, *The Rise of Environmental Crime: A growing threat to natural resources, peace, development and security*, ed Christian Nellemann et al (United Nations Environmental Programme, 2016) 20. It is worth noting that, while valuations for illegal timber and unreported and unregulated fisheries have dramatically increased over this period, the wildlife category has remained constant. Global Financial Integrity, *Illicit Financial Flows to and from Developing Countries: 2005-2014* (Global Financial Integrity, 2017) now estimates illegal logging to be worth USD52- USD157 billion, and illegal, unreported or unregulated fishing to be USD15.5 billion – USD36.4 billion.

in conversions from pounds sterling to USD,¹⁴ misattribution of sources,¹⁵ inconsistent use of language with respect to common estimates circulated (for example, animal smuggling,¹⁶ illegal wildlife trafficking,¹⁷ illicit trade in endangered species,¹⁸ and environmental crime¹⁹) and, more generally, unattributed and unsubstantiated estimates.²⁰ In their recent analysis of the scale, processes and governance of IWT, 't Sas-Rolfes et al went so far as to state that:

[t]o date there have been no robust large-scale efforts to quantify the global illegal wildlife trade... The lack of clarity in the calculation and dissemination of this key statistic is emblematic of the broader challenges faced by researchers in this field to obtain reliable quantitative data...²¹

Seeking to quantify the scale of the trade, researchers have likewise sought to demonstrate the relative value of IWT against other forms of transnational crime commodities. Rankings have likewise varied based on the interpretation of datasets, with some of the most common rankings being: 'the fourth largest global illegal trade after narcotics, humans and counterfeit products,'²² 'fourth most lucrative type of transnational crime after illegal narcotics, humans and armaments',²³ 'the third most valuable illicit commerce behind drugs and arms',²⁴ and 'the second largest form of black-market commerce, behind drug smuggling and just ahead of illegal arms trade'.²⁵

¹⁴ See, eg, Sarah Morrison, 'Time to Hunt down the 'Kingpins' of Wildlife Crime', *The Independent* (6 February 2014) <<http://www.independent.co.uk/voices/comment/time-to-hunt-down-the-kingpins-of-wildlife-crime-9113150.html>> misquoted in GFI as USD12 whereas the original source refers to '£12bn'.

¹⁵ See, eg, Tanya Wyatt and Ahn Ngoc, *Corruption and Wildlife Trafficking No 11* (Anti-Corruption Resource Centre, 2015) 4, states '[t]he criminal profits are estimated to be between USD10 and \$20 billion a year, but this figure does not account for illegal timber trade and illegal fishing (Fison 2011)'. This number does not come from the cited source, see below (n 16).

¹⁶ Maryrose Fison, 'The £6bn trade in animal smuggling', *The Independent* (online, 6 March 2011) <<https://www.independent.co.uk/climate-change/news/the-163-6bn-trade-in-animal-smuggling-2233608.html>>.

¹⁷ African Wildlife Foundation, *Tackling Poaching & Illegal Wildlife Trafficking in Africa* (African Wildlife Foundation, 2014) 2; Liana S Wyler and Pervaze A Sheikh, *International Illegal Trade in Wildlife: Threats and U.S. Policy* (Congressional Research Service, 2013) 1.

¹⁸ Melanie Wellsmith, 'Wildlife Crime: The Problems of Enforcement' (2011) 17(2) *European Journal of Criminal Policy and Research* 125, 134.

¹⁹ United Nations Environmental Programme, 'Apes Seizure Database reveals true extent of illegal trade' (Press Release, 29 September 2016) <<https://www.unep.org/news-and-stories/press-release/apes-seizure-database-reveals-true-extent-illegal-trade>>: '...environmental crime, a \$23 billion USD industry'.

²⁰ As observed by Wellsmith (n 18) 134.

²¹ 't Sas-Rolfe et al (n 6).

²² See, eg, Tom Maguire and Cathy Haenlein, *An Illusion of Complicity: Terrorism and the Illegal Ivory Trade in East Africa* (Royal United Services Institute, 2015) 1; World Wildlife Fund and Dalberg Global Development Advisors, *Fighting Illicit Wildlife Trafficking: A Consultation with Governments* (WWF International, 2012) 9.

²³ See, eg, Tom Milliken, *Illegal Trade in Ivory and Rhino Horn: An Assessment to Improve Law Enforcement Under the Wildlife TRAPS Project* (USAID & TRAFFIC, 2014) 1.

²⁴ See, eg, Charles Bergman, 'Wildlife Trafficking', *Smithsonian Magazine* (Web Page, December 2009) <<https://www.smithsonianmag.com/travel/wildlife-trafficking-149079896/>>.

²⁵ See, eg, Greg L Warchol, 'The Transnational Illegal Wildlife Trade' in Rob White (ed), *Transnational Environmental Crime: The Library of Essays on Transnational Crime* (Routledge, 2017); Francis Cullen and Pamela Wilcox (eds), *The Oxford Handbook of Criminological Theory* (Oxford University Press, 2015) 636.

IWT affects a wider range of taxa than what may be gleaned from public discourse. Empirical datasets evidencing IWT's ubiquity, both in its geographic reach and permeation of the entire web of life²⁶ runs contrary to public perception influenced by the overrepresentation of charismatic species such as tigers and elephants in popular interest.²⁷ While leveraging the profile of such species serves to engage the public with the problems associated with IWT, to do so often comes at the expense of understanding the complexity of issues and impacts on the range of species affected, including non-mammals, plants, and fungi, ecosystems, and even human communities. 'Virtually every country' is involved in IWT,²⁸ be it in supply, transit, or demand along chains of custody, and the situation appears to be worsening according to a number of factors. These include: increased international travel, the use of wildlife as conflict resources in some regions, online marketing and trade, and 'rising affluence in regions such as the Middle Eastern Gulf states, India, China and Eastern Europe'.²⁹ In its 2020 assessment drawing on data from nearly 180,000 seizures across 149 countries and territories, the UNODC found that almost 6,000 species were seized between 1999 and 2018, no single country was identified as the source of more than 9% of the total number of seized shipments, and suspected traffickers were belonged to 150 nationalities.³⁰ The UNODC report also offered insight into the wide range of species affected by IWT, with no single species constituting greater than 5% of seizures.³¹

With respect to factors enabling the trade in live species, the UNODC has indicated that a demonstrable growth in online chatrooms and forums dedicated to exotic pets has caused a 'steadily growing illegal mail order trade in live animals',³² taken together with the

²⁶ Tanya Wyatt, 'Does Convention on International Trade in Endangered Species of Wild Fauna & Flora Protect Wildlife?', *YouTube* (Online Video, 9 April 2021) <<https://www.youtube.com/watch?v=NervZEGgQns>>.

²⁷ Jacob Phelps, Duan Biggs and Edward L Webb, 'Tools and terms for understanding illegal wildlife trade' (2016) 14(9) *Frontiers in Ecology and the Environment* 479. See also Wyatt (n 26).

²⁸ UNODC, *World Wildlife Crime Report – Trafficking in protected species* (United Nations, 2020).

²⁹ Leo R Douglas and Kelvin Alie, 'High-value natural resources: Linking wildlife conservation to international conflict, insecurity, and development concerns' (2014) 171 *Biological Conservation* 270, 272.

With respect to India, the rapid growth in the nation's aviation industry has seen Indian airports become hubs for wildlife trafficking. India is a major source as well as transit and destination country for wildlife and wildlife products. As evidenced by TRAFFIC, citing to IATA (International Air Transport Association) and ROUTES (Reducing Opportunities for Unlawful Transport of Endangered Species), India's aviation industry is likely to become the third largest in the world by 2024 while placing amount the top 10 countries where the airline sector experiences to highest levels for trafficking of wildlife and wildlife products: Saket Badola and Astha Gautam, *High Flying: Insight into Wildlife Trafficking Through India's Airports* (Report, March 2022) 3.

With respect to the Middle East, Dubai is most often identified as a transit corridor and destination for wildlife commodities. Seizures in other locations demonstrate that interceptions in Dubai are barely scratching the surface (measured at a 2% seizure rate). Online trade, particularly transactions involved in procuring exotic pets, are frequently linked to the UAE, and Dubai in particular: Global Initiative Against Transnational Organised Crime, *Trade and Transit: Dubai's Role in Illicit Environmental Supply Chains* (Report, December 2022).

³⁰ UNODC (n 28) 9.

³¹ *Ibid.*

³² United Nations Office on Drugs and Crime, *Transnational Organised Crime in East Asia and the Pacific: A Threat Assessment* (United Nations Office on Drugs and Crime, 2013) 84. See also INTERPOL, *Wildlife Crime Linked to the Internet – Practical Guidelines for Law Enforcement Practitioners* (INTERPOL, 2020).

mainstreaming of online bank transfer mechanisms like PayPal. That is not to say that online platforms have not influenced the sale of non-live specimens. The online facilitation of IWT has dramatically altered the landscape for both organised crime and law enforcement. In fact, the ‘shifting of IWT onto and between online digital platforms’, ‘use of online and mobile payment and transaction platforms, including cryptocurrencies, and social media’s influence on IWT networks and consumer behaviour’ featured in the top 20 emerging issues in IWT assessed by some 23 assessors (including the author) and two facilitators in the first global horizon scan conducted into IWT co-ordinated by the Oxford Martin Programme for Illegal Wildlife Trade.³³ Based on the evidence available, it appears that IWT, akin to wildlife crime as a category of offences more broadly, is growing. In 2016, an assessment by UNEP and INTERPOL found the growth rate in environmental crimes, including IWT, may indeed be two to three times that of the global economy.³⁴ In its *Guide on Drafting Legislation to Combat Wildlife Crime*, published in September 2018, the UNODC maintained its position that IWT is increasing internationally coupled with a caveat accounting for the absence of precise accounting for the total valuation of global trade:

[d]espite considerable efforts in recent years, wildlife crime remains a growing problem worldwide. Once described as an emerging threat, wildlife crime has evolved into one of the most significant transnational criminal activities and has major economic, social and environmental impacts... It remains challenging to quantify the full scale of the problem, but it has become clear that the billions of dollars generated by this illegal business are linked to corruption, money-laundering and violence.³⁵

As explained in the article within this Chapter, while often viewed as victimless crimes, wildlife crimes including IWT contribute to a broad range of harms, including the destruction of wild resources and ecosystems, desertification, environmental degradation as well as the reduction and elimination of species.³⁶ In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (‘IPBES’) concluded that approximately 25 per cent of species assessed are threatened, suggesting that around one million species face extinction unless urgent action to mitigate the intensity of biodiversity loss drivers occurs.³⁷ The direct exploitation of

³³ Nafeesa Esmail et al, ‘Emerging illegal wildlife trade issues: A global horizon scan’ (2020) 13(4) *Conservation Letters* <https://doi.org/10.1111/conl.12715>.

³⁴ United Nations Environmental Programme and INTERPOL, *The Rise of Environmental Crime: A growing threat to natural resources, peace, development and security*, Christian Nellemann et al (eds) (United Nations Environmental Programme, 2016).

³⁵ United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018) 1 (‘*Guide on Drafting Legislation*’).

³⁶ *Ibid.*

³⁷ Note, this may be conservative. Andy Purvis, ‘How did IPBES Estimate “1 Million Species at Risk of Extinction” in #GlobalAssessment Report’ (Explanatory Note, IPBES, 22 May 2019) <<https://ipbes.net/news/how-did-ipbes-estimate-1-million-species-risk-extinction-globalassessment-report>>: ‘Genetic data are showing that many of the

organisms (including illegal extraction through poaching)³⁸ was found to be the second-most significant direct driver of change in nature next to changes in land and sea use (with trade noted as a well-established indirect driver).³⁹ IWT also threatens public health and good governance,⁴⁰ and challenges law enforcement given the degree of crime convergence with other activities including human trafficking, drug manufacturing and money laundering.⁴¹ It is also important to recognise that IWT affects specimens of live species at the individual level. Factors including the suffering of sentient animals capable of feeling pain and the cruelty of inflicted by some perpetrators ought to inform the ongoing IWT dialogue, which is oftentimes predominated by broader scale harms on species, seizure data, and financial modelling.

As the harms associated with IWT have become the subject of greater public interest and academic scrutiny, questions arise as to how to profile the so-called ‘typical’ offender (or ‘usual suspects’). Once again, as with the definition of IWT, there is no universal answer given the complexity of factors including commodity type, scale of trade, and whether a legal market exists.⁴² There are also varying approaches to classifying those involved. For example, in their overview of ‘Illegal Wildlife Trade: Scale, Processes, and Governance’, ‘t Sas-Rolfes et al (2019) provide a simplified IWT chain outlining broad actor categories specific examples of actors that may participate in trade:

species we recognise at the moment actually contain multiple – often many – lineages that have not exchanged genes with each other for a very long time (sometimes millions of years). These could be called species, and would increase the numbers considerably (this is where the estimates over 100 million mostly come from). Doing so would increase not only the number of species that are threatened but also the proportion, because many of the newly-recognised species would have very narrow distributions making them more likely to meet the Red List criteria for being threatened.’

³⁸ Patricia Balvanera et al, ‘Chapter 2.1. Status and Trends – Drivers of Change’ in Eduardo Brondizio et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services* (IPBES, 2019) 16.

³⁹ Sandra Diaz et al, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the International Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES, 2019). The need to take urgent action to end poaching and trafficking of protected species of flora and fauna has also been recognized in the *United Nations Sustainable Development Goals*, Target 15.7.

⁴⁰ Steven Greenfield and Diogo Verissimo, ‘To What Extent Is Social Marketing Used in Demand Reduction Campaigns for Illegal Wildlife Products? Insights From Elephant Ivory and Rhino Horn’ (2019) 25(1) *Social Marketing Quarterly* 40, 40.

⁴¹ United Nations Office on Drugs and Crime, *Guide on Drafting Legislation* (n 35) 1.

⁴² ‘t Sas-Rolfe et al (n 6) 206.

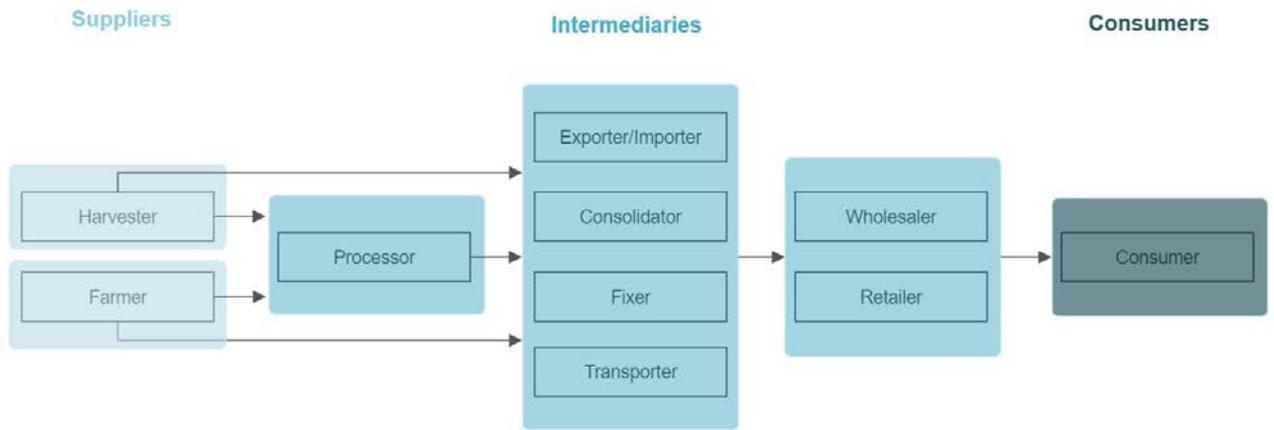


Figure 1: Simplified Illegal Wildlife Trade Chain.⁴³

This sort of actor mapping along a chain is useful in representing how a wildlife commodity enters the market from harvest and may move through a series of actors before it reaches the end-user. Another way of conceptually understanding actors involved is by grouping them into a hierarchy of offending based on the blameworthiness and guilt corresponding to their conduct. Wyatt devised such a hierarchy below:

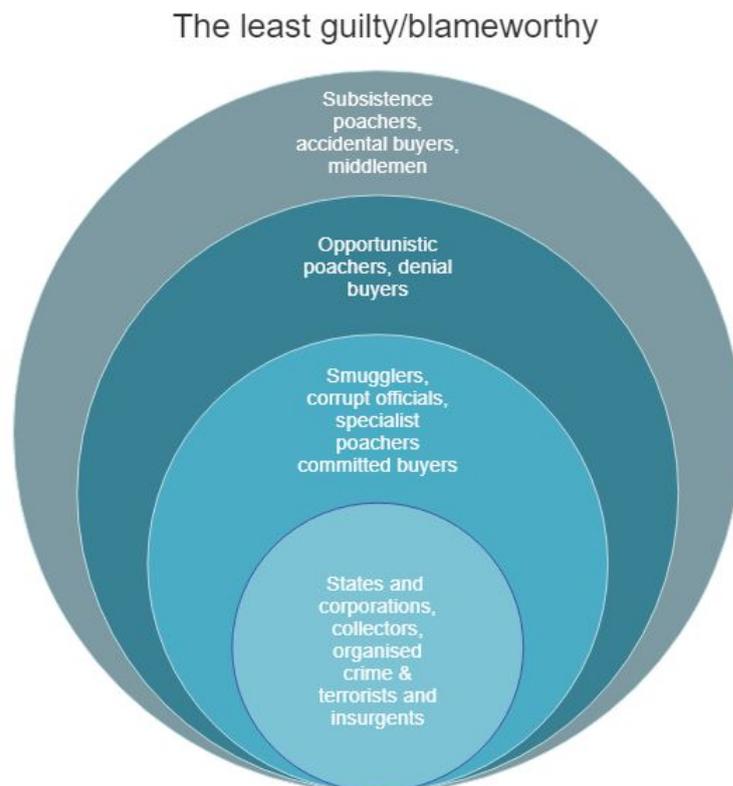


Figure 2: Wyatt's Hierarchy of Offending.⁴⁴

⁴³ Ibid.

⁴⁴ Tanya Wyatt, *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* (Palgrave Macmillan, 2013) 99.

Wyatt's hierarchy calls attention to the diversity of actors involved in offending. Motivations vary among these actors and effects where they sit in the hierarchy as the nature of motivation is a key determinant of blameworthiness and guilt.⁴⁵ For example, those who offend for subsistence and persons whose involvement crystallises from honest mistake (for example, tourists purchasing souvenirs made from wildlife products or derivatives) sit on the lower end of the range,⁴⁶ whereas organised crime groups who perpetrate their crimes with a greater degree of calculation, ideological impunity and violence for profit sit at the upper echelon.⁴⁷

For present purposes, it suffices to state that both examples of classification of IWT actors are useful to articulate the range of actors involved. Researchers investigating specific commodities delve deeper into the specific dynamics of the relevant markets/networks as will be performed in the case of rhino horn in Chapters III and VI. However, one observation that should resonate is that the presence of organised crime, including those operating transnationally, now features prominently in contemporary conceptions of IWT actors. With respect to the angle of transnational organised crime, the standard messaging appears to be that the extent of the problem and impacts of IWT are significant and that 'bolder steps'⁴⁸ are required to deter, detect, and disrupt actors along illicit supply chains.

⁴⁵ Ibid 98.

⁴⁶ Ibid 99-100.

⁴⁷ Ibid 102.

⁴⁸ Ricardo Jorge Lopes, Juliana Machado Ferreira and Nadia Moraes-Barros, 'Bolder steps to fight global wildlife illegal trade' (2018) 33(1) *Conservation Biology* 7.

Pages 36-53 of this thesis have been removed as they contain published material. Please refer to the following citation for details of the article contained in these pages.

Bending, Z. (2015). An introduction to regulating the illegal trade in wildlife: a snapshot of the illicit trade in rhinoceros horn. *Australian Journal of Environmental Law*, 2, 123-140. <https://classic.austlii.edu.au/au/journals/AUJEnvLaw/2015/6.html>

III CONCLUSION: A SNAPSHOT IN RETROSPECT

As nearly a decade of time has passed since the publication of the article embedded in this Chapter, it is worth revisiting and reflecting on the significance of events and projects discussed with the benefit of hindsight and further research. This exercise is useful to extract specific points and themes that will be addressed in greater detail later in the thesis towards reaching its conclusion; a ‘snapshot in retrospect’.

The article opened referring to ‘two landmark’ events, and this assessment has indeed withstood the test of time. Turning to the first, the establishment of the Wildlife Justice Commission was a game-changing event for not only progressing the case for greater criminal investigation into wildlife trafficking as a form of serious organised crime but would specifically impact CITES’ decision-making process on rhino horn trafficking as of CoP19 (the last CoP prior to the finalisation of this thesis). Both aspects will be discussed in Chapter VI of this thesis, but as to the general impact of the Commission,⁴⁹ in its first nine years it helped to secure the arrests of 220 suspected high-level traffickers, rescue over 8,900 live animals from the pet trade, and seize tonnes of contraband including pangolin scales, rhino horns, and elephant ivory. Every case brought before the courts has resulted in a conviction for finalised cases to date. Turning to the second, the passage of the UNGA resolution on ‘tackling illicit trafficking of wildlife’ would be the first in what would become a suite of five such resolutions passed during the writing of this thesis (2015, 2016, 2017, 2019, and 2021).⁵⁰ Taken together, both events signalled the momentum building towards the sort of political will which would see IWT elevated in international discourse. The Commission would further fuel and respond to this political will by submitting high-level policy documents to bodies and forums including the United Nations General Assembly (‘UNGA’) and CITES to directly inform decision-making.

In retrospect, it is interesting to reflect on how contending with a multidimensional challenge like IWT has attracted a diverse ecosystem of actors. For example, the article refers to INTERPOL (representing the involvement of conventional law enforcement in treating wildlife crime as ‘crime’ as will be discussed in Chapter VI), TRAFFIC (who are not only one of the many NGOs engaged with CITES but importantly maintain a more formal role in assessing proposals regarding CITES listings as will be discussed in Chapters V and VI), and actors whose involvement signals the

⁴⁹ ‘Our Impact’, *Wildlife Justice Commission* (Web Page) <<https://wildlifejustice.org/impact/>>.

⁵⁰ *Tackling illicit trafficking in wildlife*, GA Res 69/314, UN Doc A/RES/69/314 (30 July 2015, adopted 19 August 2015); *Tackling illicit trafficking in wildlife*, GA Res 70/301, UN Doc A/RES/70/301 (9 September 2016, adopted 23 September 2016); *Tackling illicit trafficking in wildlife*, GA Res 71/326, UN Doc A/RES/71/326 (11 September 2017, adopted 28 September 2017); *Tackling illicit trafficking in wildlife*, GA Res 73/343, UN Doc 73/343, UN Doc A/RES/73/343 (16 September 2019, adopted 20 September 2019); *Draft Resolution – Tackling illicit trafficking in wildlife*, UN Doc A/75/L.116 (16 July 2021).

sort of 'green militarisation' to be critiqued in Chapter VII (the term refers to the deployment of 'military and paramilitary techniques, technologies, and partnerships in pursuit of conservation').⁵¹ As to the latter, the article refers to the use of new technology considered innovative at the time (at least in application within conservation) such as using drones for anti-poaching and the work of rangers on-the-ground during periods of escalating violence brought on by poachers. Chapter VII will interrogate the relationship between armed conflict and IWT, including dismantling some myths commonly held at the time of the original article's writing, however what is telling is that the Black Mambas (the South African, all-female anti-poaching unit) is now known to not carry arms. The implications for rangers whose conventional role in conservation law enforcement and monitoring did not include armed combat, as well as for wildlife and human communities who bear the burden of living with and around high-value wildlife have received more critical attention in the past decade and will be discussed in not only supporting the thesis' conclusion, but as a cautionary tale of what can occur when a problem fundamentally rooted in crime is securitised.

In addition to the Black Mambas, reference is made to another organisation topical at the time of the original article's writing: the Australian Rhino Project. The Project is still active and at last reportage with Australia's charity regulator, appears to have commenced work on applying for CITES export and import permits.⁵² This is not to say that the organisation's efforts have been without criticism as some experts maintain that biodiversity is best conserved where it occurs naturally supported by community-based conservation efforts.⁵³ The integration of species conservation and human development agendas will be discussed in Chapter II and developed further in the context of CITES in Chapter V , but it is worth forecasting that much of the tension around how the international community has approached rhino horn trade historically to the present day centres around questions of equity. Specifically, there remain questions regarding the equitable balancing of rights and responsibilities/benefits and burdens between states seeking to restrict versus liberalise trade in wildlife; particularly where those seeking to trade are themselves range states seeking to derive economic benefit from their own natural resources. The argument that western NGOs continue to impose paternalistic and prohibitive policies on

⁵¹ Elizabeth Lunstrum, 'Green Militarization: Anti-Poaching Efforts and the Spatial Contours of Kruger National Park' (2014) 104(4) *Annals of the Association of American Geographers* 816, 817.

⁵² 'The Australian Rhino Project', *Australian Charities and Not-for-profit Commission* (Web Page) <<https://www.acnc.gov.au/charity/charities/28a27b44-3aaf-e811-a961-000d3ad24182/profile>>.

⁵³ See, eg, Matt Hayward, 'Rhinos should be conserved in Africa, not moved to Australia', *The Conversation* (online, 27 April 2017) <<https://theconversation.com/rhinos-should-be-conserved-in-africa-not-moved-to-australia-72551>>.

such range states opens up another line of inquiry which will be explored in Chapter VI's case study and returned to in the thesis' Conclusion.

The criminological profile of actors involved in poaching organisations has progressed since the article's publication (an updated overview of actors their roles in rhino horn supply chains is offered in Chapter VI courtesy of the Wildlife Justice Commission), however it is worth noting that 'pseudo hunting' (a scheme wherein horns are laundered into circulation by trafficking affiliates disguising themselves as sports shooters equipped with hunting permits- see the case of Chumlong Lemtongthai for a clear example) and trade in stockpiled horns remain issues presently. Further, the role of online trade as identified in the article has materialised over the years and now constitutes a major challenge in the implementation and enforcement of CITES and to combatting wildlife crime as a form of transnational organised crime.

A final point of reflection concerns reference to some of the agreements governing the issue of wildlife trade raised in the original article. Chapter V will deal with the question of compatibility between the multilateral trading system and CITES at length, however little has changed on this front in the last decade. There has still yet to be a formal WTO challenge. Moreover, while the CITES ban on international trade in rhino horn is introduced in the article, a full examination of the ban including its entry into force and developments since 1977 will be undertaken in Chapter VI in the form of an original critical chronology of rhino-related resolutions and decisions from CoP1 Bern (Switzerland) 2 – 6 November 1976 to CoP19 Panama City (Panama) 14 – 25 November 2022. Chapter III also considers the connection between the ban and demand reduction efforts which is also updated and revisited in Chapter VI.

This Chapter sought to introduce the problem of IWT (including consideration of relevant actors and harms) as well as this thesis' case study on rhinoceros horn. With the benefit of hindsight, it demonstrates how nearly a decade's worth of treatment has elevated our understanding of IWT as a form of crime befitting a response that is fit-for-purpose. This raises the question, indeed the one asked in this thesis, as to whether CITES is up to task.

The preponderance of scientific evidence indicates that Earth's wildlife face near insurmountable odds for survival. Key figures driving home this message include: the 2019 Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ('IPBES') Report,¹ identifying one million species at risk; and the 2011 assessment by Raven et al,² suggesting that two-thirds of all species may be lost by 2100. Humankind's role in the current 'sixth great mass extinction event' (or Holocene extinction) is so significant that the current epoch has also been referred to as 'the Anthropocene'.³ The ethical implications of mass extinction are such that other labels for the current epoch have emerged (and in some cases re-emerged), less to describe the current ecological or geochemical state, but more to characterise the sort of action required to avert disaster. Examples of the latter include Wilson's 'Half-Earth' argument,⁴ as well as Swimme and Verry's 'Ecozoic' label.⁵ The latter sets forth a normative ethical position in which the Earth needs to enter a geologic era wherein humankind exists in a mutually enhancing relationship with the planet and all its constituent forms of life and processes.⁶ Against this backdrop of mass extinction, questions of what and how to conserve become as much about pragmatically plotting out the survival of our own species as it is about navigating an arena of contested theories and ideas.

The current era of biodiversity loss has been characterised by drawing on concepts that are now commonplace in academic and popular discourse reflecting humankind's ecological and ethical relationship with nature. To explore the central research question of this thesis, this Chapter provides a critical review of conservation discourse to define 'conservation' within the current era of extreme biodiversity loss. This line of inquiry is fundamental to understanding not only the range of values and approaches employed in wildlife conservation regimes and interventions, but how success in species conservation is benchmarked. Both considerations need to be addressed

¹ Eduardo Brondizio et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services* (IPBES, 2019).

² Peter H Raven, Jonathan M Chase and J Chris Pires, 'Introduction to special issue on biodiversity' (2011) 98(3) *American Journal of Botany* 333, 333.

³ It should be noted that there was some contention as to whether the Anthropocene ought to be considered an epoch or geological event. See, eg, Giacomo Certini and Riccardo Scalenghe, 'Holocene as Anthropocene' (2015) 349(6245) *Science* 246; Ben van der Pluijm, 'Hello Anthropocene, Goodbye Holocene' (2014) 2(10) *Earth's Future* 566. In March 2024, the International Union of Geological Sciences upheld a vote against canonising the Anthropocene. See 'The Anthropocene', *International Union of Geological Sciences* (Web Page, 20 March 2024) <https://www.iugs.org/_files/ugd/f1fc07_40d1a7ed58de458c9f8f24de5e739663.pdf?index=true>.

⁴ Edward O Wilson, *Half-Earth: Our Planet's Fight for Life* (Liveright, 2016).

⁵ Brian Swimme and Thomas Berry, *The Universe Story: From the Primordial Flaring Forth to the Ecozoic Era – A Celebration of the Unfolding of the Cosmos* (HarperSanFrancisco, 1992).

⁶ Ibid.

prior to analysing the existing international legal framework governing illegal wildlife trade ('IWT'). Further, this Chapter's analysis of conservation directly grounds Chapter IV's analysis of the development of international wildlife conservation law which, among its aims, explores how conservation is expressed in key legal instruments.

Despite decades of considered debate and periods of intense dispute, 'conservation' remains a contested term, spanning a range of key sources of literature that survey the human-nature relationship that include: *Conservation Biology*, *Environmental Ethics*, *BioScience*, *Nature*, *Ecological Economics* and *Environmental Values*. Its meaning is 'more than just an academic question' or a matter of semantics, as conservation policies will prescribe 'what to conserve, where and how', which necessarily invites deliberation of how it is defined, 'implicitly or explicitly'.⁷ In other words, how conservation is theoretically conceived will have practical implications when applied to specific environmental dilemmas, such as IWT, as well as for how these crises are to be contended with to improve conditions for species in situ, such as the five extant species of rhino across Africa and Asia profiled in Chapter III.

The definitional debate has traditionally been framed as binary: between intrinsic and instrumental valuers of nature. For the purpose of developing inclusive, pragmatic and more locally appropriate approaches, Part I of this Chapter advances that it is more desirable to consider conservation as a marketplace of ideas encompassing a growing breadth of inputs and solutions. Conservation is ultimately an applied expression of the human-nature relationship where decision-makers assign weight to ecological and ethical inputs and may consider the historical, present, and future contexts/implications of their actions/inactions. Accordingly, Part II considers what principles ought to guide the conservation of rhinos within the context of megafauna mass extinction, endorsing the schema co-authored by 43 conservation scientists in the Declaration to Save the World's Terrestrial Megafauna.⁸ As will be explained in Part II, this schema recognises a spread of values, and mirrors two dimensions of conservation identified as having the most widespread support in the ground-breaking *Future of Conservation* survey discussed in Part I: 'people centered [sic] conservation' and 'science-led ecocentrism'.⁹

⁷ Chris Sandbrook, 'What is Conservation' (2015) 49(4) *Oryx* 565, 565.

⁸ William Ripple et al, 'Saving the World's Terrestrial Megafauna' (2016) 66(10) *BioScience* 807.

⁹ Chris Sandbrook et al, 'The global conversation movement is diverse but not divided' (2010) 2(4) *Nature Sustainability* 316.

Despite its relationship with the 'hard sciences', the question of defining conservation is not without its conceptual complexities and controversies. Even with wide usage in academic and popular literature, conservation is an essentially contested term. For the purpose of this thesis, this Part aims to press the question in a taxonomic manner, having regard to historical and contemporary discourse. The series of sub-questions guiding this line of inquiry may be simplified to the following sequence:

Conservation by whom?

Of what?

Evoking what value(s)?

And, actioned through what approaches?

A Conservation by whom?

Before delving into the nature of what values permeate conservation discourse, this analysis commences with a more fundamental question: who is the valuer? To state it plainly, conservation is an expression of humankind's relationship with nature having both ecological and ethical inputs. Such an expression does not merely exist as a theoretical dynamic dictating our perception of the natural world but has practical and systemic dimensions when this understanding is reduced to and reflected in frameworks governing that relationship. As will be conveyed in this thesis, international wildlife conservation law is created and maintained as a political expression of homo sapiens' relationship with nature through what activities are regulated, for what purposes, by what standards, and to what ends. This fundamental premise,

positioning humans as the valuers of conservation, was best articulated by Alexander who amalgamated insights offered by Meffe et al,¹⁰ Adams,¹¹ Jepson and Canney,¹² and Cole-King:¹³

Nature conservation is an expression of a relationship between people and nature: it is something that we do, a human or anthropogenic activity. We are the only species that engages in this activity. No other species presumes to make decisions about our environment or the fate of the other species that inhabit this earth.¹⁴

Having established humans as those who do conservation within some relationship with nature, a second line of inquiry opens as to how humans position themselves within that relationship: at its centre dictating? As subject to it? As its constituent? It is from here that some of the fundamental differences in schools of conservation ethics begin to emerge. Notably, anthropocentrism posits a human-centered position prioritising human betterment, reflecting humanity's innate superiority vis-à-vis non-human nature, and is more permissive in utilising non-human nature as natural resources.¹⁵ In contrast, ecocentrism denotes a nature-centred orientation that accords primacy to the ecosphere (comprised of all the planet's ecosystems, atmosphere, water, and land).¹⁶ Ecocentrism does not view the human-nature relationship as mutually constitutive, drawing instead on the premise that human survival is reliant and

¹⁰ Gary K Meffe and C Ronald Carroll (eds), *Principles of Conservation Biology* (Sinauer Associates, 1997) cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 110-111: 'Conservation biology strives to maintain the diversity of genes, populations, species, habitats, ecosystems and landscapes, and the processes normally carried out by them, such as natural selection, biogeochemical cycling, photosynthesis, energy transfer, and hydrologic cycles. It is a dynamic play, with players and action on many different spatial and temporal scales, with old actors disappearing and new ones arriving, but the play ultimately comes down to one thing: dynamic evolutionary processes in a changing ecological background. Conservation biology attempts to keep those normally evolutionary processes working within a functioning setting.'

¹¹ Bill Adams, *Future Nature: A Vision for Conservation* (Routledge, 2003) cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111: 'A personal relationship, a matter of decisions about human actions in the light of their implications for nonhuman nature. I believe that perhaps the most critical element in conservation is the form of human engagement with non-human nature.'

¹² Paul Jepson and Susan Canney, 'Values-led conservation' (2003) 12(4) *Global Ecology and Biogeography* 271 cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111: 'Nature conservation can be thought of as a social movement working to develop or reassert certain values in society concerning the human-nature relationship.'

¹³ Adam Cole-King, *Personal Communication* (2005), cited in Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111: 'Nature conservation is a highly organized system for expressing environmental preferences.'

¹⁴ Mike Alexander, *Management Planning for Nature Conservation: A Theoretical Basis & Practical Guide* (Springer, 2nd ed, 2013) 111. Noting, however, that there are some examples of species 'conserving' others locally including, for example, Bell Miners maintaining populations of psyllids through sustainable feeding and protection from predation by other birds. The author thanks Professor Ed Couzens for this specific observation.

¹⁵ See Rob Boddice, *Anthropocentrism: Human, Animals, Environments* (Brill, 2011).

¹⁶ Joe Gray, Ian Whyte and Patrick Curry, 'Ecocentrism: What it means and what it implies' (2018) 1(2) *The Ecological Citizen* 130.

dependent on nature, whereas the inverse is not true.¹⁷ In contrast to ecocentrism, which emphasises the primacy of the abiotic environment (ie the sum of non-living processes and factors), biocentrism assigns value to all living things (humans included) as having prima facie equal standing. Narrowing the scope of concern further, zoo-centrism specifically positions animals as having elevated moral standing, often within the context of elevating non-human animals to standards already enjoyed by homo sapiens.¹⁸ While it may be simple to define conservation as expressing humankind's relationship with nature, how humankind is situated in that relationship (and the degree of recognition accorded to components of nature in that relationship) invites more questions than it affords answers.

The answer to where humankind is oriented vis-à-vis nature may then lie in etymology, as is often employed when reining in machinations over a concept's meaning through its linguistic roots. The etymology of conservation was once employed by Sandbrook in an attempt to quell a protracted and ardent dispute over 'true conservation' (as will be dissected later in this Chapter).¹⁹ In his 2015 *Oryx* article, aptly entitled 'What is conservation?', Sandbrook commenced with the Oxford English Dictionary definition which simply describes conservation as 'the action of conserving something'.²⁰ This then required further examination of the word 'conserving', which is derived from the verb to 'conserve' and itself yields two relevant definitions: 'to protect from harm or destruction' (Definition A) and 'to prevent the wasteful over-use of a resource' (Definition B). While both indicate some favourable treatment of the subject, they vary in degree. Applied to the context of nature conservation, the reference to protection in Definition A may evoke greater emphasis on maintaining the subject's natural state, suggesting a tendency towards an ecocentric orientation. This may be distinguished from Definition B, which could be associated more closely with sustainable use, tending more towards anthropocentric positioning.

It merits asking whether this is a theoretical distinction lacking any practical difference. To demonstrate how these two definitions elicit disparate outcomes when applied to a conservation problem, it may be useful to employ the example of a biodiversity-rich old-growth forest. While both definitions would likely consider the impact of human encroachment, a response guided by

¹⁷ Helen Kopnina and Haydn Washington, 'Ethical Approaches to Conversation' in Helen Kopnina and Haydn Washington (eds), *Conversation: Integrating Social and Ecological Justice* (Springer, 1st ed, 2020).

See also Haydn Washington et al, 'Why ecocentrism is the key to sustainability' (2017) 1 *The Ecological Citizen* 35.

¹⁸ Chelsea Batavia and Michael Paul Nelson, 'For goodness sake! What is intrinsic value and why should we care?' (2017) 209 *Biological Conservation* 366, 368.

¹⁹ Sandbrook (n 7) 565.

²⁰ *Ibid.*

Definition A would foreseeably err on the side of less encroachment. This could involve, for example, advocating legal protection of the forest, regulating activities in the region that may impact on its existing state and limiting human access through research and monitoring. Definition A would favour preservation of stasis through non-invasive strategies aimed to prevent harm and minimise deterioration. By contrast, a policy based on Definition B would likely permit a greater extent of encroachment falling short of what is determined to be ‘wasteful over-use’ (for example, logging in deposits in accordance with some certification scheme for sustainable management). Invariably, decisionmakers in such a position would turn their minds to what ought to be preserved or left intact, expressed through several alternative approaches: the number of trees? The number of species of trees? The density of trees in supporting all or a fraction of existing wildlife species? The protection of all species or just those currently considered endangered? The continuation of habitat corridors? A proportion of the geographic area? A fraction or entirety of the existing provision of ecosystem services? For definitional clarity, it should be noted that the terms ‘conservation’ and ‘preservation’ are not interchangeable terms, with the oft used analogy distinguishing conservation as promoting ‘hands-on’ strategies from preservation’s ‘hands-off’ approach to the subject; however, preservation has long been considered an important tool in conservation.²¹

We may arrive at the answer to ‘Conservation: by whom?’ with relative ease: humankind. Conservation situates humankind in its relationship with nature; and given the range of attitudes held and expressed by humankind, there is bound to be a range of perspectives as to what ought to be conserved and how. This leads to the second sub-question: what is the subject or target of conservation?

B *Conservation of what?*

As foreshadowed above, the subjects of nature conservation are varied and include species (inclusive of plants, animals, fungi, algae and bacteria), the ecosystems that sustain them, as well as geodiversity (inclusive of geological, geomorphological and soil features).²² As outlined by Justus et al., conservation biologists have attributed value to an array of non-human subjects including: ‘ecosystems, all biological entities and their environments, wilderness, wasteland habitats and wild organisms, genetic variation that increases probability of population

²¹ Ibid. See also Alexander (n 14) 111.

²² See, eg, Murray Gray, *Geodiversity: Valuing and Conserving Abiotic Nature* (Wiley-Blackwell, 2nd ed, 2013).

persistence and even all entities produced by natural processes'.²³ Within the context of mass extinction and biodiversity loss, conservation is most often considered at the species level, with the acronym HIPPO commonly employed to represent the most significant threats requiring mitigation: habitat loss, invasive species, pollution, human population and overharvesting.²⁴

The term 'species' is used compatibly in both its singular use and contextual use in the combined term 'species conservation'. With respect to the former, the word 'species', owing to its scientific meaning, denotes a basic unit of classification and taxonomic rank for living things. With respect to the latter, conservation orients towards species as a whole rather than individual members of a species as its focal point of concern. Discussion of broader processes tends to be mobilised to demonstrate how life at the species level can and cannot be sustained. A distinction may be drawn between conservation (construed as 'being concerned with the survival of wild species and ecosystems and preservation of overall bio-and geodiversity') and animal welfare (framed as 'how well an animal survives in its environment using indicators to measure welfare such as observed behaviour, physiology, longevity and reproduction').²⁵ The term 'species conservation' is used throughout this thesis to make this distinction explicit in its scope.

Nevertheless, the individual or the few do matter in species conservation, and consideration of the five domains underpinning animal welfare (nutrition, environment, health, behaviour, and mental state) is of consequence.²⁶ In fact, it is often when a species' population is diminished to a few that the welfare of individuals enters into sharp focus as conservationists seek to use those remaining to restore populations through natural breeding or artificial insemination. The last of a species also find themselves at the heart of species conservation campaigns aimed at winning hearts and minds and attracting funds to the cause. It must be noted, however, that the primary focus of these efforts orients towards revitalising and re-establishing wildlife at the species level (or, in some cases, sub-species). Current efforts in rhino conservation, for example, speak to the predominance of this narrative. The birth of a female Sumatran rhinoceros (*Dicerorhinus*

²³ James Justus et al, 'Buying Into Conservation: Intrinsic Versus Instrumental Value' (2009) 24(4) *Trends in Ecology & Evolution* 187, 187.

²⁴ Bill Devall, 'Conservation of Biodiversity: Opportunities and Challenges' (2006) 13(1) *Society for Human Ecology* 60, 61, citing Edward O Wilson, *The Future of Life* (Alfred A Knopf, 1st ed, 2002) 50.

²⁵ Helen Kopnina and Haydn Washington, 'Ethical Approaches to Conversation' in Helen Kopnina and Haydn Washington (eds), *Conversation: Integrating Social and Ecological Justice* (Springer, 1st ed, 2020) citing Mark Rowlands, *Animal Rights: A Philosophical Defence* (St. Martin's Press, 1998) 192.

²⁶ See, eg, David Mellor and CSW Reid, 'Concepts of animal well-being and predicting the impact of procedures on experimental animals' in RM Baker, G Jenkin and David Mellor, *Improving the well-being of animals in the research environment: Proceedings of the conference held at the Marriott Hotel* (ANZCCART, 1994) 3-18; David Mellor, 'Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare' (2017) 7(8) *Animals (Basel)* 60.

sumatrensis) in March 2022 and deaths of the last male (Tam, May 2019) and female (Iman, November 2019) in Malaysia were all events used to underscore the need to galvanise support for species conservation through the tragedy of seeing extinction within one's lifetime.²⁷ Likewise, the outpouring of grief following the death of Sudan, the last male northern white rhino (*Ceratotherium simum cottoni*), in 2018 rallied funders and researchers towards reproductive technology work to harvest eggs from the remaining two animals, Najin and Fatu.²⁸ With the greater one-horned rhino (*Rhinoceros unicornis*) having risen in number from as few as fifty in 1910 to over four thousand (population trend increasing at last assessment), there is certainly hope for those wanting to 'bring back' the northern white rhino and Sumatran rhino, particularly at a time where genetic technology is playing a pivotal role in conservation. This technology has expanded the subjects of 'conservation' to include biological material capable of producing viable specimens of a species. The proliferation of 'frozen zoos' and 'seed banks' as proverbial arks exemplify this broadening technological advancement.

Having considered both the valuers and subjects of conservation, the following two sections turn to what values are evoked in conservation discourse, and subsequently how these values underpin and are ascribed weight in different approaches to conservation.

C Conservation evoking what value(s)?

Conservation compels humankind to make decisions regarding what, how and why to conserve, and is thus fundamentally a question of values. The calculus is rarely a straightforward process and may involve deliberating where values are fixed, can be balanced, and even traded off. Even where values are known, there is an array of variables that influence how conservationists select a course of action. As Blackburn once wrote, 'different beliefs and desires (and perhaps other states, such as emotions, attitudes, wishes, fantasies, fears, and of course values) come together

²⁷ Basten Gokkon, 'Malaysia's last Sumatran rhino dies, leaving Indonesia as the final refuge' *Mongabay* (online, 25 November 2019) <<https://news.mongabay.com/2019/11/malaysias-last-sumatran-rhino-dies-leaving-indonesia-as-the-final-refuge/>>; 'Last male rhino in Malaysia dies', *Mongabay* (online, 27 May 2019) <<https://news.mongabay.com/2019/05/last-male-rhino-in-malaysia-dies/>>; Basten Gokkon, 'It's a girl: Super rare Sumatran rhino born in captive-breeding centre', *Mongabay* (online, 28 March 2022) <<https://news.mongabay.com/2022/03/its-a-girl-super-rare-sumatran-rhino-born-in-captive-breeding-center/>>.

²⁸ Sam Anderson, 'The Last Two Northern White Rhinos on Earth: What will we lose when Najin and Fatu die?', *The New York Times Magazine* (online, 6 January 2021) <<https://www.nytimes.com/2021/01/06/magazine/the-last-two-northern-white-rhinos-on-earth.html>>.

to issue in action'.²⁹ Intrinsic and instrumental values have attracted the most attention in the normative conservation literature.

1 *Intrinsic value*

An intrinsic valuation of nature recognises that all life possesses inherent value irrespective of its utility to humankind, and thus finds itself at odds with anthropocentric assessments of nature.³⁰ Nature transcends characterisation as a mere source of harvest for human-defined wants and needs. Rather, humans are situated amongst many diverse forms of life and processes persisting in 'a network of phenomena that are fundamentally interconnected and interdependent'.³¹ The 1970s was a particularly crucial period for the development of intrinsic valuation, marked by the works of Naess³² and Lovelock.³³ Under his framework of 'Deep Ecology', Naess applies a principle of 'biocentric egalitarianism' (that all living entities possess innate value and ought not to be reduced to use-value)³⁴ within a construct of holism (where the biosphere 'does not consist of discrete entities but rather internally related individuals that make up an ontologically unbroken whole').³⁵ Lovelock, together with Margulis, developed Gaia Theory, culminating in their seminal publication in 1979.³⁶ Gaian ethics has been described as a 'modern scientific reworking of the Earth Goddess' in the form of a 'complex total living planetary synergistic self-regulating super organism'.³⁷

This view of life, however, is not without its complexities, particularly when grounded in the realities of species conservation within the context of mass extinction. Is it tenable and/or

²⁹ Simon Blackburn, *Ruling Passions: A Theory of Practical Reasoning* (Oxford University Press, 1998) 52.

³⁰ Alexander (n 14) 118.

³¹ *Ibid.*

³² Arne Naess, 'The shallow and the deep, the long-range ecology movement: A Summary' (1973) 16(1-4) *Inquiry* 95.

³³ James E Lovelock and Lynn Margulis, 'Atmospheric homeostasis by and for the biosphere: The gaia hypothesis' (1973) 26(1-2) *Tellus* 2; James E Lovelock, 'Gaia as seen through the atmosphere' (1972) 6(8) *Atmospheric Environment* 10.1016/0004-6981(72)90076-5.

³⁴ DR Keller, 'Deep Ecology' in J Baird Callicott and Robert Frodeman (eds), *Encyclopedia of Environmental Ethics and Philosophy* (Macmillan Reference, 2008) 206.

³⁵ *Ibid* 209; Naess (n 32) 202.

³⁶ James E Lovelock and Lynn Margulis, 'Atmospheric homeostasis by and for the biosphere: The gaia hypothesis' (1973) 26(1-2) *Tellus* 2; James E Lovelock, 'Gaia as seen through the atmosphere' (1972) 6(8) *Atmospheric Environment* 10.1016/0004-6981(72)90076-5.

³⁷ Anthony Weston, 'Forms of Gaian Ethics' (1987) 9(3) *Environmental Ethics* 217, 217. While the scientific premises underpinning Gaia theory have been debunked by modern-day scientists, most notably Tyrrell (See Toby Tyrrell, *On Gaia: A Critical Investigation of the Relationship between Life and Earth* (Princeton University Press, 2013); Toby Tyrrell, 'Gaia: The verdict is...' (2013) 220(2940) *The New Scientist* 30), its conceptual legacy still holds sway. It can inspire a more holistic and integrated approach to earth sciences; or, alternatively, persists in evoking an ethos that bestows inalienable moral standing to a range of Earth's living matter arising from its very existence as necessary components of life at-large.

desirable to make decisions based on biocentric egalitarianism? Callicott memorably addressed this query in the negative, suggesting that it is not viable to 'accord equal moral worth to each and every member of the biotic community'.³⁸ Examining the workability of this premise within the context of species extinction, Norton, as referred to by Keller,³⁹ argued that 'the 120,000th elk cannot be treated equally with one of the last California condors—not, at least, on a reasonable environmental ethic'.⁴⁰ So, is intrinsic value something that lies in the subject, or is it simply perceived through the eyes of the valuer? Perhaps the answer is both. Keller posits that Naess attempted to meet this critique through acknowledging that 'brute biospherical reality entails some forms of killing, exploitation, and suppression of other living beings; the aim is to do more good than harm, to respect on an equal basis the right of every life form to flourish'.⁴¹ It may then be useful to conceive of recognising intrinsic value in nature as offering a baseline of value acknowledged; and recognising a right to exist and persist as a rebuttable presumption to determine which actions ought to be curtailed or balanced off against that right.

Delving deeper, the question that arises is whether intrinsic value is so vague, arbitrary and seemingly infinite that it is not workable in an area of application like conservation where trade-offs are often required.⁴² Vucetich, Bruskotter and Nelson offer a compelling response to these critiques, to a point doubling down on the significance of intrinsic value by suggesting that it is the recognition of intrinsic value that gives rise to a relationship characterised as conservation itself.⁴³ While complex and qualitative, intrinsic value need not be branded as either a variously vague or vacuous concept. One could equally make similar critiques of concepts such as justice, reasonableness, equality or equity in law, for example, but this does not diminish their importance or utility.⁴⁴ The authors advance that intrinsic value is not arbitrary as there are indicative features, such as the capacity to flourish and experience pain;⁴⁵ and maintain further that intrinsic value is not misanthropic because respecting non-human entities for their own sake does not undermine the moral quality, standing or value of a human being.⁴⁶ Finally, they argue

³⁸ J Baird Callicott, 'Animal Liberation: A Triangular Affair' (1980) 2(4) *Environmental Ethics* 311, 327.

³⁹ Keller (n 34) 208.

⁴⁰ Bryan G Norton, *Toward Unity Among Environmentalists* (Oxford University Press, 1995) 224.

⁴¹ *Ibid* 209.

⁴² Alexander (n 14) 122: Alexander supposes that 'only a tiny minority of people give intrinsic value any consideration and within that minority there are a range of quite different and often contradictory opinions'.

⁴³ John T Vucetich, Jeremy T Bruskotter and Michael Paul Nelson, 'Evaluating whether nature's intrinsic value is an axiom of or anathema to conservation' (2015) 29(2) *Conservation Biology* 321, 330.

⁴⁴ *Ibid* 325. The authors evoke comparisons to 'fitness' as a concept in evolutionary ecology and 'fairness' as a common notion in social justice respectively.

⁴⁵ *Ibid* 323.

⁴⁶ *Ibid* 325.

against the misconception that intrinsic value is infinite⁴⁷ employing the example of a 'priceless' wetland to produce a formulation consistent with Naess' response to the critique of biocentric egalitarianism.⁴⁸ The authors posit that referring to a wetland as 'priceless' does not infer that it holds infinite monetary value, but rather that it is inappropriate to express its value in monetary terms or to calculate a potential trade-off based on a straightforward cost-benefit calculation of instrumental values in play.⁴⁹ The authors state it plainly: 'when something possesses intrinsic value it deserves to be treated with respect for what it is, with concern for its welfare or in a just manner'.⁵⁰ This formulation of intrinsic value perhaps best represents the contemporary status of intrinsic value as understood in conservation ethics and expressed in its use in conservation frameworks.

2 Instrumental value

To conceive nature in terms of its instrumental value is inherently anthropocentric as it assigns worth to the extent that it benefits humankind.⁵¹ The language of instrumental value has evolved over time. While popularised in the late 90s and early 2000s, the language of 'environmental goods and services' and 'ecosystem services' can be traced back to the mid to late 1960s, following the more dominant usage of 'instrumental values' and 'anthropocentric values' which commenced in the 1930s.⁵² Reference to instrumental value began to achieve traction as the rate of environmental degradation continued to increase during the second half of the twentieth century, arising from the premise that humankind's poor management of Earth's resources was due, at least in some part, to lack of appropriate valuation.⁵³ In support of this notion, Liu et al suggest that the use of terms such as 'priceless' and 'invaluable' within the context of conservation has done little to reduce ecosystem degradation.⁵⁴ As a result, more quantitative measures were sought.

Environmental economics endeavoured to meet this need for more quantitative measures. It studies the impact of human activities on the flow of ecosystem functions that the biosphere

⁴⁷ Ibid 328

⁴⁸ Keller (n 34) 208.

⁴⁹ Vucetich, Bruskotter and Nelson (n 43) 328.

⁵⁰ Ibid 321.

⁵¹ Alexander (n 14) 118.

⁵² Ibid 119.

⁵³ Ibid.

⁵⁴ Shuang Liu et al, 'Valuing ecosystem services: Theory, practice, and the need for a transdisciplinary synthesis' (2010) 1185 *Annals of the New York Academy of Science* 54, 54.

generates (ie environmental impact) and seeks to articulate the value of the world's ecosystem in calculating trade-offs.⁵⁵ Ecosystem functions refer to the 'habitat, biological or system properties or processes of ecosystems'.⁵⁶ Humankind benefits from these functions, directly or indirectly, wants and needs alike, in the form of goods (for example, water or food) or services (for example, regulation of disease and floods).⁵⁷ Building on this understanding of the different output typologies, the Conceptual Framework Working Group of the Millennium Ecosystem Assessment adopted a system of four categories, delineating between: 'provisioning services' (products obtained from ecosystems – food and fibre, fresh water, fuel and wood, biochemical and genetic resources), 'regulating services' (benefits obtained from regulation of ecosystem processes – climate regulation, disease regulation, water regulation, water purification and pollination), 'cultural services' (nonmaterial benefits obtained from ecosystems – spiritual/religious, recreation and ecotourism, aesthetic, inspirational, educational, sense of place and cultural heritage) and 'supporting services' (services necessary for the production of all other ecosystem services – soil formation, nutrient cycling and primary production).⁵⁸ Turner notes that calculations of total economic value ('TEV') may incorporate both 'use values' and 'non-use values'.⁵⁹ Consideration of non-use values serves to acknowledge that 'individuals may have little or no use for a given environmental asset or attribute but would nevertheless feel a 'loss' if such things were to disappear'.⁶⁰

In a landmark study that forever shaped conservation discourse,⁶¹ Costanza et al estimated in 1997 the average global economic value of seventeen ecosystem services contributing to human welfare. The final calculation was a contribution of USD33 trillion annually (ranging between USD16-54 trillion) or the equivalent to 1.8 times the global gross national product ('GNP'); however, the authors remark that 'the real value is almost certainly larger'.⁶² While the breadth

⁵⁵ Diego Azqueta and Daniel Sotelsek, 'Valuing nature: From environmental impacts to natural capital' (2007) 63(1) *Ecological Economics* 22, 23.

⁵⁶ Robert Costanza et al, 'The value of the world's ecosystem services and natural capital' (1997) 387 *Nature* 253, 253.

⁵⁷ Eugenio Figueroa and Roberto Pasten, 'Economically valuing nature resources to promote conservation: An empirical application to Chile's national system of protected areas' (2013) 93(4) *Regional Science Association International* 865, 866. It should be noted that it is not uncommon that 'goods' and 'services' are dealt with under the generic term of 'ecosystem: Costanza et al (n 56) 253.

⁵⁸ Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press, 2005) 57.

⁵⁹ R Kerry Turner et al, 'Valuing nature: Lessons learned and future directions' (2003) 46(3) *Ecological Economics* 493, 494.

⁶⁰ *Ibid.*

⁶¹ As of April 2024, the journal *Nature* estimates citations to the paper at more than 12,000 when comparing CrossRef with Web of Science; the most recent articles were published in 2024.

⁶² Costanza et al (n 56) 259. The total estimate includes services such as gas regulation (USD1.3 trillion), disturbance regulation (USD1.8 trillion), waste treatment (USD2.3 trillion) and nutrient cycling (USD17 trillion). By way of

and scale of the services are certainly significant, Costanza et al cautioned that, while substitution is possible to an extent, there are many ecosystem services that are literally irreplaceable⁶³ – for instance, there is no substitute for primary forests.⁶⁴

While providing assessments in monetary terms served to enliven a broader audience to the value provided by nature by using a currency whose value was already understood by decisionmakers and the public alike, it invited criticisms alleging that instrumental valuations undesirably commodify nature. The 'commodification' or 'monetisation' critique of instrumental value (phrased more simply as 'putting a price-tag on nature')⁶⁵ emerges from different angles, including that it transforms conservation from being done to provide social and ecological benefit for local communities to something being conducted for the economic gain of elites and those of means to capitalise.⁶⁶

The topic of endangered species is often used to illustrate concerns over instrumental valuations.⁶⁷ Would an instrumental valuation effectively protect species on the brink of extinction which contribute little to human welfare? Miller, Soulé, and Terborgh explored this question by advancing 'that where economics can justify the existence of species with profit value, it also can justify the extinction of those interfering with profit'.⁶⁸ With human encroachment into previously wild spaces increasing due to population growth and mass migration due to displacement from climate change and conflict, would instrumental value justify the elimination of strategies to minimise human-wildlife conflict in favour of neocolonial tactics aimed at 'civilising' an area by driving out wildlife?

comparing distinct biomes, approximately 63 per cent of the estimated value was contributed by marine systems (USD20.9 trillion), most of which came from coastal systems (USD10.6 trillion); and approximately 37 per cent of the estimated value derived from terrestrial systems, mainly from forests (USD4.7 trillion) and wetlands (USD4.9 trillion).

⁶³ Ibid.

⁶⁴ Luke Gibson et al, 'Primary forests are irreplaceable for sustaining tropical biodiversity' (2011) 478 *Nature* 378, 378.

⁶⁵ Gretchen C Daily et al, 'The Value of Nature and the Nature of Value' (2000) 289(5478) *Science* 395, 396. See also Ian A Smith, *The Intrinsic Value of Endangered Species* (Routledge, 2006) 6.

⁶⁶ Kent H Redford and William M Adams, 'Payment for Ecosystem Services and the Challenge of Saving Nature' (2009) 23(4) *Conservation Biology* 785; Brett Sylvester Matulis, 'The economic violation of nature: A question of justice?' (2014) 104 *Ecological Economics* 155, 156.

⁶⁷ Vucetich, Bruskotter and Nelson (n 43) 321.

⁶⁸ Brian Miller, Michael Soulé and John Terborgh, 'New Conservation' or surrender to development' (2014) 17(6) *Animal Conservation* 509, 509.

Efforts have been made to respond to the monetisation critique. For instance, in defence of monetary valuations of ecosystem services, Hanley and Shogren,⁶⁹ and Randall⁷⁰ have argued that these do not so much seek to assign a dollar value to nature, but rather to express how variations in ecosystem services trade off against other things of value to society. The intention has not been to reduce nature to a dollar amount, but to use a common metric to calculate disparate services. It stresses that nature has value and seeks to express it in terms that may be more broadly appreciated by human valuers. However, to the avid advocate for intrinsic valuation, this may be a distinction without a meaningful difference, given that valuation is still determined within an anthropocentric framework. In any case, contemporary analyses of instrumental values extend far beyond those things capable of being expressed in monetary values, even skirting into the territory of identifying values that, while not ascribing intrinsic value, similarly express reference to nature.⁷¹ These include aesthetic, cultural, scientific and existence value; with the latter according value to an entity because its continued existence is itself valued.⁷² This last point illustrates how different understandings of value can nonetheless serve a similar purpose in expressing a view of nature, albeit by a different route and positioning. It may therefore be useful to trace how these various values are evoked in underpinning approaches to conservation, described alternatively as schools of thought.

D Conservation: through what approaches?

The contest regarding the definition of conservation and its accepted ethical and ecological inputs is best showcased through the series of papers exchanged between one of the founding fathers of conservation biology, Soulé, and ‘new conservationists’, including Kareiva and Marvier. Soulé, wrote his seminal essay in 1985 entitled ‘What is Conservation Biology?’⁷³ in which he advances an interdisciplinary model of ‘conservation biology’ to address ‘the biology of species, communities, and ecosystems that are perturbed, either directly or indirectly, by human activities or other agents,’ and specifically, ‘to provide principles and tools for preserving biological

⁶⁹ Nick Hanley and Jason F Shogren, ‘Awkward Choices: Economics and Nature Conservation’ in Daniel W Bromley and Jouni Paavola (eds), *Economics, Ethics, and Environmental Policy: Contested Choices* (Wiley-Blackwell UK, 2002).

⁷⁰ Alan Randall, ‘Benefit-Cost Considerations Should be Decisive when there is Nothing more Important at Stake’ in Daniel W Bromley and Jouni Paavola (eds), *Economics, Ethics, and Environmental Policy: Contested Choices* (Wiley-Blackwell UK, 2002).

⁷¹ Justus et al (n 23).

⁷² Ibid 190.

⁷³ Michael Soulé, ‘What is Conservation Biology? A new synthetic discipline addresses the dynamics and problems of perturbed species, communities, and ecosystems’ (1985) 35(11) *The Biological Diversity Crisis* 727 (‘What is Conservation Biology?’).

diversity'.⁷⁴ Central to Soulé's thesis is an original framework comprised of four core principles referred to as 'functional postulates' and four core values referred to as 'normative postulates'.⁷⁵ Neither list of principles is hierarchical.

Functional Postulates	Normative Postulates
<ol style="list-style-type: none"> 1. Many of the species that constitute natural communities are the products of coevolutionary processes. 2. Many, if not all, ecological processes have thresholds below and above which they become discontinuous, chaotic, or suspended. 3. Genetic and demographic processes have thresholds below which nonadaptive, random forces begin to prevail over adaptive, deterministic forces within populations. 4. Nature reserves are inherently disequibrial for large, rare organisms. 	<ol style="list-style-type: none"> 1. Diversity of organisms is good. 2. Ecological complexity is good. 3. Evolution is good. 4. Biotic diversity has intrinsic value, irrespective of its instrumental or utilitarian value.
<p>Related fields: genetics, social sciences, ecophilosophy, environmental monitoring, veterinary medicine, hazard evaluation, historical biogeography, island biogeography, physiobiology, population biology (including population genetics, ecology and sociobiology) and natural resource fields (including forestry, fishery biology, wildlife biology, public policy and management).</p>	

Table 1: Soulé's Conservation Biology.⁷⁶

Recognition of the intrinsic value in nature, and not as a means for human benefit, underpins Soulé's conservation ethos. This nuance resonates throughout the model yet asserts itself most strongly under the fourth normative postulate which specifies that 'species have value in themselves, a value neither conferred nor revocable, but springing from a species' long evolutionary heritage and potential or even from the mere fact of its existence'.⁷⁷

Kareiva and Marvier revisit Soulé's essay in 2012, asking not 'What is Conservation Biology?' but rather *What is Conservation Science?*, positing that conservation biology is now incorporated within the more expansive framework of conservation science which broadens the scope of inquiry and integrates human interests.⁷⁸ The authors critique Soulé's exclusion of human wellbeing and suggest that his model is 'reactive and defensive' due to its central goal to

⁷⁴ Ibid 727.

⁷⁵ Ibid 729-731.

⁷⁶ Ibid.

⁷⁷ Ibid 731.

⁷⁸ Peter Kareiva and Michelle Marvier, 'What is Conservation Science?' (2012) 62(11) *BioScience* 962, 963.

‘minimize losses and, to the extent that this was possible, to maintain the world as it once was’.⁷⁹ By contrast, Kareiva and Marvier advocate actively pursuing mechanisms to enhance benefits to humankind and biodiversity by drawing upon both the natural and social sciences and applying ‘the dynamics of coupled human-natural systems’.⁸⁰ The larger emphasis on the social sciences and psychology in determining appropriate action evident in this approach is consistent with the premise upon which this analysis commenced: that conservation is an expression of humankind’s relationship with nature wherein humans are ultimately the valuers. This approach also aligns pragmatically with another earlier observation, which is supported in this thesis, that conservation as expressed in governing frameworks is ultimately the result of political preference. This expanded scope of inquiry is also beneficial as conservation actions extend beyond biodiversity, including influencing human factors that may in turn impact biodiversity in the long run (including the displacement of human communities, quality of life, economic wellbeing, and livelihoods).⁸¹ Borrowing Soulé’s phraseology, Kareiva and Marvier offer new functional and normative postulates, providing five, instead of four, under each category:

Functional Postulates	Normative Postulates
<ol style="list-style-type: none"> 1. ‘Pristine nature’, untouched by human influences, does not exist. 2. The fate of nature and humankind are deeply intertwined. 3. Nature can be surprisingly resilient. 4. Human communities can avoid the tragedy of the commons. 5. Local conservation efforts are deeply connected to global forces. 	<ol style="list-style-type: none"> 1. conservation must occur within human-altered landscape 2. conservation will be a durable success only if people support conservation goals 3. conservationists must work with corporations 4. only by seeking to jointly maximize conservation and economic objectives is conservation likely to succeed 5. conservation must not infringe on human rights and must embrace the principles of fairness and gender equity.
<p>Related fields: conservation biology, economics, agriculture, anthropology, communications, psychology, sociobiology, philanthropy, sustainable development, ethics, public policy, public health and climate science.</p>	

Table 2: Kareiva and Marvier’s Conservation Science.⁸²

⁷⁹ Ibid 967.

⁸⁰ Ibid 962.

⁸¹ Ibid 963.

⁸² Ibid 965-967.

Kareiva and Marvier acknowledge the globalisation of conservation problems, espoused in the fifth functional postulate, which provides the most obvious example of their update of Soulé's approach. In support of their position, the authors refer to the mass conversion of forests to agricultural land for food and fuel security, as well as the illegal trade in wildlife.

What followed Kareiva and Marvier's 2012 article was a forthright 'back-and-forth'. Soulé responded, referring to an earlier essay co-authored by Kareiva, Marvier and Lalasz.⁸³ They branded this 'new conservation' as 'a powerful but chimeric movement' that elevates the instrumental human-use value of nature above its innate intrinsic value while simultaneously over-reaching into areas beyond the scope of traditional conservation.⁸⁴ Soulé perhaps expressed his discontent most succinctly in the following claim: 'because [new conservation's] goal is to supplant the biological diversity-based model of traditional conservation with something entirely differently, namely an economic growth-based or humanitarian movement, it does not deserve to be labelled conservation'.⁸⁵ Marvier subsequently addressed Soulé's critique, affirming that 'New Conservation is True Conservation'.⁸⁶ While agreeing that conservationists ought to operate with respect for nature's intrinsic value, Marvier advanced that the new conservation offers a more pragmatic and effective *modus operandi* which acknowledges self-interest within the reality of motivators for human behaviour, and can thus garner positive outcomes by informing humanity as to the benefits that nature may provide intra- and inter-generationally.⁸⁷ Marvier supported this approach by citing empirical data published by Marvier and Wong which indicated that conservation messages focusing primarily on intrinsic value as the justification for protecting biodiversity have limited resonance with the general public.⁸⁸ Within months, Soulé co-authored a Letter to the Editor in *Animal Conservation* with Miller and Terborgh, rigorously challenging both the content and currency of the assumption that

⁸³ Michelle Marvier, Peter Kareiva, and Robert Lalasz, 'Conversation in the Anthropocene: Beyond Solitude and Fragility', *The Breakthrough* (online, 1 February 2012) <<https://thebreakthrough.org/journal/issue-2/conservation-in-the-anthropocene>>.

⁸⁴ Michael Soulé, 'The "New Conservation"' (2013) 27(5) *Conservation Biology* 895, 895. Soulé alleges that New Conservation 'promotes economic development, poverty alleviation, and corporate partnerships as surrogates or substitutes for endangered species listings, protected areas, and other mainstream conservation tools.'

⁸⁵ *Ibid.*

⁸⁶ Michelle Marvier, 'The New Conservation Is True Conservation' (2013) 28(1) *Conservation Biology* 1.

⁸⁷ *Ibid.* 1-2. Marvier claims that this is preferable to a position that seeks to 'chide humanity for its self-interest'.

⁸⁸ Michelle Marvier and H Wong, 'Winning back broad public support for conservation' (2012) 2 *Journal of Environmental Studies and Science* 291. Marvier and Wong expand on these ideas further and respond to critiques in Daniel F Doak et al, 'What is the future of conservation?' (2014) 29(2) *Trends in Ecology & Evolution* 77, qualifying that new conservation seeks to create a spirit of collaboration and innovation to increase appreciation for all facets of nature's value (intrinsic and instrumental), and that corporate engagement is one strategy that may be employed to achieve positive results.

managing nature for human benefit will preserve ecological integrity.⁸⁹ Instead, the authors contended that the underlying causes of biological degradation are not adequately addressed, including population growth, ever-increasing consumption and continued adherence to a model of unlimited economic growth.⁹⁰ Referring back to Kareiva and Marvier's 2012 piece, the authors identified some common, albeit unremarkable, points of agreement, including the need for children to spend more time immersed in nature and that conservationists ought to collaborate with corporations if these partnerships benefit wildlife and people.⁹¹

This period of debate concluded with Soulé⁹² and Kareiva⁹³ publishing respective comments in *Conservation Biology*, both seeking 'common ground'. Kareiva left little room for misunderstanding, offering six clarifications about new conservation. For example, he proposed that new conservation does not seek to replace biological diversity-based conservation with a humanitarian movement, nor does it demand that nature not be protected for its own sake. On the topic of species protection, Kareiva explained that new conservation does not favour economic growth and corporate partnerships as substitutes for protected areas or endangered species listings; nor does it advocate conservation that would exclude keystone species.⁹⁴ Following an assessment of what new conservation is not, Kareiva firmly proclaimed: 'The new conservation is a reaction to a frank assessment of global trends in human population growth, resource demands, habitat loss, and species loss and asks what we can do that really makes a difference on a global scale in the face of these huge counterforces'.⁹⁵ Soulé thanked Kareiva for agreeing that biodiversity must be protected for its own sake, in addition to utilitarian reasons, and identified two further matters of agreement: firstly, that more protected areas are required to achieve greater biodiversity protection; and secondly, that biodiversity loss ought to be managed in areas subject to resource extraction.⁹⁶ However, Soulé resolved that the differences between he and Kareiva 'rest on nearly irreconcilable, beliefs and ideologies not amenable to testing by empirical science' and further reiterated in a single footnote that Kareiva's approach

⁸⁹ Miller, Soulé and Terborgh (n 68).

⁹⁰ Ibid 512.

⁹¹ Ibid.

⁹² Michael Soulé, 'Also seeking common ground in conservation' (2014) 28(3) *Conservation Biology* 637 ('*Seeking Common Ground*').

⁹³ Peter Kareiva, 'New Conservation: Setting the Record Straight and Finding Common Ground' (2014) 28(3) *Conservation Biology* 634.

⁹⁴ Ibid.

⁹⁵ Ibid 634.

⁹⁶ Soulé, *Seeking Common Ground* (n 92) 637.

is 'not really conservation, and while possibly beneficial to some people in the short run, will be harmful to the mission and profession of conservation'.⁹⁷

Having regard to the tangible differences in conservation approaches identified between traditional and new conservation, the debate turned to contemporary and future directions. Through the 'Future of Conservation' survey, authors Sandbrook, Fisher, Holmes, Luque-Lora and Keane sought to survey how conservation is conceived globally. More than 9,000 conservation practitioners from 149 countries responded, achieving greater representation than the pages of academic publishing and including authors originating from or working within biodiversity hotspots concentrated in the Global South. This was the largest published survey requiring conservationists to identify their views and values, and to express them explicitly.⁹⁸ The results were published in a paper aptly entitled: 'The global conservation movement is diverse but not divided'. By way of methodology, four conservation orientations were presented in the survey framework as schools of thought, which sat outside the parameters of simply new versus traditional. A summary of the four conservation 'orientations' presented as the framework for the 'Future of Conservation survey' (as extracted from Kopnina, Washington, Gray and Taylor's critique of the survey) is presented in the table below.

⁹⁷ Ibid.

⁹⁸ Methodologically, this involved respondents indicating their level of agreement with 38 Likert items.

Role of corporations and capitalism	Conservation should work hand in hand with this	<p>‘New conservation’</p> <ul style="list-style-type: none"> This is grounded in a belief that win-win situations (in which people benefit from conservation) can often be achieved by promoting economic growth and partnering with corporations. Key authors within this movement have responded to criticism that they are ‘doing away’ with nature’s intrinsic value by clarifying that their motive is strategic or pragmatic more than it is ethically founded (based on the claim that conservation needs to emphasise nature’s instrumental value, rather than its intrinsic value to better promote support for conservation). <p>Key references, provided on the website are Bl (2015), Kareiva and Marvier (2012), Levin (2014), Marris (2014) and Marvier and Kareiva (2014).</p>	<p>‘Market biocentrism’</p> <ul style="list-style-type: none"> Although support for conservation based on both nature’s intrinsic value and market-based approaches is not common in the literature, a recent example is presented by E.O. Wilson’s book <i>Half-Earth</i> (which advocates setting aside at least half of the Earth’s surface as protected areas). Noting the substantial decrease in per capita environmental footprint worldwide that this would require, Wilson supports free markets as a means of favouring products with maximum profit and minimum energy and resource consumption. The pro-market strategy, it would appear, is to be used in order to buffer the ‘human’ half of the Earth against the need to exploit the ‘natural’ half. <p>The only key reference, as provided on the website, is Wilson (2016).</p>
	Conservation necessitates a move away from capitalism (and growth-based economics)	<p>‘Critical social science’</p> <ul style="list-style-type: none"> Here it is argued that the impacts of conservation on human wellbeing should be at the forefront of the conservation debate. This involves being critical of the potential negative side effects of conservation activities for people who are economically poor or politically marginalized, as well as employing conservation initiatives with a primary goal of improving human welfare. Critical social scientists tend to be sceptical of the ability of capitalism-based approaches to deliver benefits for both nature and people. <p>Key references provided on the website are Büscher et al. (2012), Spash (2015) and Brockington and Duffy (2011).</p>	<p>‘Traditional conservation’</p> <ul style="list-style-type: none"> Traditional conservationists generally support the protection of nature because of its intrinsic value and are critical of market-based approaches to conservation. Embracing markets, it is argued, means neglecting those species considered to have little economic value. Economic growth is viewed as a major driver of biodiversity loss. Advocates often note that traditional conservation has for a long time considered human wellbeing, for example by trying to minimize negative impacts on local communities. Protected areas are generally favoured as a primary conservation strategy. <p>Key references provided on the website are Soulé (1985), McCauley (2006), Greenwald et al. (2013), Noss et al. (2013), Miller et al. (2014) and Wuerthner et al. (2014, 2015).</p>
		Protecting nature to improve human wellbeing (especially that of the poor)	Protecting nature for biodiversity’s own sake
	Value centre		

Table 3: Summary of Four Conversation ‘Orientations’.⁹⁹

⁹⁹ Helen Kopnina et al, ‘The “Future of Conservation” Debate: Defending ecocentrism and the Nature Needs Half movement’ (2018) 217 *Biological Conservation* 140, summarising the orientations presented as the framework of the Future of Conservation survey (survey available at <<https://futureconservation.org/>>).

The authors found the strongest consensus in agreement with the notion that the maintenance of biodiversity and ecosystem processes should be goals of conservation, and strong consensus also in agreement with the statement that humans are part of nature, not separate from it. The most polarising issues included the acceptability of displacing people to establish protected areas, the need for strict protected areas to achieve conservation goals, and whether pristine nature untouched by humans exists. What was perhaps most surprising was that conservationists' views on dimensions of conservation thinking, when plotted, formed one cluster rather than many. Three dimensions were identified, with two ('people-centred conservation'¹⁰⁰ and 'science-led ecocentrism'¹⁰¹) displaying widespread support, whereas the third ('conservation through capitalism')¹⁰² was found to be more contentious. Overall, the findings suggest that when observed on a global scale, conservation is less divided than some have claimed.

E Conservation as a marketplace of ideas

Having regard to the analysis above, how is conservation approached in this thesis? Can differences be reconciled? One solution was suggested by Tallis and Lubchenco in their 'Call for Inclusive Conservation in Nature', which was published as a plea of sorts to halt the 'infighting that is stalling progress in protecting the planet'.¹⁰³ As a prospective solution, the authors advanced a 'unified and diverse conservation ethic; one that recognises and accepts all values of nature, from intrinsic to instrumental, and welcomes all philosophies justifying nature protection and restoration, from ethical to economic, and from aesthetic to utilitarian'.¹⁰⁴ This thesis supports this sentiment, although advocating a different route in answering the fundamental question of 'what is conservation'. The position adopted here is that there is no universal definition, value centre, approach, or ethic as far as conservation is concerned; and nor should there be. Both a unified ethic that embraces all values and single definition that is sufficiently

¹⁰⁰ This pertains to the role of people in conservation, as participants and stakeholders.

¹⁰¹ This relates to the role of science in the conservation of species and ecosystems, consistent with the fundamental elements of ecocentric thinking.

¹⁰² This relates to the role of corporations, economic metaphors and market-based approaches in conservation.

¹⁰³ Heather Tallis and Jane Lubchenco, 'Working together: A call for inclusive conservation' (2014) 515 *Nature* 27, 27-28.

¹⁰⁴ *Ibid.*

broad to encapsulate all aspects are unlikely to bridge gaps in the normative conservation debate or be viable in establishing priorities to guide conservation action.¹⁰⁵

Conservation should not be treated as a singular concept. Rather, it should be conceived as a marketplace of ideas from which values and approaches may be drawn and oriented towards the dynamics of problems within their relevant geographic and demographic contexts. This Chapter commenced with the premise that conservation is, at its core, an expression of human values and preferences in our relationship with nature. Humankind itself is not homogenous; and attitudes to nature, and thus conservation, are culturally relative to varying extents. This is supported by the outcomes of the 'Future of Conservation' survey wherein the authors derived clear relationships between dimension scores and the demographic information of survey respondents (eg, gender, age, educational background, career stage and continent of nationality).¹⁰⁶ For example, respondents from North America and Oceania demonstrated strong support for 'science-led ecocentrism'; and women with non-natural science training and people from Africa, Asia and South and Central America were more in favour of 'people-centred conservation'.¹⁰⁷ Viewing conservation as a marketplace of ideas encompassing a diversity of conceptions of relationships with nature not only enables the discussion and development of new and innovative ideas but recognises customary relationships with nature that are maintained by indigenous peoples. Elevating 'alternative'¹⁰⁸ approaches to conservation to assume equal-footing with conventional thought within the broader contest of conservation ideas can then also serve to address the 'colonial conservation' critique, which holds out that conservation, as conventionally understood and practiced, imposes the values and attitudes of Western governments and non-state actors to the detriment of local communities.¹⁰⁹ With the expanse of Earth's remaining biodiversity hotspots located in the Global South, this approach ought not be taken lightly.

That conservation remains a contested term lacking a single definition should be considered a success rather than a shortcoming. That the word 'conservation' is devoid of a universally palatable conceptualisation does not leave it wanting for meaning or invite claims that it is

¹⁰⁵ Sandbrook (n 7) 565-566. Sandbrook offers one such inclusive definition as follows: 'actions that are intended to establish, improve or maintain good relations with nature'.

¹⁰⁶ Sandbrook et al (n 9) 316,

¹⁰⁷ Ibid 320.

¹⁰⁸ Adrian Martin et al, 'Justice and conservation: The need to incorporate recognition' (2016) 197 *Biological Conservation* 254, 254.

¹⁰⁹ See Dan Brockington and Rosaleen Duffy, 'Capitalism and Conservation: The Production and Reproduction of Biodiversity Conservation' (2010) 42(3) *Antipode* 469.

vacuous. As evident in the above analysis, and most recently the 'Future of Conservation' survey, conservation discourse has amassed such an increasingly multidisciplinary body of rich ethical and ecological inputs that it has likely outgrown a single label. In articulating his views on conservation's 'critical mass', Sandbrook offers an analogy whereby conservation 'becomes a forest rather than a single tree – a parliament not a corporation'.¹¹⁰ Furthermore, there are pitfalls in attempting to force all conservation orientations under the same label, most notably in that it discredits arguments in favour of the betterment of nature by those opposing who may wish to expend time emphasising contradictions and internal hypocrisies within the movement. Time is of the essence in advocating for conservation action during the current age of biodiversity loss, wherein resources to fund and operate conservation projects are finite.¹¹¹

Advancing the paradigm of conservation as a marketplace of ideas also serves pragmatic ends in the realm of law and policy. It enables different values and approaches to be considered and engaged with as needed to reach diverse audiences including the public, stakeholders and decision-makers at different levels who may each be better persuaded by disparate justifications for action. Within this context, strategies to leverage the full suite of values, including intrinsic and instrumental value, may be executed in tandem. Rhino conservation demonstrates this *in praxis*. As detailed in Chapter III of this thesis, the five extant species of rhino remaining on Earth persist from a long evolutionary past and may be recognised as having intrinsic value. The presumption that follows is that these species have a prima facie right to continue existing in situ. At the same time, rhinos, not dissimilar to other mega-herbivores, are recognised as serving instrumental value in their habitats as ecological engineers.¹¹² Recognising one form of value does not corrupt the other, just as recognising moral value in other non-human species does not diminish that of homo sapiens. These values are different but may be employed to arrive at the same end depending on the sensibilities of those driving, making, and actioning decisions.

As recognised in more recent discourse, multiple justifications from a diversity of perspectives are needed to maximise uptake in conservation initiatives. With regard to biodiversity conservation, Adams writes that it is imperative for conservationists to factor in the reality that

¹¹⁰ Sandbrook (n 7) 566.

¹¹¹ See Kerrie A Wilson et al, 'Prioritizing global conservation efforts' (2006) 440 *Nature* 337, 337: 'the allocation of conservation resources, like any problem in decision theory, requires a broad goal, a specific objective, a set of constraints, a set of possible actions that form a strategy, and an understanding of the system dynamics provided by equations that link the actions and constraints to the objective.'

¹¹² Dana Paige Seidel et al, 'Mesoscale movement and recursion behaviors of Namibian black rhinos' (2019) 7 *Movement Ecology* 34. See also R Norman Owen-Smith, *Megaherbivores. The influence of very large body size on ecology* (Cambridge University Press, 1988).

'economic rationalisations and calculations of ecosystem service will not always favour biotic diversity, nor that a positive economic valuation will guarantee victory, as ultimately conservation is a political choice'.¹¹³ As Justus et al admit, there are challenges in attracting support for conservation action, including knowing stakeholder preferences and how strongly these are held, reconciling different stakeholder values, and identifying which of these are relevant for specific decisions.¹¹⁴ However, the authors impress a point that follows an applied understanding of decision-making, stating that rather than 'selling out nature' such an approach goes towards maximising those 'buying into conservation'.¹¹⁵

Ultimately, approaching conservation as a marketplace of ideas promotes its increasingly 'problem-oriented' focus, which rejects a 'one-size-fits-all' brand of conservation and operates with an acute understanding that uptake and compliance with measures is contingent on conservationists first understanding the context of the problem. This requires consideration of social data in conjunction with biological data towards achieving, as Whitehead et al write, 'both socially acceptable and scientifically defensible conservation planning outcomes'.¹¹⁶ Within the context of species conservation, this is most commonly executed with reference to species specialists collaborating through projects or groups, such as those within the International Union for Conservation of Nature network, having integrated knowledge of both the species affected and a full accounting of the nature of threats currently faced in situ. The next Part of this Chapter considers what problem-oriented schema of conservation principles ought to be applied when assessing rhinoceros conservation, given the thesis's specific focus on the illegal trade in rhinoceros horn as its commodity case study to explore the current international legal framework's response to IWT.

II PRINCIPLES FOR THE CONSERVATION OF MEGAFUNA

A shortlist of criteria was considered in selecting an appropriate framework to guide rhinoceros conservation for this research. Having regard in Part I to the complexities of conceiving conservation and the fundamental importance of diversity in valuers (and values) represented, these criteria include:

¹¹³ WM Adams, 'Conservation. The value of valuing nature' (2014) 346(6209) *Science* 549, 551.

¹¹⁴ Justus et al (n 23).

¹¹⁵ Ibid 190. See also Douglas J McCauley, 'Selling out on nature' (2006) 443 *Nature* 27, 27-28.

¹¹⁶ Amy L Whitehead et al, 'Integrating biological and social values when prioritizing places for biodiversity conservation' (2014) 28(4) *Conservation Biology* 992, 992.

- I. publication of the framework in a peer-reviewed source of scholarship rather than a particular organisation or body;
- II. authorship by experts in relevant fields by way of discipline and species (including knowledge of threats faced in range states);
- III. authorship from a range of institutions and affiliations; and
- IV. authorship from diverse backgrounds.

Based on these criteria, Ripple et al's 'Declaration to Save the World's Terrestrial Megafauna' emerged as a frontrunner early in the piece.¹¹⁷ As to the impact of the article within which the Declaration is published, as of April 2024, the article has been cited over two hundred times across a range of peer-reviewed publications addressing relevant species.¹¹⁸

In July 2016, *BioScience* published a *Viewpoint* co-authored by 43 international conservation scientists¹¹⁹ led by Distinguished Professor of Ecology at Oregon State University, William Ripple, whose seminal research on trophic cascades features prominently in species extinction discourse.¹²⁰ The authors, comprised predominantly of biologists and ecologists, published their 'Declaration to Save the World's Terrestrial Megafauna' in the form of a thirteen-point schema. Referring to the Supplementary Materials reveals that all five species of *Rhinocerotidae* were included in the study. The Declaration stresses the role of global grassroots action to drive political change through recognising the significant symbolic, cultural, ecological, and economic value of these species.

¹¹⁷ Ripple et al (n 8).

¹¹⁸ See, eg, Maxime Sèbe, 'Protecting megafauna: group-specific threats and conservation strategies' (2023) 69 *European Journal of Wildlife Research* doi: 10.1007/s10344-023-01665-3; Michael 't Sas-Rolfes and Jennifer Lynn Gooden, 'A conflict of visions: Ideas shaping wildlife trade policy towards African megafauna' (2023) doi: 10.31235/osf.io/bzse5; Nicolás Fuentes-Allende et al, 'Remote monitoring of short-term body mass variation in savanna ungulates' (2023) 9(5) *Remote Sensing in Ecology and Conservation* 707; Brian J Enquist et al, 'The megabiota are disproportionately important for biosphere functioning' (2020) 11 *Nature Communications* doi: 10.1038/s41467-020-14369-y; Eric Dinerstein et al, 'A Global Deal for Nature: Guiding principles, milestones, and targets' (2019) 5(4) *Science Advances* doi: 10.1126/sciadv.aaw2869; Franck Courchamp et al, 'The paradoxical extinction of the most charismatic animals' (2018) 16(4) *PLoS Biology* doi: 10.1371/journal.pbio.2003997; Peter A Lindsey et al, 'Relative efforts of countries to conserve world's megafauna' (2017) 10 *Global Ecology and Conservation* 243.

¹¹⁹ Authors listed: William J Ripple, Guillaume Chapron, José Vincente López-Bao, Sarah M Durant, David W Macdonald, Peter A Lindsey, Elizabeth L Bennett, Robert L Beschta, Jeremy T Bruskotter, Ahimsa Campos-Arceiz, Richard T Corlett, Chris T Dairmont, Amy J Dickman, Rodolfo Dirzo, Holly T Dublin, James A Estes, Kristoffer T Everatt, Mauro Galetti, Varun R Goswami, Matt W Hayward, Simon Hedges, Michael Hoffman, Luke TB Hunter, Graham IH Kerley, Mike Letnic, Taal Levi, Fiona Maisels, John C Morrison, Michael Paul Nelson, Thomas M Newsome, Luke Painter, Robert M Pringle, Christopher J Sandom, John Terborgh, Adrian Treves, Blaire Van Walkenburgh, John A Vucetich, Aaron J Wirsing, Arian D Wallach, Christopher Wolf, Rosie Woodroffe, Hillary Young and Li Zhang.

¹²⁰ Ripple et al (n 8).

It is worth noting that the two dimensions identified in the *Future of Conservation* survey that received the most widespread support are represented in the 13-point schema. The dimension of 'people-centred conservation', as it pertains to the role of people in conservation, as participants and stakeholders, is alluded to throughout the Declaration, but most prominently in Principles 4-8 with particular regard to the Global South in Principles 5 and 6. The dimension of 'science-led ecocentrism', relating to the role of science in the conservation of species and ecosystems consistent with the fundamental elements of ecocentric thinking, is most prominently featured in Principles 3 and 13. This alignment with the results of the 'Future of Conservation' survey bolsters the claim that the views represented in the Declaration, while derived from a smaller sample, may be understood as representing a sufficiently diverse pool for present purposes.

We conservation scientists

1. Acknowledge that most of the terrestrial megafauna species are threatened with extinction and have declining populations. Some megafauna species that are not globally threatened nonetheless face local extinctions or have Critically Endangered subspecies.
2. Appreciate that “business as usual” will result in the loss of many of the Earth’s most iconic species.
3. Understand that megafauna have ecological roles that directly and indirectly affect ecosystem processes and other species throughout the food web; failure to reverse megafaunal declines will disrupt species interactions, with negative consequences for ecosystem function; biological diversity; and the ecological, economic, and social services that these species provide.
4. Realize that megafauna are epitomized as a symbol of the wilderness, exemplifying the public’s engagement in nature, and that this is a driving force behind efforts to maintain the ecosystem service they can provide.
5. Recognize the importance of integrating and better aligning human development and biodiversity conservation needs through the engagement and support of local communities in developing countries.
6. Propose that funding agencies and scientists increase conservation research efforts in developing countries, where most threatened megafauna occur. Specifically, there is a need to increase the amount of research directed at finding solutions for the conservation of megafauna, especially for lesser-known species.
7. Request the help of individuals, governments, corporations, and nongovernmental organizations to stop practices that are harmful to these species and to actively engage in helping to reverse declines in megafauna.
8. Strive for increased awareness among the global public of the current megafauna crisis using traditional media as well as social media and other networking approaches.
9. Seek a new and comprehensive global commitment and framework for conserving megafauna. The international community should take necessary action to prevent mass extinction of the world’s megafauna and other species.
10. Urge the development of new funding mechanisms to transfer the current benefits accrued through the existence values of megafauna into tangible payments to support research, conservation actions, and local people who bear the cost of living with wildlife in the places where highly valued megafauna must be preserved.
11. Advocate for interdisciplinary scientific interchange between nations to improve the social and ecological understanding of the drivers of the decline of megafauna and to increase the capacity for megafauna science and conservation.
12. Recommend the reintroduction and rehabilitation, following accepted IUCN guidelines, of degraded megafauna populations whenever possible, the ecological and economic importance of which is evidenced by a growing number of success stories, from Yellowstone’s wolves (*Canis lupus*) and the Père David’s deer (*Elaphurus davidianus*) in China to various megafauna species of Gorongosa National Park in Mozambique.
13. Affirm an abiding moral obligation to protect the Earth’s megafauna.

Figure 1: Declaration to Save the World’s Terrestrial Megafauna.¹²¹

Principle 1 acknowledges the current population decline in megafauna populations, accounting for both global and local extinctions, with Principle 2 underscoring that adhering to the status quo will fail to avert extinction.¹²² At their time of writing, the authors calculated that 59% of the world's largest carnivores (more than or equal to 15 kilograms, $n=27$) and 60% of the world's largest herbivores (more than or equal to 100 kilograms, $n=74$) were classified as threatened with extinction on the International Union for the Conservation of Nature Red List.¹²³ The authors explained that megafauna species are generally more vulnerable to threats posed by habitat loss, persecution and exploitation (including poaching and overhunting), or human-wildlife conflict to protect local livelihoods (including measures taken to minimize actual or perceived threats to humans, crops, and/or livestock).¹²⁴ Together with slow life-history traits and the need for lower densities for larger mammals,¹²⁵ the impacts of removing even a small number of a species from a habitat can reap significant consequences.

While the Declaration ends with an affirmation of 'an abiding moral obligation to protect the Earth's megafauna', the language employed throughout dominantly evokes that of instrumental value, for example in favouring reference to the existence value of species in Principle 10 rather than intrinsic value. Cultural value is alluded to in Principle 2 (wherein megafauna symbolically represent the public's engagement with nature) and Principle 1 (though the use of the descriptor 'iconic'). Principles 3 and 4 operate to underscore the ecosystem services provided by megafauna. The authors account for the direct and indirect impact megafauna have as ecological engineers, stressing their effects on ecosystem processes and other species in the food web which may negatively impact 'ecosystem function; biological diversity; and the ecological, economic, and social services that these species provide'. For example, white rhinoceroses maintain short grass patches in mesic areas which enables the growth of other species, enabling other herbivores such as impalas, wildebeests, and zebra to access increased browse. This maintenance of vegetation also alters the frequency, intensity and spatial distribution of fires.¹²⁶

¹²¹ Ibid.

¹²² Ibid 807.

¹²³ Ibid.

¹²⁴ Ibid. See also William J Ripple et al, 'Collapse of the world's largest herbivores' (2015) 1(4) *Science Advances* DOI: 10.1126/sciadv.1400103; William J Ripple et al, 'Status and Ecological Effects of the World's Largest Carnivores' (2014) 343(6167) *Science* DOI: 10.1126/science.12414.

¹²⁵ Ripple et al (n 8); William J Ripple et al, 'Collapse of the world's largest herbivores' (2015) 1(4) *Science Advances* DOI: 10.1126/sciadv.1400103; William J Ripple et al, 'Status and Ecological Effects of the World's Largest Carnivores' (2014) 343(6167) *Science* DOI: 10.1126/science.12414.

¹²⁶ William J Ripple et al, 'Collapse of the world's largest herbivores' (2015) 1(4) *Science Advances* DOI: 10.1126/sciadv.1400103. See also Joris PGM Cromsigt and Mariska te Beest, 'Restoration of a megaherbivore: Landscape-level impacts of white rhinoceros in Kruger National Park, South Africa' (2014) 102(3) *Journal of Ecology* 566.

By comparison, greater one-horned rhinoceros move large tree seeds from forest canopies to grasslands, generally with successful germination and recruitment, playing a vital role in seed dispersal.¹²⁷ In addition to their role as ecological engineers, the ongoing existence of rhinos in national parks and reserves benefits local livelihoods and economic wellbeing of national economies through ecotourism. Outside tourism and hospitality, the likes of rangers, private security and researchers rely on these species for continuing employment.

As well as identifying specific industries reliant on the survival of terrestrial megafauna, and consistent with an understanding of the human aspect of conservation, the Declaration acknowledges a range of actors and institutions in the enterprise. These include, expressly, ‘individuals, governments, corporations and nongovernment organisations’ in Principle 7, alongside repeated reference to the need for international coordination in Principles 11, 9, and 8. Developing countries are referred to in Principles 5 and 6 as sites where conservation efforts ought to be targeted. The greatest diversity of extant megafauna exists in areas of sub-Saharan Africa and Southeast Asia, with particular emphasis on integrating human development and conservation strategies supported by local communities. Principle 10 explains that it is largely local people who bear the economic burden of living with wildlife.

In its totality, the Declaration offers an evidence-based, problem-oriented, representative, and context-informed guide for the purposes of this thesis.

III CONCLUSION

In *Ruling Passions*, Blackburn writes that ‘words are contested because they illustrate attitudes, and have other consequences, and these can rightly cause concern. Many terms in a language combine a descriptive and evaluative element, and their application is contested as a matter of ethics’.¹²⁸ No truer statement could explain the basis for contention in defining ‘conservation’.

This Chapter sought to canvass scholarly responses to the fundamental question of ‘what is conservation?’; and, in doing so, derive some of the key values and approaches in the literature. The position adopted in this thesis is that it is more accurate and desirable to consider

¹²⁷ William J Ripple et al, ‘Collapse of the world’s largest herbivores’ (2015) 1(4) *Science Advances* DOI: 10.1126/sciadv.1400103; Joris PGM Cromsigt and Mariska te Beest, ‘Restoration of a megaherbivore: Landscape-level impacts of white rhinoceros in Kruger National Park, South Africa’ (2014) 102(3) *Journal of Ecology* 566. See also Eric Dinerstein, ‘Effects of Rhinoceros Unicornis on Riverine Forest Structure in Lowland Nepal’ (1992) 73(2) *Ecology* 701.

¹²⁸ Blackburn (n 29) 15.

conservation a marketplace of ideas, rather than reduce it to a single conception. Conservation is ultimately a representation of the human-nature relationship, which when applied through action is an expression of both ecological and ethical inputs. The justifications for conservation, articulated across a range of values, are numerous and have evolved over time in a growing body of critical literature. In its most basic form, conservation has been (and will continue to be) a label that resonates with those identifying with the natural cause, regardless of the bases for their reasons.¹²⁹ A relevant question for conservation practitioners engaged in law and policy drafting, implementation, and reform at any level – from local to international – then becomes how conservation is expressed in the legal instruments that govern aspects of the human-nature relationship. This line of inquiry is taken up in Chapter IV's analysis of international wildlife conservation law.

Within the present context of mass extinction, and particularly that of terrestrial megafauna (including rhinoceroses), the 'Declaration to Save the World's Terrestrial Megafauna' offers an example of an appropriate problem-oriented schema, representing a range of valuers and values to support species conservation, and serves as a solid conceptual foundation for the core concept of 'conservation' for this research. This schema will be explicitly employed in Chapter VI's analysis of this thesis' case study, ie CITES' treatment of rhino horn trafficking. Of equal import, the questions forming of the core line of inquiry in this Chapter (*Conservation by whom? Of what? Evoking what value(s)? And, actioned through what approaches?*) are revisited throughout the thesis in distilling down scope as well as deliberating on consistencies and clashes of values and approaches between actors as they pertain to species conservation more broadly, and rhino conservation specifically. As illuminated in this Chapter, responses to contemporary conservation challenges may be influenced by a range of disciplinary inputs, and so the following Chapter provides a multidisciplinary examination of the illicit trade in rhinoceros horn inclusive of its historical and cultural roots, as formative to the more current legal analysis in the balance of the thesis.

¹²⁹ Sandbrook (n 7) 566.

CHAPTER III: IMPROVING CONSERVATION OUTCOMES: UNDERSTANDING SCIENTIFIC, HISTORICAL AND CULTURAL
DIMENSIONS OF THE ILLICIT TRADE IN RHINOCEROS HORN

Situating the current exploitation of wild resources within the broader context of the Holocene mass extinction, Chapter III was published as a featured article in *Environment and History* in 2018.¹ The article provides a multidisciplinary analysis of the scientific, historical, and cultural dimensions of the illegal trade in rhino horn, fleshing out a more complete and nuanced understanding of the case study commodity. An exhaustive approach to profiling the commodity was favoured as the value of many wildlife products does not hinge on a one-dimensional dollar amount. As foreshadowed in Chapter I, the value of wildlife products is inextricably linked to the historical significance of the commodity and its animal of origin, including associated cultural practices and lore. To achieve better conservation outcomes, this Chapter reinforces the need for conservationists and the regimes in which they operate to recognise and respond to both legal and illegal aspects of trade. This requires cross-cultural understanding and, in the case of rhino horn trade, drawing upon multidisciplinary sources from ancient and modern history, evolutionary biology, species ecology, cultural anthropology, biomedicine, and biomaterial engineering.

Chapter III applies this approach in three parts. Part I clarifies the subject matter by providing an overview of rhinoceros taxonomy. It outlines the evolutionary history of the taxonomic family *Rhinocerotidae* and profiles each of the five extant species, including population statistics and threats. Part II draws together literary accounts of the rhinoceros to demonstrate the longitudinal human fascination with the animal and its horn, canvassing western and non-western accounts. Lastly, Part III undertakes a closer examination of the rhinoceros horn by investigating its morphology, and links this analysis to historical and current uses across eastern and western cultures.

Chapter III provides an in-depth profile of the problem posed to those lawmakers who seek to respond to the illegal trade in rhinoceros horn. In doing so, it sets the scene for the doctrinal

¹ Zara Jean Bending, *Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn* (2018) 24 *Environment and History* 149. During peer review, the article was recommended for publication, described as 'a welcoming breakthrough in the field of environmental studies' noting the author's success 'in combining various disciplines through cross-cultural and multi-disciplinary approaches' and further that 'the history of rhinoceros from a multidiscipline methodology and approach, and the author's painstaking narration of global/international dimension concerning the rhinoceros discussed in this article is by no means a simple feat'. In the journal issue's editorial, editors noted that 'Bending makes a persuasive argument here for the importance of cultural practices and historical stories in understanding the global animal commodity trade.'

analysis in Chapter IV of the evolution of international wildlife conservation law from which *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention')² emerged and is formative to the critique of the Convention's response in the remaining Chapters.

Chapter III emphasises that trade in species is not a new phenomenon, and how its extensive history presents a double-edged sword: providing an opportunity to design strategies informed by a wealth of historical data to extrapolate market trends and evaluate the effectiveness of past counter-measures; and also driving home the stark reality that many practices associated with wildlife commodities derive from longstanding customs, which may be too culturally entrenched to address in the brief window of extinction mitigation. This Chapter illustrates how the history between humans and rhinos is so deeply enmeshed that the international market in its horn has persisted decades after the 1977 CITES ban. Even if a decrease in horn use were to occur across any number of states, the danger would always remain that its use could return *in vogue* and initiate the next great extinction of the rhinoceros, assuming it survives the current poaching crisis.

Since publication of the article, conservation projects and events such as the COVID-19 pandemic have impacted efforts on the ground. Many of the individual rhino named have since passed away. The International Union for Conservation of Nature ('IUCN') Red List status for each of the five rhino species remains the same as at the time of publication; however, to maintain currency, population statistics and trends are provided below. These estimates are drawn from the International Rhino Foundation's 2022 *State of the Rhino Report*³ and the joint report of the IUCN Species Survival Commission ('SSC') African and Asian Rhino Specialist Groups and TRAFFIC, commissioned CITES Secretariat for CoP19⁴ in accordance with Resolution Conf. 9.14 (Rev. CoP17).⁵ The updated figures presented below do not invalidate or vary the findings of the article as published and serve to further underscore the persistence of threats to all five species of rhino while stressing the need for evidence-based conservation strategies appropriate for each,

² *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

³ International Rhino Foundation, '2022 State of the Rhino Report' (August 2022) <<https://rhinos.org/wp-content/uploads/2022/09/IRF-State-of-the-Rhino-2022.pdf>>.

⁴ IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC, 'African and Asian Rhinoceroses – Status, Conservation and Trade' as contained in *Report of the CITES Secretariat and Standing Committee*, CoP19 Doc.75 (Rev. 1) Annex 4.

⁵ *Conservation of and trade in African and Asian rhinoceroses*, CITES Resolution Conf. 9.14 (Rev. CoP17). The resolution was subsequently revised at CoP19. See *Conservation of and trade in African and Asian rhinoceroses*, CITES Resolution Conf. 9.14 (Rev. CoP19).

supported by a legal framework to counter wildlife crime. For clarity, the species profiles below specifically update those between pages 153 and 157 of the publication.

I BLACK RHINOCEROS STATUS

Rhino species	Population #	Population Trend	IUCN Red List Status
Black rhinoceros (<i>Diceros bicornis</i>)	6,195	Increasing	Critically Endangered

Table 1: Black Rhinoceros Status.

Note: After an absence spanning almost thirty years, a black rhino population was reintroduced to Gonarezhou National Park, Zimbabwe (29 individuals translocated from Bubye Valley Conservancy, Malilangwe Wildlife Reserve, and Save Valley Conservancy). The species has benefitted from anti-poaching strategies and translocations to safer areas. Nevertheless, poaching remains the greatest threat. The current population has seen an increase from the 2,300 animals in 1993 (down from 65,000 in 1970). There was an estimated 12% growth between 2017 and present estimates.

II WHITE RHINOCEROS STATUS

Rhino species	Population #	Population Trend	IUCN Red List Status
White rhinoceros (<i>Ceratotherium simum</i>)	15,942	Decreasing	Near Threatened

Table 2: White Rhinoceros Status.

Note: Northern white subspecies was declared extinct in the wild in 2018. Reproductive technology has shown promise using eggs harvested from the two remaining northern white rhino (females Najin and Fatu at the Ol Pejeta Reserve in Kenya) and frozen semen samples from deceased males.

Efforts to distribute white rhino across the African continent have seen South African stock moved to Rwanda (Akagera National Park, November 2021) and Mozambique (Zinave National Park, June-July 2022). The transfer of 30 white rhino to Rwanda was the largest single rhino translocation to date and represents an introduction (rather than reintroduction) of the species

to effectively expand its number of range states. The transfer of 19 white rhino to Mozambique was the longest road transfer of rhinos ever conducted and represented the park’s first white rhino in 40 years following decades of civil war and ensuing poaching.

White rhinoceros have been the hardest hit by poaching mortalities in the current megafauna poaching crisis, declining by approximately 12% in the last four years from an estimated 18,067 to fewer than 16,000.

III GREATER ONE-HORNED RHINOCEROS STATUS

Rhino species	Population #	Population Trend	IUCN Red List Status
Greater one -horned rhinoceros (<i>Rhinoceros unicornis</i>)	4,014	Increasing	Vulnerable

Table 3: Greater One-Horned Rhinoceros Status.

Note: The increase can be attributed to the governments of India and Nepal preventing poaching and creating habitat. Assam’s population (the largest greater one-horned rhino population in India) benefited from several years of poaching declines. Translocations are occurring to provide rhinos more room to breed.

IV JAVAN RHINOCEROS STATUS

Rhino species	Population #	Population Trend	IUCN Red List Status
Javan rhinoceros (<i>Rhinoceros sondaicus</i>)	78	Stable	Critically Endangered

Table 4: Javan Rhinoceros Status.⁶

⁶ An estimate of 76 individuals in the 2022 ‘State of the Rhino Report’ and IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC, ‘African and Asian Rhinoceroses – Status, Conservation and Trade’ as contained in Annex 4 of Report of the CITES Secretariat and Standing Committee, CoP19 Doc.75 (Rev. 1) was updated by two new calves reported subsequently by Indonesia’s Ministry of Environment and Forestry. See International Rhino Foundation, ‘Great News From Java to Close Out 2022’ (Web Page) <<https://rhinos.org/blog/great-news-from-java-to-close-out-2022/>>.

Note: The only remaining population continues to be in Ujung Kulon National Park, Indonesia. New births are offsetting deaths with at least one new calf born each year since 2012. Ten years ago, there were fewer than 50 Javan rhino.

V SUMATRAN RHINOCEROS STATUS

Rhino species	Population #	Population Trend	IUCN Red List Status
Sumatran rhinoceros (<i>Dicerorhinus sumatratrensis</i>)	< 80, likely 34-47	Decreasing	Critically Endangered

Table 5: Sumatran Rhinoceros Status.⁷

Note: A female calf was born to Andatu and Rosa on March 24, 2022 at the Sumatran Rhino Sanctuary. The last two Sumatran rhino in Malaysia died in 2019 (Iman, November 2019; Tam, May 2019). The population demonstrated a decline of 13% per year between 2017-2021.⁸

⁷ See IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Groups and TRAFFIC, 'African and Asian Rhinoceroses – Status, Conservation and Trade' as contained in Annex 4 of Report of the CITES Secretariat and Standing Committee, CoP19 Doc.75 (Rev. 1).

⁸ Ibid.

Pages 92-129 of this thesis have been removed as they contain published material. Please refer to the following citation for details of the article contained in these pages.

Bending, Z. J. (2018). Improving conservation outcomes: understanding scientific, historical and cultural dimensions of the illicit trade in rhinoceros horn. *Environment and History*, 24(2), 149-186. <https://doi.org/10.3197/096734018X15137949591891>

VII Conclusion

Chapter III has provided an interdisciplinary analysis of the history of rhino horn trade inclusive of cultural significance and practices. In doing so it sets the scene for the legal analysis of how international law, and more specifically CITES, has contended with rhino horn trafficking. As Chapter IV will illuminate, what makes wildlife conservation such a complex subject is that natural resources, the environment, and ecosystem services tend not to sit conveniently within territorial borders and are, as Crawford posits 'at the same time shared and partitioned, indivisible and divided'.⁹ By the same token, wildlife do not inhabit areas partitioned by ethnicity, religion, or extent of cultural practice. How should public international law seek to regulate access or use of wild species not wholly within a state's territory or even to restrict a state's use of species within their borders?

What Chapter III has borne out is the complexity of species extinction, in particular understanding the impact of patterns of human consumption. Preoccupation with orientalist stereotypes of eastern markets using rhino horn for sexual enhancement (a myth originally propagated by the West) continues to be an undercurrent of more practical discussions around traditional medicine and trophy hunting (as will be discussed further in Chapters V and VI). Taken together with how conspicuous consumption and the procurement of horn has become a sign of economic and social capital as well as how trade was affected by the COVID-19 pandemic (also to be discussed in Chapter VI), it is evident that there is a need for ongoing, multifaceted, and intercultural research to better understand trade dynamics. Indeed, it appears the motivations for consumption may intersect such as horn being consumed as a treatment for consumers with the status to afford it. At the time the article housed in this Chapter was written, one could have referred to President Nguyen Minh Triet's alleged use of rhino horn alongside modern treatment to treat prostate cancer.¹⁰ Writing from present day April 2024, it appears that South Africa intends to meet demand from such patrons by permitting medical tourists to use rhino horn powder within its borders as part of its thriving medical tourism sector.¹¹

As Chapter II explored, conservation values and approaches can form the basis of protracted debates on the legitimacy of decision-making. As Chapter III has raised, and Chapter VI will continue, there are fundamental legal questions concerning how, when, how, and why rhino

⁹ James Crawford, *Brownlie's Principles of International Public Law* (Oxford University Press, 9th ed, 2019) 317.

¹⁰ Annette Michaela Hübschle, 'A Game of Horns: Transnational Flows of Rhino Horn' (PhD Thesis, University of Cologne, 2016) 167.

¹¹ David Pilling, 'S Africa proposes 'innovative' medical tourism plan allowing use of rhino horn', *Financial Times* (online, 6 April 2024) <<https://www.ft.com/content/8cc47694-e71f-40c3-b3ed-3c5e2d8766a9>>.

horn products may be traded, and by whom. An uneasy question arises, however, when considering whether organs of public international law rooted administratively and historically developed by the Global North ought to proscribe uses of natural resources occurring in biodiverse regions that predominate the Global South. How does a Convention navigate scientific thresholds of precaution as recognised in international law while respecting local cultures and attitudes including those raised in this Chapter? The SADC has long held a position of ‘use it or lose it’ in relation to its natural resources aimed to promote sustainable use as part of broader sustainable development initiatives. How does this align with the CITES ban, and was the ban even effective? As will be examined in Chapter VI, the ban only worked where demand decreased and specifically in consumer states where local communities and authorities supported its implementation and enforcement. The international pressure and campaigning that saw the ban installed also played a major role in its early success, however, was not enough to ward off new demand in new markets that eventually overwhelmed existing enforcement capacity.¹²

Forecasting forward into the remainder of the thesis, Chapter III has emphasised that rhino horn trade is complex, resilient, and deeply rooted in the enduring significance of the rhino-human relationship going back some tens of thousands of years. It positions the task of international law and CITES specifically in seeking to regulate it as one of mammoth (if not woolly rhinoceros) proportions. With IWT now receiving political and scholarly attention as an issue of transnational organised crime, it is perhaps time to reflect on and reconsider CITES’ role moving forward as one cannot simply ‘retro-fit-for-purpose’ given established rules on the construction and interpretation of treaties as will be explored and applied.

¹² Vanda Felbab-Brown, *The Extinction Market: Wildlife Trafficking and How to Counter It* (Oxford University Press, 2017) 109; Lucy Vigne, ‘The rhino horn and ivory trade: 1980-2020’ (PhD Thesis, Oxford Brookes University, 2020) 33.

'International wildlife law' has evolved within the broader framework of international environmental law but has only recently received treatment as its own subdiscipline in tandem with the development of a recognisable body of instruments applying to wildlife as their central legal subject. The five central pillars of international wildlife law comprise: the *Convention on the Conservation of Wetlands of International Importance especially as Waterfowl Habitat* (ie the 'Ramsar Convention');¹ the *Convention for the Protection of the World Cultural and Natural Heritage* (or simply, the 'World Heritage Convention');² the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention');³ *Conservation of Migratory Species of Wild Animals* (ie 'CMS' or 'Bonn Convention');⁴ and the *United Nations Convention on Biological Diversity* ('CBD').⁵ As coined by Trouwborst et al, these instruments are referred to as the 'Big Five',⁶ which has a dual meaning in wildlife conservation circles as it also refers to the 'big five' game animals of Africa (lion, leopard, rhino, buffalo, and elephant). Given the centrality of conservation to this body of international wildlife law, this thesis will go one step further and adopt the nomenclature of 'international wildlife conservation law' in describing its development.

This Chapter plots the development of international wildlife conservation law, tracing the emergence of key agreements and the influence of seminal actors in drafting, negotiating, and lobbying for new legal frameworks. To that end, this Chapter performs two pertinent lines of inquiry. Firstly, it situates and explains the origins of CITES, which is the primary instrument examined in this thesis due to its role in governing international wildlife trade. Secondly, it examines how sustainable development and more recent express references to 'sustainable use' of natural resources have emerged as core considerations in framing wildlife conservation in the implementation of international law and policy. This analysis sets the scene for a more expansive

¹ *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975) ('Ramsar Convention').

² *Convention for the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 9 March 1977) ('World Heritage Convention').

³ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

⁴ *Convention on the Conservation of Migratory Species of Wild Animals*, opened for signature 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983) ('CMS').

⁵ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 69 (entered into force 29 December 1993) ('CBD').

⁶ Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784.

analysis of these themes, specifically in relation to the purposes and operation of CITES in Chapter V.

While this Chapter applies a largely conventional doctrinal methodology, it inevitably draws upon broader perspectives informed by scientific expertise to contextualise the emergence of key concepts and rise of non-state actors in coordinating an approach to international species conservation. The field of international relations thus provides an interdisciplinary input into the legal analysis.⁷ Moreover, drawing upon Chapter II's definitional treatment of conservation, this Chapter identifies where certain conservation values have influenced an ever-growing list of valuers and values that are recognised and legitimised within the international legal framework, most notably where the presence of intrinsic value is contrasted with the predominant reference to instrumental value.

I THE RISE OF WILDLIFE CONSERVATION AS A SUBJECT IN PUBLIC INTERNATIONAL LAW

Wildlife conservation has emerged as a distinct subject in public international law, predominantly within the body of MEAs regulating humankind's utilisation of natural resources. As Crawford opined:

the world's resources and environment are at the same time shared and partitioned, indivisible and divided. A world of sovereigns creates the greatest collective action problem in history: international law is both the product of this world and one of the few tools at our disposal for addressing the problem.⁸

The challenge of species conservation is implicit within Crawford's position: wild species and the ecosystem services they deliver do not sit neatly within territorial borders, requiring that laws operate to regulate the protection and use of specimens of a species, as well as which purposes of use are deemed legitimate. Questions arise regarding state sovereignty and the extent to which states consent to be bound by standards of international wildlife conservation law. This body of law seeks not only to regulate access to wildlife as natural resources not wholly located within a state's territory (for example, migratory species); but to govern, or even limit, states in their use of species whose range states may sit wholly or chiefly within their borders. The aspect of regulating or seeking to control the use of wildlife within national borders relates to broader critiques of public international law, notably Third World Approaches to International Law

⁷ Steven R Ratner and Anne-Marie Slaughter, 'Appraising the Methods of International Law' (1999) 93(2) *American Journal of International Law* 291.

⁸ James Crawford, *Brownlie's Principles of International Public Law* (Oxford University Press, 9th ed, 2019) 317.

(‘TWAIL’).⁹ Through this lens, the Global South may see its rights to develop (using its natural resources) at odds with Eurocentric institutions, instruments, and actors within international law-making largely instigated by state actors and NGOs from the Global North. This critique is relevant to the specific context of species conservation as the majority of 36 species-rich biodiversity hotspots¹⁰ are located within the Global South.¹¹ This thesis’s case study on CITES’ treatment rhinoceros horn trade in Chapter VI will demonstrate this tension in action. While a full analysis of CITES adopting TWAIL theories and methodologies is outside the scope of this thesis, it presents a much-needed line of inquiry for future research. Further, it is noted that while the term ‘Third World’ is outdated and has lost relevance post-Cold War, the term is still used by scholars and publications in the context of discussing TWAIL.

As a branch of public international law, international wildlife conservation law is no exception in its reliance on ‘voluntarist devices’ in the form of treaties, agreements, international agencies and organizations; and these may, and frequently will, conflict with the immediate interests of any one of its parties.¹² A narrower question, while albeit outside the scope of this thesis, further articulates the complexity of species conservation as a problem of international law. This

⁹ See, eg, Makau Mutua and Antony Anghie, ‘What is TWAIL?’ (2000) 94 *American Society of International Law* 31; As at 2022, the Third World Approaches to International Law Review has established itself, now in its third issue: *TWAILR – Third World Approaches to International Law Review* (Web Page) <<https://twailr.com/>>.

¹⁰ What classifies as a biodiversity hotspot comes down to a two-prong test considering both species endemism and degree of threat. The region must have at least 1500 vascular plants as endemics, and it must have 30% of its original natural vegetation. The shorthand for these criteria is often expressed as the region needing to be ‘irreplaceable’ and ‘threatened’. A 2011 analysis of the then 35 biodiversity hotspots (a 36th was added in 2016) found that these regions once covered 15.9% of the planet’s land surface but due to habitat destruction over the past century reduced to just 2.3% of Earth’s land area. These areas were found to host 77% of the world’s terrestrial vertebrates, with 43% found exclusively in biodiversity hotspots. Over 50% of the planet’s plant species were found to be single-hotspot endemics, with other species likely to be endemic to a combination of hotspots. Further, cross-referencing to the IUCN Red List of Threatened Species 2008, 60% of threatened mammals, 63% of threatened birds, and 79% of threatened amphibians were found exclusively in hotspots. It is worth noting that the current 36 qualifying regions are home to 2 billion people. See, eg, Russel A Mittermeier et al, Global Biodiversity Conservation: The Critical Role of Hotspots’ in Frank E Zachos and Jan Christian Habel (eds), *Biodiversity Hotspots* (Springer, 2011) 3-22; Kristen Jennifer Williams et al, ‘Forests of East Australia: The 35th Biodiversity Hotspot’ in Frank E Zachos and Jan Christian Habel (eds), *Biodiversity Hotspots* (Springer, 2011) 295-310; Aleš Hrdina and Dušan Romportl, ‘Evaluating Global Biodiversity Hotspots – Very Rich and Even More Endangered’ (2017) 10(1) *Journal of Landscape Ecology* 108. Biodiversity hotspot designation traces back to Myers et al in 1988. See, eg, Norman Myers, ‘Threatened biotas: “Hot spots” in tropical forests’ (1988) 8 *Environmentalist* 187; Norman Myers, ‘The biodiversity challenge: Expanded hot-spots analysis’ (1990) 10 *Environmentalist* 243; Norman Myers et al, ‘Biodiversity hotspots for conservation priorities’ (2000) 403 *Nature* 853.

For an overview see, eg, Christian Marchese, ‘Biodiversity hotspots: A shortcut for a more complicated concepts’ (2015) 3 *Global Ecology and Conservation* 297.

¹¹ This finding is supported in cross referencing the list of Global South countries identified in the United Nations’ Finance Center for South-South Cooperation (see, ‘Global South Countries (Group of 88 and China)’, *Finance Center for South-South Cooperation* (Web Page, 2015) <http://www.fc-sc.org/en/partnership_program/south_south_countries>) and the map provided in Figure 2 in the Supplementary Materials of Jan C Habel et al, ‘Final countdown for biodiversity hotspots’ (2019) 12(6) *Conservation Letters* <<https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/conl.12668>>.

¹² Crawford (n 8).

nanced question would be concerned with whether the position that biodiversity conservation 'is a common concern of humankind' is in any way analogous to the concept of *res communis* as applied under laws governing outer space, the high seas, oceans, and the atmosphere. Irrespective of the avenue of inquiry sought, however, the fundamental question promulgated by international wildlife conservation law concerns the regulation of humankind's relationship with wildlife as natural resources for parties to a body of instruments, whether treated as commodities traded in themselves (in whole, part, or derivative) or as the linchpin for industries such as ecotourism.

The use of legal frameworks towards the aim of wildlife conservation is not new; however, literature on the specific subject in international law arose relatively recently. Bowman, Davies and Redgwell trace specific national legislation to protect wildlife and the environment to antiquity, citing laws governing forest conservation in Babylon in 1900BCE and establishing nature reserves in Egypt in 1370BCE.¹³ The first moves towards a MEA came as recently as 1900, albeit unsuccessfully.¹⁴ While the 1970s saw the publication of a series of works that drove the environmental movement, the first international environmental law treatises were published in 1989, 1992 and 1994 by Kiss,¹⁵ Birnie and Boyle,¹⁶ and Sands and Peel¹⁷ respectively.¹⁸ A focus on 'international wildlife law' came later still, with works such as *Lyster's International Wildlife Law* published in first edition in 2010, and Trouwborst et al's paper entitled *International Wildlife Law: Understanding and Enhancing Its Role in Conservation in Bioscience* in 2017.¹⁹

Existing chronologies relevant to plotting out the development of international wildlife conservation law approach the same series of milestones in the broader scope of international environmental law with a particular focal point or theme. These include: examining how geopolitical forces influenced the creation of international legal institutions, such as the United Nations, and corresponding effects on the capacity for states to conceive and attack the international conservation agenda; focusing on the emergence of sustainable development and dynamics between Global North and Global South; or some combination of both. An example of

¹³ Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 3.

¹⁴ Fenneke Sysling, 'Protecting the Primitive Natives': Indigenous People as Endangered Species in the Early Nature Protection Movement, 1900-1940' (2016) 21(3) *Environment and History* 381.

¹⁵ Alexandre Kiss, *Droit international de l'environnement* (Pedone, 1989).

¹⁶ Patricia W Birnie and Alan E Boyle, *International Law and the Environment* (Clarendon Press, 1992).

¹⁷ Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (Cambridge University Press, 1st ed, 1994).

¹⁸ Philippe Sands et al, *Principles of International Environmental Law* (Cambridge University Press, 3rd ed, 2012) 16-17.

¹⁹ Trouwborst et al (n 6).

the first approach can be identified in Bowman, Davies and Redgwell's chronology covering early developments around water resources to the outbreak of the First World War, the interwar period, the immediate aftermath of the Second World War and the 'age of environmental awareness'.²⁰ An example of the second approach is most evident in Hunter, Salzman and Zaelke's analysis, which is constructed around three landmark conferences: the 1972 *United Nations Conference on the Human Environment* (also known as the 'Stockholm Conference'); the 1992 *United Nations Conference on Environment and Development* (referred to variously as the 'Rio Conference', the 'Earth Summit', or abbreviated as 'UNCED'); and the 2002 *World Summit on Sustainable Development* ('WSSD' or the 'Johannesburg Summit').²¹ An example of the third hybrid approach is Sands and Peel's chronology, which encapsulates a similar longitudinal timeline to Bowman, Davies and Redgwell, but delineates between four respective periods organised largely around the same seminal instruments examined by Hunter, Salzman and Zaelke. Accordingly, Sands and Peel's distinct phases of development international environmental governance are as follows:

- I. from the nineteenth century bilateral fisheries treaties to the establishment of the United Nations in 1945;
- II. from the creation of the United Nations to the Stockholm Conference;
- III. from the Stockholm Conference to the Rio Conference; and
- IV. from the Rio Conference to the present day.²²

Not dissimilarly, in the *Oxford Handbook of International Environmental Law*, Sand observes that most descriptions of historical evolution of the multilateral environmental regime refer to three or four phases: the traditional era preceding the Stockholm Conference,²³ the modern era from the Stockholm Conference to the Rio Conference; and the post-modern era after the Rio Conference.²⁴ Sand notes that the traditional period is sometimes sub-divided into a pre-1945 and post-1945 phase.

Five general observations can be deduced from a review of these chronologies and sources cited therein. Firstly, while the critical mass of international environmental law in which international

²⁰ Bowman, Davies and Redgwell (n 13) Chapter 1.

²¹ David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law and Policy* (Foundation Press, 3rd ed, 2007) 162.

²² Sands et al (n 18) Chapter 2.

²³ Peter H Sand, 'The Evolution of International Environmental Law' in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2008) 30.

²⁴ *Ibid.*

wildlife conservation law sits constitutes 'those substantive, procedural and institutional rules of international law that have as their primary objective the protection of the environment'.²⁵ The nature of that protection has transformed incrementally as different perspectives continue to inform notions of what constitutes 'the environment' itself.²⁶ Secondly, the body of instruments and key principles underpinning international wildlife conservation law have, by and large, developed in reactive fashion in response to specific crises or events rather than pre-empting harm. Thirdly, these developments have generally crystallised where the political will of governments have been roused by non-state actors; although, Sands and Peel note that this too requires a corresponding international institution as a forum in which to negotiate appropriate action.²⁷ Fourthly, advancements in international wildlife conservation law, as with international environmental law more broadly, are inextricably linked to progress in science and technology, given that political responses have required evidence of the existence and extent of environmental damage in constructing cases for reform. Lastly, by way of content and structure, Tully, Lewis and Quirico²⁸ observe that, within this body of international law, multilateral environment agreements employing convention-annex or convention-protocol frameworks have been favoured to adapt more readily to technological advancement and respond to the availability of evidence, be it of a challenge requiring the attention of the parties or improvement in the status quo resulting from state action. In general terms, international environmental treaty regimes typically include an administrative secretariat, specialised bodies and periodic Conferences of the Parties ('CoPs') to facilitate the development, clarification and adoption of subsidiary rules.²⁹ Obligations arising bind states and private persons, contingent upon reservations made and the ratification of such obligations at the domestic level. It must be noted, however, that decisions and action plans of CoPs provide examples of soft law which, while non-binding, are nonetheless important sources of international environmental law insofar as they offer 'normative content and help to shape the expectations of the international community'.³⁰

²⁵ Sands et al (n 18) 13.

²⁶ Ibid. Sands et al describe these 'inputs' as including philosophical, religious, scientific (particularly ecological) and economic assessments.

²⁷ Ibid 23.

²⁸ Stephen Tully, Bridget Lewis and Ottavio Quirico, *International Law* (LexisNexis Butterworths, 2015) 70.

²⁹ Ibid.

³⁰ Marc Pallemmaerts, 'An Introduction to the Sources, Principles and Regimes of International Environmental Law' in Tuomas Kuokkanen et al (eds), *International Environmental Law-making and Diplomacy – Insights and Overviews* (Routledge, 2017) 9.

Part II of this Chapter chronicles the development of international wildlife conservation law. While speaking to similar themes identified above, it adopts a different approach to delineating between epochs. Four stages are framed around the emergence of important features: Phase 1 – the genesis of multilateralism in international wildlife conservation law; Phase 2 – the establishment of supra-national science-based institutions and funding mechanisms; Phase 3 – the birth of the ‘Big Four’; and Phase 4 – the age of biodiversity and the ‘Big Five’.

A Phase 1– The genesis of multilateralism in international wildlife conservation law

The use of international legal instruments and dispute settlement for the purpose of conservation commenced from the final quarter of the nineteenth century. These were bilateral and regional agreements focused mainly on natural resources and specific species of wildlife (fisheries, birds, seals, and sea otters) in transboundary areas.³¹

Colonial expansion had roused Eurocentric interests in natural history, which made for stark contrasts between inhabited and uninhabited nature (ie notions of ‘natural states’ and ‘pristine nature’); although, one must remain mindful of the prevalence of western values in determining what constituted ‘uninhabited nature’ with respect to the existence of indigenous peoples in ‘wild’ spaces at this time.³² The works of the likes of Charles Darwin and the Comte de Buffon fuelled scientific discourse, promulgating the establishment of national societies and academies for the study of wildlife in the Western World.³³ These forums would critically continue in the traditions and methods of the natural sciences and natural history alike. This fascination with nature inevitably led to an increase in human encroachment and settlements into wild areas which, in turn, began to reap adverse environmental impacts. For example, the correlation between the drying up of water basins and deforestation was widely observed by the mid-

³¹ Sands et al (n 18) 23; Peter H Sand, ‘The Evolution of International Environmental Law’, in Daniel Bodansky, Jutta Brunnee and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2008) 31; Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster’s International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 4.

³² Bowman, Davies and Redgwell (n 13) 3; Philippe Sands et al, *Principles of International Environmental Law* (Cambridge University Press, 3rd ed, 2012) 23.

³³ Charles Darwin, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life* (John Murray, 1859); Georges Louis Leclerc et al, *Histoire naturelle, générale et particulière, avec la description du Cabinet du Roy* (Paris De L’Imprimerie royale, 1774).

For specific references to the Leclerc’s involvement in the natural and cultural history of the rhinoceros, see, Zara Bending, ‘Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn’ (2018) 24 *Environment and History* 149, 167.

eighteenth century.³⁴ In 1868, regulations were first adopted concerning the transport of inflammable, corrosive and poisonous substances along the Rhine; and in 1885, a convention was concluded for the regulation of fishing in that river.³⁵ In addition, the accidental introduction and subsequent incursion of the Mississippi native *Phylloxera vastatrix* unto Europe's winegrowing industry, destroying some 70 percent of European vineyard from the mid-1860s to mid-1880s, prompted the adoption of treaties in 1881 and 1889 to control the spread of plant pests and diseases.³⁶

The dispute that would prompt the emergence of multilateral environmental agreements in international wildlife conservation law arose between the United States and Great Britain (on behalf of Canada) regarding the over-exploitation of North-Pacific Fur Seals. The Bering Sea Arbitration of 1893 resolved in favour of Great Britain. As summarised by Sands and Peel, '[t]he award rejected the argument that states had the right to assert jurisdiction over natural resources outside their jurisdiction to ensure their conservation, and set forth regulations for the "proper protection and preservation" of fur seals outside jurisdictional limits'.³⁷ These regulations included limitations on timing, location and fishing technique, which are now commonplace considerations in sustainable fisheries management around the world. Despite machinations, the agreement allegedly did not necessarily fulfil its stated objective as mother seals refused to feed in the protected area.³⁸ Nonetheless, it paved the way for the *Convention between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals*. More commonly known as the *North Pacific Fur Seal Convention of 1911*, the instrument was the first multilateral international wildlife conservation treaty and prohibited pelagic sealing in the North Pacific Ocean.³⁹ The Convention, which also regulated the hunting of sea otters under Article V, is significant for its exemptions for indigenous peoples who employed traditional hunting methods, provided they were not under contract to deliver skins to third parties.⁴⁰ The

³⁴ Sands et al (n 18) 24.

³⁵ Bowman, Davies and Redgwell (n 13) 4.

³⁶ Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 4; Ed Couzens and Melissa Lewis, 'Learning from the Past: A Reflection on the Roles of People and Problems in the Development in International Environmental Law' in Tuomas Kuokkanen et al (eds), *International Environmental Law-making and Diplomacy* (Routledge, 2016) 97.

³⁷ Sands et al (n 18) 26.

³⁸ *The Encyclopedia Americana: A Library of Universal Knowledge* (The Encyclopedia Americana Corporation, 1920) vol 24.

³⁹ *Convention between the United States and other Powers providing for the preservation and protection of fur seals*, opened for signature 7 July 1911, 4 IPE 1638 (entered into force 15 December 1911) ('*Fur Seal Convention*'). The treaty was signed by the United States, Great Britain (also representing Canada), Japan and Russia. The United States was granted jurisdiction in managing onshore hunting over the relevant area in return for a guaranteed income to the other parties from pelts taken.

⁴⁰ *Ibid* art IV 'Aborigines exempt from prohibition'.

instrument set the tone for generations of MEAs bearing provisions governing species conservation and trade as integrated concerns.

Efforts towards a multilateral treaty on wildlife conservation, however, had been undertaken in earnest prior to the *North Pacific Fur Seal Convention of 1911*. In 1900, the main imperial powers occupying the African continent adopted 'the first regional conservation treaty of general scope'⁴¹ in the form of the *Convention for the Preservation of Wild Animals, Birds and Fish in Africa* (also known as the *London Convention of 1900*).⁴² The treaty was concluded on May 19th by France, Germany, the United Kingdom, Italy, Portugal, Spain and the Congo Free State. The Convention sought to regulate the exploitation of wildlife and encourage the creation of nature reserves; however, it never entered into force as the text required that all signatories ratify the agreement for this to occur.⁴³ The experiment ultimately failed for its piecemeal implementation among parties,⁴⁴ but was successful in forecasting a potential approach to prioritising conservation action as it included schedules grouping taxa by the commensurate level of protection. Accordingly, Schedule 1 provided an absolute prohibition on hunting or destruction with species selected for their perceived 'usefulness' or 'rarity and threatened extermination', which included secretary birds, wild asses, elands, giraffes, and chimpanzees. Schedules 2 and 3 offered prohibitions on hunting or destruction while young or mothering (and it is worth noting that rhinos fell into this category). Schedule 4 listed animals that may be hunted or destroyed in limited numbers (this included servals, aardvarks, and dugongs), Finally, Schedule 5 designated harmful animals desirable to be reduced in number 'within sufficient limits' (this included lions, otters, and leopards).⁴⁵ The *London Convention of 1900* further provided a blueprint for future conservation agreements in its promotion of nature reserves⁴⁶ (including for accommodating migratory species); establishment of closed seasons to 'facilitate the rearing of young';⁴⁷ use of government-issued permits;⁴⁸ and prohibitions on certain devices and techniques (eg prohibiting

⁴¹ Bowman, Davies and Redgwell (n 13) 5.

⁴² *Convention for the Preservation of Wild Animals, Birds and Fish in Africa*, signed 19 May 1900, 4 IPE 1607 (not yet in force) ('*London Convention of 1900*'), cited in Sands et al (n 18) 24.

⁴³ John MacDonald MacKenzie, *The Empire of Nature: Hunting, Conservation, and British Imperialism* (Manchester University Press, 1988) 202; IUCN, *An Introduction to the African Convention on the Conservation of Nature and Natural Resources – IUCN Environmental Policy and Law Paper No. 56* (Policy Paper, 2004) 3.

⁴⁴ Notably, the United Kingdom and Germany were most active in implementing the provisions of the Convention in their jurisdictions whereas the government of the Congo refused to introduce regulations until other powers ratified the Convention. See also John MacDonald MacKenzie, *The Empire of Nature: Hunting, Conservation, and British Imperialism* (Manchester University Press, 1988) 208.

⁴⁵ *London Convention of 1900* (n 42).

⁴⁶ *Ibid* art 11.5.

⁴⁷ *Ibid* art 11.6.

⁴⁸ *Ibid* art 11.7.

explosives and poisons for fishing⁴⁹ and restrictions on pitfalls and nets for hunting).⁵⁰ The *London Convention of 1900* also imposed export duties on certain hides and skins (from zebra, rhinos, antelopes, and hippos), hippopotamus tusks, and horns from antelope and rhinos as well as requiring confiscation of all elephant tusks under five kilograms unless it could be proven that the possession of the tusks pre-dated the Convention's entry into force.⁵¹

In analysing these instruments through the lens of conservation ethics (see Chapter II), early instruments were rooted in instrumental values of nature centred around the economic benefits of species as natural resources. The *North Pacific Fur Seal Convention of 1911* arose from a dispute concerning the exploitation of seals towards the commercial trade in seal pelts. The *London Convention of 1900* looked to protect species 'useful to man or inoffensive'.⁵² Another example, the *1902 Convention for the Protection of Birds Useful to Agriculture*, was clearly geared towards commercial interests. The *1902 Convention for the Protection of Birds Useful to Agriculture* had been brokered between the governments of Europe following lobbying by the agricultural industry to protect bird species who served the valuable function of insects and pest control, and in doing so preserve crop yield. The *1902 Convention for the Protection of Birds Useful to Agriculture* as adopted varied significantly from an earlier draft from 1895 which more recent commentary has found provided greater protection for species and attracted support from a wider range of actors including politicians, technicians, ornithologists and naturalists.⁵³ Herein, international wildlife conservation law ultimately sees its origins rooted in anthropocentric Eurocentric instrumental valuations of nature defined by utility.⁵⁴ The legacy of these origins, as this thesis contends, is present in the contemporary status of sustainable use as a driving consideration in the regulation of wildlife trade.

⁴⁹ Ibid art 11.9.

⁵⁰ Ibid art 11.8. See also M André Rabie, 'Wildlife conservation and the law' (1973) 6(2) *The Comparative and International Law Journal of Southern Africa* 145, 192-193.

⁵¹ *London Convention of 1900* (n 42) art 11.11. See also Ed Couzens, 'CITES at Forty: Never Too Late to Make Lifestyle Changes' (2013) 22(3) *Review of European, Comparative & International Environmental Law* 311, 313.

⁵² Bowman, Davies and Redgwell (n 13) 5.

⁵³ Juan José Ferrero Garcia, 'The International Convention for the Protection of Birds (1902): A missed opportunity for wildlife conservation?' (2013) 60(2) *Ardeola* 385.

⁵⁴ Ibid.

B Phase 2 – The establishment of supra-national science-based institutions and funding mechanisms

The second phase of international wildlife conservation law may be characterised as driven by the need for supra-national forums and mechanisms to centralise data and expertise to inform legal frameworks. This development was significant as it paved the way for the involvement of non-state actors as a key feature of this body of law, as well as the multidisciplinary expertise required.

An early attempt to gather and disseminate information on international conservation matters was disrupted by World War I. In 1913, the *Act of Foundations of a Consultative Commission for International Protection of Nature*⁵⁵ was signed by Argentina, Austria-Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Norway, Portugal, Russia, Spain, Sweden, Switzerland, and the United States. Continuing its pre-war avian focus, international wildlife conservation law saw a major milestone in 1922 with the establishment of the International Committee for Bird Protection (now BirdLife International) to share data and coordinate national avian organisations.⁵⁶

Significantly, this epoch saw the birth of international mechanisms to fund expert-driven coordination towards conservation globally with the birth of the organisation that would evolve into the International Union for Conservation of Nature ('IUCN'); and once again, these efforts were driven by European action. In 1925, the Netherlands Commission for International Nature Protection was founded by P G van Tienhoven who mobilised support for the establishment of the International Office for the Protection of Nature ('IOPN'), with financial aid from the Dutch Government in 1934 and later funding through the American Committee for International Wild Life Protection. IOPN's duties included collecting and disseminating scientific and legislative texts.⁵⁷

The next iteration of the IOPN's development towards becoming the contemporary IUCN occurred within the context of the establishment of new global institutions now essential to the functioning of international law following WWII. The United Nations heralded a new era of globalisation and collective action. For example, through its Economic and Social Council, the UN convened the first global conference on conservation: the *1949 Conference on the Conservation*

⁵⁵ *Act for the Foundation of an International Consultative Commission for the Protection of Nature*, signed 19 November 1913, 219 CTS 32.

⁵⁶ BirdLife International, *About Us: Who We Are* (Web Page) <<https://www.birdlife.org/who-we-are/>>.

⁵⁷ Bowman, Davies and Redgwell (n 13) 7.

and Utilisation of Resources. Specialised agencies germane to environmental concerns emerged, including: the Food and Agriculture Organisation ('FAO'); United Nations Educational, Scientific and Cultural Organisation ('UNESCO'); the World Meteorological Organisation ('WMO'); and the International Maritime Organisation ('IMO'). As Bowman, Davies and Redgwell state:

the necessity for some kind of supra-national institution devoted specifically to conservation issues was still keenly felt in some quarters, however, and led to the creation under UNESCO's auspices of the International Union for the Protection of Nature (IUPN), incorporating the earlier IOPN.⁵⁸

Founded in October 1948 in France, and led by the first Director General of UNESCO, British biologist Julian Huxley, IUPN was constituted with 65 members; however, IUPN was dependent on UNESCO funding and suffered from inaction at the national level.⁵⁹ In 1956, IUPN changed its name formally to the International Union for Conservation of Nature and Natural Resources. The organisation's early work focused on measuring the impact of human activities on nature, including promoting the use of environmental impact assessments in decision-making. This scope evolved in the 1960s and 1970s to focus on the protection of species and habitats required for their survival,⁶⁰ most significantly by establishing the IUCN Red List of Threatened Species in 1964, which remains the most authoritative global data source indexing species at risk of extinction.⁶¹ At the time of writing, IUCN has 211 states and government agency members, with more than 1200 NGOs and indigenous peoples' organisations connected as part of the network, with membership across more than 160 countries, and over 18,000 experts spread across its six Commissions assessing the state of Earth's natural resources.⁶²

The rise of supra-national science-led institutions fostered the global evolution of international wildlife conservation law; it saw rapid engagement with and uptake of critical findings within the conservation community, but also the general public and the media. Rachel Carson's *Silent Spring* (1962)⁶³ and the Club of Rome's *The Limits to Growth*⁶⁴ (1972) became part of conservation's canon. The groundswell of public support for new actors in the burgeoning landscape of global conservation governance, including civil society, helped to fund mechanisms for efforts internationally. In 1961, the World Wildlife Fund (now World Wild Fund for Nature, 'WWF') was established, motivated by the lack of fundraising hampering IUCN's work, supported by members

⁵⁸ Ibid 9.

⁵⁹ IUCN, 'Seven decades of experience', *History* (Web Page) <<https://www.iucn.org/about-iucn/history>>.

⁶⁰ Ibid.

⁶¹ IUCN, *The IUCN Red List of Threatened Species* (Web Page) <<https://www.iucnredlist.org/>>.

⁶² IUCN, *United for life & livelihoods* (Web Page) <<https://www.iucn.org/>>.

⁶³ Rachel Carson, *Silent Spring* (Houghton Mifflin Company, 1962).

⁶⁴ Donella H Meadows et al, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (Universe Books, 1972).

of Western royals once again expanding the sphere of the West's influence in global conservation.⁶⁵

This epoch yielded results despite being stifled in the immediate aftermath of the WWI and the outbreak of WWII. The 1933 *Convention Relative to the Preservation of Fauna and Flora in the Natural State* (also known as the 'London Convention of 1933') has drawn acclaim. The Convention saw colonial powers return to the objectives of the 1900 *London Convention*, this time including two classes of protection.⁶⁶ Class A listed 17 mammals,⁶⁷ three birds and one plant species⁶⁸ that could only be hunted or otherwise killed by special permissions granted exclusively for scientific research or other critical purpose. Class B permitted authorised hunting of the species listed by special permit but for any purpose.⁶⁹ The 1933 *London Convention* has been referred to variously as 'the high point of institutionalised global nature protection before the Second World War'⁷⁰ and the 'Magna Carta of wildlife conservation'.⁷¹ The first efforts to regulate whale hunting came in the form of the 1931 *Convention for the Regulation of Whaling*. The whaling issue resurfaced later, leading to the 1946 *International Convention for the Regulation of Whaling*,⁷² which remains the dominant mechanism for the conservation of the larger Cetacea and created the International Whaling Commission still active today. Birds likewise maintained a key position in the development of regimes.⁷³ Moreover, the establishment of supra-national science-based institutions and funding mechanisms in this phase laid the groundwork for Phase III; which would accelerate international wildlife conservation's law's development and clarify its scope (eg subjects, actors, values, and approaches).

⁶⁵ *WorldWildLife* (Web Page) <<https://www.worldwildlife.org/>>. The first WWF president, as established at IUCN's headquarters in Switzerland, was HRH Prince Bernhard of the Netherlands; and later that year, in the UK, HRH Prince Philip, the Duke of Edinburgh, assumed the role of president of WWF's first national organisation.

⁶⁶ *Convention relative to the Preservation of Fauna and Flora in their Natural State*, opened for signature 8 November 1933, 172 UNTS 241 (entered into force 6 November 1933).

⁶⁷ Class A listings included all species of gorilla, white rhinoceros, pygmy hippopotamus, and elephants (with tusks not exceeding five kilos each).

⁶⁸ Welwitschia.

⁶⁹ Class B listings included chimpanzee, black rhinoceros, ostrich, and pangolin.

⁷⁰ Edward I Steinhart, *Black Poachers, White Hunters: A Social History of Hunting in Colonial Kenya* (James Currey Publishers, 2006) 180.

⁷¹ Robert Boardman, *International Organization and the Conservation of Nature* (Palgrave Macmillan, 1981) 34.

⁷² *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948).

⁷³ In 1940, the Pan-American Union adopted the *Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere* and in Europe, the 1950 *International Convention for the Protection of Birds* was adopted to replace the 1902 *Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere*, opened for signature 12 October 1940, 161 UNTS 193 (entered into force 30 April 1942); *Convention for the Protection of Birds Useful to Agriculture* (n 47); see also Santos Casado, 'The Importance of Being Listed: Birds, Lists and the History of Conservation' (2013) 60(2) *Ardeola* 397.

C Phase 3 – The birth of the ‘Big Four’

The third phase of international wildlife conservation was one of rapid development and increasing coordination. A cycle of landmark international conferences, resulting legal instruments and the setting of targets in accompanying action plans and strategies, ensured that the collective force of the global eco-conscious movement was not merely a flash in the pan. Rather, the movement saw a dynamic response from states that facilitated the genesis of the bedrock instruments of today’s international wildlife conservation law known presently as the ‘Big Five’.⁷⁴ Of these five core agreements, four emerged in this third wave of development. The core doctrinal observation of this phase concerns the birth of ‘The Big Four’ as they once were: the Ramsar Convention;⁷⁵ World Heritage Convention;⁷⁶ CITES; and the CMS.⁷⁷ The landmark conferences of this phase were conducted through the auspices of post-WWII institutions, which had, by this time, attained more widespread legitimacy within the international community and established themselves as organs fluent in the rhythm of international relations. Critically, mirroring the language of the environmental movement at that time, the political discourse that informed the creation of these core agreements evoked a greater range of conservation values to inform international law and policy’s expression of the human-nature relationship despite the persistence of human-centred valuations of wildlife as natural resources to be managed for human consumption. The first major conference of this period was held in 1968 by UNESCO. Hosted in France, the ‘Man and the Biosphere’ Conference laid the groundwork for the launch of UNESCO’s ‘Man and the Biosphere Program’ in 1970 with the objective to protect areas representing the central ecosystems of Earth as ‘biosphere reserves’.⁷⁸

The first of the ‘Big Four’ emerged in 1971, with the Ramsar Convention opening for signature, entering into force in accordance with Article 10 on 21 December 1975. The Convention provides a framework for national action and international cooperation for the conservation and use of wetlands and their resources.⁷⁹ Bowman, Davies and Redgwell call attention to three features of the Ramsar Convention in representing the origins of more modern multilateral approaches to environmental regulation by way of structure, substance, and participation.⁸⁰ Firstly, the

⁷⁴ Trouwborst et al (n 6).

⁷⁵ *Ramsar Convention* (n 1).

⁷⁶ *CITES* (n 3).

⁷⁷ *CMS* (n 4).

⁷⁸ See also Lynton Keith Caldwell, *International Environmental Policy From the Twentieth to the Twenty-First Century* (Duke University Press, 3rd ed, 1996).

⁷⁹ At the time of writing, the Convention has 172 parties and concerns 2,431 wetlands designated to be of international importance (covering more than 250 million hectares).

⁸⁰ Bowman, Davies and Redgwell (n 13) 13.

Convention was the first to embed the institutional structures of contemporary MEAs towards the achievement of its objectives, including a Secretariat, Conference of the Parties and supporting administrative infrastructure. In this, Ramsar was the first agreement to introduce the 'rhythm' of promotion, engagements, global meetings, decision-making, implementation, and continuous review, which are associated with present-day international environmental law. Secondly, it was the first agreement to specifically address the protection of a particular habitat type as supporting the existence of species, in doing so 'paving the way for a more ecologically informed approach to conservation where species are considered not merely in isolation but as part of the wider ecosystem in which they function'.⁸¹ Lastly, the Convention invited the participation of non-government actors in collaboration with states towards embedding relevant expertise into the drafting and execution of the agreement. This element of collaborative governance is now a hallmark of international wildlife conservation law, and to this day involves many of the non-government actors established in the second phase of development as described above.

The next three of the 'Big Four' were created among a flurry of MEAs resulting from the 1972 Stockholm Conference. The conference was the first world conference focused on the environment and prompted the adoption of a more systemic approach to the human-nature relationship. The resulting Stockholm Declaration contained 26 principles prioritising environmental issues at the international level, and kickstarted well-overdue discussions between the Global North and Global South regarding linkages between economic growth, environmental degradation (particularly pollution) and impacts on human communities.⁸²

Principle 4 is perhaps the most obvious in its connection to wildlife conservation:

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of advance factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.⁸³

Further mention is made of flora and fauna in Principle 2: 'the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate'.⁸⁴

⁸¹ Ibid.

⁸² *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1973).

⁸³ Ibid 4 'Principle 4'.

⁸⁴ Ibid 4 'Principle 2'.

Having characterised flora and fauna as resources in Principle 2, Principle 3 provides further that: '[t]he capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved'.⁸⁵

The corresponding Action Plan for the Human Environment contained 109 recommendations and established a framework for implementation across three categories: environmental assessment, environmental management and supporting measures. Crucial to the execution of the Declaration and Action Plan, the United Nations Environmental Programme ('UNEP') was created as the first global agency with a dedicated mandate on environmental matters.

The legacy of the Stockholm Conference in influencing global environmental governance was immediately apparent with the adoption of 75 new multilateral environmental agreements in the 1970s.⁸⁶ To underscore the scale of growth, the adoption of these 75 new agreements totalled a greater number of MEAs than had existed in totality to that point in time.⁸⁷ This was followed by 40 additional MEAs in the 1980s.⁸⁸ The second, third, and fourth instruments comprising the 'Big Four' emerged during this period of exponential growth. The World Heritage Convention was adopted by UNESCO in December 1972, aiming to promote international cooperation towards the protection of heritage sites considered to be of such outstanding universal value that their conservation is important for current and future generations.⁸⁹ While wildlife populations are not considered subjects for heritage protection directly, the criteria for inscription for the World Heritage List includes references to plant and animal communities under Criterion (ix)⁹⁰ and 'habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value' under Criterion (x).⁹¹ In March 1973, the CITES opened for signature in 1973 and entered into force in 1975. In 1979, the CMS opened for signature and entered into force in 1983. The CMS presented a further outcome of the Stockholm Conference, as Recommendation 32 of the Action Plan prompted governments to

⁸⁵ Ibid 4 'Principle 3'.

⁸⁶ Pallemmaerts (n 30) 9.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ At the time of writing, the World Heritage Convention enjoins 195 state parties to the Convention.

⁹⁰ UNESCO, 'The Criteria for Selection', *World Heritage Convention* (Web Page) Criterion (ix) <<https://whc.unesco.org/en/criteria/>>: 'to be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals'.

⁹¹ Ibid Criterion (x): 'to contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation'.

consider enacting international conventions and treaties to protect species inhabiting international waters or who migrate between territories.⁹²

The considerable political will around conservation during this period not only created new legal instruments and forums to progress discourse but culminated in the World Conservation Strategy in 1980.⁹³ The 'World Conservation Strategy: living resource conservation for sustainable development' was the first international policy document on living resource conservation. It was also the first concerted effort to position development and conservation as non-mutually exclusive goals by introducing the notion of sustainable development. The idea for the strategy appears to have originated within IUCN around 1976,⁹⁴ and was prepared by IUCN with involvement from WWF, UNEP, FAO and UNESCO with the express intention to be utilised by three primary groups: 1) government policy makers and their advisers; 2) conservationists and others directly concerning with living resources; and 3) development practitioners, including development agencies, industry and commerce, and trade unions.⁹⁵ The Strategy put forward three main objectives of living resource conservation: 1) to maintain essential ecological processes and life-support systems; 2) to preserve genetic diversity; and 3) to ensure the sustainable utilisation of species and ecosystems.⁹⁶ Wildlife conservation featured within the broader context of these objectives, whereupon the 'extinction of species, subspecies and varieties' and 'overexploitation of fish and other wildlife' were expressly included as priority issues.⁹⁷

The objectives of the Strategy were later mirrored in the five general principles of the 1982 *United Nations World Charter for Nature* as adopted by the General Assembly. Principles 2 and 4 are particularly relevant to species conservation, with both stressing the importance of sustainable management so as to not endanger the integrity or survival of populations:

⁹² The CMS currently has 133 parties.

⁹³ IUCN, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (IUCN-UNEP-WWF, 1980) ('*World Conservation Strategy*').

⁹⁴ Rodger D Schwass, 'World Conservation Strategy of the International Union for the Conservation of Nature and Natural Resources (IUCN)' in David VJ Bell and Yuk-kuen Annie Cheung (eds), *Selected Topics in Introduction to Sustainable Development* (UNESCO-EOLSS) vol 1, 149.

⁹⁵ IUCN, *World Conservation Strategy* (n 93) VI.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.* V.

1. Nature shall be respected and its essential processes shall not be impaired
2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded.
3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.
4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.
5. Nature shall be secured against degradation caused by warfare or other hostile activities.

Extract 1: *United Nations World Charter for Nature*, Principle V.⁹⁸

By way of conservation values, this era saw a greater balance of both intrinsic and instrumental value language, and while arguably still tending towards instrumental valuation in justifying conservation action, the rhetoric sought to draw on more ecocentric ideas of humankind's position as a species vis-à-vis earth's biotic and abiotic components. Referring back to Chapter II's 'Future of Conservation' survey findings, this is perhaps where the bulk of participants derived their attitudes towards 'science-led ecocentrism'; and perhaps also accounts for the emphasis on people-centred conservation, with the genesis of sustainable development as a driving concept. The process of drafting the World Conservation Strategy reflects this shift from preservationism and highlights the rising role of the Global South in advocating for more people-centred approaches. As chronicled by Schwass, the approach to the drafting of the World Conservation Strategy was set forth in 1977 by then Secretary-General of IUCN, Duncan Poore, who spoke plainly to the presence of values in decision-making:

The Union is concerned with values more, I would say, even than with science. For science should be the servant, not the master of mankind. Our strategy must be firmly based in realism but it must move ahead with vision. We should be the architects of guided change (call it development if you will)—guided change in the direction of increasing the well-being of mankind—not only the standard of living but the good life—but (and the but is all important) in such a way that the potential of the biosphere to support this good life is not diminished.⁹⁹

Schwass notes that the first two drafts of the Strategy focused 'exclusively on the protection of nature, addressing the conservation and sustainable management of major ecosystems and habitats'.¹⁰⁰ This scope was broadened to include all living resources, including forests,

⁹⁸ *World Charter for Nature*, GA Res37/7, UN Doc A/RES/37/7 (28 October 1982, adopted 10 October 1982) Annex.

⁹⁹ Schwass (n 94) 149, quoting Martin Holdgate, *The Green Web: A union for world conservation* (Earthscan Press, 1999) 137.

¹⁰⁰ *Ibid.*

agriculture and fisheries, following objections from the African members of the union and the need to ‘accommodate UNEP’s increasing sensitivity to development concerns’.¹⁰¹ Two further versions of the Strategy were drafted prior to publication of the final product, with each version seeking to build consensus between conservationists and development practitioners.¹⁰² The increasing coordination and consensus-building between African members saw a stronger regional presence in global conservation fora in this phase and may be considered another prominent feature. This greater self-determination of states formerly subjected to colonial rule or influence first bore fruit during the early stages of this epoch when the independent African nations negotiated and concluded their first agreement with the 1968 *African Convention on the Conservation of Nature and Natural Resources*, which superseded the 1933 *London Convention*.¹⁰³ Watershed moments such as these were as important for their symbolism as the substance of the instruments concluded, and provoked questions as to the pragmatism of conservation endeavours against the realities faced by the Global South, which became a trend that continued into the fourth phase and to the present day (as will be demonstrated in this thesis’s case study on CITES’ treatment of rhino horn in Chapter VI).

D Phase 4 –The age of biodiversity; the ‘Big Four’ becomes the ‘Big Five’

The fourth phase of international wildlife conservation law saw the entrenchment of biodiversity language and goals within the ever-expanding and intertwined narratives of conservation and sustainable development in frameworks such as the Millennium Development Goals and Sustainable Development Goals. This phase may be characterised by the publication of the *Brundtland Report*, a push towards a ‘species convention’, and the desire to embed conservation of biological diversity into an agreement. Significantly, this period saw ‘the Big Four’ become ‘the Big Five’.

The ‘Big Four’ became the ‘Big Five’ owing to efforts initiated by former Norwegian Prime Minister Gro Harlem Brundtland. Brundtland chaired the World Commission on Environment and Development as established by the United Nations General Assembly. The Commission’s report,

¹⁰¹ Ibid 149.

¹⁰² Ibid. As outlined by Schwass, Lee Talbot, a former Director General of IUCN commented: ‘...the first draft was essentially a wildlife conservation textbook, for at that time many conservationists regarded development as the enemy to be opposed and many developers, for their part, regarded conservation as, at best, something to be ignored (or at worst, as an obstacle to progress). However, each draft brought the two sides closer, and involved a process of education. The final draft represents a consensus between the practitioners of conservation and development’: Martin Holdgate, *The Green Web: A union for world conservation* (Earthscan Press, 1999) 152.

¹⁰³ Bowman, Davies and Redgwell (n 13) 13.

known as the *Brundtland Report* or *Our Common Future* (1987) further embedded sustainable development as a fundamental feature of the international community's approach.¹⁰⁴ The Report defined sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.¹⁰⁵ As Hunter et al, observed, while not providing the origins of sustainable development, the *Brundtland Report* popularised the use of the term, which saw it become a regular fixture in international policy drafting.¹⁰⁶ In fact, the provenance of sustainable development in shaping international law has drawn judicial commentary, most notably that of HE Judge Christopher Weeramantry, former Vice-President of the International Court of Justice. This includes HE's Separate Opinion in *Gabčíkovo-Nagymaros* in 1997:

sustainable development is thus not merely a principle of modern international law. It is one of the most ancient of ideas in human heritage. Fortified by the rich insights that can be gained from millennia of human experience, it has an important part to play in the service of international law.¹⁰⁷

Herein, the popularisation of sustainable development as a pre-existing concept bearing a long lineage through the *Brundtland Report* became rooted in international law and capitalised on momentum from the third phase discussed above.

As to international wildlife conservation, Chapter 6 of the *Brundtland Report*, entitled 'Species and Ecosystems: Resources for Development', recognises the diversity of values underpinning the case for species conservation, stating as follows:

Species conservation is not only justified in economic terms. Aesthetic, ethical, cultural, and scientific considerations provide ample grounds for conservation. For those who demand an accounting, the economic values inherent in the genetic materials of species are alone enough to justify species preservation.¹⁰⁸

Interestingly, while the title of the Chapter appears to stress the value of species as dominantly instrumental as resources for development, the *Brundtland Report* appears to position economic

¹⁰⁴ World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987) ('*Brundtland Report*').

¹⁰⁵ This definition was qualified further as containing two key concepts: firstly, 'the concept of "needs", in particular the essential needs of the world's poor, to which overriding priority should be given; and secondly, the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs'.

¹⁰⁶ Hunter, Salzman and Zaelke (n 21) 148.

¹⁰⁷ *Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment)* [1997] ICJ Rep 88, 107, cited in Donald W Kaniaru, 'The development of the concept of sustainable development' in Tuomas Kuokkanen et al (eds), *International Environmental Law-making and Diplomacy* (Routledge, 2016) 136.

¹⁰⁸ *Brundtland Report* (n 104) ch 6 [30].

arguments for preserving species and their genetic materials as a secondary line of defence to aid pre-existing cases for support, that is, '[s]pecies and their genetic materials promise to play an expanding role in development, and a powerful economic rationale is emerging to bolster the ethical, aesthetic, and scientific cases for preserving them'.¹⁰⁹

In setting priorities for future action, the *Brundtland Report* specifically recommended that governments investigate the prospect of a 'Species Convention' together with a supporting financial arrangement.¹¹⁰ This recommendation bore fruit at the 1992 Rio Conference with the CBD.¹¹¹ The CBD, the fifth of the 'Big Five', currently bears 196 parties (and was one of a further 75 MEAs concluded in the 1990s).¹¹² Its stated objectives, pursuant to Article 1, are:

the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.¹¹³

Standard-setting has formed a fundamental part of the treaty's execution, including the 20 Aichi Biodiversity Targets contained in the *Strategic Plan for Biodiversity 2011-2020* resulting from the tenth CoP.¹¹⁴ The five strategic goals around which the twenty targets were grouped were as follows:

- I. Goal A – Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society;
- II. Goal B – Reduce the direct pressures on biodiversity and promote sustainable use;
- III. Goal C – To improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity;
- IV. Goal D – Enhance the benefits to all from biodiversity and ecosystem services; and
- V. Goal E – Enhance implementation through participatory planning, knowledge management and capacity building.

¹⁰⁹ Ibid ch 6 [2].

¹¹⁰ Ibid ch 6 [58].

¹¹¹ CBD (n 5).

¹¹² Pallemmaerts (n 30) 9.

¹¹³ CBD (n 5) art 1.

¹¹⁴ Secretariate of the Convention on Biological Diversity, 'Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets', *The Strategic Plan for Biodiversity 2011-2020* (Web Page) <<https://www.cbd.int/doc/strategic-plan/2011-2020/Aichi-Targets-EN.pdf>>.

In the decades since the CBD opened for signature, the emphasis on biodiversity has permeated academic and popular discourse concerning conservation, with sustainable development continuing to provide the dominant vehicle to see some intrinsic, but predominantly instrumental, values in nature evoked to drive conservation. Sustainable development provides a framework for global collective action wherein the conservation of species features as one of a range of inputs. In September 2000, the General Assembly convened its Millennium Summit to address the pressing issues facing humankind ahead of the new millennium. The *UN Millennium Declaration*¹¹⁵ included ‘respect for nature’ as a fundamental value under Article 6, with Millennium Development Goal 7, ‘Ensure Environmental Sustainability’, calling for the integration of the principles of sustainable development into national policies and programmes and the reversal of loss of environmental resources. The Millennium Goals were superseded by the 17 Sustainable Development Goals (SDGs), which contain more explicit references to species conservation, including express mention of the challenges of wildlife crime. The SDGs aim to produce ‘a set of universally applicable goals that balances the three dimensions of sustainable development: environmental, social, and economic’.¹¹⁶ Advanced further as a blueprint to achieve a sustainable future for all, the SDGs address challenges including poverty, climate change, world hunger, access to education, and gender inequality.¹¹⁷ The SDGs were first raised in concept at the UN Conference on Sustainable Development (‘Rio +20’) in 2012, then adopted by Resolution by all UN member states in 2015 as *Transforming our World: the 2030 Agenda for Sustainable Development*.¹¹⁸ Marine biodiversity conservation is addressed under Goal 14 ‘Life Below Water’; however, the primary targets for species conservation appear under Goal 15 ‘Life on Land’, including specific reference to eliminating poaching and wildlife trafficking under 15.7¹¹⁹ supported by a community-centred conservation approach under 15.C.¹²⁰

¹¹⁵ *United Nations Millennium Declaration*, GA Res 55/2, UN Doc A/RES/55/2 (adopted 18 September 2000).

¹¹⁶ Tadanori Inomata, ‘Building institutional and managerial foundations for a new structure for environmental governance with the United Nations system’ in Tuomas Kuokkanen et al (eds), *International Environmental Law-making and Diplomacy – Insights and Overviews* (Routledge, 2017) 74.

¹¹⁷ Hunter, Salzman and Zaelke (n 21) 148. The authors observe that the concept of sustainable development has benefitted from practically universal acceptance owing to its ‘brilliant ambiguity’. The SDGs, therefore, offer an opportunity to further deliberate on the substance of sustainable development and develop more specific indicia towards its realisation.

¹¹⁸ *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015).

¹¹⁹ ‘Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products’.

¹²⁰ ‘Enhance global support for efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities.’

In addition to facilitating early discussion of the SDGs, Rio+20 saw the establishment of the United Nations Environment Assembly ('UNEA') in responding to calls to strengthen and upgrade UNEP contained in the outcome document *The Future We Want*. The UNGA accordingly adopted resolution 67/213, establishing universal membership of its Governing Council, with UNGA resolution 67/251 being adopted to alter the designation of the UNEP Governing Council to UNEA of the UNEP. UNEA is now the highest-level decision-making body dedicated to the environment, with universal membership of all 193 UN member states. UNEA continues the legacy of collaborative governance and engagement of non-state actors as par for course.

Despite the development of the above legal framework, evidence continues to mount suggesting that more intensive and urgent efforts are required to conserve biodiversity. The preponderance of scientific evidence detailing the scale and impact of the exploitation of wild species continues to amass. Indeed, 2019 was a landmark year chronicling the anthropogenic decline of earth's biodiversity and the pervasiveness of wildlife trade in the mix of drivers. In March of that year, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ('IPBES') released a policy advice and draft chapters of its much-anticipated assessment which promises to be the most comprehensive review of global ecosystems ever conducted.¹²¹ On average, it concluded that approximately 25 per cent of species assessed are threatened, suggesting that around one million species¹²² face extinction unless urgent action to mitigate the intensity of biodiversity loss drivers occurs. The direct exploitation of organisms (including illegal extraction through poaching)¹²³ was found to be the second-most significant direct driver of change in nature next to changes in land and sea use (with trade noted as a well-established indirect driver).¹²⁴ In July of 2019, the updated *International Union for Conservation of Nature Red List* identified 28,338 species of over 105,732 assessed as being threatened with extinction due to a

¹²¹ Sandra Diaz et al, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the International Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES, 2019).

¹²² Note this estimate may be conservative. Andy Purvis, 'How did IPBES Estimate "1 Million Species at Risk of Extinction" in #GlobalAssessment Report' (Explanatory Note, IPBES, 22 May 2019) <<https://ipbes.net/news/how-did-ipbes-estimate-1-million-species-risk-extinction-globalassessment-report>>: 'Genetic data are showing that many of the species we recognise at the moment actually contain multiple – often many – lineages that have not exchanged genes with each other for a very long time (sometimes millions of years). These could be called species, and would increase the numbers considerably (this is where the estimates over 100 million mostly come from). Doing so would increase not only the number of species that are threatened but also the proportion, because many of the newly-recognised species would have very narrow distributions making them more likely to meet the Red List criteria for being threatened.'

¹²³ Patricia Balvanera et al, 'Chapter 2.1. Status and Trends – Drivers of Change' in Eduardo Brondizio et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services* (IPBES, 2019) 115-117.

¹²⁴ Eduardo Brondizio et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services* (IPBES, 2019) XVI.

combination of habitat loss, unsustainable fishing and hunting.¹²⁵ IUCN Biodiversity Conservation Group Global Director, Jane Smart, expressed that the assessment confirmed the IPBES' findings, noting the unprecedented decline of wild species within the expanse of human history.¹²⁶

While most sources of international wildlife conservation law, mirroring international environmental law more broadly, derive from similar structures (most prominently multilateral environmental agreements), this does not necessarily equate to a coherent, consistent, and unfragmented body of international law. As Inomata observes, 'most environmental management issues have been left to the discretion of various secretariats of international organizations, probably because of the often highly technical and scientific nature of understanding and approaching environmental problems'.¹²⁷ As Chapter II contended, conservation, while essentially contested as a normative concept, is fundamentally an expression of humankind's relationship with nature. Inevitably, with each secretariat bearing their own attitudes to that relationship, and each international organisation perhaps expressing their own 'culture' of conservation emphasising different values and preferences to varying degrees, it is inevitable that the current state of affairs has resulted in a lack of synergy between MEAs. This is problematic when synergy between the regimes would better promote consistent state practice, with the majority of member states being party to each of the 'Big Five' while having their own views at the national level. Achieving this synergy, while desirable, is itself challenged by the structure of these international organisations, whereby the administrative heads are first and foremost limited by their respective mandates and are not permitted to enter into relations contrary to the interests of their respective organisations.¹²⁸

In addition to structural challenges, there are substantive variations in the application of MEAs in the absence of an overarching legal framework that is applicable to all environmental conventions and which would aim to achieve harmonisation through a world convention on the law of environmental treaties. Such an approach is highly desirable, given the interconnection of environmental challenges between, for example, climate change, ocean acidification and marine biodiversity loss. As Inomata stresses:

¹²⁵ This includes approximately 40% of amphibians, 34% of conifers, 33% of reef building corals, 30% of sharks and rays, 25% of mammals and 14% of birds.

¹²⁶ Lilian Anekwe, 'We're pushing 28,000 species closer to extinction', *New Scientist* (online, 18 July 2019) <<https://www.newscientist.com/article/2210437-were-pushing-28000-species-closer-to-extinction/#ixzz66FetfO8x>>.

¹²⁷ Inomata (n 116) 77.

¹²⁸ Ibid 78.

such a law of treaties should identify and assist in horizontally harmonizing principles and rules applicable to MEAs with respect to environmentally responsible principles, precautionary approaches, sharing of scientific assessments, mutual information and monitoring of transboundary hazards, compliance procedures and mechanisms of coordination of normative and operational actions.¹²⁹

It is abundantly clear that greater coordination is needed. CoP15 of the CBD determined the post-2020 global biodiversity framework in the wake of the damning assessments that none of the 20 Aichi Biodiversity Targets were fully achieved at the global level and that biodiversity loss worsened with further decline between 2011 and 2020.¹³⁰ However, the resolve of key institutions gives reason for optimism. For the first time in its history, IUCN has set its programme in a decadal timeframe (2021-2030) entitled *Nature 2030: One nature, one future*, which was adopted by IUCN Members on 10 February 2021 as part of the IUCN World Conservation Congress 2020 (Marseille).¹³¹ Nature 2030 prioritises the realisation of just, inclusive, equitable and effective natural resource governance, conservation and sustainable use of natural resources, to benefit people and nature.¹³² Indeed it appears that optimism in speaking to the successes of species conservation, rather than focusing solely on standard-setting is emerging as a force fuelling the current movement within IUCN and its partnerships. For example, the Nature 2030 Framework states plainly:

There is great room for optimism, underpinned by clear evidence. The IUCN Red List of Threatened Species reveals that trends in species extinction risk would have been at least 20% worse in the absence of conservation action. Techniques from other disciplines are being applied to reveal the genuine impact of conservation to date. Transformative change requires taking this impact to scale.¹³³

As to how this impact may be brought to scale, the IUCN Species Survival Commission ('SSC'), now constituting over 10,000 members in 163 groups in 174 countries, launched a 'Reverse the Red' movement in Marseille to mobilise local action in response to global priorities by furthering existing work which support national strategies to meet commitments to biodiversity

¹²⁹ Ibid.

¹³⁰ IUCN, 'Post-2020 global biodiversity framework', *IUCN Issues Brief* (Web Page) <[¹³¹ Proceedings were delayed by the COVID-19 pandemic. The Framework cross references to the SDGs for continuity and coherence with current programmes.](https://www.iucn.org/resources/issues-brief/post-2020-global-biodiversity-framework#:~:text=The%20framework%20must%20seek%20to,science%2C%20and%20have%20explicit%20outcomes.>>.</p></div><div data-bbox=)

¹³² IUCN, 'IUCN statement on UN recognition of the human right to a clean, healthy and sustainable environment', *IUCN Statement* (Web Page, 11 October 2021) <[¹³³ IUCN, *Nature 2030 – One nature, one future: A Programme for the Union 2021-2024* \(IUCN, 2021\) 6.](https://www.iucn.org/news/secretariat/202110/iucn-statement-un-recognition-human-right-a-clean-healthy-and-sustainable-environment?fbclid=IwAR3VbpJEiSheGTTOLdUADezxIXyAGIJSewJ-Wg-QZEMI4RD49MmO5i4LG-0>>.</p></div><div data-bbox=)

conventions including the CBD, CITES and CMS.¹³⁴ Critically, there is a drive to re-examine humankind's relationship with nature, continuing to unravel Eurocentric constructs underpinning current paradigms of access and use. Most notably, the idea of pristine wildness without human presence has been challenged as a desirable and viable construct in conservation decision-making, with a recent study labelling it as a Eurocentric concept that ignores indigenous and local community practices and management that have taken place for millennia. Moreover, the displacement of Indigenous and local communities for conservation purposes may have adverse impacts on ecosystem integrity and factor into the degradation of biodiversity.¹³⁵ These more contemporary attitudes to biodiversity appear to have sparked a renewed phase of development with a greater acknowledgment of pluralism in conservation as described in Chapter II. This may very well be what defines the next epoch in the evolution of international wildlife conservation law.

The third and final Part of this Chapter will delve deeper into the origins of CITES as the international wildlife conservation agreement around which this thesis's doctrinal legal analysis revolves. As outlined above, CITES emerged in the third epoch of international wildlife conservation law's evolution; and this is contextually significant in informing its origins, purpose, and operation. The Convention's mandate to regulate wildlife trade developed in the same era that saw sustainable development included in the World Conservation Strategy (which evoked the explicit language of 'sustainable utilization of species' in its objectives). This is formative to understanding its contemporary treatment of conservation – ie, one that promotes sustainable use.

III THE ORIGINS OF CITES

The first calls for international wildlife trade controls occurred as early as 1911, with the Swiss conservationist Paul Sarasin making the case for restrictions on the import and export of bird feathers on the grounds that fashions in vogue (ie plumed headwear) were threatening the survival of some avian species.¹³⁶ Traction ultimately began in earnest in 1960, taking full advantage of the development of new organs and forums of international environmental law. At the Seventh General Assembly of the IUCN in 1960, governments were urged to restrict the

¹³⁴ Jon Paul Rodriguez, 'Reverse the Red: Achieving global biodiversity targets at national level' (2021) 55(1) *Oryx* 1.

¹³⁵ Michael-Shawn Fletcher et al, 'Indigenous knowledge and the shackles of wilderness' (2021) 118(4) *Proceedings of the National Academy of Sciences* <<https://doi.org/10.1073/pnas.2022218118>>.

¹³⁶ Bowman, Davies and Redgwell (n 13) 483.

import of animals in accordance with the export regulations of countries of origin. However, in the absence of an integrated legal framework allowing importing countries to be kept abreast of such export regulations, let alone adapting import rules for some 190 countries, calls for such measures were demonstrably unfeasible.¹³⁷ As a result of the continuing dialogue between members, a resolution of the Eighth General Assembly of the IUCN held in Nairobi was passed in 1963 calling for ‘an international convention in regulation of import, export and transit of rare or threatened wildlife species or their skins and trophies’.¹³⁸

Of note, the resolution is explicit in its intention to target the illegal traffic in wildlife species in both content and title, as per official records:

Resolution on illegal traffic in wildlife species

Whereas many rare and vanishing species of wildlife are threatened with early extinction through illegal export from their native land and whereas such illegal export would be much less frequent if import into other countries were prohibited; recalling resolution 2,213 adopted by the General Conference of UNESCO at its 12th session and resolution 1931 (xvii) adopted by the General Assembly of the United Nations at its 17th session concerning economic development and conservation of natural resources, flora and fauna, the 8th General Assembly of IUCN meeting at Nairobi in 1963 recommends that the practical and political problems involved in illegal export be studied and that an international convention on regulations of export, transit and import of rare or threatened wildlife species or their skins and trophies be drafted and submitted for the approval of governments by the appropriate international organisations possibly on the occasion of a world-wide conference convened for that purpose.

Extract 2: Resolution on illegal traffic in wildlife species.¹³⁹

Texts were drafted and revised for circulation by the IUCN Environmental Law Centre in Bonn, then further revised in 1969 to include a list of species to be controlled. A second draft was circulated in 1971, integrating comments from 39 governments and 18 non-government organisations.¹⁴⁰ The involvement of NGOs in the actual drafting of the treaty was ahead of its time, even in a body of law as described in Parts I and II of this Chapter wherein non-state actors evolved to play crucial roles in providing data and expertise before achieving greater influence. Negotiations over final versions were not concluded for the 1972 Stockholm Conference; and thus a recommendation was added to the Stockholm Action Plan to advance the matter, which called for ‘a plenipotentiary conference to be convened as soon as possible, under appropriate governmental or intergovernmental auspices to prepare and adopt a convention on export,

¹³⁷ Willem Wijnstekers, *The Evolution of CITES* (International Council for Game and Wildlife Conservation, 2018) 33.

¹³⁸ IUCN, *Proceedings of the Eighth General Assembly* (IUCN, 1963) 120.

¹³⁹ *Ibid* 130.

¹⁴⁰ Rosalind Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (Royal Institute of International Affairs and Earthscan, 2002) 27.

import and transit of certain species of wild animals and wild plants'.¹⁴¹ It is worth noting that the language of 'trafficking' and illegal trade, which evoked some emphasis on the criminality of some forms of wildlife trade, was walked back to favour greater regulatory focus on the thresholds for legal import, export and transit of certain species. This is significant as it signals an intention by drafters to avoid constructing an instrument that criminalised forms of illegal wildlife trade as trafficking offences, but rather one that governed legal trade as its mandate. This was consistent with the spirit of MEAs of the time where conservation and development activities aimed to promote positive and sustainable growth utilising natural resources, including wildlife. As will be discussed in Chapter VI, there are ever-compounding challenges to the integrity of the legal trade in wildlife as governed by CITES, including the presence of serious organised crime, that warrant specific treatment under international law. However, what should be emphasised at this juncture is that CITES was not, since even before its inception, positioned to be an instrument that would criminalise and police illegal wildlife trade.

At this point it is worth noting the particular interest and influence of the United States of America in the formation of CITES. The United States is credited by experts as having the first national legislation governing commercial wildlife trade in the form of the *Lacey Act of 1900*,¹⁴² named for its champion Congressman John Lacey who sought to address the overhunting of game birds. The conversation subsequently turned to the United States prohibition on imports of wildlife 'threatened with worldwide extinction' (other than for scientific or breeding purposes), under the *Endangered Species Conservation Act of 1969*. The US Department of the Interior produced a list of species, but this was not well received by the American leather and fur industries, nor by the pet trade sector which argued that they would be at a competitive disadvantage in the market.¹⁴³ The solution was to lobby for international regulation of similar purpose, operation, and enforcement to correct for this disadvantage. As luck would have it, one of the largest cases of illegal wildlife imports in New York's history was receiving mainstream media coverage¹⁴⁴ in the lead-up to the plenipotentiary conference scheduled to be held at the Pentagon in Washington DC from 12 February to 3 March 1973. The New York case, known as the Vesely-Forte case, was reported to have concerned 'half the illegal trade by Americans in the

¹⁴¹ *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (16 June 1972) Recommendation 99.3.

¹⁴² Michael 't Sas-Rolfe et al, 'Illegal Wildlife Trade: Scale, Process, and Governance' (2019) 44(1) *Annual Review of Environment and Resources* 201, 212.

¹⁴³ Reeve (n 140) 27.

¹⁴⁴ Morris Kaplan, 'An Illegal Fur Ring Broken Up Here By U.S.', *New York Times* (online, 22 February 1973) <<https://www.nytimes.com/1973/02/22/archives/an-illegal-wildfur-ring-broken-up-here-by-us-consent-writ-signed.html>>.

pelts of endangered wild animals', including leopard, cheetah, and ocelot, all illegally exported from Brazil and Mexico.

The United States put forward a draft having regard to counter-versions offered by IUCN and Kenya. Consistent with this Chapter's observation regarding the rise of the Global South in the third epoch, Kenya's counter-version staunchly advanced arguments reflective of concerns from the Global South. The IUCN version was based on the control of wildlife trade through global lists of threatened species to be devised and updated by expert committees of international membership. Kenya's draft proposed that each range state hold the right to determine their own lists of tradeable specimens to avoid the imposition of paternalistic trade restrictive measures by the Global North.¹⁴⁵ As will be seen in Chapter VI's case study on CITES' treatment of rhino horn, Kenya would continue to hold a firm position against proposals that would inequitably distribute the responsibilities, resources, and benefits of measures against the interests of range states. CITES was concluded on 3 March 1973, featuring four appendices and 25 Articles, as signed by 21 countries. CITES entered into force on 1 July 1975, ninety days after the tenth ratification as required by Article XXII(1) of the Convention. UN World Wildlife Day has been observed on 3rd March since proclamation by the 68th session of the UNGA¹⁴⁶ to mark the day CITES was adopted. There are currently 184 parties to the Convention.

Prior to critiquing the Purposes and Operation of CITES in the following Chapter, the title the parties settled on in naming CITES merits a final observation. Turning to the commentary of one of the undisputed authorities on CITES, former CITES Secretary General (1999-2010) Willem Wijnstekers chronicled *The Evolution of CITES* in painstakingly exhaustive fashion, with the current 11th edition having been published in 2018, some 30 years since the first edition in 1988. Wijnstekers notes that the wording of the title of the Convention may mislead some as to its intended scope. For example, the use of 'endangered species' may be misconstrued and lead some to incorrectly assume that the treaty exclusively concerns species classified as either 'endangered' or 'critically endangered'. This is untrue as several species listed in lesser threatened categories on the IUCN Red List not only appear in the treaty's Appendices, but even attract the highest level of regulated trade under Appendix I. For example, the greater one-horned rhinoceros (*Rhinoceros unicornis*) is currently listed as 'Vulnerable' on the IUCN Red List, but trade is regulated under Appendix I of CITES. The 'endangered' label may even, to Wijnstekers' mind, form a 'psychological barrier for industries involved in the exploitation of

¹⁴⁵ Reeve (n 140) 28.

¹⁴⁶ *World Wildlife Day*, GA Res 68/205, UN Doc A/RES/68/205 (17 January 2014, adopted 20 December 2013).

consumer products derived from eg fish and timber,’ clarifying further that ‘most consumers will not understand that a species in Appendix II is not endangered when its products are covered by an international convention regulating world trade in ‘endangered’ species’.¹⁴⁷ Wijnstekers’ observation, as it pertains to fish and timber, further underscores the need to broaden public understanding of wildlife trade as affecting species beyond the charismatic megafauna most often featured in conservation campaigning on the subject. For these reasons, Wijnstekers once offered a solution in the form of mass adoption of a more neutral working title of the convention, ‘such as *CITES, the Wildlife Trade Convention*’;¹⁴⁸ however, this suggestion was not taken up.

IV CONCLUSION

This Chapter has provided the context for doctrinal analysis and critique of CITES to follow in Chapters V-VII by offering an in-depth examination of the broader branch of international wildlife conservation law from which it has evolved. Part I examined the rise of wildlife conservation as a subdiscipline of Public International Law, noting some of the characteristic ways in which scholars have sought to chronicle its development and extract its key features. Part II provided an original delineation of epochs based on the emergence of key features to plot the evolution of international wildlife conservation law. Part III extracted the emergence of CITES in the third epoch of international wildlife conservation law, positioning its mandate squarely in the realm of international trade regulation. Precisely how the treaty operationalises within its mandate, and how its mandate has been clarified over time, will be scrutinised in the next Chapter.

The development of international wildlife conservation law is perhaps most simply summarised using the four-question framework employed in Chapter II. Conservation by whom? Since the genesis of multilateralism in Phase I, the prominence of Western actors in driving the creation of conservation instruments, forums, funding mechanisms, and organisations has fostered an undercurrent of Eurocentricity. However, increasing regional unity between countries in the Global South and regard for indigenous peoples have emerged incrementally to unwind colonial conservation artifices. Conservation of what? Traditionally, the legal subjects of conservation concern were those species valuable for commercial use, however this has developed, particularly in Phases III and IV towards a more holistic focus on ecosystem services and biodiversity. Conservation evoking what values? As laws are drafted by the hands of humankind,

¹⁴⁷ Wijnstekers (n 137) 33.

¹⁴⁸ Ibid.

there is an inevitable degree of inherent anthropocentrism, however the rise of ‘science-led ecocentrism’ has diversified inputs. International wildlife conservation law expresses a range of values, including recognising the intrinsic, however instrumental values predominate. Conservation: through what approaches? Since the mainstreaming of development activities within conservation through the introduction and subsequent popularisation of sustainable development in Phase III, the proliferation of sustainable use strategies and ‘people-centred conservation’ have reversed more traditional approaches to ‘conservation as preservation’ (see Chapter II).

For a regime comprised of largely reactive instruments, international wildlife conservation law can claim a range of successes as its approach has developed. These include those collated by Trouwborst et al, many of which were canvassed in this Chapter: the designation of protected areas; increased cooperation among and between governmental and nongovernmental stakeholders; and incorporation of technical guidance adopted by CoPs and other treaty bodies into national action plans and legislation.¹⁴⁹ However, despite these developments, there is an open question as to whether people-centred approaches may inadvertently reinforce the anthropocentric values that contributed to the biodiversity crisis in the first place. The current wave of mass extinction and prevalence of activities threatening species survival on an industrial scale, such as unsustainable and illegal wildlife trade, requires a closer examination of the regime regulating international trade to decide whether it is fit for purpose, specifically CITES.

¹⁴⁹ Trouwborst et al (n 6). The full list (a)-(h) is as follows: ‘(a) the designation of protected areas pursuant to international obligations; (b) similarly instigated national legislation regulating wildlife exploitation; (c) enhanced priority for conservation issues on governments’ agendas; (d) incorporation of technical guidance adopted by COPs and other treaty bodies into national action plans and legislation; (e) coordinated collection of data; (f) increased cooperation among and between governmental and nongovernmental stakeholders; (g) direct assistance to conservation initiatives through treaties’ funding mechanisms; and (h) many instances in which harmful developments were blocked or particular conservation actions taken when governments were confronted with their international obligations in national or international court proceedings or through compliance mechanisms.’

The *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention')¹ is the central multilateral environmental agreement governing the international trade in wildlife. Informed by Chapter IV's analysis of the historical development and present scope of international wildlife conservation law, Chapter V adopts the rules of treaty interpretation pursuant to the *Vienna Convention on the Law of Treaties* ('VCLT')² by reading down the purpose and operation of CITES, with reference to its origins coupled with the Convention's text and subsequent development of soft law. Chapter V underscores CITES' dual-objectives whereby species conservation and sustainable use are deemed to be compatible aims within the Convention's mandate. Rather than adopting an approach to criminalise illegal trade, CITES seeks to control the environmental harms associated with international wildlife trade through a permit-based regulatory approach to promote 'legal, sustainable, and traceable' trade. This Chapter outlines the functions of the governing organs, Appendices and licensing system that are central to the Convention's operation; and critiques the primary compliance mechanisms. The examination of how CITES operates to achieve its mission is carried out in three parts.

This Chapter undertakes a doctrinal analysis by applying established rules of treaty interpretation, seeking to address an area of need in the existing literature. Trouwborst et al, citing Chapron et al,³ and Freyfogle,⁴ stress that 'legal methodology is still a relatively unfamiliar feature within the multidisciplinary conservation literature and among conservation practitioners', despite broad acknowledgement of the law's importance to wildlife conservation.⁵ The authors go on to specifically identify treaty interpretation as a core component of that methodology, also highlighting the benefits of integrating legal expertise within wildlife conservation:

International law research methodology consists primarily of the identification, analysis, and application of legal instruments, including their interpretation according to the format codified in

¹ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

² *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) ('VCLT').

³ Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784, citing Guillaume Chapron et al, 'Bolster legal boundaries to stay within planetary boundaries' (2017) 1(3) *Nature Ecology and Evolution* 86.

⁴ Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784, citing Eric T Freyfogle, 'Conservation biology and law: Only a start' (2006) 20(3) *Conservation Biology* 679.

⁵ *Ibid* 788.

the *Vienna Convention on the Law of Treaties* (1969). Such analysis gains in utility when combined with insights regarding the ecological, socioeconomic, and cultural aspects of the issues involved. It is especially worthwhile when conservationists from other disciplines work with international wildlife lawyers to clarify the implications of international instruments for given issues; to identify gaps and inconsistencies in the legal framework; and, above all, to identify and pursue avenues toward improving the application of the law and, where needed, the law itself.⁶

This methodology is appropriate given CITES' status as a treaty per the definition under Article 2(1)(a) of the VCLT, with the purposive approach evident in Part 3, Section 3 of the VCLT dictating the imperative to confine assessments of a treaty's performance firmly within its mandate.⁷ Informed by a joint textual analysis of the Convention's Preamble and most recent Strategic Vision,⁸ Part I sets the parameters for a purposive analysis of the operation of CITES by examining the treaty's objectives. This exercise yields three key insights. Firstly, referring back to the conceptual discussion of conservation in Chapter II, the Convention's approach to conservation evokes both intrinsic and instrumental values of nature in advancing multiple imperatives for species conservation. Secondly, continuing the analysis of CITES' origins within international wildlife conservation law in Chapter IV, the textual analysis confirms that CITES expressly aims to achieve conservation and sustainable use objectives. Thirdly, this part illuminates how elevation of the language of sustainable use as a core component of CITES' mission and interpretation serves to reverse previous assumptions that CITES operates to facilitate trade that is not unsustainable; rather, the Convention intends to promote trade that is sustainable. This distinction, while subtle in where emphasis is placed, is important as it reflects the intention for the instrument to operate in a way that is not prohibitively trade-restrictive, but instead views trade in wildlife as a desirable status quo that needs to be regulated to ensure its sustainability and persistence for future generations.

Part II reads down the operative clauses that are core to the functioning of the CITES regulatory regime in four sub-parts: (a) CITES Governing Bodies: Conference of the Parties ('CoP'); Secretariat, and Committees; (b) Appendices and Licensing System; (c) Interaction with other international agreements (including discussion of the determination of non-detriment findings and export quotas); (d) Reservations and Exemptions; and (e) Dispute Resolution.

⁶ Ibid.

⁷ VCLT (n 2) art 2(1)(a): A 'treaty' is defined under Article 2(1)(a) of the VCLT as meaning 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'. See also s 3.

⁸ *CITES Strategic Vision: 2021-2030*, CITES Resolution Conf. 18.3.

Part III critically analyses the use of compliance mechanisms under CITES. A more detailed analysis of treaty enforcement will be carried out in Chapter VI aligning more closely with a discussion of wildlife crime law enforcement. Part III concludes that the CITES compliance system, while commendable for being one of the first multilateral environmental agreements ('MEAs') with an information system built into the operative clauses of the Convention itself as well as for its continued development through Resolutions and Decisions, is not without valid criticism.

The deconstruction and accounting of the treaty's purpose and architecture in this Chapter lays the groundwork for a more direct critique of the Convention's scope and capacity to address the core problem interrogated by this thesis, the illegal wildlife trade. Chapter VI will undertake that analysis by employing a more in-depth examination of the treaty's treatment of this thesis' case study commodity: rhinoceros horn.

I OBJECTIVES OF CITES: CONSERVATION AND SUSTAINABLE USE

Assessment of whether an agreement is fit-for-purpose necessarily requires a scoping exercise to define its purpose. A holistic understanding of the contemporary objectives of CITES may be best adduced through a joint textual analysis of the *Convention's* Preamble and Strategic Vision. The present Strategic Vision reflects the current collective positions and goals of the parties and is a particularly rich source for interpretation when examined as the third in a sequence of such documents that have evolved incrementally and resulted in action undertaken through the Convention's auspices.⁹ Articles 31(3)(a) and 31(3)(b) of the VCLT require use of subsequent agreements between parties regarding the interpretation of a treaty as well as subsequent practice in the application of the treaty establishing the agreement of the parties regarding its interpretation.¹⁰ The use of the Preamble for this purpose is more confined and must be understood within the broader rules of treaty interpretation. While preambles are useful in considering the purpose and objects of a treaty, preambulatory clauses are often framed by parties in normative terms or as expressions of intent. They do not give rise to rights and obligations, which are determined from the operative clauses of a treaty that follow.

⁹ Ibid.

¹⁰ VCLT (n 2) arts 31(3)(a)-(b).

A The CITES Preamble

Commencing with the Preamble, being mindful that the clauses do not appear in any consecutive hierarchical order and are all assigned equal import, parties to CITES 'recogniz[e] that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come'.¹¹ Harkening back to Chapter II's discussion of conservation values, the broad construction of the first preambulatory clause evokes language of both intrinsic and instrumental value by alluding to the role of biodiversity as a component of natural systems, inclusive of both biotic and abiotic. 'Beautiful' is employed as a descriptor, evoking the socio-aesthetic value of wild fauna and flora; and the descriptor 'irreplaceable' signals that the value of wild species transcends purely economic-based valuation. In a sense, the latter descriptor elevates the value of wild species beyond that which could be capable of being exhausted as a natural resource.

The second preambulatory clause is consistent with the multivariate nature of values present in wild fauna and flora and speaks explicitly to a range of values: 'conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view'.¹²

The third clause provides a statement signposting to state sovereignty, which is typical of multilateral agreements within international law generally. However, it characterises the role of local decision-making for wildlife management within range states as not only factual, but desirable, whereby 'peoples and States are and should be the best protectors of their own wild fauna and flora'.¹³

The fourth preambulatory clause is the most frequently quoted when articulating the ultimate purpose of the treaty: '*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade'.¹⁴

There are several elements in the construction of this clause worth noting. The reference to 'international co-operation' is prefaced with 'in addition', connecting the present clause to the prior, which when read together positions the primacy of the role of peoples and states in decision-making within the international framework offered by CITES as an additional horizontal

¹¹ CITES (n 1) Preamble.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

means of regulation. This positioning demonstrates a major departure from the typical ‘top-down’, Eurocentric, and at times unabashedly paternalistic approach in international law. This drafting also reflects the concerns voiced by Kenya as discussed in the latter part of the previous chapter, which represented the concerns of the Global South at the time of drafting.¹⁵ Indeed, the participation of the Global South in negotiating the initial parameters of the treaty is more than a point of legacy in the treaty’s evolution as the Global South maintains a strong presence within the operation of CITES. While secondary to the primacy of peoples and states in protecting local wild fauna and flora, international co-operation is nonetheless deemed to be ‘essential’ towards achieving the treaty’s ultimate objective: the ‘protection of certain species of wild fauna and flora’.¹⁶

The use of ‘certain species’ in a sense foreshadows the structure underpinning the operation of CITES. The regime is not intended to offer *prima facie* protection to all species of wild fauna and flora in a manner akin to ‘reverse listing’; but rather, only to those particular specimens deemed to fall within the scope of the treaty. Some have criticised the CITES system of direct listing, suggesting that reverse listing (ie, operating from a default position of ‘no commercial trade’ in any species) would offer a more precautionary approach to wildlife trade that is more appropriate for biodiversity conservation. For example, Nature Needs More recommends that reverse listing could better conserve species and secure an ongoing funding stream for the costs of regulation to industry.¹⁷ Interestingly, an initial critic of reverse listing, Martin Ditkof,¹⁸ opined in 2020 that reverse listing ‘would certainly best fulfil the ultimate goal of protection in that direct listing risks missing either species not often traded or which have become endangered over time’.¹⁹ Reverse listing was considered at the meeting of CoP3 following a proposal by delegates for Australia. This resulted in Resolution Conf. 3.21²⁰ whereafter the proposal was withdrawn lacking sufficient support.²¹ Australia’s proposal was accurate in its assessment that the

¹⁵ Rosalind Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (Royal Institute of International Affairs and Earthscan, 2002) 28.

¹⁶ CITES (n 1) Preamble.

¹⁷ Peter Lanius and Lynn Johnson, *Modernising CITES: A Blueprint for Better Trade Regulation – Comprehensive Strategy for 2030* (Nature Needs More, 2021).

¹⁸ Martin L Ditkof, ‘International Trade in Endangered Species under C.I.T.E.S.: Direct Listing vs. Reverse Listing’ (1982) 15(1) *Cornell International Law Journal* 107.

¹⁹ Lanius and Johnson (n 17).

²⁰ Willem Wijnstekers, *The Evolution of CITES* (International Council for Game and Wildlife Conservation, 11th ed, 2018) 113: Resolution Conf. 3.21 recommended that a sub-committee examine the implications of the general concept of listing species in which commercial trade is permitted (as compared to the current system, in which trade in listed species is restricted).

²¹ CITES Conf. Doc 4.36, cited in Ed Couzens, ‘CITES at Forty: Never Too Late to Make Lifestyle Changes’ (2013) 22(3) *Review of European, Comparative & International Environmental Law* 311, 322.

continued adding of species to the appendices under the direct listing model would lead to practical difficulties in identification and enforcement at customs down the line, given that many species are similar in appearance. This is compounded further by specimens where products and derivatives are subject to greater pre-export modification such as rhino horn. However, consistent with the findings of the review committee and Wijnstekers, attempts to re-orient the Convention to a reverse listing model would require a series of amendments to the core of the Convention.²² It is also unlikely that the proposal would garner enough political support to meet the two-thirds CoP voting requirement to progress because a more trade restrictive approach would not be desirable to some parties, including those critical of the current tenor of trade controls. This would inevitably, and arguably inequitably, impact territories in the Global South given the representation of biodiversity hotspots located predominantly in the Global South (as discussed in previous Chapters). The debate over 'reverse listing', alternatively phrased as 'whitelisting', will continue so long as shortcomings of the current model persist. This issue will be discussed later in the present Chapter. Couzens suggests that while it may have been premature to shift to whitelisting at the time of the original proposal by Australia ('less than a decade after CITES came into existence'), it may be desirable to reconsider the possibility so as to focus less on individual species but rather on preserving biodiversity (ie larger units of conservation concern, from single species to multispecies/ habitat/ ecosystem) consistent with the development of instruments explored in Chapter IV.²³

The final refrain, 'against over-exploitation through international trade',²⁴ positions the scope of CITES as relating to international trade while identifying over-exploitation as its fundamental challenge. Once again, relating back to Chapter IV, this emphasis on managing species as natural resources was a dominant theme during the epoch in international wildlife conservation law from which CITES emerged, alongside and complementary to sustainable development. As Wijnstekers explains, the case for the importance of international co-operation is self-evident as rates of wildlife exploitation through poaching or smuggling in one part of the world may be driven by market forces elsewhere, specifically by demand and pricing in consumer countries.²⁵ Herein, CITES establishes a model of shared responsibility between consumer and producer countries in a joint mission to conserve certain fauna and flora requiring protection.

²² Wijnstekers (n 20) 113.

²³ Ed Couzens, 'CITES at Forty: Never Too Late to Make Lifestyle Changes' (2013) 22(3) *Review of European, Comparative & International Environmental Law* 311, 322-323.

²⁴ CITES (n 1) Preamble.

²⁵ Wijnstekers (n 20) 34.

Lastly, preambulatory clause five leads into the operative clauses of the treaty; however, it stresses that parties are ‘convinced of the urgency of taking appropriate measure to this end...’.²⁶ As an aside, it is interesting to consider the extent of the evidence against which parties were ‘convinced of the urgency’ to act and how those present at the time of clause’s drafting would respond to the evidence of today’s biodiversity crisis, the Holocene mass extinction, the involvement of transnational organised crime, and even links between wildlife trade and zoonotic disease outbreaks (eg COVID-19). As set out in various sections of Chapters I-IV, the evidence suggests that urgent action is not only necessary, but long overdue.

While appearing to be distinctions without differences at first blush, there are questions of interpretation of near-existential significance to the purpose and operation of CITES around the object to protect certain species ‘against over-exploitation’. In essence, a question arises as to what standard of protection is required for parties to meet this threshold. As preambulatory clauses are constructed in normative terms, it is necessary to refer to operative clauses of the treaty and subsequent agreements for greater clarity. In prefacing a more detailed analysis of the three Appendices that form the core of CITES, it is worth noting that the regulation of trade is deemed necessary where it threatens species survival, as stated plainly on the official CITES website.²⁷ Having regard to the standard of trade in specimens not threatening species survival, eminent experts such as Reeve have argued that this it does not necessarily follow that sustainable use is an objective of CITES, but rather that ‘CITES seeks to prevent unsustainable use, not to promote sustainable use over non-use’.²⁸ Reeve refers to commentary by the OECD in its 1997 interpretation of the treaty in reaching the conclusion that:

[w]hile some try to argue that sustainable use is an objective, it has been concluded that: ‘This is probably not the case. CITES is not per se a treaty to promote trade and use of wildlife. The principal objective of CITES is and has always been to ensure that international trade does not lead to species extinction’.²⁹

It is also important to note that, while the wording of the preamble and operative clauses has not changed since 1997, CITES has been actively positioned as promoting sustainable use, including by direct representation of the Secretary-General (the role and functions of the

²⁶ CITES (n 1) Preamble.

²⁷ ‘What is CITES?’, CITES (Web Page) <<https://cites.org/eng/disc/what.php>>: ‘CITES ... is an international agreement between governments that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.’

²⁸ Reeve (n 15) 29.

²⁹ Ibid 29, citing ‘Experience with the Use of Trade Measures in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)’ in OECD, *Trade Measures in Multilateral Environmental Agreements* (OECD Publishing, 2000) 11, 32.

Secretariat is further discussed in Part II of this Chapter concerning the *Operation of the Convention*). Indeed, during a virtual session facilitated by the Reverse the Red Pavilion at IUCN's World Conservation Congress (Marseille, September 3-11, 2021), CITES Secretary-General Ivonne Higuero gave a presentation entitled *Sustainable use: a powerful tool to ensure the conservation of species of wild fauna and flora*, even stating explicitly that CITES 'is aimed at achieving conservation and sustainable use objectives' on a slide entitled 'the purpose of CITES'.³⁰ Publications on the CITES website, including the *CITES Trade: A Snapshot*³¹ brochure, offer that 'CITES plays an important role in supporting sustainable development by ensuring that trade in wild animals and plants is legal, sustainable and traceable'.³² On the Global South, Resolution Conf. 8.3 (Rev. CoP13) recognises the benefits of trade in wildlife, noting that the majority of species of wild fauna and flora that CITES seeks to protect and enhance occur in the developing countries of the world.³³ Thus, it appears that the premise that CITES does not seek to fulfil sustainable use as an objective is rebuttable, particularly based on an interpretation having regard to subsequent practice as per Article 31(3)(b) of the VCLT.

B The evolution of CITES' Strategic Vision

The tenor towards sustainable use is most prominently demonstrated as a core feature of all three of CITES' Strategic Vision documents, as adopted by the CoP. The ninth meeting of the CoP (Fort Lauderdale, 1994) commissioned a review of the treaty's effectiveness, and at the 10th meeting (Harare, 1997) agreed to an Action Plan implementing certain findings and recommendations of the review, most centrally the need for a Strategic Plan.³⁴ The first Strategic Vision through 2005 and corresponding Action Plan were adopted at the 11th meeting of the CoP (Gigiri, 2000),³⁵ and subsequently extended to 2007 at the 13th CoP (Bangkok, 2004).³⁶ The second Strategic Vision spanning the period 2008-2013 was adopted at the 14th meeting of the CoP (The Hague, 2007)³⁷ through Resolution Conf. 14.2 which was replaced by Resolution Conf.

³⁰ Ivonne Higuero, 'Sustainable use: a powerful tool to ensure the conservation of species of wild fauna and flora' (Presentation, IUCN's World Conservation Congress, 6 September 2021) <<https://youtu.be/IIQHcmPvAPc>>.

³¹ CITES, 'CITES Trade: A Snapshot' <<https://cites.org/sites/default/files/common/docs/CITES-trade-snapshot-eng.pdf>>.

³² *Ibid.*

³³ *Recognition of the benefits of trade in wildlife*, CITES Resolution Conf. 8.3 (Rev. CoP13).

³⁴ CITES, *Decisions regarding improvement of the effectiveness of the Convention*, Doc. SC.42.7. This document was produced by the Strategic Plan Working Group and was agreed to by the Standing Committee at its 42nd meeting in Lisbon (28 September – 1 October 1999).

³⁵ CITES, *Decision 11.1 – Regarding the Strategic Plan for the Convention*.

³⁶ CITES, *Decision 13.1 – Strategic Vision*.

³⁷ CITES, *Decision 14.2 – CITES Strategic Vision: 2008-2013*.

16.3 at the 16th meeting of the CoP (Bangkok, 2013) extending the period to conclude in 2020. The latter resolution amended the initial version to include reference to the *Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*,³⁸ as well as the United Nations Conference on Sustainable Development. What became the *CITES Strategic Vision 2008-2020* was further amended at the 17th meeting of the CoP (Johannesburg, 2016), to include reference to the Sustainable Development Goals and 2-3- Agenda for Sustainable Development targets.³⁹ The 18th meeting of the CoP (Geneva, 2019) adopted a third *Strategic Vision 2021-2030* incorporating the 2030 Agenda for Sustainable Development and post-2020 agenda.⁴⁰ As to specific references to sustainable trade, the ‘purpose’ of the first Strategic Vision reads as follows:

The purpose of the Strategic Plan is to improve the working of the Convention so that international trade in wild fauna and flora is increasingly and consistently conducted at sustainable levels. Where uncertainty remains as to whether trade is sustainable, the precautionary principle will prevail as the ultimate safeguard. However, a successful outcome of the implementation of the Strategic Plan will be reducing the requirement to bring the precautionary principle into play. The Strategic Plan confirms the recognition by the Parties that sustainable trade in wild fauna and flora can make a major contribution to securing the broader and not incompatible objectives of sustainable development and biodiversity conservation. However, it also recognizes that the Convention must continue to ensure that proper trade mechanisms are put in place...⁴¹

All three strategic phases of the Strategic Vision contain a statement reinforcing an intention to improve the working of the Convention that would enable international trade to be ‘conducted at sustainable levels’. Specific reference to ‘sustainable use’ emerged more explicitly in the second phase through the CITES Vision Statement:

Conserve biodiversity and contribute to its sustainable use by ensuring that no species of wild fauna⁴² or flora becomes or remains subject to unsustainable exploitation through international trade, thereby contributing to the significant reduction of the rate of biodiversity loss and making a significant contribution towards achieving the relevant Aichi Biodiversity Targets.⁴³

This Vision Statement was updated for the third Strategic Plan and maintained reference to sustainable use while doubling down on the intention to have all international trade be legal and

³⁸ *The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, Decision, UN Doc UNEP/CBD/COP/DEC/X/2 (29 October 2010).

³⁹ *CITES Strategic Vision: 2008-2020*, CITES Resolution Conf. 16.3 (Rev. CoP17).

⁴⁰ *CITES Strategic Vision: 2021-2030* (n 8).

⁴¹ *CITES and the Regulation of International Trade in Wild Fauna and Flora Strategic Vision Through 2005 – International trade in any wild fauna or flora shall be sustainable*, No. 1999/76.

⁴² *Ibid.*

⁴³ *CITES Strategic Vision: 2008-2020* (n 39).

sustainable as mutually supportive of species survival: 'By 2030, all international trade in wild fauna and flora is legal and sustainable, consistent with the long-term conservation of species, and thereby contributing to halting biodiversity loss, to ensuring its sustainable use, and to achieving the 2030 Agenda for Sustainable Development.'⁴⁴

Reading down the current 2021-2030 Strategic Vision, it is clear that the Convention operates with a view that it is not only possible but desirable to promote legal and sustainable use of wildlife and serve to 'act in the best interest of the conservation of species'.⁴⁵ The Strategic Goals underpinning this approach refer to CITES contributing to and learning from international efforts to achieve sustainable development (Goal 4) and compliance with the Convention to achieve the conservation and sustainable use in CITES-listed species (Goal 1). Goal 3 further highlights the importance of sustainable use, envisioning that 'parties (individually and collectively) have the tools, resources and capacity to effectively implement and enforce the Convention, contributing to the conservation, sustainable use and the reduction of illegal trade in CITES-listed wildlife species'.⁴⁶

Taken together, the CITES framework is intended to promote sustainable trade rather than to facilitate that that is not unsustainable (ie framed in terms of advancing a positive objective rather than merely the absence of a negative outcome). Therefore, in clarifying CITES' identity as a multilateral environmental agreement, it must be stated plainly that the treaty is intended to be more permissive to trade than restrictive. Phrased otherwise, using the language employed in Chapters II and IV, CITES' approach to conservation, while science-informed, is people-centred in how it positions people as the decision-makers and those benefitting from the trade in wildlife as natural resources as inputs into a broader human development agenda. Intrinsic value is cited in its Preamble, however instrumental values dominate. It posits trade, not 'pristine nature' or absolute preservation, as the norm in its expression of conservation. This conception of CITES as a trade agreement concerning wild species will be underscored further in reading down the treaty's operative clauses in Part II.

⁴⁴ *CITES Strategic Vision: 2021-2030* (n 8).

⁴⁵ *Ibid* 3 'Values'.

⁴⁶ *Ibid* 4 'Strategic Goals'.

II THE OPERATION OF CITES

Part I discerned the core purpose of CITES as promoting sustainable trade of wildlife as well as conservation as part of its objectives. Before critiquing the compliance regime established by the treaty in advance of those objectives, the analysis now turns to an examination of the framework that demarcates the scope of the treaty's operation, namely different restrictions on and exceptions to permitted trade based on the classification of species as protected under Appendices I, II and III. This involves understanding five functional aspects of the regime: (a) governing bodies; (b) the licensing regime, including differentiating between Appendices and means to add/amend/etc, which determine protections afforded/limits on trade; (c) understanding linkages with other subject matter-relevant international agreements, particularly those that have influenced the licensing regime (d) mechanisms to establish reservations and exceptions, and (e) dispute resolution.

A CITES Governing Bodies: Conference of the Parties, Secretariat, and Committees

The governing bodies of CITES are most succinctly set out in the organigramme produced by the Secretariat below; involving the CoP and three Committees (Standing, Animals, and Plants) serviced and coordinated by the Secretariat (which itself is comprised of the Office for the Secretary-General as supported by subsidiary units).

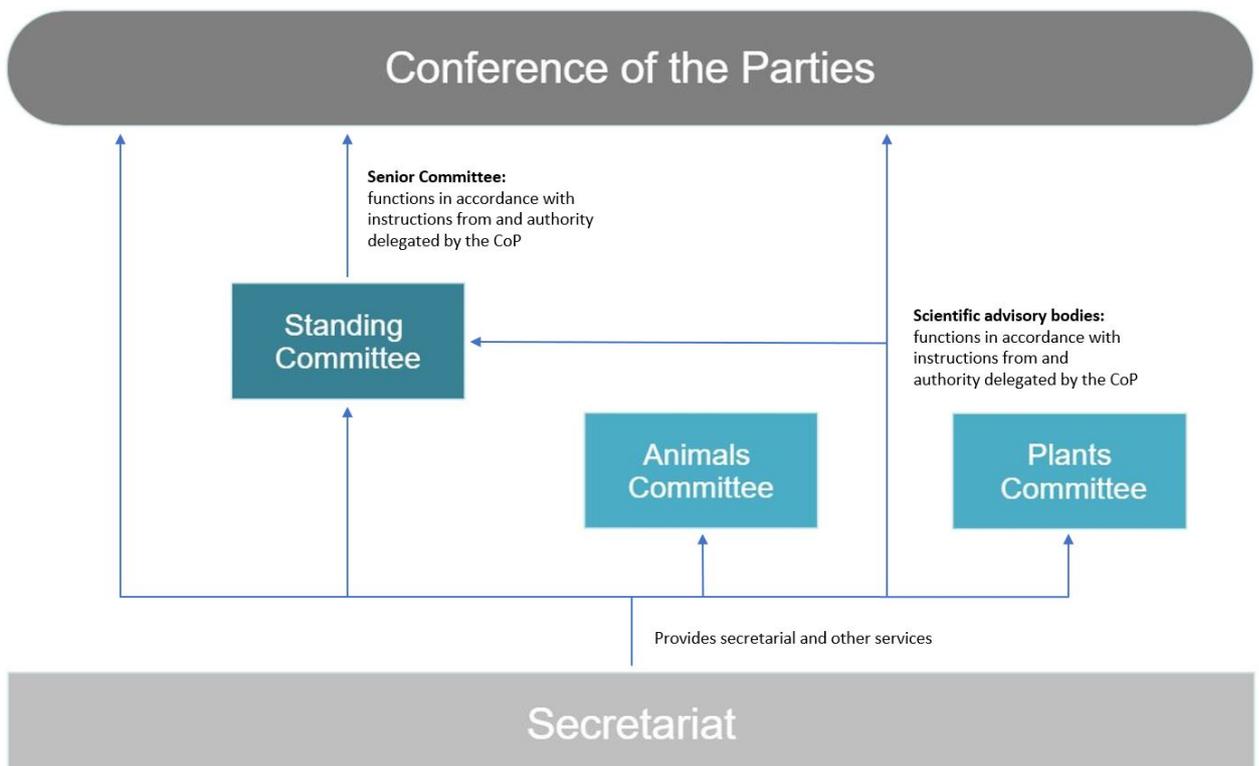


Figure 1: Organigramme of CITES Governing Bodies.⁴⁷

1 *The Conference of the Parties*

A pivotal governing body for CITES is the CoP, whose function and operation is outlined in Article XI of the Convention. The CoP meets to review the implementation of the Convention every two to three years. CoPs provide the parties opportunity to:

- I. review progress in the conservation of CITES-listed species;
- II. examine discussion documents and reports from the parties, permanent committees, the Secretariat, and working groups;
- III. where appropriate, consider and adopt proposals to amend the lists of species in Appendices I and II;
- IV. recommend measures to improve the effectiveness of the Convention; and
- V. make provisions (including adoption of a budget) required to support the Secretariat in fulfilling its duties and functions.⁴⁸

As highlighted in Chapter IV, the involvement of non-state actors under the auspices of the Convention, while not unprecedented, is certainly beyond the norm in international law-making.⁴⁹ This sees a range of organisations influencing decision-making in real time as opposed to simply offering commentary on proceedings as outsiders-looking-in. Meetings of the CoP are attended not only by delegations representing CITES parties, but by observers including representatives from non-party states to the Convention, United Nations agencies and other international conventions. Observers from non-governmental organisations involved in conservation or trade may be permitted to participate at the discretion of the parties.⁵⁰ Regular observers at meetings of the CoP include those representing many of the conservation organisations referred to in Chapter IV, including IUCN and WWF.

The voting process and outputs of CoPs have changed over time. Until 1985, resolutions were adopted by a simple majority of the parties present and voting; however, this changed to a two-thirds majority of votes cast (excluding abstentions) for adoption.⁵¹ In practice, attempts are

⁴⁷ 'The structure of CITES', *CITES* <<https://cites.org/eng/disc/org.php>>.

⁴⁸ 'Conference of the Parties', *CITES* <<https://cites.org/eng/disc/cop.php>>.

⁴⁹ Reeve (n 15) 68-69. See also Daniel WS Challender and Douglas C MacMillan, 'Investigating the Influence of Non-state Actors on Amendments to the CITES Appendices (2019) 22(2) *Journal of International Wildlife Law & Policy* 90, 110.

⁵⁰ *Ibid.*

⁵¹ Wijnstekers (n 20) 376.

made to adopt resolutions by consensus; however, the introduction of the two-thirds rule was predicated on the notion that a greater proportion of parties in-favour would maximise chances for success in implementation.⁵² Since 1994, decisions arising from each CoP have emerged in the form of resolutions, revised resolutions and decisions, constituting the soft law underpinning CITES' operation and interpretation. This reliance on a growing body of soft law means that parties can more readily inform and be informed by contemporary data on the status and likely impacts of trade in a species when seeking to minimise the 'evidence-to-response-lag' in decision-making.

The locations of meetings of the CoPs to date demonstrate a willingness by parties to see negotiations hosted by member states from the Global South where wildlife trade occurs through commercial trade in specimens (ie in whole, parts, products, or derivatives) or as the central feature of industries such as ecotourism. CoP18 is one of a small number of CoPs held in a developed nation; but it should be noted that it was originally intended to be held in Colombo, Sri Lanka in May 2019, postponed to June, and then later moved to Geneva due to security concerns (ie following the Easter Sunday bombings).

⁵² Ibid.

Dates and venues of meetings of the Conference of the Parties:

CoP19	Panama City (Panama), 14 - 25 November 2022
CoP18	Geneva (Switzerland), 17-28 August 2019
CoP17	Johannesburg (South Africa), 24 September - 4 October 2016
CoP16	Bangkok (Thailand), 3-14 March 2013
CoP15	Doha (Qatar), 13-25 March 2010
CoP14	The Hague (the Netherlands), 3-15 June 2007
CoP13	Bangkok (Thailand), 2-14 October 2004
CoP12	Santiago (Chile), 3-15 November 2002
CoP11	Gigiri (Kenya), 10-20 April 2000
CoP10	Harare (Zimbabwe), 9-20 June 1997
CoP9	Fort Lauderdale (United States of America), 7-18 November 1994
CoP8	Kyoto (Japan), 2-13 March 1992
CoP7	Lausanne (Switzerland), 9-20 October 1989
CoP6	Ottawa (Canada), 12-24 July 1987
CoP5	Buenos Aires (Argentina), 22 April - 3 May 1985
CoP4	Gaborone (Botswana), 19-30 April 1983
CoP3	New Delhi (India), 25 February - 8 March 1981
CoP2	San José (Costa Rica), 19-30 March 1979
CoP1	Bern (Switzerland), 2-6 November 1976

Table 1: Table outlining the Dates and Venues of meetings of the Conference of the Parties.⁵³

⁵³ Ibid.

2 Secretariat

The functions of the CITES Secretariat are generally those concerning the coordinating, advisory and servicing roles for effective implementation of the treaty. These duties are outlined in further detail in Article XII of the Convention, and include arranging meetings of the parties, offering assistance with respect to legislation, enforcement, science and training, assisting with communication and monitoring the implementation of the Convention (including preparing annual reports to the parties), and issuing updated editions of the Appendices, Resolutions, and Decisions. The Secretariat is administered by UNEP and located in Geneva, Switzerland.⁵⁴ It is structured with the Office for the Secretary-General as the peak strategic leadership and administrative organ with a suite of subsidiary units reporting as set out below:

⁵⁴ See *Memorandum of Understanding Between the Standing Committee of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Executive Director of the United Nations Environment Programme Concerning Secretariate Services to and Support of the Convention* (1 September 2011) <https://cites.org/sites/default/files/common/disc/sec/CITES-UNEP_0.pdf>. For present financing of the Secretariat, see *Financing and the costed programme of work for the Secretariat for the triennium 2023-2025*, CITES Resolution Conf. 19.1.

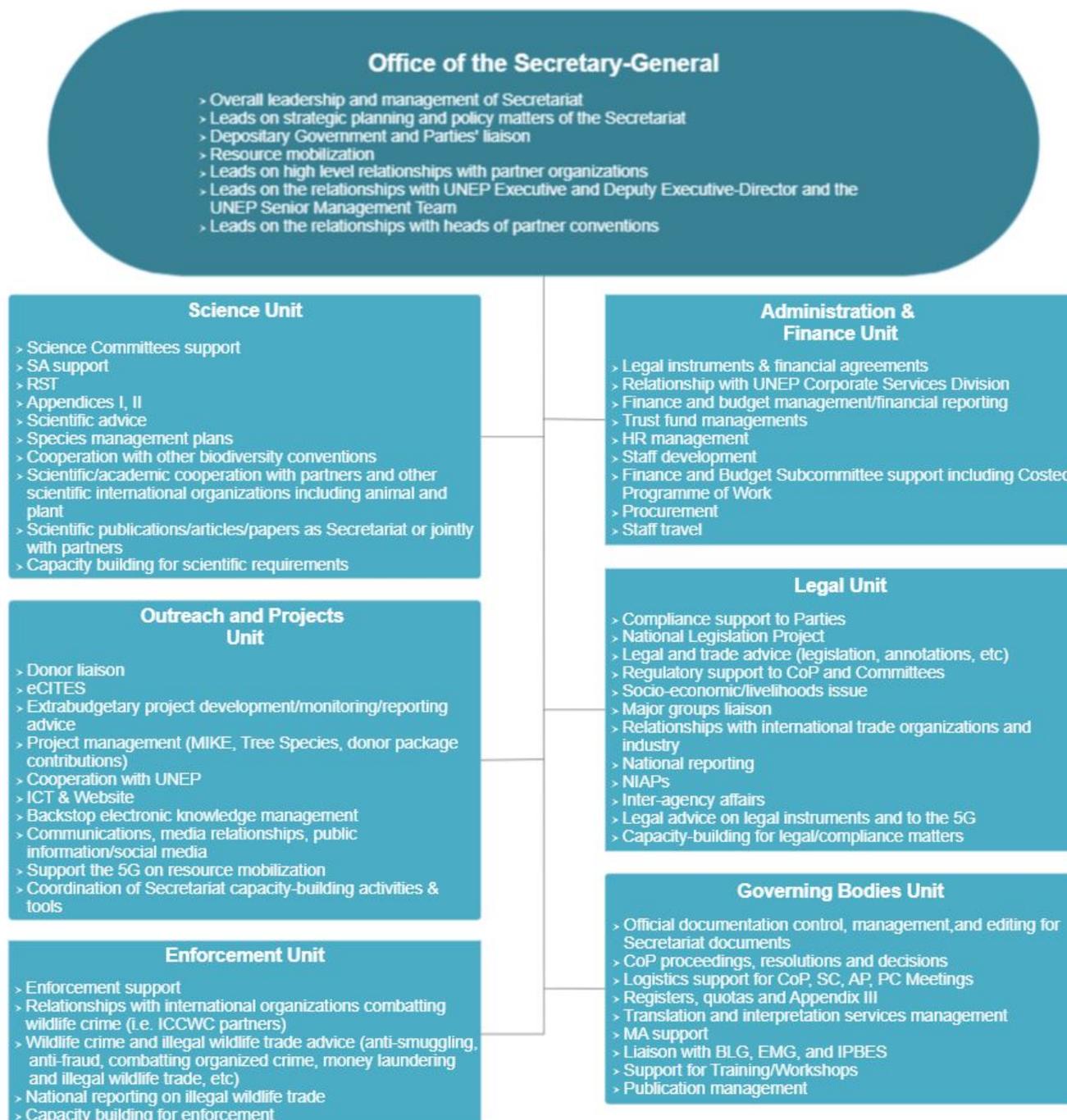


Figure 2: Functional Structure of the CITES Secretariat.⁵⁵

3 Committees

In addition to the CoP and Secretariat, three permanent Committees are constituted within the structure of CITES governing bodies: the Standing Committee, Animals Committee and Plants Committee.⁵⁶ While their functions differ, all three play an important role structurally by ensuring that knowledge and experience informing discussions regarding the treaty's implementation is

⁵⁵ 'The CITES Secretariat', *CITES* <<https://cites.org/eng/disc/sec/index.php>>.

⁵⁶ *Establishment of committees*, CITES Resolution Conf 18.2.

not centralised, but rather representative of the range of regions in which the treaty operates. This approach to representation within CITES' governing bodies is important to maintaining its legitimacy from the perspective of its parties, which ought to go towards maximising compliance with its decisions. As identified in Chapters II and IV, there is an imperative to both understand diverse perspectives on conservation, in principle and practice, coupled with contending with the legacy of the Global North- Global South divide. Thus, the composition of these committees serves to move the Convention forward symbolically and practically in these respects as one of the most significant decision-making architectures in international wildlife conservation law.

The Standing Committee provides policy guidance to the Secretariat concerning the implementation of the Convention and oversees management of the Secretariat's budget. Beyond these key roles, it coordinates and oversees, where required, the work of other committees and working groups; carries out tasks given to it by the CoP; and drafts resolutions for consideration by the CoP. Members of the Standing Committee consist of parties representing each of the six major geographical regions (Africa, Asia, Europe, North America, Central and South America and the Caribbean, and Oceania), with the number of representatives weighted according to the number of parties within the region.⁵⁷ The membership of the Standing Committee is reviewed at every regular meeting of the CoP. Additionally, the Standing Committee systematically includes representatives from the Depositary Government (Switzerland), the previous host of the CoP, and the party designated to host the next CoP. The Depositary Government may only vote to break a tie, whilst the previous and next hosts parties have no voting rights. All parties that are not members of the Standing Committee have the right to send observers to its meetings. In addition, the Chair may invite observers from any country or organisation, including non-governmental organisations, who may be represented as observers at meetings of the Committee in accordance with Rule 4 of the *Rules of Procedure of the Standing Committee*.⁵⁸

The Standing Committee usually meets once a year, although additional gatherings are commonplace before and after each CoP.⁵⁹ The Standing Committee may establish such working groups as may be necessary to carry out its functions. For example, the list of 2020-2021 intersessional working groups includes those concerning 'Engagement with indigenous people

⁵⁷ See *Establishment of Committees*, CITES Resolution Conf. 18.2, annex 1.

⁵⁸ CITES, *Rules of Procedure of the Standing Committee* (July 2014) <<https://cites.org/sites/default/files/eng/com/sc/E-SC65-Rules.pdf>>.

⁵⁹ 'Standing Committee', CITES <<https://cites.org/eng/disc/sc.php>>.

and local and rural communities’, ‘Livelihoods’, and ‘Role of CITES in reducing risk of future zoonotic disease emergence associated with international wildlife trade’.⁶⁰

The Animals and Plants Committees were created in response to the identified need for experts to fill gaps in biological and other specialised knowledge regarding species of animals and plants that are (or might become) subject to CITES trade controls. Both committees were established at the sixth meeting of the CoP (Ottawa, 1987).⁶¹ These two Committees have similar terms of reference, which include contending with nomenclatural issues, undertaking periodic reviews of species to ascertain their appropriate placement on the Appendices, and offering scientific advice and guidance to the CoP, other committees, working groups and the Secretariat.⁶² As will be discussed later in this Chapter, these committees also play an advisory role in the Review of Significant Trade process.

The Animals and Plants Committees meet twice between meetings of the CoP and report to the CoP at its meetings. If so requested, they provide advice to the Standing Committee between such meetings. Like the Standing Committee, committee memberships are similarly comprised of individuals from the six major geographical regions in addition to one nomenclature specialist on each of the two committees. They are elected at the meetings of the CoP, with the number of regional representatives weighted according to the number of parties within each region and according to the regional distribution of biodiversity.⁶³ Similarly to the Standing Committee, any party may be represented at a meeting of either committee as an observer and the Chair may invite any person or organisation as observers.

Having identified the major organs in CITES’ decision-making structure, how these are constituted, and their relationship to each other, the following sections of this Chapter will examine how the operative clauses of the convention are operationalised by this framework, commencing first and foremost with an overview of the Appendices and licensing system which sits at the treaty’s core.

⁶⁰ ‘List of 2020-2021 Intersessional Working Groups’, *CITES* <<https://cites.org/sites/default/files/eng/com/sc/2020-2021/E-SC-IWGs-2021-11082021.pdf>>.

⁶¹ There was formerly an additional committee constituted called the Nomenclature Committee however this was dissolved as per the adopted of *Establishment of committees*, CITES Resolution Conf. 11.1 (Rev. CoP14). Specialists on zoological and botanical nomenclature were integrated into the two scientific committees and have no voting rights.

⁶² *Establishment of Committees* (n 57) annex 2.

⁶³ As in the Standing Committee, there is an elected alternate member for each of the six regions who represents the region at meetings when the relevant member is unable to attend.

B Appendices & Licensing System (including non-detriment findings and export quotas)

CITES is an anomaly amongst most MEAs in that its operative clauses are extremely technical rather than tending towards vague language and generalities as to party obligations and standard setting. This is unsurprising, however, given that the Convention intends to operate as a licensing regime on a global scale which is informed by a vast body of technical expertise as discussed above. Owing to this high degree of precision and nuance, it is necessary to dissect the operative clauses comprising this regime with equal rigour.

CITES regulates international trade in specimens of species of wild fauna and flora through a licensing system of permits and certificates which can only be issued where certain conditions are met and that must be presented before consignments of specimens can exit or enter a country.⁶⁴ A species is defined under Article I(a) as meaning ‘any species, subspecies, or geographically separate population thereof’.⁶⁵ A ‘specimen’ is defined in Article I(b) as any animal or plant, alive or dead, and may include readily recognisable parts or derivatives as further specified in relation to where on the Appendices the species falls.⁶⁶ For example, Article I(b)(ii) holds that in the case of an animal ‘for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species’.⁶⁷

Of particular note, Resolution Conf. 9.6 (Rev. CoP19) states that a ‘readily recognizable part or derivative’ must be interpreted inclusive of any specimen which appears from an accompanying document, packaging or mark or label, or from any other circumstances, to be a part of or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention.⁶⁸ This Resolution is of pragmatic significance for law enforcement activities involving faux consignments, for example products labelled as containing rhino horn powder but which contain baking soda or alleged authentic ivory contraband that turns out to be resin or bone.⁶⁹ The aim, once again, is to clarify what is and is not subject to the provisions of the Convention and aid law enforcement in determining what is and is not to be taken as indicative of a shipment or product in contravention of the Convention (regardless of whether the commodities turn out to be authentic or not). The

⁶⁴ Resolution Conf. 12.3 (Rev. CoP19) concerns ‘Permits and certificates’.

⁶⁵ *CITES* (n 1) art I(a).

⁶⁶ *Ibid* art I(b).

⁶⁷ *Ibid*.

⁶⁸ Wijnstekers (n 20) 55-56.

⁶⁹ *Ibid*.

Convention stipulates that a separate permit or certificate be obtained for each consignment of specimens, and that an export permit be considered valid only for six months from the date granted.⁷⁰ Each party to the Convention must designate one or more Management Authorities in charge of administering that licensing system,⁷¹ and one or more Scientific Authorities to advise them on the effects of trade on the status of the species.⁷² Such international trade is defined in Article 1(c) whereby 'trade' means 'export, re-export, import and introduction from sea'.⁷³ Animal and plant species that are subjects of the convention are placed into one of three appendices reflecting degrees of regulation corresponding to how threatened they are by international trade.

1 CITES Listings

As of 23 February 2023, CITES regulates trade in over 40,000 species, including approximately 6,610 species of animals and 34,310 species of plants through listing in its Appendices (see table below):

⁷⁰ CITES (n 1) arts VI.2, VI.5.

⁷¹ See *Designation and roles of Management Authorities*, CITES Resolution Conf. 18.6.

⁷² See *Designation and roles of the Scientific Authorities*, CITES Resolution Conf. 10.3. Resolution corrected by the Secretariat following the 13th, 14th, 15th and 16th meetings of the CoP.

⁷³ CITES (n 1) art I(c). 'Re-export' means export of any specimen that has previously been imported; (e) 'Introduction from the sea' means transportation into a state of specimens of any species which were taken in the marine environment not under the jurisdiction of any state.

	Appendix I	Appendix II	Appendix III
<i>FAUNA</i>			
Mammals	334 spp. (incl. 21 popns) + 14 sspp. (incl. 4 popns)	523 spp. (incl. 22 popns) + 9 sspp. (incl. 4 popns)	46 spp. + 11 sspp
Birds	156 spp. (incl. 2 popns) + 5 sspp.	1294 spp. (incl. 1 popn) + 6 sspp.	60 spp. (incl. 31 popns)
Reptiles	105 spp. (incl. 7 popns) + 4 sspp.	870 spp. (incl. 6 popns)	215 spp. (incl. 1 popn) + 8 sspp.
Amphibians	24 spp.	351 spp.	5 spp.
Fish	16 spp.	224 spp.	19 spp. (incl. 10 popns)
Invertebrates	69 spp. + 7 sspp.	2193 spp. + 1 sspp.	27 spp. + 3 sspp.
FAUNA TOTAL	704 spp. + 30 sspp.	5466 spp. + 16 sspp.	372 spp. + 22 sspp.
<i>FLORA</i>	395 spp. + 4 sspp. + 12 var.	33,764 spp. (incl. 110 popns)	134 spp. + 1 var.
GRAND TOTAL	1,099 spp. + 34 sspp. + 12 var.	39,230 spp. + 16 sspp.	506 spp. + 22 sspp + 1 var.

Table 2: CITES-listed species.⁷⁴

The majority of listings are for species; however, in some instances only a subspecies or particular population (of a species within a specific country) may be listed. Annex 3 to Resolution Conf. 9.24 (Rev. CoP17) provides that ‘split-listing’ a species in more than one Appendix ought to ‘be avoided in general in view of the enforcement problems it creates’,⁷⁵ and should generally be on the basis of national or regional populations rather than subspecies. Split-listings that place some populations of a species in the Appendices to the exclusion of other populations of that same species should ‘normally not be permitted’.⁷⁶ Split-listing is important however, as it enables parties to list an endangered population of a species in Appendix I to protect it from commercial exploitation despite the species not being endangered in other parts of its range where trade may be maintained. In this way, split-listing incentivises effective in situ wildlife conservation management in range states whereby a party with a thriving local population may seek to have it listed in Appendix II, thus permitting limited commercial trade unavailable under Appendix I.⁷⁷ Rhinoceros conservationists would be familiar with the concept of split-listing wherein all species of *Rhinocerotidae* are listed under Appendix I, except for the southern white rhino populations

⁷⁴ Ibid

⁷⁵ *Criteria for amendment of Appendices I and II*, CITES Resolution Conf. 9.24 (Rev. CoP17) 5.

⁷⁶ Ibid.

⁷⁷ Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster’s International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 492.

of South Africa, eSwatini and Namibia which are subject to annotations contained in Appendix II (as will be analysed in Chapter VI). The split-listing mechanism exemplifies how the twin objects of CITES, conservation and sustainable use, can work in tandem.

According to a statement by the CITES Secretary-General on 14 September 2023, ‘...more than 97 per cent of species listed in the CITES Appendices are allowed to be commercially traded under a permitting scheme’.⁷⁸ Parties tend to list individual species in Appendix I but whole families in Appendix II.⁷⁹ The proportion of tradeable specimens represented on the Appendices further underscores the findings of Part I of this Chapter.

In further clarifying the ‘precautionary approach’ as briefly touched on in Part I, while the treaty text sets forth the base conditions for inclusion in its Appendices, parties have sought greater clarity on the criteria for amending Appendices I and II (listing, up-listing, or de-listing). This guidance began with Resolution Conf. 1.1 in Bern (known as the ‘Bern criteria’) but was subsequently replaced at the ninth meeting of the CoP in Fort Lauderdale (known as the ‘Fort Lauderdale criteria’) via Resolution Conf. 9.24 (Rev. CoP17).⁸⁰ Significantly, the Resolution:

resolves that by virtue of the precautionary approach and in cases of uncertainty regarding the status of a species or the impact of trade on the conservation of a species, the Parties shall act in the best interest of the conservation of the species concerned and, when considering proposals to amend Appendix I or II, adopt measures that are proportionate to the anticipated risks to the species.⁸¹

At each regular meeting of the CoP, parties submit proposals based on those criteria to amend these two Appendices. Those amendment proposals are discussed and then submitted to a vote. The Convention also allows for amendments by a postal procedure between meetings of the CoP (see Article XV(2) of the Convention), although this procedure is rarely used. Further reflective of a precautionary approach, a species listed in Appendix I cannot be removed from the Appendices without first being transferred to Appendix II, with monitoring of any impact of trade on the species for at minimum two intervals between CoPs.⁸² Discussions around the Fort Lauderdale criteria are frequent, particularly in how to balance the interests of human and non-human

⁷⁸ Ivonne Higuero, ‘eCITES: Transforming Global Wildlife Trade Management’ (Media Release, CITES, 23 September 2023) <<https://cites.org/eng/news/sg-statements/eCITES-transforming-global-wildlife-trade-management>> (‘eCITES’).

⁷⁹ UNODC, ‘Module 2: International Frameworks for Combating Wildlife Trafficking’, *E4J University Module Series: Wildlife Crime* (Web Page) <<https://www.unodc.org/e4j/en/wildlife-crime/module-2/key-issues/cites-and-the-international-trade-in-endangered-species.html>>; Bowman, Davies and Redgwell (n 77) 496.

⁸⁰ *Criteria for amendment of Appendices I and II*, CITES Resolution Conf. 9.24 (Rev. CoP17).

⁸¹ *Ibid.*

⁸² *Ibid.* 6.

species in achieving conservation and sustainable use objectives. Most recently, at CoP19, the parties rejected a proposal to include local livelihoods and food security into the criteria for amending the Appendices.⁸³

The CITES Appendices each provide their own set of conditions for classification which result in flow-on effects on trade. Each requires focused examination and shall be explained with reference to the treaty text below.

2 Trade in Appendix I Species

CITES Article II(1) ('Fundamental Principles') provides:

Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.⁸⁴

In interpreting this category, a species must effectively satisfy two tests. Firstly, they must be 'threatened with extinction'. Secondly, they must be or may be 'affected by trade'.

Annex 1 of the Fort Lauderdale criteria provides Biological Criteria for Appendix I species, including defining where a species is considered to be threatened with extinction. As per the definition, a species is considered to be threatened with extinction if it meets, or is likely to meet, at least one of the following criteria:

- I. an observed, inferred or projected decline in the number of individuals or the area and quality of habitat;
- II. each subpopulation being very small;
- III. a majority of individuals being concentrated geographically during one or more life-history phases;
- IV. large short-term fluctuations in population size; or
- v. a high vulnerability to either intrinsic or extrinsic factors.⁸⁵

⁸³ *Species specific matters – Maintenance of the Appendices: Amendments to Resolution Conf. 9.24 (Rev. CoP17)*, CITES CoP19/Doc. 87.1 (14-25 November 2022).

⁸⁴ CITES (n 1) art II.1,

⁸⁵ *Criteria for amendment of Appendices I and II*, CITES Resolution Conf. 9.24 (Rev. CoP17) annex 1. Additional parameters for determining whether a wild population has a restricted area of distribution or a marked decline in population are also provided in Annex 1.

The parameters set out in Appendix I are to be read in conjunction with Annex 5, which provides further technical guidance on the meaning of terms and threshold determinations including definitions of ‘decline’, ‘population’, ‘fluctuations’, etc. For example, the word ‘small’ stands out as imprecise as a benchmark for determination of this important standard; however, Annex 5 provides that judgements as to whether a species bear a ‘small wildlife population’ or ‘very small wild subpopulation’ is ultimately a taxon-specific judgement, which is aligned with the Convention’s expert-based decision-making architecture.⁸⁶ Factors including the number of individuals capable for reproduction and birth intervals for the species involved would feed into the calculus and are ultimately best deferred to specialists.

Annex 5 of the Fort Lauderdale criteria stipulates that a species ‘is or may be affected by trade’ if:

- I. it is known to be in trade (using the definition of ‘trade’ in Article I of the Convention), and that trade has or may have a detrimental impact on the status of the species; or
- II. it is suspected to be in trade, or there is demonstrable potential international demand for the species, that may be detrimental to its survival in the wild.⁸⁷

The above criteria accommodate a margin of uncertainty in determinations as to whether a species ‘is or may be affected by trade’. Firstly, it doubles down on the use of ‘may’ (that is, ‘may have a detrimental impact...’ and ‘may be detrimental to its survival...’) as opposed to more definitive language (for instance, ‘must be detrimental...’). Secondly, the test may be satisfied where trade is suspected that may be detrimental to survival in the wild’ under (ii) as opposed to known to have a detrimental impact under (i). Given that most wildlife trade is demand-driven, this cautionary approach goes towards an enhanced approach to control trade to sustainable levels.

The Regulation of Trade in Specimens of Species in Appendix I is outlined in Article III of CITES. The rules applying to Appendix I specimens are the most restrictive of the regime whereby trade will only be authorised in ‘exceptional circumstances’ and where not conducted for ‘primarily commercial purposes’.⁸⁸ Guidance on how to construe ‘primarily commercial purposes’ has developed over time, with amendments to Resolution Conf. 5.10 (Rev. CoP15)⁸⁹ at CoP19

⁸⁶ Ibid Annex 5.

⁸⁷ Ibid.

⁸⁸ CITES (n 1) arts 1, 2.

⁸⁹ Amendments to the resolution occurred in compliance with Decision 14.19 and with decisions adopted by the Standing Committee at its 58th meeting in addition to revisions at CoPs15 and 19.

encouraging parties to refer to the definitions of purpose-of-transaction codes outlined in the newly revised Resolution Conf. 12.3 (Rev. CoP 19) on 'Permits and certificates' in making determinations. As per Resolution Conf. 12.3 (Rev. CoP19) the rules governing the use of purpose-of-transaction codes⁹⁰ specifies that transactions be recorded as 'commercial' where non-commercial aspects do not clearly predominate, as opposed to non-commercial transactions for which the most applicable code be used.⁹¹ Paragraph (a) of the 'General principles' of Resolution Conf. 5.10 (Rev. CoP19) stresses first and foremost that trade in Appendix I species be 'subject to particularly strict regulation and authorized only in exceptional circumstance'.⁹² Further reflective of a precautionary approach, all uses whose non-commercial aspects 'do not clearly predominate' must be classified as primarily commercial in nature thus not permitting the import of Appendix I species.⁹³ While the onus of demonstrating that the intended trade in Appendix I specimens is non-commercial lies with the person or entity importing, parties are informed that countries of import should define the term 'commercial purposes'⁹⁴ 'as broadly as possible' to the effect any transaction which is not wholly 'non-commercial' will be regarded as 'commercial'.⁹⁵ The Annex to Resolution Conf. 5.10 (Rev. CoP19) maintains a non-exhaustive list of examples where import of Appendix I specimens could be found to be not for primarily commercial purposes. Examples are consistent with Article VII of the Convention, and education or training and will be discussed further in the upcoming section on 'Reservations and Exemptions'. Determinations of the degree of commerciality of a transaction are conducted on a case-by-case basis.⁹⁶

Article III of the Convention outlines the role of national authorities in certifying the legitimacy of trade in Appendix I species along the chain of custody via export permits, import permits, re-export certificates, and certificates concerning specimens introduced from the sea. The export of any Appendix I species requires the prior grant and presentation of an export permit which may only be granted where the exporting state's Scientific Authority has advised that the export

⁹⁰ *Permits and certificates*, CITES Resolution Conf. 12.3 (Rev. CoP19) 4: T – Commercial; Z – Zoo; G – Botanical garden; Q – Circus or travelling exhibition; S – Scientific; H – Hunting trophy; P – Personal; M – Medical (including biomedical research); E – Educational; N – Reintroduction or introduction into the wild; B – Breeding in captivity or artificial propagation; L – Law enforcement / judicial / forensic.

⁹¹ *Purpose Codes on CITES Permits and Certificates*, CITES CoP19/Doc. 42 (14-25 November 2022).

⁹² *Definition of 'primarily commercial purposes'*, CITES Resolution Conf. 5.10 (Rev. CoP19).

⁹³ *Ibid* 1.

⁹⁴ *Ibid*: General Principles paragraph (b) offers guidance on the definition of 'commercial' as follows: 'An activity can generally be described as 'commercial' if its purpose is to obtain economic benefit (whether in cash or otherwise), and is directed toward resale, exchange, provision of a service or any other form of economic use or benefit.'

⁹⁵ *Ibid*.

⁹⁶ *Ibid* Annex.

will not be detrimental to the survival of that species.⁹⁷ Additionally, the exporting state's Management Authority must be satisfied that: the specimen was not acquired⁹⁸ in contravention of domestic laws; that any living specimen will be transported to minimise risk of injury, damage to health or cruel treatment; and that an import permit has been granted.⁹⁹

3 Trade in Appendix II Species

According to Article II(2)(a)-(b), Appendix II includes:

- (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.¹⁰⁰

The rationale behind Appendix II listings is to regulate international trade in species that are not sufficiently endangered to warrant inclusion on Appendix I, but which may become so unless trade is controlled. As Bowman et al. observed, 'species in this category range from heavily traded species whose populations are still relatively secure to those which are not yet in trade but could be vulnerable if, as frequently happens, traders suddenly switch from one target species to another'.¹⁰¹ A novel aspect of interpreting Article II(2)(b) concerns how to regulate so-called 'lookalike' specimens. While not explicitly addressed in the Convention, Resolution Conf. 9.24 (Rev. CoP17) considers that specimens of species that strongly resemble those of a species

⁹⁷ CITES (n 1) art III(2)(a)

⁹⁸ *Legal acquisition findings*, CITES Resolution Conf. 18.7 (Rev. CoP19).

⁹⁹ *Ibid* art III(2)(b)-(d). The granting of an import permit is contingent on whether the Management Authority of the state of import is satisfied that the specimen will not be used for primarily commercial purposes (as noted above) and where the Scientific Authority of the state of import has advised that the import will be for purposes not detrimental to the survival of the species and that the prospective recipient of a living specimen is appropriately equipped to provide housing and care per Article III(3). Imports will only be approved where both an import permit and either an export permit or a re-export certificate are granted and presented. In the case of re-exporting an Appendix I specimen, a re-export certificate must be granted and presented. The granting of a re-export certificate only requires that the Management Authority of the state of re-export be convinced that: the specimen was imported into their state in accordance with the provisions of the Convention; any living specimens will be transported to minimize risk of injury, damage to health or cruel treatment; and where an import permit has been granted for any living specimen (per Article III(4)(a)-(c)). CITES also prohibits the introduction of Appendix I specimens from the sea without a certificate issued by the Management Authority of the state into which the specimens are being introduced in accordance with determinations by both itself and the Scientific Authority in accordance with Article III(5). For clarity, 'introduction from the sea' 'means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State' (Article I(e)).

¹⁰⁰ *Ibid* II(2).

¹⁰¹ Bowman, Davies and Redgwell (n 77) 495.

listed on Appendix I ought to be regulated so as to bring trade in that Appendix I species under effective control.¹⁰²

Trade in Appendix II species is outlined in Article IV of CITES and is less stringent than Appendix I trade controls. Imports require the prior presentation or either an export permit or re-export certificate. Exports require the prior granting and presentation of an export permit where: (i) the Scientific Authority of the state of export make a non-detriment finding; and (ii) the Management Authority of the state of export be satisfied that the specimen was not acquired in contravention of domestic laws and, in the case of a living specimen, be satisfied that it will be prepared and transported to minimise the risk of injury, damage to health or cruelty.¹⁰³

4 Trade in Appendix III Species

Article II(3) provides that ‘Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade’.¹⁰⁴ As per Article XVI, parties are permitted to unilaterally amend Appendix III at any time through notifying the Secretariat.¹⁰⁵ Listings take effect 90 days after communication. Essentially, Appendix III operates to give parties with domestic legislation regulating the export of species not listed in Appendix I or II assistance in enforcing that legislation. The requirements for trading in Appendix III specimens are outlined in Article V of CITES. In the case of trade from a state that included the species in Appendix III, an export permit issued by the Management Authority of that state is required. This may be issued only if the specimen was legally obtained and, in the case of a live

¹⁰² *Species specific matters – Maintenance of the Appendices: Amendments to Resolution Conf. 9.24 (Rev. CoP17), CITES CoP19/Doc. 87.1 (14-25 November 2022)*. See also Bowman, Davies and Redgwell (n 77) 494. Earlier still, Resolution Conf. 1.1 (no longer valid) noted that those species that look like Appendix I species should be included in Appendix II. For recent debate on the lookalike provision, see discussion of the proposal to list Woolly mammoth (*Mammuthus primigenius*) in Appendix II under the lookalike provision to bring trade in elephant ivory under effective control. See *Implementation of Resolution Conf. 10.10 (Rev. CoP18) on Trade in Elephant Specimens, CITES CoP19 Doc. 66.1 (14-25 November 2022)*.

¹⁰³ Re-export certificates require that the Management Authority of the re-exporting state be satisfied that the specimen was imported in accordance with the Convention coupled with an identical ‘live specimen’ provision to exports. Given the importance of the integrity of export permits for trade in Appendix II species, the Convention requires that a Scientific Authority in each party monitor export permits granted and actual exports to inform the Management Authority where exports ought to be limited. The threshold here is where the Scientific Authority finds that ‘the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I’ (Article IV(3)). The introduction from the sea of Appendix II species is provided for under Article IV(6)-(7).

¹⁰⁴ *Ibid* art II(3).

¹⁰⁵ *Ibid* art XVI.

animal or plant, if it will be prepared and shipped to minimize any risk of injury, damage to health or cruel treatment. In the case of export from any other state, a certificate of origin issued by its Management Authority is required. In the case of re-export, a re-export certificate issued by the state of re-export is required.

Having clarified the classification system under the three Appendices and their corresponding trade provisions, it is worth noting that other international agreements have influenced the Convention's operation, including decisions to permit or not permit trade. The following Part will address the areas of intersection of greatest impact on CITES, including interaction between CITES and the CBD as well as the WTO.

5 Interaction with other international agreements

CITES maintains relationships with other biodiversity-related conventions as well as thematic cooperation with organisations including those regarding legal trade (eg the WTO, United Nations Conference on Trade and Development, and International Trade Centre), illegal wildlife trade (as will be discussed in Chapter VI), science policy (eg IPBES)¹⁰⁶ and safety and welfare standards (eg the World Association of Zoos and Aquariums and World Organization, International Air Transport Association and Animal Health). CITES is part of the Liaison Group of Biodiversity-related Conventions where the heads of the secretariats of the biodiversity-related conventions share information and explore synergies to avoid duplication of efforts while respecting the distinct mandates of each agreement.¹⁰⁷ Initiatives such as these speak to the need to de-fragment and harmonise areas of international law with overlapping subject matter, interconnected challenges (such as climate change and species extinction), and a high likelihood that national-level authorities will be required to navigate implementing competing and/or duplicative measures in giving effect to international obligations. The need for harmonisation was specifically identified by decision X/20 (paragraphs 4, 7-11) of the CBD CoP¹⁰⁸ which was formative to the negotiation of the MoU founding the group. The Secretary-General of CITES collaborates with the heads of each of the other core instruments comprising the 'Big Five' of

¹⁰⁶ *Cooperation with the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, CITES Resolution Conf. 18.4.

¹⁰⁷ 'Modus Operandi for the Liaison Group of the Biodiversity-related Conventions' (4 September 2011) <<https://cites.org/sites/default/files/eng/news/sundry/2011/201109-blg-modus-operandi-en.pdf>>; 'Liaison Group of Biodiversity-related Conventions', *Cooperation and Partnerships* (Web Page, 20 January 2022) <<https://www.cbd.int/blg/>>.

¹⁰⁸ *Cooperation with other conventions and international organizations and initiatives*, Decision, UN Doc UNEP/CBD/COP/DEC/X/20 (29 October 2010).

international wildlife conservation law as described in Chapter IV (ie the CBD, CMS, Ramsar, and World Heritage Convention) with additional recognition of the CBD, CMS, and World Heritage Convention formally in the Convention's soft-law in the form of dedicated resolutions.¹⁰⁹

(a) Intersection with the CBD: non-detriment findings and sustainable use of biodiversity

As discussed in Part I and clarified further in reading down the treaty text on the listing of species on the Appendices, while there is no express reference to a precautionary approach in the Convention's text, CITES entrenches a precautionary approach consistent with the broader precautionary principle¹¹⁰ as recognised in international wildlife conservation law, including alignment with the CBD. As discussed earlier, a precautionary approach may be implied from Articles II, III, and IV of the Convention and expressly found in resolutions of the CoP.¹¹¹ While lacking a universal definition, the most widely cited statement of the precautionary principle, formulated at the 1992 UN Conference on Environment and Development, was: 'In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.¹¹² The origin of the precautionary principle is generally attributed to the 1970s German environmental policy of *Vorsorgeprinzip* however there is some dispute as to whether it in fact Scandinavian in origin.¹¹³ As to the status of the precautionary principle in international law more broadly, some have found that precaution has attained customary status including Trouwborst who, in 2002, advanced it had reached the level of a general principle in international environmental law and a customary norm.¹¹⁴ This position is

¹⁰⁹ *Cooperation and synergy with the World Heritage Convention*, CITES Resolution Conf. 18.5; *Cooperation and synergy with the Convention of Migratory Species of Wild Animals (CMS)*, CITES Resolution Conf. 13.3; *Cooperation and synergy with the Convention on Biological Diversity*, CITES Resolution Conf.10.4 (Rev. CoP14). See also *Cooperation of CITES with other biodiversity-related conventions*, CITES Resolution Conf. 16.4; 'Cooperation with Multilateral Environmental Agreements and other international organizations', *Decisions of the Conference of the Parties to CITES in effect after its 19th meeting*, CITES Decisions 19.20-19.21, 17.55 (Rev. CoP19)-17.56 (Rev. CoP19).

¹¹⁰ See Rosie Cooney, *The Precautionary Principle in Biodiversity Conservation and Natural Resource Management: An issues paper for policy-makers, researchers and practitioners* (IUCN Policy and Global Change Series No. 2, 2004) 13-14.

¹¹¹ See, eg, *Criteria for amendment of Appendices I and II*, CITES Resolution Conf. 9.24 (Rev. CoP17).

¹¹² *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. 1) Principle 15. See Deborah C Peterson, 'Precaution: principles and practice in Australian environmental and natural resources management' (Address, Australian Agricultural and Resources Economics Society Conference, 8-10 February 2006).

¹¹³ Jacqueline Peel, 'Precaution – A Matter of Principle, Approach or Process?' (2004) 5(2) *Melbourne Journal of International Law* 483.

¹¹⁴ Arie Trouwborst, *Evolution and Status of the Precautionary Principle in International Law* (Kluwer Law International, 2002).

not uncontested and case law continues to consider the status of the precautionary principle in international and domestic courts. While outside the scope of this thesis, a worthwhile line of inquiry concerns whether the distinction between direct adoption of the precautionary principle versus a precautionary approach and/or precautionary measures is a distinction without a difference in the operation and outcomes of CITES.

An interpretation of this principle is enshrined in the preambulatory clauses of the CBD; 'where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat'. In addition to the application of a precautionary approach to listing on the Appendices, the determination of non-detriment findings offers an example of where parties have attempted to resolve some of the fragmentation in international wildlife conservation law through growing integration between CITES and the CBD. As per the principle of systemic integration expressed in Article 31(3)(c) of the VCLT, the context for interpreting the scope of treaty obligations shall have regard to 'any relevant rules of international law applicable in the relations between the parties'.¹¹⁵ In interpreting for areas of integration between CITES and the CBD that significantly impact that operation of the former, it must be noted that most parties are party to both MEAs, and therefore there is a strong case for the integration of themes, principles and even standards, such as in the criteria for non-detriment findings.

A key threshold in a Scientific Authority's approval of export permits for specimens of an Appendix I or II species is that such trade will not be detrimental to the survival of the species involved.¹¹⁶ A resolution was adopted by the CoP in 1992 (Resolution Conf. 8.6) on 'the Role of Scientific Authority' which was replaced by Resolution Conf. 10.3 on the 'Designation and role of the Scientific Authorities'. With this change, the directive to prepare general guidelines for conducting appropriate scientific reviews by Scientific Authorities was replaced by an encouragement to the parties, the Secretariat and interested non-governmental organizations to develop and support workshops and seminars designed specifically to improve the identification and implementation of CITES by Scientific Authorities.¹¹⁷ In response, IUCN led a workshop in October 1998 and October 1999, the second under contract from the Secretariat. These resulted in the report *CITES Scientific Authorities' Checklist to assist in making Non-*

¹¹⁵ VCLT (n 2) art 31(3)(c).

¹¹⁶ No pre-export non-detriment finding is required for Appendix III species, even by the listing state.

¹¹⁷ *Designation and role of the Scientific Authorities*, CITES Resolution Conf. 10.3.

detriment Findings for Appendix II Exports. The report was circulated at CoP11,¹¹⁸ and was later published by the IUCN SSC.¹¹⁹

More recently, Resolution Conf. 16.7 (Rev. CoP17) on 'Non-detriment findings' offers concepts and non-binding guiding principles in considering whether trade would be detrimental to the survival of a species.¹²⁰ These include that such findings are 'the result of a science-based assessment';¹²¹ 'whether the species would be maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs';¹²² that data requirements for determination should be proportionate to the vulnerability of species concerned; and that methods used for specimens known to be of non-wild origin may be of less rigour than that for a specimen of wild origin.¹²³ Notably, operative clause 1(ix) of the Resolution recommends that non-detriment findings be based on resource assessment methodologies which may include, but are not limited to, consideration of a list of factors.¹²⁴

One of the most direct examples of integration between the CBD and CITES concerns the definition of 'sustainable use'. Resolution Conf. 13.2 (Rev. CoP 14) on 'Sustainable use of biodiversity: the Addis Ababa Principles and Guidelines urges' CITES parties to use the 'Principles and Guidelines for the Sustainable Use of Biodiversity' in combination with scientific, trade and enforcement factors dictated by each state's circumstances as well as recommendations by the Animals and Plants Committees in all non-detriment making and processes and specifically CITES non-detriment findings.¹²⁵ In the absence of a definition of 'sustainable use' within CITES, preambulatory clause 4 of the resolution expressly recognises the term in the sense it is used in Article 2 of the CBD: 'the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining the potential

¹¹⁸ *CITES Scientific Authorities Checklist to Assist in Making Non-Detriment Findings for Appendix II Exports*, CITES Doc Inf. 11.3. This Checklist continues to be a seminal node of technical knowledge assisting Scientific Authorities in making non-detriment findings and featured in training sessions involving representatives from over one hundred parties.

¹¹⁹ A Rosser and M Haywood, 'Guidance for CITES Scientific Authorities: Checklist to assist in making non-detriment findings for Appendix II exports (IUCN Species Survival Commission' (Occasional Paper No 27, IUCN Species Survival Commission, 2002).

¹²⁰ *Non-detriment findings*, CITES Resolution Conf. 16.7 (Rev. CoP17).

¹²¹ *Ibid* 2.

¹²² *Ibid*.

¹²³ *Ibid*.

¹²⁴ *Ibid*. 'A. species biology and life-history characteristics; B. species range (historical and current); C. population structure, status and trends (in the harvested area, nationally and internationally); D. threats; E. historical and current species-specific levels and patterns of harvest and mortality (eg age, sex) from all sources combined; F. management measures currently in place and proposed, including adaptive management strategies and consideration of levels of compliance; G. population monitoring; and H. conservation status.'

¹²⁵ *Sustainable use of biodiversity: Addis Ababa Principles and Guidelines*, CITES Resolution Conf. 13.2 (Rev. CoP14).

to meet the needs and aspirations of present and future generations'.¹²⁶ Of note, the Recommendations of the Animals and Plants Committees contained in Annex 2 of the Resolution note that while not all principles therein are relevant to CITES, elements of the *Guidelines for the Sustainable Use of Biodiversity* are incorporated into the existing Checklist in making non-detriment findings for Appendix II exports.¹²⁷ 'Additional Principles' may be considered relevant on a case-by-case basis in developing further taxa-specific guidelines.¹²⁸

This intersection with the CBD bolsters this thesis' interpretation of sustainable use as core to CITES' contemporary purpose and operation. However, there are questions as to whether the measures employed under the auspices of CITES conflict with established rules of international trade.

(b) Intersection with GATT/WTO: conflict, compatibility, and quotas

The relationship between CITES and the multilateral trade system established and maintained through the General Agreement and Tariffs and Trade ('GATT') and World Trade Organization ('WTO') merits particular examination given how the former's use of trade restrictive measures such as bans and export quotas conflicts with the trade liberalisation imperative of the latter. A hypothetical question has been posed regarding whether countries who find the Convention's controls undesirably trade restrictive have an avenue for recourse under the multilateral trading system.¹²⁹ After all, trade is the central activity regulated by CITES. As Crawford writes 'CITES is an example of an environmental convention which targets the economic activity (trade) supporting the environmental harm (loss of species) as a means to address the problem'.¹³⁰

Broadly speaking, CITES and the GATT/WTO travel parallel paths but share some common goals influenced by the prominence of sustainable development and instrumental use values during each system's emergence. In 2015, the WTO Director-General Robert Azevêdo and CITES Secretary-General John Scanlon developed a publication explaining the history and roles of the two bodies.¹³¹ The Foreword to this publication explains that 'the relationship between CITES

¹²⁶ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 69 (entered into force 29 December 1993) art 2 ('CBD').

¹²⁷ Ibid annex 2; annex 1 Principles 1, 2, 4, 7, 9, 12.

¹²⁸ Ibid annex 2; annex 1 Principles 5, 6, 8, 11.

¹²⁹ Reeve (n 15) 333.

¹³⁰ James Crawford, *Brownlie's Principles of International Public Law* (Oxford University Press, 9th ed, 2019) 345.

¹³¹ *CITES and the WTO – Enhancing Cooperation for Sustainable Development* (CITES Secretariat, 2015) ('*Enhancing Cooperation*').

and the WTO has evolved into a leading example of how global trade and environmental regimes can support each other and work coherently to achieve shared objectives'.¹³² Fundamentally, this thesis contends that CITES and the WTO are increasingly complementary. While CITES predates the creation of the WTO (and even the precursor to the WTO, the GATT), CITES has adopted the modern language of sustainable development and sustainable use consistent with principles underlying trade under the auspices of the WTO. The establishment of the GATT/WTO framework was informed by the discourse of the fourth epoch of international wildlife conservation law as described in Chapter IV. 'Sustainable development' thus features prominently, such as in the first preambulatory clause of the WTO's founding charter, the *Marrakesh Agreement Establishing the World Trade Organisation* ('Marrakesh Agreement').¹³³ As identified in Chapter IV, this centrality of sustainable development traces back to Principle 12 of the Rio Declaration as follows: 'States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation'.¹³⁴ The potential for conflict remains as the trade-related environmental measures (known as 'TREMs') imposed by CITES may run counter to the GATT/WTO aim to advance economic growth and liberalise trade between WTO members (noting WTO membership increasingly mirrors that of CITES). The core principles of the multilateral trading regime established and maintained through the GATT/WTO are expressed in GATT Articles I, III and XI. Article I contains the most-favoured-nation ('MFN') rule, described as 'basic to the whole edifice of the GATT'.¹³⁵ The MFN stipulates that all members are entitled to receive the most favourable treatment given by any member with respect to the import and export of 'like products', or as alternatively phrased, are entitled to not be discriminated against. Article III concerns 'National Treatment in Internal Taxation and Regulation' and complements the MFN rule, requiring 'like products' to be treated identically with respect to internal taxes and regulations. Article XI on 'General Elimination of

¹³² Ibid 1.

¹³³ *Marrakesh Agreement Establishing the World Trade Organisation*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) Preamble ('Marrakesh Agreement'): 'Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.'

¹³⁴ *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. 1) Principle 12.

¹³⁵ WTO, *The WTO Agreement Series – General Agreement on Tariffs and Trade 1994 and 1947* (WTO Publications, 2014) vol 2, 2.

Quantitative Restrictions' dictates that no prohibitions or restrictions but for duties, taxes, and other charges ('whether made effective through quotas, import or export licenses or other measures') may be established or maintained on imports or exports to other members. Taken together, and summarised by Reeve, 'WTO members are not permitted to discriminate between other WTO members' traded products or between domestic and international production, and are obliged to eliminate all restrictions other than tariffs'.¹³⁶ Reeve provides a shortlist of TREMs that may prove problematic from a GATT/WTO standpoint, including:

- I. bans on commercial trade and temporary trade suspensions;
- II. requirements for export and import permits, export quotas, labelling systems, and the tagging and marking of wildlife products;
- III. differential treatment depending on whether the same species is captive-bred, ranched, artificially propagated or trades from the wild; and
- IV. differential treatment based on a split-listing.¹³⁷

Export quotas have become a commonplace tool in managing sustainable international trade in fauna and flora. These quotas, such as in the form of maximum number of specimens of a species that may be exported annually without having a detrimental effect of its survival, may thus form a part of a Scientific Authority's consideration in issuing non-detriment findings for Appendix I and II species).¹³⁸ The onus rests with each party to establish their own quotas, except for where quotas have been set through decisions of the CoP. States inform the Secretariat of their export quotas, which are subsequently communicated to the parties.¹³⁹ The management of nationally established export quotas is the subject of Resolution Conf. 14.7 (Rev. CoP15).¹⁴⁰ The Secretariat publishes a Notification to the Parties each year including explanatory notes on the export quotas of which it has been notified. Quotas established by the CoP are either found in the Resolutions

¹³⁶ Reeve (n 15) 300.

¹³⁷ *Ibid* 311.

¹³⁸ See *CITES* (n 1) arts III(2)(a), IV(2)(a). The list of annual export quotas may be found using the online Export Quota Tool:

<https://cites.org/eng/resources/quotas/export_quotas?field_country_target_id=All&field_species_target_id=&field_date_value%5Bmin%5D=2000-01-01&field_date_value%5Bmax%5D=2021-12-31>.

¹³⁹ See *Permits and certificates*, CITES Resolution Conf. 12.3 (Rev. CoP19).

¹⁴⁰ *Management of nationally established export quotas*, CITES Resolution Conf. 14.7 (Rev. CoP15).

or specified in annotations to the Appendices,¹⁴¹ most often where there are concerns regarding the transfer of a species from Appendix I to II.¹⁴²

Efforts to examine the precise intersection between CITES and the multilateral trading regime ramped up in the 1990s, and at CITES CoP10 (Zimbabwe, 1997) saw recommendations to enhance the relationship set out in an external report commissioned by the Standing Committee. To that end, the CITES Secretariat contacted the WTO Secretariat for closer collaboration, including invitations to attend future meetings of the Standing Committee of CITES.¹⁴³ Further to a recommendation that the clarity be sought regarding the compatibility between CITES and global trade regulations, the Secretariat worked with the Organisation for Economic Co-operation and Development ('OECD') and Joint Session of Trade and Environment Experts in a study on the use of trade measures in CITES. The study found that there was no reason to anticipate that a challenge to domestic measures taken pursuant to CITES would be raised directly in the GATT/WTO dispute settlement regime.¹⁴⁴ It concluded that, while there may be potential for issues of interpretation to arise, these may never give way to 'actual problems' which may well be resolved without disturbing the coexistence between the multilateral trading system and CITES.¹⁴⁵ In reaching this conclusion, the study took into account the expanding membership of CITES, as well as provisions of VCLT.¹⁴⁶ Under the VCLT, where two agreements

¹⁴¹ Regarding the use of annotations in Appendices I and II, see: *Use of annotations in Appendices I and II*, CITES Resolution Conf. 11.21 (Rev. CoP19).

¹⁴² Resolutions establishing quotas include Resolution Conf. 10.14 (Rev. CoP16) Quotas for leopard hunting trophies and skins for personal use and Resolution Conf. 13.5 (Rev. CoP18) 'Establishment of export quotas for black rhinoceros hunting trophies'. The *Loxodonta africana* (African elephant) offers an example of a quota built into the listing on the Appendices. IUCN now recognises two species of African elephant: *Loxodonta africana* (African savanna elephant) and *Loxodonta cyclotis* (African forest elephant). Both species are covered under the existing CITES designation.

These quotas have not been without controversy, particularly where dominantly anti-trophy hunting international NGOs have challenged the legitimacy of local decision-making. In 2022, the Western Cape High Court in South Africa suspended the decision of Forestry, Fisheries and Environment Minister Barbara Creecy in issuing quotas to hunt and export ten black rhinos, 10 leopards, and 150 elephants. Humane Society International/Africa brought an application for an interim interdict against the 2022 hunting and export quotas on grounds that the department was not permitted to defer 2021 quotas to 2022, as this was inconsistent with CITES regulations and violated the common law principle of legitimate expectation. At the time of writing, pending further review of the decision, the Minister is not permitted to issue hunting quotas for any of the three species concerned, issue export permits, or publish quotas in the Government Gazette. News coverage of the decision saw frequent reference to a *2022 Good Governance Africa* report, suggesting that trophy hunting in South Africa is not justifiable as a core component of its conservation strategy; as while it may generate some economic benefit, it 'comes at the cost of alternative, more sustainable forms of conservation advancing revenue'. See Ross Harvey et al, 'Trophy hunting in South Africa: is it worth it? An evaluation of South Africa's policy decision to elevate trophy hunting as a key conservation tool' (Working Paper, Good Governance Africa, March 2022).

¹⁴³ *Evolution of the Convention – How to improve the effectiveness of the Convention: Comments from the Parties and the Organizations on the study*, CITES Doc. 10.22 Annex 2, 477 ('*Evolution of the Convention 2*').

¹⁴⁴ *Ibid.*

¹⁴⁵ *Evolution of the Convention – How to improve the effectiveness of the Convention: Comments from the Parties and the Organizations on the study*, CITES Doc. 10.22 Annex 3, 478-80 ('*Evolution of the Convention 3*').

¹⁴⁶ VCLT (n 2) arts 30(3)-(4).

signed by the same parties regarding the same subject matter are in conflict, the agreement later in time (*lex posterior*) is presumed to prevail. Given that the GATT 1994 is legally distinct from the GATT 1947 as per Article II.1 of the WTO Agreement, it would appear that the GATT 1994 would prevail over CITES. However, the prospect remains for CITES to prevail under the principle of *lex specialis* as its provisions are more specific than relevant provisions in the WTO/GATT. As per the judgement of Hudec:

... environmental agreements are clearly more specific than GATT in terms of their subject matter. Under the principle of *lex specialis*, it is normally presumed that the more specific of two agreements is meant to control, even when the more general agreement happens to be later in time [emphasis added].¹⁴⁷

Moreover, the study concluded that the scope for potential issues to arise relies on whether:

(a) measures taken by Parties that are strictly based on the text of the Convention or on consensus of the CITES Parties; (b) measures applied by one CITES party to another which are not manifestly based on the Convention itself or an agreed interpretation; and (c) measures applied by CITES Parties to WTO Members not CITES Parties.¹⁴⁸

In the event of potential disputes, the WTO established its Committee on Trade and Environment ('CTE'), which also has also served as a communication pathway between the multilateral trading regime and CITES, with the CITES Secretariat having obtained permanent observer status at the CTE in 1997.¹⁴⁹ The CITES Strategic Vision developed around the same time included an objective to ensure continuing recognition and acceptance of CITES measures by GATT/WTO and to ensure 'mutual supportiveness' of the decision-making processes between these bodies.¹⁵⁰ The subsequent *Strategic Vision: 2008-2020* stated that its objective is 'cooperation with relevant international environmental, trade and development organisations is enhanced'.¹⁵¹ Finally, in its most recent strategic vision, *CITES Strategic Vision: 2021-2030*, it is stated that an objective is to ensure that 'Parties and the Secretariat support and enhance existing cooperative partnerships in order to achieve their identified objectives'.¹⁵²

¹⁴⁷ Robert E Hudec, 'GATT Legal Restraints in the Use of Trade Measures Against Foreign Environmental Practices' in Jagdish N Bhagwati and Robert E Hudec (eds), *Fair Trade and Harmonization: Prerequisites for Free Trade?* (MIT Press, 1996) 95, 121. Further, '[i]n general, these principles would suggest that GATT should step aside whenever a GATT member government has signed an international environmental agreement authorising other signatories to impose trade restrictions against it. The general concept is that GATT members who sign such an agreement can quite properly be deemed to have waived their GATT legal rights against such trade restrictions'.

¹⁴⁸ *Evolution of the Convention 3* (n 145) 480.

¹⁴⁹ *Action plan to improve the effectiveness of the Convention*, CITES Doc. 11.12.1 (10-20 April 2000) 5. See also *Enhancing Cooperation* (n 131) 4.

¹⁵⁰ *Ibid* 9. The Strategic Vision covered the period 2000-2007.

¹⁵¹ *CITES Strategic Vision: 2008-2020* (n 39) 4: objective 3.3.

¹⁵² *CITES Strategic Vision: 2021-2030* (n 8) 6: objective 5.1.

The CTE has stated that, where a dispute arises between WTO members regarding the use of a measure pursuant to an MEA to which they are also party, they ought to seek resolution at the first instance pursuant to the MEA's dispute settlement mechanisms. Were a dispute to arise between a non-party to an MEA, however, the WTO would provide the only possible forum for the settlement. Similarly, in cases where conflicting parties to CITES are unable to negotiate an outcome as per Article XVIII, or if one of those parties refused to submit the dispute to the Permanent Court of Arbitration, the WTO would likewise be left as the only option for resolution.

There has not been a WTO dispute directly challenging a CITES trade measure to date; however, should this occur, there is a process designated to dispense with disputes. The process is contained in Article IV.3. of the Marrakesh Agreement and complemented by the 'Dispute Resolution Understanding' contained in Annexure 2.¹⁵³ Where disputes arise, this provides for the establishment of dispute settlement panels and an Appellate Body. The Dispute Settlement Body ('DSB') of the WTO may adopt the decision of the panel; a party to the dispute may appeal; or the DSB may, by consensus, reject the decision of the panel. With respect to appeals, there may only be one of two outcomes: the DSB adopts the decision of the Appellate Body, or by consensus rejects the same.

While CITES TREMs may conflict with the core principles of the GATT/WTO, such measures may qualify under the general exceptions contained in the GATT Article XX 'chapeau' depending on the way they are applied:

Article XX:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

...

(b) necessary to protect human, animal or plant life or health;

...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.¹⁵⁴

¹⁵³ *Marrakesh Agreement* (n 133) art IV.3; annex 2.

¹⁵⁴ *General Agreement on Tariffs and Trade*, opened for signature 30 October 1947, 55 UNTS 187 (entered into force 1 January 1948) arts XX(b), XX(g) ('GATT').

While species conservation is most obviously consistent with Article XX(b)'s reference to 'animal or plant life or health' it is worth noting that the Appellate Body¹⁵⁵ in the 'US Shrimp-Turtle' matter found that sea turtles qualified as 'exhaustible natural resources' in Article XX(g), citing across to their listing on CITES Appendix I.¹⁵⁶ Of course, such decisions are not static and an otherwise comprised group of decisionmakers may find otherwise. However, for conservationists it has been encouraging that a broader interpretation had been accepted further to earlier statements by the CTE recognising the role of TREMs in MEAs, such as the following:

... Trade measures based on specifically agreed-upon provisions can also be needed in certain cases to achieve the environmental objectives of an MEA, particularly where trade is related directly to the source of an environmental problem. They have played an important role in some MEAs in the past, and they may be needed to play a similarly important¹⁵⁷ role in certain cases in the future.¹⁵⁸

Decisions to suspend trade are generally made by the CITES Standing Committee (usually by consensus) and by the CoP; and the chances of a challenge because of a breach of the GATT/WTO regime are therefore slim but not non-existent. However, the core CITES TREMs, such as its licensing system of permits and certifications as well as tagging and labelling requirements, are applied multilaterally and would therefore be unlikely to be judged as arbitrary or as distinguishing between countries to constitute unjustifiable discrimination. Trade suspensions under the auspices of CITES are now viewed as compatible with GATT Article XX.¹⁵⁹

¹⁵⁵ Appellate Body Report, *United States — Importation of Certain Shrimp and Shrimp Products*, WTO Doc WT/DS58/AB/R (12 October 1998).

¹⁵⁶ See also *Enhancing Cooperation* (n 124) 8.

¹⁵⁷ *Report (1996) of the Committee on Trade and Environment*, WTO Doc WT/CTF/1 (12 November 1996) [178]: 'While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA.'

¹⁵⁸ *Ibid* para 173. See also Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DS58/AB/R (12 October 1998, adopted 6 November 1998) [185]: 'In reaching these conclusions, we wish to underscore what we have not decided in this appeal. We have not decided that the protection and preservation of the environment is of no significance to the Members of the WTO. Clearly, it is. We have not decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And we have not decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international fora, to protect endangered species or to otherwise protect the environment. Clearly, they should and do.'

¹⁵⁹ Peter H Sand, 'International protection of endangered species in the face of wildlife trade: whither conservation diplomacy?' (2017) 20 *Asia Pacific Journal of Environmental Law* 5, 21, citing Chris Wold, 'The Convention on International Trade in Endangered Species of Wild Fauna and Flora' in Robert Housman et al (eds), *The Use of Trade Measures in Select Multilateral Environmental Agreements* (UNEP, 1995) 165; Peter H Sand, 'International protection of endangered species in the face of wildlife trade: whither conservation diplomacy?' (2017) 20 *Asia Pacific Journal of Environmental Law* 5, 21, citing Richard G Tarasofsky, 'Ensuring Compatibility between Multilateral Environmental Agreements and GATT/WTO' (1996) 7(1) *Yearbook of International Environmental Law* 52.

As has been outlined so far, the CITES framework regulates what may be traded, under what circumstances and for what purposes. This is set out in some detail within the operative clauses of the treaty text, supplemented by greater specificity as to how determinations are made, against which criteria, and with reference to terms carrying particular meaning as defined by resolutions and decisions by the CITES governing bodies as described above. Through regulating trade in species as a prominent economic activity through direct listing (rather than reverse listing), use of non-detriment findings, and consideration of principles of sustainable use, the Convention treats conservation and sustainable use of wildlife as compatible twin objectives. Completing a reading down of the treaty's operation, however, requires accounting for how reservations and exemptions from these requirements of the Convention operate.

C Reservations & Exemptions

The issuing of Reservations and recognition of Exemptions from the requirements of the Convention are addressed within the Convention's text and given fuller treatment in Resolutions and Decisions of the CoP. Exemptions are typically accompanied by subject specific resolutions of the CoP, with additional commentary arising from discussions around Resolution Conf. 12.3 (Rev. CoP19) concerning 'Permits and certificates' as discussed above (for example, regarding purpose codes).

1 Reservations

As permitted under Article 19(b) of the VCLT, Article XXIII prohibits general reservations to the provisions of the Convention, instead allowing specific reservations in relation to the listing of species in the Appendices. Parties objecting to the inclusion of a species must communicate their reservation at the time a party deposits its instrument of ratification, acceptance, approval, or accession to the Convention as per Article XXIII(2). Article XXIII(3) stipulates that '[u]ntil a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation'.¹⁶⁰ Reservations may be withdrawn at any time; and parties may reserve on any subsequent amendments to the Appendices, provided their reservation is registered with the Swiss Government within 90 days of the adoption of the

¹⁶⁰ CITES (n 1) art XXIII(3).

amendment.¹⁶¹ In any case, reservations are not permitted if they are incompatible with the object and purpose of a treaty,¹⁶² and therefore reservations must align with the conservation and sustainable use objectives of CITES.

It is interesting to note that the impact of trading as a 'non-party' for the purpose of a reservation is limited in trading with CITES parties. While CITES has no scope to govern trade relations between non-parties, Article X provides for trade regulation between parties and non-parties through the acceptance of 'comparable documentation issued by the competent authorities' of a non-party containing information substantially conforming to the convention's permits and certificates in lieu to facilitate trade.¹⁶³ The issue of trade with non-parties raises the question as to whether any of CITES' operation has crystallised into custom, thus binding all states. As CITES is effectively a mechanistic multilateral environmental agreement centred around a licensing system, it is far too procedural for norm creation, and thus has not attained customary status.¹⁶⁴ Resolution Conf. 9.5 (Rev. CoP16) offers further guidance on 'trade with States not party to the Convention', including the contents of permits and certificates issued by non-party states.¹⁶⁵ Therefore, a party who has made reservations will still be required to produce like documentation when trading with CITES parties; however, it does not prevent them from free trade with non-parties. Further, as non-parties for the purpose of certain species arising from a reservation, countries are not required to meet the typical reporting obligations vital for monitoring trade. Several recommendations have been made to mitigate the risks posed by reservations, including parties being called upon to maintain reporting trading statistics and to treat Appendix I species for whom they have registered a reservation akin to Appendix II species pursuant to Resolution Conf. 4.25 (Rev. CoP19).¹⁶⁶

2 Exemptions

The exemptions expressly written into the Convention's operative clauses (such as pre-CITES specimens and personal household effects) and those that have developed subsequently through

¹⁶¹ Ibid arts XV(3), XVI(2).

¹⁶² VCLT (n 2) art 19(c).

¹⁶³ Ibid art X. Note also that recommendations to suspend trade with non-parties can be issued by the CoP or Standing Committee.

¹⁶⁴ See *North Sea Continental Shelf (Federal Republic of Germany v Denmark) Merits* 1969] ICJ Rep 3, [60]-[82].

¹⁶⁵ *Trade with States not party to the Convention*, CITES Resolution Conf. 9.5 (Rev. CoP16).

¹⁶⁶ *Reservations*, CITES Resolution Conf. 4.25 (Rev. CoP19). See also CITES Secretariate, *Communications Concerning Amendments to the Appendices Received by the Depositary Government after the 18th Meeting of the Conference of the Parties*, CITES CoP19 Doc.88 (14-25 November 2022).

'soft law' (such as ranching)¹⁶⁷ ultimately serve an importance role in balancing where restrictions on trade will and will not justifiably advance the conservation and sustainable use objectives of the treaty. Exemptions recognise that trade is necessary, and in some instances acknowledge that instrumental values will be paramount to maintaining wide membership to the agreement. For example, the approach adopted to ranching was negotiated following several parties arguing the need to draw some economic benefit from species to offset the opportunity costs of protecting habitats from major industrial sectors (including agriculture and mining). However, as will be identified in Part III of this Chapter as well as Chapter VI, exemptions have been exploited as cover for illegal trade. Some exemptions, such as those concerning personal or household effects have attracted attention in recent years in public discourse regarding elephant ivory and rhinoceros horn in particular.¹⁶⁸

(a) Transit or Transshipment

Article VII(1) provides that permits are not required for 'the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control'.¹⁶⁹ This exemption was introduced so as to not place undue administrative burden on countries of transit; however, parties have subsequently recommended via Resolution Conf. 9.7 (Rev. CoP 15) on 'Transit and transshipment' that consignments be inspected to ensure that they are accompanied with the appropriate documentation and that 'any change of ultimate destination be investigated by the country of transit or transshipment to verify that the trade complies with the purposes of the Convention'.¹⁷⁰ In addition, the noted Resolution recommends that parties adopt legislation allowing them to seize and confiscate specimens in transit or being transhipped without a valid permit or certificate or proof of the existence there; and failing this, parties unable to seize must pass on all information on the shipment to the country of final destination, the Secretariat and, where possible, other countries of prospective transit.¹⁷¹

¹⁶⁷ *Ranching and trade in ranched specimens of species transferred from Appendix I to Appendix II*, CITES Resolution Conf. 11.16 (Rev. CoP15).

¹⁶⁸ Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into the Trade in Elephant Ivory and Rhinoceros Horn* (Final Report, September 2018).

¹⁶⁹ CITES (n 1) art VII(1).

¹⁷⁰ *Transit or transshipment*, CITES Resolution Conf. 9.7 (Rev. CoP15) 1.

¹⁷¹ *Ibid* 2.

(b) Pre-CITES specimens

Article VII(2) stipulates that permits do not apply for international trade in specimens ‘acquired before the provision of the present Convention applied to that specimen’, provided the Management Authority of the state of export or re-export provides documentation accompanying that specimen with words to that effect. Resolution Conf. 13.6 (Rev. CoP18) clarifies this exemption concerning ‘pre-Convention specimens’, including that ‘the date from which the provisions of the Convention apply to a specimen be the date on which the species concerned was first included in the Appendices’.¹⁷² Therefore, a party would not be at liberty to trade sans permits in specimens it acquired before acceding to the Convention but after it was listed on Appendix I or II.

(c) Personal or household effects

Article VII(3) provides that ‘personal or household effects’ can be internationally traded without CITES documentation.¹⁷³ Resolution Conf. 13.7 (Rev. CoP17) defines ‘personal or household effects’ as meaning specimens that are:

- I. personally owned or possessed for non-commercial purposes;
- II. legally-acquired; and
- III. at the time of import, export, or re-export either:
 - i. worn, carried, or included in personal baggage; or
 - ii. part of a household move.¹⁷⁴

The exemption does not apply, however, where:

- I. in the case of specimens of a species included in Appendix I, they were acquired by the owner outside their state of usual residence, and are being imported into that state; or
- II. in the case of specimens of species included in Appendix II:
 - i. they were acquired by the owner outside their state of usual residence and in a state where removal from the wild occurred;

¹⁷² *Implementation of Article VII, paragraph 2, concerning ‘pre-Convention specimens*, CITES Resolution Conf. 13.6 (Rev. CoP18) 1.

¹⁷³ CITES (n 1) art VII(3).

¹⁷⁴ *Control on trade in personal and household effects*, CITES Resolution Conf. 13.7 (Rev. CoP17) 2.

- ii. they are being imported into the owner's state of usual residence; and
- iii. the state where removal from the wild occurred requires the prior grant of export permits before any export of such specimens; unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.¹⁷⁵

Hunting trophies may be classified under the 'personal or household effects' and are specifically named as an example in the relevant resolution, ie '[a] hunting trophy that has been legally hunted abroad and imported under the person and household effects exemption or with the appropriate CITES documents.'¹⁷⁶ Hunting trophies are defined under Resolution Cond. 12.3 (Rev. CoP19) as meaning:

'a whole animal, or a readily recognizable part or derivative of an animal, specified on any accompanying CITES permit or certificate, that:

- i. is raw, processed or manufactured;
- ii. was legally obtained by the hunter through hunting for the hunter's personal use; and
- iii. is being imported, exported or re-exported by or on behalf of the hunter, as part of the transfer from its country of origin, ultimately to the hunter's State of usual residence.'¹⁷⁷

Currently, the export or re-export of rhino horn and elephant ivory contained in hunting trophies does not qualify for the personal and household effects exemption. Chapter VI discusses the particular programs for rhino hunting.

(d) Animals bred in captivity and plants artificially propagated

Articles VII(4)-(5) concern specimens of animals bred in captivity and plants artificially propagated as distinct from wild-take specimens.¹⁷⁸ Article VII(4) dictates that 'specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II'.¹⁷⁹ These specimens would thus only require the issuing of an export permit or re-export certificate, and imports for commercial purposes would be permitted. Article VII(5) goes on to state that '[w]here a Management Authority of the

¹⁷⁵ Ibid 2-3.

¹⁷⁶ *Control of trade in personal and household effects* (n 174) 5.

¹⁷⁷ *Permits and certificates* (n 139) 5.

¹⁷⁸ *CITES* (n 1) arts VII(4)-(5).

¹⁷⁹ Ibid art VII(4).

State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V'.¹⁸⁰ Resolution Conf. 10.16 (Rev. CoP19) offers guidance on the definitional criteria for specimens of animal species 'bred in captivity',¹⁸¹ including that the breeding stock must be established 'in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild' to the 'satisfaction of the competent government authorities of the exporting country'.¹⁸² Similarly, Resolution Conf. 11.11 (Rev. CoP18) offers guidance on the regulation of trade in plants.¹⁸³

(e) Specimens destined for scientific research

Article VII(6) provides that non-commercial loans, donations or exchanges between scientists or scientific institutions registered by a Management Authority of their state are exempted from permit requirements with respect to 'herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority'.¹⁸⁴ Resolution Conf. 11.15 (Rev. CoP18) offers corresponding guidance, including examples of the types of forensic reference samples that may qualify in Annex.¹⁸⁵

(f) Animals or plants forming part of a travelling collection or exhibition

Article VII(7) allows a Management Authority of any state to waive the requirements of Articles III, IV and V for specimens forming part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition contingent upon three provisos.¹⁸⁶ Firstly, the exporter or importer must register full details of specimens with that Management Authority. Secondly, specimens must fall into either the categories specified in Article VII(2) or Article VII(5). Thirdly, the

¹⁸⁰ Ibid art VII(5).

¹⁸¹ *Specimens of animal species bred in captivity*, CITES Resolution Conf. 10.16 (Rev. CoP19).

¹⁸² Ibid 2.

¹⁸³ *Regulation of trade in plants*, CITES Resolution Conf. 11.11 (Rev. CoP18).

¹⁸⁴ CITES (n 1) art VII(6).

¹⁸⁵ *Non-commercial loan, donation or exchange of museum, herbarium, diagnostic and forensic research specimens*, CITES Resolution Conf. 11.15 (Rev. CoP18).

¹⁸⁶ CITES (n 1) art VII(7).

Management Authority must be satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

(g) Ranching

The issue of ranching, while not an express exemption in the Convention, is of increasing significance.¹⁸⁷ Resolution Conf. 11.16 (Rev. CoP15) addresses the 'Ranching and trade in ranched specimens of species transferred from Appendix I to Appendix II' and recognises 'that as a management system, ranching for some species has proven to be a 'safe' and robust form of sustainable utilization relative to wild harvests of adults'.¹⁸⁸ Therein, 'ranching' is defined as 'the rearing in a controlled environment of animals taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving to adulthood'.¹⁸⁹ As these specimens would not qualify for the captive-bred exemption, it is not permissible for specimens of Appendix I species to be ranched and subsequently traded internationally for commercial purposes. Resolution Conf. 11.16 (Rev. CoP15) allows parties to propose a transfer of their population of an Appendix I species to Appendix II for ranching purposes in some circumstances.¹⁹⁰ Populations of Appendix I species that occur within the jurisdiction of parties and are deemed by the CoP 'to be no longer endangered and to benefit by ranching with the intention of trade' may be included in Appendix II.¹⁹¹

D Dispute Resolution

Article XVIII of the Convention sets out the mechanism for the resolution of disputes,¹⁹² however it should be noted that disputes have thus far been dispensed with between the parties. Where

¹⁸⁷ Bowman, Davies and Redgwell (n 77) 514-5.

¹⁸⁸ *Ranching and trade in ranched specimens of species transferred from Appendix I to Appendix II*, CITES Resolution Conf. 11.16 (Rev. CoP15).

¹⁸⁹ *Ibid* 2.

¹⁹⁰ *Ibid*.

¹⁹¹ *Ibid* [2(a)]. Where such an operation is approved, ranched specimens are subject to a marking system to distinguish all products (including live specimens) from products of Appendix I populations. The general criteria for consideration by the CoP include:

- I. whether the ranching programme has provision for appropriate inventories, harvest-level controls and mechanisms to monitor the wild populations;
- II. that the programme must be primarily beneficial to the conservation of the local population; and
- III. where there are sufficient safeguards to ensure adequate numbers of animals are returned to the wild if necessary and where appropriate.

¹⁹² CITES (n 1) art XVIII.

questions of interpretation of the Convention's text arise, these questions have been resolved by resolution of the CoP. Speaking hypothetically then, should parties to a dispute fail to negotiate an outcome, the parties are invited to submit the dispute by mutual consent to the Permanent Court of Arbitration and shall be bound by the arbitral decision.¹⁹³

The third and final part of this Chapter critically analyses the mechanisms by which compliance with the treaty's provisions as set out in Part II have been employed. The crucial question as to whether the Convention is effective in mitigating environmental harms, notably endangerment of wild species, will be addressed with reference to current data (noting too where data is deficient, which in itself impedes success of a regime reliant on evidence-based assessments).

III THE CITES COMPLIANCE REGIME

The CITES compliance regime constitutes processes which may be evoked in parallel and has evolved through a suite of Resolutions and Decisions involving all the Governing Bodies as described in Part II. The CoP offers general policy guidance on compliance issues; directs and oversees the handling of compliance matters, particularly through the identification of key obligations and procedures; reviews compliance-related decisions of the Standing Committee as needed; and may delegate certain authority to the Standing Committee or other CITES bodies in accordance with the Convention. The Standing Committee acts in accordance with instructions from and authority delegated by the CoP in handling general and specific compliance matters, including monitoring and assessing overall compliance with obligations under CITES; advising and assisting parties in complying with obligations; and verifying information. The compliance-related functions of the Animals and Plants Committees include, but are not limited to, assisting the Standing Committee and CoP through conducting reviews, consultations, assessments, and reporting. Of note, these Committees have carriage of specific tasks in handling matters regarding the Review of Significant Trade. The Secretariat assists the above-mentioned bodies; receives, assesses, and communicates to the parties information on compliance matters; advises and assists parties in complying with obligations; makes recommendations for achieving compliance; and monitors the implementation of compliance-related decisions.

¹⁹³ Ibid. The full provision reads: '1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute. 2. If the dispute can not be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.'

A Compliance procedures under Resolution Conf. 14.3 (Rev. CoP19)

CoP18 was pivotal milestone for the CITES compliance framework with its revision of Resolution Conf. 14.3 (Rev. CoP18) 'CITES compliance procedures'¹⁹⁴ and the establishment of a new Compliance Assistance Program aimed at providing targeted support to parties facing persistent compliance challenges.¹⁹⁵ The resolution was subsequently refined once more at CoP19.¹⁹⁶ This facilitative approach to building capacity towards implementation of the trade regime serves to maintain the substantial membership of the agreement and thus the net impact of the global collective. This is underscored further in the guiding principles of Resolution Conf. 14.3 (Rev. CoP19), which asserts CITES' approach towards compliance matters as 'supportive and non-adversarial' with the aim of ensuring long-term compliance. As of CoP19, all parties (governmental, intergovernmental, and non-governmental organisations, and other sources) are invited to provide financial and/or technical assistance for the effective implementation of the Programme.¹⁹⁷

A party is deemed to be acting in accordance with and in fulfilment of its obligations under CITES where it meets the base minimum requirements. Resolution Conf. 14.3 (Rev. CoP19) draws particular attention to obligations regarding:

- I. designating Management Authority(ies) and Scientific Authority(ies) (Article IX);
- II. permitting trade in CITES-listed specimens only to the extent consistent with the procedures laid down in the Convention (Articles III, IV, V, VI, VII and XV);
- III. taking appropriate domestic measures to enforce the provisions of the Convention and prohibit trade in violation thereof (Article VIII(1));
- IV. maintaining records of trade and submitting periodic reports (Article VIII, (7) and (8));
and
- V. responding as soon as possible to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species.¹⁹⁸

¹⁹⁴ See *Decisions 18.68 to 18.70 on the Compliance Assistance Programme*, CITES Notification No. 2021/063 (14 October 2021) annex 1.

¹⁹⁵ *CITES compliance procedures*, CITES Resolution Conf. 14.3 (Rev. CoP18).

¹⁹⁶ *CITES compliance procedures*, CITES Resolution Conf. 14.3 (Rev. CoP19).

¹⁹⁷ *Compliance Assistance Programme*, CITES CoP19 Doc. 30 (14-25 November 2022). See also *CITES compliance procedures*, CITES Resolution Conf. 14.3 (Rev. CoP19) 'General Principles'.

¹⁹⁸ *CITES compliance procedures* (n 196).

These obligations are further reflected under ‘Goal 1’ of the current Objectives of the CITES Strategic Vision 2021-2030:

GOAL 1 TRADE IN CITES-LISTED SPECIES IS CONDUCTED IN FULL COMPLIANCE WITH THE CONVENTION IN ORDER TO ACHIEVE THEIR CONSERVATION AND SUSTAINABLE USE

Objective 1.1 Parties comply with their obligations under the Convention through the adoption and implementation of appropriate legislation, policies, and procedures.

Objective 1.2 Parties have established CITES Management and Scientific Authorities and enforcement focal points that effectively carry out the duties required of them under the Convention and relevant Resolutions.

Objective 1.3 Implementation of the Convention at the national level is consistent with Resolutions and Decisions adopted by the Conference of the Parties.¹⁹⁹

There are four steps specified in the handling of compliance procedures outlined in the Annex to Resolution Conf. 14.3 (Rev. CoP19) albeit as a non-legally binding guide intended primarily to play an educative role in informing parties and others of how compliance under the Convention is facilitated:

- I. identification of potential compliance matters;
- II. consideration of compliance matters;
- III. measures to achieve compliance; and
- IV. monitoring and implementation of such measures to achieve compliance.²⁰⁰

Where a party’s compliance comes into question, the Secretariat engages the party affected including information received, any relevant facts insofar as the law permits, and where appropriate, proposes remedial action. Where the party considers that an inquiry is desirable, such inquiry may be undertaken by one or more persons expressly authorised by the party. This language mirrors that of Article XIII of the Convention, the triggering of which is considered to signal systemic, persistent, and structural problems in implementing the Convention.²⁰¹ All parties to CITES are invited to bring compliance matters to the party in question and/or call upon the Secretariat for assistance. Parties themselves are encouraged to give the Secretariat early warning of any compliance matter, including the inability to provide information by a certain

¹⁹⁹ *CITES Strategic Vision: 2021-2030* (n 8) 5: Goal 1.

²⁰⁰ *CITES compliance procedures* (n 196).

²⁰¹ At time of writing, Parties currently subject to the Article XIII process are the following: Albania, the Democratic Republic of Congo, Guinea, Lao People’s Democratic Republic, Madagascar, and Nigeria.

deadline, and indicate the reasons and any need for assistance.²⁰² Where compliance matters are identified, the parties concerned are given every opportunity to correct them within reasonable time limits with the assistance of the Secretariat.²⁰³

Where a party ‘fails to take sufficient remedial action within a reasonable timeframe, the matter is considered by the Standing Committee following referral by the Secretariat, in direct contact with the concerned Party.’²⁰⁴ Matters received by the Standing Committee by other methods may also be referred to the Secretariat to undergo the aforementioned process; or rejected as trivial or ill-founded; or in exceptional circumstances, after consultation with the party concerned, allowed to proceed with further consideration of the matter.²⁰⁵ Where a matter is not rejected as ill-founded or trivial, the Standing Committee provides the party concerned a reasonable time to offer comments.²⁰⁶ Further information may be sought by the Standing Committee, ‘including whether to seek an invitation from the Party concerned to undertake the gathering and verification of information in the territory of that Party or wherever such information may be found’.²⁰⁷ The Secretariat and Standing Committee may be sought for guidance by the party concerned in accessing financial resources to support its participation in discussions and meetings where its own compliance is the focus of inquiry.²⁰⁸

Where compliance matters are not resolved, the Standing Committee may opt to undertake one or more designated measures to achieve compliance,²⁰⁹ including but not limited to: requesting special reporting from the party; issuing a written caution; requesting a response and offering assistance; sending a public notification of a compliance matter through the Secretariat to all parties; issuing a warning to the party that it is in non-compliance (eg in relation to national reporting and/or the National Legislation Project); and requesting a compliance action plan for submission to the Standing Committee. In some cases, the Standing Committee may recommend the suspension of commercial or all trade in specimens of one or more CITES listed species. Given the severity of this course of action, it is always specifically and explicitly based on the Convention and on any applicable resolutions and decisions of the CoP.²¹⁰ In providing its recommendations,

²⁰² *CITES compliance procedures* (n 196) [15]-[20]: ‘Identification of potential compliance matters’.

²⁰³ *Ibid* [20].

²⁰⁴ *Ibid* [21]: ‘Consideration of compliance matters’.

²⁰⁵ *Ibid* [22].

²⁰⁶ *Ibid* [25].

²⁰⁷ *Ibid* [26].

²⁰⁸ *Ibid* [28].

²⁰⁹ *Ibid* [29]-[32]: ‘Measures to achieve compliance’.

²¹⁰ See, eg, *CITES* (n 1) art VIII; *National reports*, CITES Resolution Conf. 11.17 (Rev. CoP19); *National laws for implementation of the Convention*, CITES Resolution Conf. 8.4 (Rev. CoP15); *Review of Significant Trade in specimens of Appendix-II species*, CITES Resolution Conf. 12.8 (Rev. CoP18); *Compliance and enforcement*, CITES

the Standing Committee factors in variables such as the capacity of the party concerned (especially developing countries) and the appropriateness of the measures commensurate with the gravity of the compliance matter. The most successful sanctions to-date have been country-specific embargoes (these being general embargoes, as distinct from the species-specific embargoes also available under the Convention) to the extent that the mere threat of a general embargo will often be enough to bring a party into compliance.²¹¹

The Standing Committee, with assistance from the Secretariat, monitors actions taken by the party concerned towards implementing the measures specified and may request progress reports and arrange, upon invitation of the party, an in-country technical assessment and verification mission. The Convention's facilitative approach is further supported through a recent resolution on capacity-building²¹² which contains specific recognition of the 'special and diverse needs of developing country Parties' in supporting the Global South in fulfilling their obligations.²¹³ Where progress occurs, the Standing Committee may modify existing measures or take other measures. Existing recommendations to suspend trade are generally reviewed at each Standing Committee meeting and monitored intersessionally by the Secretariat. A recommendation to suspend trade is withdrawn as soon as the compliance matter has been resolved or sufficient progress has been made. The Secretariat notifies parties of any such withdrawal as soon as possible. More precise provisions may be involved towards achieving compliance when laid down in resolutions and decisions, such as reviews of significant trade in specimens of Appendix II species. The Standing Committee reports to the CoP on compliance matters, with the Secretariat reporting to both the Standing Committee and CoP.²¹⁴

Resolution Conf. 11.3 (Rev. CoP19); *Establishment of Committees* (n 51); *Trade in elephant specimens*, CITES Resolution Conf. 10.10 (Rev. CoP19) regarding the provisions on the National Ivory Action Plans process; *Review of trade in animal specimens reported as produced in captivity*, CITES Resolution Conf. 17.7 (Rev. CoP19).

²¹¹ Peter H Sand, 'International protection of endangered species in the face of wildlife trade: whither conservation diplomacy?' (2017) 20 *Asia Pacific Journal of Environmental Law* 5, 17.

²¹² *Capacity-building*, CITES Resolution Conf. 19.2.

²¹³ *Ibid.* See preambulatory cl 7: 'RECOGNIZING the special and diverse needs of developing country Parties, in particular the Least Developed Countries and Small Island Developing States, and Parties with economies in transition, with regard to difficulties in the establishment, staffing, training and equipment of Management Authorities and Scientific Authorities, as well as enforcement authorities and entities.'

²¹⁴ See, eg, CITES Secretariat, *CITES Compliance Matters*, CITES CoP18 Doc. 27 (23 May – 3 June 2019) 5[35]: 'At its 69th meeting, the Standing Committee determined that Brunei Darussalam, Djibouti, Dominica, Equatorial Guinea and Saint Vincent and the Grenadines had failed to provide annual reports for three consecutive years, without having provided adequate justification, and agreed that if they did not provide their missing reports within 60 days of the SC69 meeting, the Secretariat would issue a Notification recommending that Parties not authorize any trade in specimens of CITES-listed species with those Parties until the missing reports were provided. Brunei Darussalam and Equatorial Guinea submitted their reports within the 60 days.'

The identification of potential compliance matters most commonly arises in routine monitoring conducted in accordance with Resolutions, such as with ‘annual or biennial reports, legislative texts as well as other special reports and responses to requests for information’.²¹⁵ These requests include those sought pursuant to the Review of Significant Trade or the National Legislation Project. It must be stated, however, that critiques of the Convention’s legitimacy have arisen in part due to an overwhelming North/South imbalance in trade sanctions despite infraction reports by the Secretariat and NGO observers indicating contravention of the Convention across developing and developed countries. Sand’s analysis of sanctions published in 2017 evidenced that 95 per cent of states ‘targeted by all-out trade embargoes’ were developing countries.²¹⁶ If this disparity was largely attributable to developing countries’ difficulties in implementing the Convention (eg inability to access technical expertise or fund relevant administrative processes and authorities) commentators could then expect to see this imbalance corrected in the coming years due to the Secretariat’s emphasis on capacity building and adoption of the ‘facilitative approach’ discussed earlier. As for other reasons, as Sand observes, others have suggested the imbalance in trade embargoes to be evidence of a ‘hidden neo-colonist bias of the regime’.²¹⁷

B *The National Legislation Project*

By way of brief description, the National Legislation Project was established in 1992 to evaluate and review domestic implementing measures, with failure to adopt appropriate national laws providing cause for the Standing Committee to recommend a suspension of trade in CITES-listed species. It must be noted that each party maintains sovereignty in its decisions as to how to incorporate CITES obligations (including stricter than CITES obligations). To this end, the provisions of the Convention and Resolution Conf. 8.4 (Rev. CoP15) offer a broad basis supported by the current *Revised Draft (2021) Model Law on International Trade in Wild Fauna and Flora* (‘Model Law’) and additional resources.²¹⁸ Generally, the National Legislation Project has three primary options: enacting CITES-specific legislation via law or regulation; including a CITES chapter or CITES provisions in comprehensive wildlife, biodiversity or environment legislation;

²¹⁵ *Draft guidelines on compliance with the Convention*, CITES Notification No. 2003/031, SC49 Doc. 15 (6 May 2003).

²¹⁶ Sand (n 211) 22.

²¹⁷ *Ibid.*

²¹⁸ CITES Secretariat, *Revised Draft – Model Law on International Trade in Wild Fauna and Flora* (CITES, 2021) (‘Model Law’).

and/or amending existing provisions in various legislative texts related to wildlife, natural resources, Customs, import/export and environment.²¹⁹

The National Legislation Project categorises parties into three Categories based on evidence of their passing domestic measures in meeting all four of the following requirements: designation of at least one Management Authority and one Scientific Authority; prohibition of trade in specimens in violation of the Convention; penalisation of such trade; and confiscation of specimens illegally traded or possessed. Category 1 includes those parties whose legislation is believed generally to meet the requirements for implementation of CITES. Category 2 includes those parties whose legislation is believed generally not to meet all requirements for the implementation of CITES. Category 3 includes parties whose legislation is believed generally not to meet the requirements for the implementation of CITES. The most recent lists to the time of writing (post CoP19, November 2022) contains 73 parties across categories 2 and 3, an increase of three parties from post CoP18.²²⁰ Moreover, much like reporting broadly, biennial reports updating the Secretariat on measures taken to enforce the provisions of the Convention are often submitted late, if at all, and with disparate quality.²²¹ It should also be noted that, while Scientific and Management Authorities are requirements of the Convention, an Enforcement Authority is not mandated.²²²

C Review of Significant Trade

The Review of Significant Trade procedure, as per Resolution Conf. 12.8 (Rev. CoP18), was drafted to identify Appendix II listed species that may be subject to unsustainable levels of trade, and to identify challenges and solutions towards effective implementation of Article IV of the Convention.²²³ As outlined by Foster and Vincent, this process ‘is directed at ensuring that countries make defensible NDFs and formally monitor exports’, and may be characterised as

²¹⁹ Ibid 2. The Model Law states that of these options, the first is preferred ‘because the scope of CITES legislation goes beyond regulating trade in native species to include all species in the Appendices, including non-native species’.

²²⁰ *Status of Legislative Progress for Implementing CITES* (November 2022) <<https://cites.org/sites/default/files/documents/legislation-status/legislation-status.pdf>>. At the time of writing, three recently acceded Parties are also noted and not categorised on the category 1-3 rating. These are Andorra, Tajikistan, and Tonga.

²²¹ See Bowman, Davies and Redgwell (n 77) 522. The authors note the 2005-2006 report due at the end of October 2007 saw just 32 parties comply.

²²² Lanius and Johnson (n 17) 1. Nature Needs More found that 85 of the 183 parties at the time of publication in 2021 had a dedicated Enforcement Authority.

²²³ *Review of Significant Trade in specimens of Appendix-II species*, CITES Resolution Conf. 12.8 (Rev. CoP18). Specifically, *CITES* (n 1) arts IV(2)(a), (3), (6)(a).

'highly unusual among MEAs because it has a mechanism for remedial action to help ensure countries are meeting their obligations for sustainability'.²²⁴ Decisions 17.108 to 17.110 (Rev. CoP19) support this process,²²⁵ for example, by requesting the Secretariat to establish a Review of Significant Trade Tracking and Management database, user-friendly guide (subject to funds), and comprehensive training model. Lastly, parties have determined that failure to submit an annual report on time, as obliged under Article VIII, constitutes a major challenge to the implementation of CITES.²²⁶ Taking note of such non-compliance is important, as the data provided by these reports provide the basis for other compliance measures, such as the Review of Significant Trade, quota management, and identification of parties with high trade volumes pursuant to the National Legislation Project. Indeed, Resolution Conf. 11.17 (Rev. CoP19) on 'National reports' recognises the 'importance of the annual reports and biennial reports as the only available means of monitoring the implementation of the Convention and the level of international trade in specimens of species included in the Appendices'.²²⁷

The Review of Significant Trade ('RST') has been characterised as one of the Convention's 'most important elements',²²⁸ however, its effectiveness in achieving conservation objectives is debatable. Indeed, species conservation groups critical of CITES' operation will refer to the workings of the Animals Committee (more than the Plants Committee) and cite statistics such as the following as indicative of ineffectiveness:

Between 2010 and 2016, of the 40 species selected for Review of Significant Trade over the same period, only about half have been completed (either by uplisting the species to Appendix I, implementation of the recommendations by the country or by downgrading the category of concern).²²⁹

²²⁴ SJ Foster and ACJ Vincent, 'Holding governments accountable for their commitments: CITES Review of Significant Trade for a very high-volume taxon' (2021) 27 *Global Ecology and Conservation* <<https://doi.org/10.1016/j.gecco.2021.e01572>>.

²²⁵ '17.108 (Rev. CoP19) – 17-110 (Rev. CoP19)', *CITES Decisions* (Web Page) <<https://cites.org/eng/dec/index.php/44380>>.

²²⁶ *CITES* (n 1) art VIII(7): 'Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

(a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and

(b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.'

²²⁷ *National reports*, CITES Resolution Conf. 11.17 (Rev. CoP19).

²²⁸ Foster and Vincent (n 224) 2.

²²⁹ Peter Lanius and Lynn Johnson, *Debunking Sustainable Use Report 2020: Investigating the sustainable use mode in relation to the legal trade in endangered wildlife* (Report, 2020) 12, citing *Review of Significant Trade in specimens of Appendix-II species – Overview of the Review of Significant Trade*, CITES AC30 Doc. 12.1 (16-21 July 2018); Peter Lanius and Lynn Johnson, *Debunking Sustainable Use Report 2020: Investigating the sustainable use mode in relation to the legal trade in endangered wildlife* (Report, 2020) 12, citing *Review of Significant Trade in specimens of Appendix-II species – Species selected following CoP17*, CITES AC30 Doc. 12.2 (16-21 July 2018); Peter Lanius and

Foster and Vincent have provided one of the most exhaustive analyses of the CITES Review of Significant Trade, arriving at the conclusion that the process is not improving implementation as intended. The authors note that as of July 2020, 660 species and three entire genera had been subject to the process, resulting in 20 parties becoming subject to trade suspensions involving 39 species. While this small proportion of species for which a trade suspension was deemed necessary in comparison to those subject to the process may in itself be cause for concern for some favouring greater restraints on trade, the more objective test of the RST's effectiveness is whether the process resulted in positive conservation outcomes for species reviewed. Foster and Vincent's study responded to this line of inquiry, citing three examples in the negative. In the first example, three of eight species of pangolin (listed since 1975) underwent the RST procedure three times, with two further species undergoing the process twice, and a further two species once.²³⁰ Persistent decline in pangolin species as a direct cause of international trade (ie the scope of trade within CITES' mandate) saw all species uplisted from Appendix II to Appendix I.²³¹ A second example, the African grey parrot (listed since 1981) was subject to the RST three times before the decision was made to uplist from Appendix II to Appendix I owing, once more, to the impact of international trade.²³² The third example presented, queen conch (listed since 1992) underwent the RST process twice, eliciting little or no impact of management across the majority of range states exporting the gastropod.²³³

While it is important to not generalise in dealing with matters concerning the effectiveness of conservation across species, given the range of factors influencing conservation outcomes, Vincent and Foster make several key recommendations towards strengthening the process, drawing attention to an overarching critique of the compliance system relating to capacity. On the one hand, as noted above, while CITES is making increasing efforts to build capacity in parties towards compliance with the system, its central organs may not themselves be sufficiently resourced. RST assessments and recommendations ought to integrate experts in a formal

Lynn Johnson, *Debunking Sustainable Use Report 2020: Investigating the sustainable use mode in relation to the legal trade in endangered wildlife* (Report, 2020) 12, citing *Overview of Species Under Periodic Review*, CITES AC30 Doc. 29.1 (16-21 July 2018).

²³⁰ Foster and Vincent (n 224) 2.

²³¹ Ibid citing Daniel WS Challender and Colman O'Criodain, 'Chapter 19 – Addressing trade threats to pangolins in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)' in Daniel WS Challender, Helen C Nash and Carly Waterman (eds), *Pangolins: Science, Society and Conservation* (Elsevier, 2020) 305; Foster and Vincent (n 224), citing Daniel WS Challender, Stuart R Harrop and Douglas C MacMillan, 'Understanding markets to conserve trade-threatened species in CITES' (2015) 187 *Biological Conservation* 249.

²³² Ibid, citing *Consideration of Proposals for Amendment of Appendices I and II*, CITES CoP17 Prop. 19 (24 September – 5 October 2016).

²³³ Ibid, citing *Evaluation of the Review of Significant Trade: Case Studies*, CITES AC26/PC20 Doc.7 Annex 5, 2.

manner and be appropriately resourced through a funding mechanism for the RST process, and not rely on volunteers. As the authors observed, 'it is clearly impossible for the very small staff at the Secretariat and the 11-person membership of the technical committees (AC or PC) to have specialized knowledge of the 37,000+ species listed on CITES Appendix II'.²³⁴ Further, while funds may be forthcoming from some of the more well-resourced parties, these tend to favour those species of national commercial significance or more charismatic species. Garnering more formalised funding, technical support and injecting expertise into the process would surely assist in the achievement of other core recommendations for reform.²³⁵

D Information challenges

The CITES compliance system, while commendable in being one of the first MEAs with an information system built into the operative clauses of the Convention text as well as continued development through resolutions and decisions, is not without criticism. As Reeve opines, 'a compliance system is only as good as its information base', and in the case of CITES the ubiquity of issues concerning data availability, consistency and quality are cause for concern.²³⁶ Some parties fail to report or report late, which at CoP12 compelled the Secretariat to report on-time submission levels for annual reports since CITES entered into force as having 'waxed and waned between 60 per cent and 35 per cent' with overall submission levels reaching '80 percent or higher about three years after the deadline for a particular annual report but the trade data being reported are quite old by that time'.²³⁷ This lag in data availability may be attributed, in part, to each party bearing the costs of implementation including managing reporting for an increasing number of species listed in the Appendices. In 1981, only 700 species were listed as opposed to the present estimate running into the tens of thousands.²³⁸ While timely intervention has resulted in some successes, most notably the vicuña,²³⁹ research conducted by Frank and

²³⁴ Ibid 10.

²³⁵ These include that the RST shift in its focus from outputs (lists, reports, workshops) to outcomes (management policies and protected areas), and then ultimately on impacts (population recovery), as well as ensuring that recommendations are appropriately adapted to 'Party-species pairing'.

²³⁶ Reeve (n 15) 62.

²³⁷ Bowman, Davies and Redgwell (n 77) 521-22, citing CITES Secretariat, *Report on national reports required under Article VIII, paragraph 7, of the Convention*, CITES CoP12 Doc. 22.1 (3-15 November 2002).

²³⁸ Ditkof (n 18) 113.

²³⁹ See *Conservation of vicuña (Vicugna vicugna) and trade in its fibre and products*, CITES Resolution Conf. 18.8. In the mid-20th century populations had dropped to approximately 10,000 animals due to the commercial demand for its fur. The Vicuña are now listed as a species of least concern on the IUCN Red List owing to intervention including a CITES listing in 1975.

Wilcove²⁴⁰ found that species wait on average 12 years after being designated as threatened from trade on the IUCN Red List before they get a CITES listing, and that it can take up to 24 years in some cases, casting doubt on the effectiveness of NDFs and utility of trade data provided.

Analyses of the CITES Trade Database is its own branch of inquiry in international wildlife governance, with at least 114 peer-reviewed publications using the database to examine the dynamics of wildlife trade, some drawing attention to the ‘mismatch in reporting quality, methods, or diligence between countries’, such as a recent paper on the world’s hippo teeth trade.²⁴¹ As Robinson and Sinovas found in their aptly entitled ‘Challenges of analysing the global trade in CITES-listed wildlife’, the CITES Trade database requires careful attention, having regard to: discrepancies in importer versus exporter data; comparative versus gross or net trade reports; the use of terms (ie types of commodities in trade) and units of measurement; and product-use codes (ie purpose codes).²⁴² A further insight can be gleaned from a 2015 thesis by Russo identifying discrepancies in CITES trade data for Appendix I and II species exported out of 50 African nations relating to 198 importing countries in the period 2003-2012.²⁴³ The data represented 2,750 species across 90,204 original records, and revealed that only 7.3% were free of discrepancies, with an increase in discrepancy rates over this period suggesting that trade was monitored less efficiently in 2012 than almost a decade prior. Moreover, the retired former Chief of Enforcement at the CITES Secretariat, John Sellar, colourfully lamented ‘monitoring trade using data which is more or less gobbledegook is next to impossible’.²⁴⁴

The permit system has experienced persistent problems in implementation, exacerbating existing discrepancies and inefficiencies. The quantities on export permits often lack a unit designation and usually vary from what is actually being shipped. If customs do not capture actual shipment quantities and in the same units, and if that shipment information is not linked to the export/import permit, then the data is rendered inconsistent and unreliable. The paper-based permit model has been fraught with issues to circumvent traceability with permits traded or

²⁴⁰ Eyal G Frank and David S Wilcove, ‘Long delays in banning trade in threatened species’ (2019) 363(6428) *Science* 686.

²⁴¹ Alexandra Andersson, ‘Incomplete Trade Records Imperil Hippo Populations’, *The Oxford Martin Programme on Wildlife Trade* (Web Page, 3 April 2018) <<https://www.illegalwildlifetrade.net/2018/04/03/incomplete-trade-records-imperil-hippo-populations/>>; Alexandra Andersson and Luke Gibson, ‘Missing teeth: Discordances in the trade of hippo ivory between Africa and Hong Kong’ (2018) 56(2) *African Journal of Ecology* 235.

²⁴² Janine E Robinson and Pablo Sinovas, ‘Challenges of analyzing the global trade in CITES-listed wildlife’ (2018) 32(5) *Conservation Biology* 1203.

²⁴³ Alexandra Russo, ‘The prevalence of documentation discrepancies in CITES (Convention on the International Trade in Endangered Species of Wild Fauna and Flora) trade data for Appendix I and II species exported out of Africa between the years 2003 and 2012’ (Masters Thesis, University of Cape Town, 2015).

²⁴⁴ Rachel Love Nuwer, *Poached: Inside the Dark World of Wildlife Trafficking* (Hachette, 2018).

forged, even in exchanges involving CITES representatives. Nuwer observed that ‘some CITES representative are negligent or abusive of the import-export system: they issue permits when they shouldn’t, sell permits, or allow permits to be “stolen” from their offices’.²⁴⁵ Of the influence of corruption undermining the integrity of the system, Tim Steele (UNODC) has commented that ‘some countries will sell you a CITES permit for pretty much anything you want’.²⁴⁶ Certain fraud typologies exploiting the permit system have even become so well known that new terms are coined to describe them, for example the ‘C-Scam’, involving the deliberate misdeclaring of wildlife sources.²⁴⁷ Efforts to modernise the permit system through rolling out electronic permits to improve governance through enhanced traceability have severely lagged.²⁴⁸ Nature Needs More found that a fraction of the 183 parties to the Convention in 2021 had fully implemented e-permits (approximately 15).²⁴⁹ In September 2023, the CITES Secretary-General released a statement on the electronic CITES permitting system (eCITES) acknowledging that of the 184 current parties, 31 had made ‘significant progress’ in implementing the systems and a further 12 in the ‘early planning stages’.²⁵⁰

IV CONCLUSION

In their joint reflection on the roles of people and problems in the development of international environmental law, Couzens and Lewis opine that whilst CITES arguably promotes ‘trade in wild animal species through attempting to regulate such trade, the Convention probably provides the

²⁴⁵ Ibid.

²⁴⁶ Rachel Nuwer, ‘How well does CITES really prevent wildlife trafficking and illegal trade?’, *Ensi*a (online, 4 October 2018) <<https://ensia.com/features/cites/>>.

²⁴⁷ The trafficking of great apes as documented by wildlife crime investigators, notably the forensic work of Daniel Stiles, demonstrates how C-Scams function. Traffickers were shown to have purchased fraudulent CITES permits for an estimated \$5000 to export animals denoted as a ‘C’ (for captive) out of West and Central Africa to take advantage of less stringent regulations compared to wild-caught specimens (ie permitting export for research or commercial purposes). As per the findings of the CITES mission to Guinea in 2011, it was found that there were no great ape breeding facilities in Guinea, yet from 2009-2011 as many as 138 chimpanzees and 10 gorillas were exported from Guinea to Chinese zoos or safari parks (via routes established by Chinese development companies) using the ‘C’ source code. Furthermore, while China reported the imports, Guinea did not report the exports. China’s CITES officers failed to conduct due diligence that would have readily revealed the lack of breeding facilities in Guinea. See Global Financial Integrity, *Illicit Financial Flows and the Illegal Trade in Great Apes* (Report, October 2018) 12.

²⁴⁸ Peter Lanius and Lynn Johnson, *Debunking Sustainable Use Report 2020: Investigating the sustainable use mode in relation to the legal trade in endangered wildlife* (Report, 2020) 4. See also CITES Secretariat, ‘CITES Electronic Permitting Toolkit Version 3.0’, *CITES* (Web Page, November 2022) <https://cites.org/sites/default/files/eng/prog/e/cites_e-toolkit_latest.pdf>.

²⁴⁹ Peter Lanius and Lynn Johnson, *Modernising CITES: A Blueprint for Better Trade Regulation – Comprehensive Strategy for 2030* (Report, 2021) 2 (‘*Modernising CITES*’).

²⁵⁰ Higuero, *eCITES* (n 78).

most visible and significant international protection for wild animal species today'.²⁵¹ This thesis agrees with all elements of this assessment. It confirms that CITES promotes the trade in wild species wherein trade controls are implemented for the purpose of species conservation and sustainable use. Through regulating trade in species as a prominent economic activity impacting species through direct listing, the Convention certainly befits the descriptors of 'visible' and 'significant' in comparison to the current mix of MEAs constituting international wildlife conservation law. However, this is not to say that the Convention is necessarily operating effectively with respect to either of its core objectives. There continues to be an open question as to whether the responsibility for achieving these objectives and benefits are distributed equitably, regardless of whether a dispute for these reasons is likely or not, continuing the narrative of the Global North/Global South divide predating the Convention's drafting as described in Chapter IV.

CITES is fundamentally a trade agreement designed to regulate legal trade in wildlife through a system of permits and licensing. Conservation and sustainable use both feature in the Convention's current objectives. However, the treaty faces challenges that render some processes, such as the RST, not fit-for-purpose. Where the treaty faces shortcomings with these matters firmly within its mandate, there are questions as to how it could conceivably be expected to effectively contend with illegal wildlife trade, which bears its own distinct mix of problems in enforcement. For example, the persistence of data quality, consistency, and accessibility issues as well as manipulation of source codes for legal trade carry even greater consequences in the prevention and investigation of actors implicated in illegal wildlife trade.

Using this Chapter's analysis of CITES as its foundation, Chapter VI employs the Convention's treatment of rhino horn trafficking as a case study in researching the extent to which it addresses illegal wildlife trade in support of species conservation.

²⁵¹ Ed Couzens and Melissa Lewis, 'Learning from the Past: A Reflection on the Roles of People and Problems in the Development in International Environmental Law' in Tuomas Kuokkanen et al (eds), *International Environmental Law-making and Diplomacy* (Routledge, 2016) 113.

Chapter VI goes to the heart of the thesis research question in its critical examination of whether the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention'),¹ as the current principal international instrument and forum where the illegal wildlife trade ('IWT') is discussed, has risen to the challenge to support species conservation. It examines how CITES has attempted to respond within its mandate. By way of legal analysis, this Chapter's examination of CITES' response to IWT is informed by the deconstruction of the Convention's scope and operation in Chapter V, as well as by the contextual analysis in Chapter IV which situated CITES within the broader field of international wildlife conservation law.

Part I of this Chapter examines the rise of IWT and the CITES response, particularly in relation to national enforcement efforts, in three sub-parts. The first examines information-gathering within the Convention's operation. The second explores enforcement obligations under Article VIII of the Convention. The third outlines the Secretariat's contribution as a core collaborator in tackling wildlife crime, including through interagency efforts such as the International Consortium on Combating Wildlife Crime ('ICWC').

Part II employs the case study of rhino horn trafficking as a vehicle to critically analyse how CITES has responded to IWT. Developments since the 1977 trade ban are analysed through a critical chronology of rhino-related resolutions and decisions from CoP1 Bern (Switzerland) 2 – 6 November 1976 to CoP19 Panama City (Panama) 14 – 25 November 2022. All proposals to amend the Appendices are analysed with reference to contemporaneous records from the Committees with carriage, as are discussions around the passage of resolutions and decisions. While the focus is on rhinos, broader discourse from CoPs concerning the operation of the treaty is introduced to provide context where relevant. The construction of this critical chronology provides an entirely original contribution to existing literature.

Part III draws on the chronology of the Convention's treatment of rhinos to respond to the research question. It does so through an integrated analysis highlighting two aspects. The first examines whether the Convention's response to the crises facing rhino species are consistent with the conservation schema provided in the 'Declaration to Save the World's Terrestrial Megafauna' discussed in Chapter II. The second aspect extracts and reflects on six key hallmarks of CITES' approach to rhino horn trafficking as a case study of its capacity to respond to IWT which

¹ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

grounds the findings presented in this thesis's conclusion. These include: the primacy of the Convention's mandate; the emergence of a collaborative evidence-informed decision-making architecture; tensions between range states and non-state actors; demand reduction as a key element in supporting trade controls; the emergence of a whole-of-chain approach expanding focus to include territories of transit in addition to supply and demand; and an increasing focus on transnational organised crime. The sixth hallmark features several sub-components: emphases on profiling and responding to transnational organised crime as defined under the *United Nations Convention against Transnational Organised Crime* ('UNTOC'),² the interaction between trade controls and black-market values; the impacts of law enforcement measures by parties on crime displacement; and the impact of online trade.

The longitudinal treatment of rhinoceros species under CITES is illustrative of the clash of perspectives on the Convention's operation. In his renowned analysis of the illegal trade in rhino horn, *Killing For Profit*, wildlife crime investigator Rademeyer contrasts the viewpoints of Pickover and 't Sas-Rolfes, juxtaposing Pickover's opinion of CITES as a 'weak treaty, promoting trade rather than preventing it' (characterising further that 'the Green Movement often refers to CITES as the 'animal dealer's charter') with 't Sas-Rolfes' perspective that 'CITES primarily operates as a restrictive mechanism, rather than an enabling one'.³ Referring to its determination of non-detriment findings, 't Sas-Rolfes posits that there is an implied assumption that all trade is prima facie bade for conservation until proven otherwise. Interestingly, both cast doubt on the Convention's capability to contribute to conservation,⁴ which could well be the case based on the findings in Chapter V. The scope of this Chapter is far narrower, and specifically analyses the CITES response to the illegal trade in rhinoceros horn as a case study to evaluate the Convention's fitness to respond to IWT.

I THE RISE OF ILLEGAL WILDLIFE TRADE & CITES' RESPONSE

A Information gathering within the Convention's operation

While CITES' mandate concerns the regulation of legal trade in listed specimens of species, it has always operated with acute awareness of the looming dark figure of IWT. As evident in Chapter

² *United Nations Convention against Transnational Organised Crime*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003) arts 2-3 ('UNTOC').

³ Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Horn Trade* (Zebra Press, 2012) 111-2.

⁴ *Ibid* 112.

IV's discussion of CITES' genesis, this awareness predates the treaty itself such as in the resolution of the Eighth General Assembly of IUCN calling for an international anti-trafficking convention in 1963.⁵ As a central repository for data on legal trade, CITES has increasingly sought to collect information on suspected illegal trade. It does this via two primary sources: through third-party intelligence from non-governmental organisations ('NGOs'); and from annual illegal trade reports from parties to the Convention. Where constituted, CITES task forces can offer more specialised expertise and assistance towards implementation. CITES also plays a role as a key collaborator with respect to law enforcement via the ICCWC.

1 *The role of NGOs within CITES' response to IWT*

NGOs play a major role in feeding information on illegal trade into the CITES information mix.⁶ In addition to NGOs using conventional (eg print news and broadcast) and social media to publicise information concerning illegal trade, NGOs can more directly inform CITES decision-making processes by making reports directly to the Secretariat. Another option is for NGOs to provide intelligence to relevant state and territory parties to the Convention, which may then include that information in reports to the Secretariat.⁷ Some NGOs enjoy more formalised relationships with the CITES Secretariat, such as the International Union for Conservation of Nature ('IUCN') and TRAFFIC who provide a joint analysis of the proposals to amend to Appendices prior to each Conference of the Parties ('CoP').⁸ These analyses, offering objective and science-based assessments, provide useful data points to temper potentially heated debates during CoPs over particular listing proposals, and are widely used by parties, observers and other stakeholders to inform decision-making. Media-reporting on specific issues at CoPs also makes use of these IUCN/TRAFFIC analyses.⁹ The relationship between CITES and TRAFFIC has an extensive history, with TRAFFIC being founded the year of CITES CoP1, and has provided information to the Secretariat and national authorities ever since. The IUCN Species Survival Commission Specialist Groups engage with CITES through species assessments and by conducting research that may

⁵ IUCN, *Proceedings of the Eighth General Assembly* (IUCN, 1963) 120.

⁶ Rosalind Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (Royal Institute of International Affairs and Earthscan, 2002) 68.

⁷ *Ibid.*

⁸ See, eg, *IUCN/TRAFFIC Analyses of the Proposals to Amend the CITES Appendices at the 19th Meeting of the Conference of the Parties*, CITES CoP19 Inf.4 (14-25 November 2022), supplemented by *IUCN/TRAFFIC Analyses of the Proposals to Amend the CITES Appendices at the 19th Meeting of the Conference of the Parties*, CITES CoP19 Inf.3 (14-25 November 2022).

⁹ See, eg, IUCN, 'Biodiversity', *Our Work* (Web Page) <<https://www.iucn.org/our-work/biodiversity>>.

include information on illegal trade activities affecting species under study. It should be noted however, that some NGOs have experienced comparatively strained and distrustful relationships with the CITES Secretariat compared to IUCN and TRAFFIC, to the extent that Reeve notes that some organisations, at least in prior decades, avoided communicating information directly to the Secretariat.¹⁰

2 Annual Illegal Trade Reporting

2017 saw a new reporting requirement come into effect requiring all CITES parties to submit an annual illegal trade report ('AITR'). However, unlike standard annual reporting requirements (see Chapter V), these are not subject to compliance procedures, but are nonetheless still considered mandatory. According to Resolution Conf. 11.17 (Rev. CoP18) (and amended further at CoP19) on 'National Reports', parties are urged to submit AITRs to the Secretariat by 31 October each year, covering actions in the preceding year.¹¹ Where not otherwise specified by reporting parties, data collected from AITRs are included in the CITES Illegal Trade Database, which serves as a centralised point for research and analysis for parties and members of the ICCWC conducting global research and analysis of wildlife and forest crime. The United Nations Office on Drugs and Crime ('UNODC') is developing the data dissemination platform for the Illegal Trade Database.¹² The Secretariat reports that the database is a valuable tool, informing materials prepared for the 74th meeting of the Standing Committee including those concerning numerous species, including eels, great apes, jaguars, pangolins, queen conch, saiga antelope, and Tibetan antelope.¹³

As a relatively new reporting system, there have been some teething issues with the AITR system that were highlighted in a report submitted to CITES CoP19 covering CITES AITR seizure data from 2016-2020.¹⁴ While parties affected by high volumes of IWT were well represented, only 356 AITRs (39%) were submitted for the 2016-2020 period, in broadly consistent numbers each year. Geographic coverage of report submissions saw a wide range,¹⁵ with further variation with

¹⁰ Reeve (n 6) 69.

¹¹ *National reports*, CITES Resolution Conf. 11.17 (Rev. CoP18); *National reports*, CITES Resolution Conf. 11.17 (Rev. CoP19).

¹² *Annual Illegal Trade Reports*, CITES CoP19 Doc. 34 (14-25 November 2022) 2.

¹³ *Ibid.*

¹⁴ *Ibid* 8-14.

¹⁵ Europe had the highest reporting coverage on average (70%), followed by North America (60%), Asia (43%), Oceania (25%), Africa (24%), and Central and South America and the Caribbean (15%).

respect to the timelines of submissions made to the Secretariat.¹⁶ The quality of data submitted was also a major hurdle, with comparisons of CITES Illegal Trade Database records and the World WISE Database showing that approximately 7,500 records were reported in the latter from non-AITR sources. Cross-referencing records for the same event in both databases indicated that approximately 5,000 events were not reported in the respective party's AITRs, including in the World WISE Database. The data submitted also displayed wide-ranging issues impeding cleaning and analysing data, including: lack of adherence to standardised codes; inappropriate reporting of species name; and multiple units of quantities, despite the availability of the *Guidelines for the preparation and submission of the CITES annual illegal trade reports* and a standard template on the CITES website. In response to these challenges, the parties at CoP19 directed the Secretariat to continue its work with the UNODC, ensuring the CITES Illegal Trade Database and data dissemination platform are maintained, and to engage in efforts to support improving overall submission rates of AITRs. The latter includes online workshops in regions with low submission rates. An overarching and existential challenge to CITES' endeavours in this realm is its reliance on extrabudgetary funding sources. Should funding be insufficient, resulting in the database being discontinued for some time, it has been found that it 'might not be practical or feasible to re-establish the capacity required' even if a funding stream was re-established.¹⁷ Downtime for the database would also create a significant gap in data, undercutting the potential power of the database to provide higher-quality longitudinal analyses upon which profiles of IWT actors and products may be based.

3 CITES Task Forces

In addition to gleaning information from NGOs and parties to the Convention via reports to the Secretariat, CITES can establish enforcement task forces to tackle IWT.¹⁸ These task forces have produced guidance on collecting and analysing data and intelligence, specialised training, identification guides and awareness-raising packages. They have also provided opportunities for enforcement officers and experts from around the world to better connect, coordinate and

¹⁶ 65% of AITRs submitted were submitted on or before the CITES deadline, with another 15% submitted 1 month late, 7% submitted between 1 to 6 months late, 6% submitted between 6 months to 1 year late, 6% submitted more than 1 year late.

¹⁷ *Annual Illegal Trade Reports*, CITES CoP19 Doc. 34 (14-25 November 2022) 2[8].

¹⁸ *Compliance and enforcement*, CITES Resolution Conf. 11.3 (Rev. CoP19) [31]: recommends that the Secretariat, in consultation with the Standing Committee, set up task forces on an ad hoc basis where there is need to focus on species significantly affected or implicated in illegal trade.

cooperate across illicit supply chains (ie including countries of origin, transit, and destination). The underpinning goal of these collaborations is to drive stronger enforcement action in the field, partly by assisting countries implementing Decisions of the CITES CoP. CITES Enforcement Task Forces have previously been established to tackle wildlife crimes regarding great apes and falcons, and most recently include the operation of the Task Force on illegal trade in specimens of CITES-listed tree species and CITES Big Cat Task Force.¹⁹ Rhinos have been the subject of more than one task force: the CITES Rhino Enforcement Task Force and the Ivory and Rhinoceros Enforcement Task Force. An example of practical assistance offered by these task forces has been to guide enforcement agencies to delay publicising news of significant seizures until information has been provided to relevant counterparts in countries of origin and destination in addition to international enforcement bodies.²⁰

B Enforcement obligations under Article VIII

Returning to the text of the Convention, Article VIII requires parties to implement measures to enforce the treaty; however, it must be restated that it does not require that parties constitute a designated Enforcement Authority akin to the obligation to designate Management and Scientific Authorities. As outlined in the previous Chapter's discussion of the CITES compliance regime, parties to the Convention maintain sovereignty over its decisions regarding how to incorporate CITES obligations. Resolution Conf. 8.4 (Rev. CoP15) offers a broad basis supplemented by the current *Revised Draft - Model Law on International Trade in Wild Fauna and Flora* ('Model Law'),²¹ as prepared by the Secretariat among other sources. With respect to making laws concerning IWT, the Model Law references Resolution Conf. 11.3 (Rev. CoP19) on *Compliance and enforcement*, the Convention, and Resolution Conf. 17.8 on *Disposal of illegally traded and confiscated specimens of CITES-listed species*. The four minimum requirements for legislation to implement CITES are stated generally in Resolution Conf. 8.4 (Rev. CoP15):

- I. designation of national CITES authorities;
- II. prohibition of trade in violation of the Convention;

¹⁹ The CITES Big Cat Task Force's mandate is to improve enforcement, tackle illegal trade and promote collaboration on conserving tigers, lions, cheetahs, jaguars, and leopards.

²⁰ See, eg, 'Wildlife Enforcement Task Force meets to combat organized crime targeted at elephants and rhinos' (Press Release, CITES, 24 May 2011) <https://cites.org/eng/news/pr/2011/20110524_taskforce.php>.

²¹ CITES Secretariat, *Revised Draft – Model Law on International Trade in Wild Fauna and Flora* (CITES, 2021) ('Model Law').

- III. penalisation of illegal trade; and
- IV. authorisation to confiscate specimens illegally trade or possessed.²²

The first two requirements have been addressed in Chapter V. The present Model Law is now complemented by the UNODC's *Guide on Drafting Legislation to Combat Wildlife Crime* (2018) ('Guide on Drafting Legislation'),²³ which acknowledges a range of challenges to effectively combat wildlife crime.

Pursuant to Article VIII(1)(a), parties must adopt measures to penalise trade violating the terms of the Convention and possession of specimens which have been so traded. Draft provisions of these offences are provided by the Model Law, largely drawn from the UNODC Guide on Drafting Legislation, and concerns trade not permitted by the Convention:

1. Any person who undertakes any of the following actions commits an offence:
 - a) import, export, re-export, or introduce from the sea, or attempt to import, export, re-export or introduce from the sea, any specimen of a species listed in Schedule 1, 2 or 3 of this Act without a valid permit or certificate as required under this Act, or in contravention of the conditions set out in the permit or certificate;
 - b) fails to take reasonable steps to prevent a service, platform or social media to be used directly or indirectly for electronic or distance trafficking in wildlife, knowing that the service is being used in such a manner;
 - c) have in their possession or under their control, receive, transport, produce, offer, expose for sale or display to the public, purchase, buy or use any specimen of a species listed in in Schedule 1, 2 or 3 of this Act which has not been lawfully acquired;
 - d) submit a fraudulent document or make or attempt to make either oral or written false or misleading statements in, or in connection with, an application for a permit or certificate or registration;
 - e) obstruct or otherwise hinder an Enforcement Officer in the performance of their duties;
 - f) use false labelling and marking of specimens, or alter, deface or erase a mark used by the Management Authority to individually and permanently identify specimens;
 - g) accept any unauthorized personal payment or other form of personal compensation in order to see to the furtherance of any provisions under this Act;
2. A person who is found guilty of an offence under subsection (1) above shall be liable to a fine not exceeding [amount] and/or to imprisonment for a term not exceeding [months/years].

Extract 1: *Model Law*.²⁴

²² Ibid 3-5.

²³ Ibid; United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018).

²⁴ *Model Law* (n 21) 20.

Alongside these base offences, Resolution Conf. 11.3 (Rev. CoP19) recommends that illicit trafficking in protected species of wild fauna and flora involving organised criminal groups be defined as a 'serious crime' in national legislation.²⁵ The definition for 'serious crime' mirrors that contained in the UNTOC, meaning 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty'.²⁶ The definition of 'organised criminal group' transposes that from UNTOC meaning 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'.²⁷ As per Article 5(1)(b) of UNTOC, legislation combating wildlife crime should criminalise the conduct of the secondary offenders involved in wildlife crime who organise, direct, facilitate, counsel, aid and abet the commission of offences. The Model Law provisions are below:

1. Any person who intentionally takes an active part in criminal activities of an organized criminal group or who aids, abets, facilitates or counsels the commission, knowing either the aim and general activity of the organized criminal group, or its intention to commit one or more offences against this Act, commits a serious crime.
2. A person who is found guilty of the offence under subsection (1) above shall be liable on conviction to a fine not exceeding [amount] and to imprisonment for a term not exceeding [4] years.

Extract 2: *Guide on Drafting Legislation*.²⁸

The Model Law considers the different types of offenders involved in wildlife crime, suggesting that fines for corporate offenders ought to be higher than for physical persons to make the penalty proportionate to the severity of the offence. In addition to any penalty imposed, a court may require compensation from a convicted offender or prohibit a convicted offender from possessing certain species or trading in or producing such species for a certain period of time.²⁹ Further, it recommends a provision whereby offences of x years of imprisonment or greater are to be considered predicate offences for money laundering.³⁰ This is consistent with the approach to criminalising the laundering of proceeds of crime under UNTOC Article 6. Article 6(1)(a)(i), which requires that parties criminalise the intentional:

²⁵ *Compliance and enforcement* (n 18).

²⁶ UNTOC (n 2) art 2(b).

²⁷ *Ibid* art 2(a).

²⁸ United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018) 20 ('*Guide on Drafting Legislation*').

²⁹ *Ibid* 21.

³⁰ UNTOC (n 2) art 2(h): 'predicate offence' as 'any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 6 of this Convention'.

conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action...³¹

As to the scope of application, Article 6(2)(a) provides that each party seek to apply the scope of offences in Article 6(1) to ‘the widest range of predicate offences’, with Article 6(2)(b) explicitly requiring that parties include all serious crimes as predicate offences.

Consistent with general principles on the drafting of penal provisions, penalties ought to reflect the seriousness of the offence and serve as an effective specific and general deterrent.³² Where fines are calculated, they should factor in the value of the specimens involved, the financial or material benefit obtained by the perpetrator, and the damage to or loss of any specimen or ecosystem. The UNODC Guide recommends that where live animals have been seized, the cost of rehabilitating specimens should be included.³³ The key with fines is to ensure that they are sufficiently high to not simply be factored into the running costs of offenders operating in organised criminal groups, thus defeating deterrence as an important purpose of sentencing.

By way of brief analysis of the other enforcement requirements under Article VIII, Article VIII(4)(b) stipulates that each party provide for the confiscation of live or dead specimens which have been illegally traded or possessed. Resolution Conf. 17.8 offers exhaustive guidance on the disposal of illegally traded and confiscated specimens of CITES-listed species.³⁴ Importantly, it is paramount that seized specimens of species listed on Appendix I not re-enter the market and that plans for repatriation or re-introduction into the wild be carefully considered and managed for the welfare of the seized specimen as well as wild populations (including with regard to the transmission of pathogens and parasites and genetic pollution). While it may dampen the spirits of some advocates, Conf. Res. 17.8 considers both that ‘specimens once in trade may no longer form part of the reproducing wild population of the species concerned’ and further that ‘release to the wild may not always be in the best interest of the conservation of a species, especially one

³¹ Ibid art 6(1)(a)(i).

³² The UNODC Guide further offers a list of aggravating and mitigating circumstances. Aggravating factors include the offence caused a serious impact on a species or the environment where the offence involves a large number of specimens or in case of particular cruelty during transportation to an animal involved in the offence. Mitigating circumstances include low quantity and/or value of the specimens involved in the offence, no prior criminal record, the age of the offender as well their willingness to cooperate with the authorities in the investigation.

³³ *Guide on Drafting Legislation* (n 28) 35.

³⁴ *Disposal of illegally traded and confiscated specimens of CITES-listed species*, CITES Resolution Conf. 17.8 (Rev. CoP19).

not in danger of extinction'.³⁵ The Statement of principle in Annex I states the goals for disposal of confiscated animals are achieving three goals:

- I. to maximize conservation value of the specimens without in any way endangering the health, behavioural repertoire, or conservation status of wild or captive populations of the species;
- II. to discourage further illegal or irregular trade in the species; and
- III. to provide a humane solution, whether this involves maintaining the animals in captivity, returning them to the wild, or employing euthanasia to destroy them.³⁶

The gravity of this decision lies with the relevant confiscating government authority. International networks of experts, such as the IUCN-Species Survival Commission Specialist Groups, assist confiscating authorities and CITES Scientific and Management Authorities in deliberations as to the appropriate disposal of confiscated specimens. Finally, Article VIII(3) urges parties to designate special ports of exit and entry through which all exports and imports of wildlife must pass. This provision seeks to encourage parties to build capacity for expert verification of shipments towards two ends: firstly, to ensure that legal supply is efficiently processed; and secondly, that smuggling is detected.

As discussed in Chapter IV, CITES' evolving Strategic Vision is formative in understanding the operation of the Convention and in the pursuit of the objectives of conservation and sustainable use. All iterations of the document have included references to illegal trade. The third and current edition acknowledges 'the importance of global cooperation to address the threats posed by illegal trade in wildlife...'³⁷ coupled with a goal that 'Parties (individually and collectively) have the tools, resources and capacity to effectively implement and enforce the Convention, contributing to the conservation, sustainable use and the reduction of illegal trade in CITES-listed wildlife species'.³⁸ By way of elaboration, this explicitly includes that parties recognise illegal trade in wildlife as a serious crime and have adequate systems in place for detection and deterrence, and collaboration to address entire illegal trade chains as well as enabling forces such as corruption.³⁹

³⁵ Ibid 1-2.

³⁶ Ibid 4. The last option may often prove the most appropriate and most humane.

³⁷ *CITES Strategic Vision: 2021-2030*, CITES Resolution Conf. 18.3, 1.

³⁸ Ibid 4 'Goal 3'.

³⁹ See also *Prohibiting, preventing, detecting and countering corruption, which facilitates activities conducted in violation of the Convention*, CITES Resolution Conf. 17.6 (Rev.CoP19).

Enforcement of the Convention faces multifaceted challenges at the risk of not fulfilling these aspects of the Strategic Vision. As outlined in Chapter IV's discussion of compliance, the most recent lists of the National Legislation Project contain 73 parties across categories 2 and 3, an increase of three parties from post-CoP18.⁴⁰ Currently, challenges in drafting provisions commensurate with the Convention's requirements cut across a variety of areas. The UNODC describes these challenges wherein some laws fundamentally fail to define 'wildlife' and/or lack the base requirements discussed above with respect to penalties, designating wildlife offences as predicate offences in anti-money-laundering laws, as well as failing to 'criminalize attempt, participation by accessories, and the possession and sale of illegally obtained wildlife specimens'.⁴¹ Another aspect of enforcement inefficiency occurs where multiple agencies and organisations may be involved in investigating wildlife crime (eg collecting evidence, interviewing accused persons, collecting forensic samples, arrest, etc), but do not operate in a coordinated way or aligned with powers permitted by the state. As to the effectiveness of measures prescribed by Article VIII(3), according to Bowman, Davies and Redgwell, evidence suggests that, while designation of ports of exit and entry has helped combat illegal trade, 'there are concerns that other ports may be targeted by smugglers in the knowledge that customs officers at these ports would not be as educated or experienced in identifying illegal trade'.⁴²

C CITES as a core collaborator in tackling wildlife crime

As foreshadowed in earlier references to the ICCWC (and its five organisations individually), CITES plays a prominent role globally in tackling wildlife crime, including IWT. As identified in Chapter V, the CITES Secretariat is one of five founding bodies of the ICCWC, together with the UNODC, INTERPOL, the World Bank, and World Customs Organization, which aims to provide states and their relevant agencies with the tools, services, technical support and capacity-building they need to establish long term sustainable capacity to respond to wildlife crime.⁴³ As further identified in Chapter V, the CITES Secretariat's Enforcement Unit is responsible for coordinating with the Consortium. The collaboration through the ICCWC has benefitted the operation of CITES through

⁴⁰ *Status of Legislative Progress for Implementing CITES* (November 2022) <<https://cites.org/sites/default/files/documents/legislation-status/legislation-status.pdf>>. Three recently acceded Parties are also noted and not categorised on the category 1-3 rating. These are Andorra, Tajikistan, and Tonga.

⁴¹ *Guide on Drafting Legislation* (n 28) 1.

⁴² Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 531.

⁴³ ICCWC, 'Our Approach', *International Consortium In Combating Wildlife Crime* (Web Page) <<https://icwc-wildlifecrime.org/our-approach>>.

the creation of key resources such as the *ICCWC Wildlife and forest crime analytic toolkit*⁴⁴ and *ICCWC Indicator framework for wildlife and forest crime*⁴⁵ as both recommended to parties in Resolution Conf. 11.3 (Rev. CoP19).⁴⁶ In addition to referencing the UNODC Guide to Drafting as discussed above, CITES seeks expertise from the UNODC regularly. This includes the CITES Secretariat's commissioning of a review of wildlife forensic science and laboratory capacity to support the implementation and enforcement of CITES, particularly with respect to overcoming the predicament of definitive identification of specimens in determining the legality of their shipment or otherwise.⁴⁷ Collaboration between CITES and the UNODC is considered essential for the attainment of sustainable development, with the UN Sustainable Development Goal indicator 'Proportion of traded wildlife that was poached or trafficked' (Target 15.7) featuring CITES and the UNODC as custodian agencies.

With respect to large-scale enforcement efforts, members of the Consortium have backed the intelligence-led field operations annually since 2017. Initiated by the INTERPOL Wildlife Crime Working Group and known collectively as the 'Thunder Operations' (comprised of Operation Thunderbird in 2017, Thunderstorm in 2018, Thunderball in 2019, Thunder 2020, Thunder 2021, and Thunder 2022), these operations have resulted in thousands of arrests and over ten thousand seizures of protected wildlife and forestry species. The latest operation at the time of writing, executed from 3-30 October 2022, involved multi-agency collaboration across 125 countries ranging from police, customs, financial intelligence units, and wildlife and forestry enforcement. Over nine hundred suspects have been identified at the time of writing (including 141 companies suspected of engaging in illegal sales), with over two thousand seizures confirmed. These operations not only play a pivotal role in law enforcement, but both rely on and provide data which, when aggregated over time, provide insight into trends. For example, the results from the Thunder Operations conducted so far have seen: an increase in illegal money transfers to launder proceeds; the use of online platforms to facilitate cross-border trafficking;⁴⁸ an increase in commercial and customs document fraud for export, transit, and import; and

⁴⁴ ICCWC, *Wildlife and Forest Crime Analytic Toolkit* (ICCWC, 2nd ed, 2022).

This toolkit may assist parties conducting a comprehensive analysis of possible means and measures to protect and monitor wildlife and forest products, and in identifying technical assistance needs.

⁴⁵ ICCWC, *Wildlife and Forest Crime Indicator Framework* (ICCWC, 2nd ed, 2022).

⁴⁶ *Ibid.* The Indicator framework provides an important framework of indicators that cover the major components of a law enforcement response to wildlife and forest crime, for national level use by parties to measure and monitor the effectiveness of their own law enforcement responses to these crimes.

⁴⁷ UNODC, *A review of wildlife forensic science and laboratory and enforcement of CITES*, CITES CoP17 Doc. 25 Annex 4.

⁴⁸ See also Annika Mozer and Stefan Prost, 'An introduction to illegal wildlife trade and its effects on biodiversity and society' (2023) 3 *Forensic Science International: Animals and Environments* 100064.

confirmed links to other serious crime. Examples of the former include Namibia, which saw wildlife crimes cases linked to illegal pharmaceuticals, food, and vehicle parts; and Mexico, where Chinese nationals smuggling totoaba swim bladders, sea cucumbers and coral were also smuggling cash and methamphetamine.⁴⁹

As evident in the sheer number of seizures detected by the Thunder Operations, illegal trade in CITES-listed species persists despite international regulation. Indeed, some of the most alarmingly high-value trafficking networks found to be operating in violation of CITES regulations in recent times concern the smuggling of young European eels (*Anguilla anguilla*) by 'glass eel cartels'⁵⁰ and export of Malagasy rosewood (genus *Dalbergia*) and ebony (genus *Diospyros*), all of which are regulated under Appendix II.⁵¹ Another example presents in the market for wild-sourced caviar derived from sturgeon and paddlefish populations despite all species having been listed in CITES Appendix I or II since 1998 (sometimes laundered as farmed stock).⁵²

In response to the growing profile of the criminal element of wildlife trade (and the imperative to safeguard the legitimacy of legal wildlife trade facilitated via CITES), the international community undertook a series of actions to call for increased coordination and strengthened criminal justice; most notably, to see illicit trafficking in wildlife recognised as a 'serious crime'.⁵³ Doing so would more firmly bring illicit trafficking in wildlife into the purview of UNTOC and elevate wildlife trafficking to a comparable level of perceived seriousness comparable to other illicitly traded commodities. A renewed approach to criminalising and taking law enforcement action against wildlife crime would then challenge the prevailing paradigm of high profits with low risks, which facilitates trade. Commencing in 2001, the United National Economic and Social Council passed a series of resolutions to specifically address illicit trafficking in wildlife and forest

⁴⁹ 'Global arrests and seizures: INTERPOL-WCO operation strikes wildlife and timber trafficking networks', *INTERPOL* (online, 30 November 2021) <<https://www.interpol.int/en/News-and-Events/News/2021/Global-arrests-and-seizures-INTERPOL-WCO-operation-strikes-wildlife-and-timber-trafficking-networks#:~:text=Demonstrating%20the%20link%20between%20wildlife,along%20with%20methamphetamine%20and%20cash>>.

⁵⁰ Hiromi Shiraishi, 'Reviewing the trade in glass eels *Anguilla* spp' (2020) 32(1) *TRAFFIC Bulletin* 13; Stein, Florian. (2018); Florian Stein, *Possible EU temporal eel fishing closure and its potential implications for glass eel trafficking* (Report, 6 December 2018) <<https://www.sustainableeelgroup.org/possible-eu-temporal-eel-fishing-closure-and-its-potential-implications-for-glass-eel-trafficking/>>.

⁵¹ See Cynthia Ratsimbazaly, David J Newton and Stéphane Ringuet, *TRAFFIC Report: Timber Island – The Rosewood and Ebony Trade of Madagascar* (Report, November 2016).

⁵² Hiromi Shiraishi, 'Understanding the Global Illegal Caviar Trade: Cites Labelling System Not Implemented', *The Oxford Martin Programme on Wildlife Trade* (Web Page, 28 October 2019) <<https://www.illegalwildlifetrade.net/2019/10/28/understanding-the-global-illegal-caviar-trade-cites-labelling-system-not-implemented/>>. See also Lindsey Harris and Hiromi Shiraishi, *TRAFFIC Report: Understanding the Global Caviar Market – Results of a report assessment on trade in sturgeon caviar* (Report, July 2018).

⁵³ *The notion of serious crime in the United Nations Convention against Transnational Organized Crime*, UN Doc CTOC/COP/2012/CRP.4.

products,⁵⁴ in addition to including trafficking in endangered species of wild fauna and flora in its measures to strengthen international cooperation in combating transnational organised crime in all its forms and manifestations;⁵⁵ and, upon the recommendation of the Commission on Crime Prevention and Criminal Justice,⁵⁶ bolster its Resolution on *The rule of law, crime prevention and criminal justice in the context of the Sustainable Development Goals*.⁵⁷

The role of the ICCWC has consistently been recognised in these instruments. Seeking to further mainstream the issue, on 27th June 2014, the United Nations Environment Assembly of the United Nations Environment Programme passed resolution 1/3 on the illegal trade in wildlife where it expressly called upon the General Assembly to consider the issue. Consequently, the United Nations General Assembly passed the first of its suite of five ‘tackling illicit trafficking of wildlife’ resolutions during its 69th session in 2015 (followed by 2016, 2017, 2019, and 2021).⁵⁸ These resolutions aim to prevent, combat, and eradicate illicit trafficking in wildlife in countries of supply and demand. For example, they call on member states to amend national legislation to classify crimes connected to IWT as predicate offences to facilitate to seizure, confiscation, and disposal of connected assets, and to prohibit, prevent and counter any form of corruption that

⁵⁴ *Illicit trafficking in protected species of wild flora and fauna*, ESC Res 2001/12, UN ECOSOC, 40th plen mtg, UN Doc E/RES/2001/12 (24 July 2001); *Illicit trafficking in protected species of wild flora and fauna*, ESC Res 2002/18, UN ECOSOC, 37th plen mtg, UN Doc E/RES/2002/18 (24 July 2002); *Illicit trafficking in protected species of wild flora and fauna*, ESC Res 2003/27, UN ECOSOC, 44th plen mtg, Supp No 1, UN Doc E/RES/2003/27 (22 July 2003); *International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources*, ESC Res 2008/25, UN ECOSOC, 42nd plen mtg, UN Doc E/RES/2008/25 (24 July 2008); *Crime prevention and criminal justice responses against illicit trafficking in endangered species of wild fauna and flora*, ESC Res 2011/36, UN ECOSOC, 48th plen mtg, UN Doc E/RES/2011/36 (28 July 2011); *Crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora*, ESC Res 2013/40, UN ECOSOC, 47th plen mtg, UN Doc E/RES/2013/40 (25 July 2013).

⁵⁵ *Strengthening international cooperation in combating transnational organized crime in all its form and manifestations*, ESC Res 2012/19, UN ECOSOC, 46th plen mtg, UN Doc E/RES/2012/19 (26 July 2012).

⁵⁶ *Commission on Crime Prevention and Criminal Justice Report on the twenty-seventh session*, UN Doc E/CN.15/2018/15/Add.1 (20 December 2018).

⁵⁷ *The rule of law, crime prevention and criminal justice in the context of the Sustainable Development Goals*, ESC Res 2018/17, UN ECOSOC, 42nd plen mtg, UN Doc E/RES/2018/17 (2 July 2018).

⁵⁸ *Tackling illicit trafficking in wildlife*, GA Res 69/314, UN Doc A/RES/69/314 (30 July 2015, adopted 19 August 2015); *Tackling illicit trafficking in wildlife*, GA Res 70/301, UN Doc A/RES/70/301 (9 September 2016, adopted 23 September 2016); *Tackling illicit trafficking in wildlife*, GA Res 71/326, UN Doc A/RES/71/326 (11 September 2017, adopted 28 September 2017); *Tackling illicit trafficking in wildlife*, GA Res 73/343, UN Doc 73/343, UN Doc A/RES/73/343 (16 September 2019, adopted 20 September 2019); *Draft Resolution – Tackling illicit trafficking in wildlife*, UN Doc A/75/L.116 (16 July 2021). Earlier mentions of the trafficking of endangered species can be found in *Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity*, GA Res 66/181, UN Doc A/RES/66/181 (19 December 2011, adopted 3 April 2012) (for example: *Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity*, GA Res 72/196, UN Doc A/RES/72/196 (19 December 2017, adopted 25 January 2018); *Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity*, GA Res 74/177, UN Doc A/RES/74/177 (18 December 2019, adopted 27 January 2020); *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015)).

facilitates illicit trafficking in wildlife and related items to ensure that legal domestic markets do not act as a conduit for illegal products. The resolutions also recognise ‘the legal framework provided by and the important role of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* as the primary mechanism for regulating international trade in species of wild fauna and flora listed in its appendices’.⁵⁹

The Preambles of the General Assembly resolutions offer an inclusive list of species of concern that includes, for present purposes, rhinos:

Expressing serious concern over the extraordinarily detrimental levels of rhinoceros poaching, the alarmingly high levels of killings of elephants in Africa and the significant increase in illicit pangolin trafficking, as well as the illegal trade in other protected wildlife species, including but not limited to tortoises, marine and freshwater turtles, land and marine iguanas, other reptiles, sharks, ornamental fish, great apes, parrots, raptors, the helmeted hornbill and big cats, which threaten those species with local extinction and, in some cases, with global extinction...⁶⁰

II A GAME OF HORNS:⁶¹ A CASE STUDY OF CITES’ TREATMENT OF RHINO HORN TRADE

This part will examine CITES’ treatment of rhino horn trade through analysis of: (a) changes to the Appendices; and (b) the creation, amendment, and repeal of the central resolutions concerning rhinos together with related decisions of the CoP. Following a summary of the current status of rhino listings on the Appendices, this second part of the Chapter will trace developments from CoP1 to CoP19. Following this analysis, the third and final part of this Chapter examines the Convention’s treatment of rhino species in response to the threat of horn trafficking, providing an integrated analysis highlighting two aspects. The first aspect concerns whether the Convention’s response to the crises facing rhino species is consistent with the schema provided in the ‘Declaration to Save the World’s Terrestrial Megafauna’ as discussed in Chapter II. The second involves extracting and reflecting on key hallmarks of the Convention’s approach to rhino horn trafficking as a case study of IWT.

⁵⁹ *Preventing and combating crimes that affect the environment*, GA Res 76/185, UN Doc A/RES/76/185 (11 January 2022, adopted 16 December 2021) 4.

⁶⁰ *Tackling Illicit Trafficking in Wildlife*, GA Res 73/343, UN Doc A/RES/73/343 (20 September 2019, adopted 16 September 2019) 2.

⁶¹ Coined by Annette Michaela Hübschle, ‘A Game of Horns: Transnational Flows of Rhino Horn’ (PhD Thesis, University of Cologne, 2016).

A Current status of rhinoceros species under CITES

At the time of the Convention's entry into force in 1975, all three Asian rhino species and the northern white rhinoceros (*Ceratotherium simum cottoni*) were listed on Appendix I. The black rhinoceros was also listed in the Appendices at this time, but on Appendix II. In 1976, the remaining white rhino were added to Appendix I, followed by an up-listing of black rhino to Appendix I in 1977. Split-listings for the southern white rhino populations of South Africa and eSwatini were subsequently added to Appendix II in 1994 and 2004 respectively, permitting international trade in live animals to appropriate and acceptable destinations and as hunting trophies. The most recent split-listing occurred at CoP19, with Namibia's southern white rhinos down-listed to Appendix II 'for the exclusive purpose of allowing international trade of live animals for *in-situ* conservation only, and only within the species' natural and historical range in Africa'.⁶² All other specimens 'shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly'.⁶³ While not the subject of a split-listing, black rhino hunting trophies are the subject of export quotas under Conf. 13.5 (Rev. CoP18) as they relate to South Africa and Namibia.⁶⁴ A summary of *Rhinocerotidae* listings is provided in the table below:

⁶² *Summary record of the Tenth session for Committee I*, CITES CoP19 Com. I. Rec. 10 (14-25 November 2022) 1-2; *Consideration of proposals for amendment of Appendices I and II*, CITES CoP19 Prop. 2 (14-25 November 2022).

⁶³ *Ibid.*

⁶⁴ *Establishment of export quotas for black rhinoceros hunting trophies*, CITES Resolution Conf. 13.5 (Rev. CoP18).

Common species name	Scientific name	CITES Appendix and year listed
Greater one-horned rhino	<i>Rhinoceros unicornis</i>	Appendix I 1975
Javan rhino	<i>Rhinoceros sondaicus</i>	Appendix I 1975
Sumatran rhino	<i>Dicerorhinus sumatrensis</i>	Appendix I 1975
Black rhino	<i>Diceros bicornis</i>	Appendix I 1977
White rhino	<i>Ceratotherium simum</i>	Appendix I 1976
	<i>Ceratotherium simum simum</i> (southern white rhinoceros) of South Africa for the exclusive purpose of allowing international trade in live animal to appropriate and acceptable destinations and hunting trophies	Appendix II 1994
	<i>Ceratotherium simum simum</i> (southern white rhinoceros) of Eswatini for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies	Appendix II 2004
	<i>Ceratotherium simum simum</i> (southern white rhinoceros) of Namibia 'for the exclusive purpose of allowing international trade of live animals for <i>in-situ</i> conservation only, and only within the species' natural and historical range in Africa	Appendix II 2022

Table 1: Five species of rhinoceros as listed in the CITES Appendices.

B A Critical Chronology of rhino resolutions and decisions through CITES CoPs

(a) CoP1 Bern (Switzerland) 2 – 6 November 1976

At CoP1, the first meeting of the Conference of the Parties (Bern, Switzerland, 2-6th November 1976), with Proposal 113 concerning the proposal for amendments to Appendices, the United Kingdom sought to remove greater one-horned, Sumatran, Javan, and northern white rhinos from Appendix I,⁶⁵ coupled with deleting the black rhino from Appendix II.⁶⁶ Instead, all species

⁶⁵ United Kingdom of Great Britain and Northern Ireland Proposal for amendments to Appendices, CITES CoP1 Prop. 113, 239.

⁶⁶ Ibid 247.

of *Rhinocerotidae* would appear on Appendix I.⁶⁷ The proposal was accompanied by a simple supporting statement that ‘all rhinoceros species are endangered, and tight control in them is necessary’.⁶⁸ The proposal was accepted, with the black rhinoceros becoming the last species to be up-listed on the fourth of February 1977.

(b) CoP3 New Delhi (India) 25 February – 8 March 1981

The next major development occurred at CoP3 (New Delhi, India, 1981) pursuant to Resolution Conf. 3.11 ‘Trade in Rhinoceros Horn’, wherein the CoP noted the ‘highly endangered status of all rhinoceros species’, and made particular reference to the ‘particularly rapid decline in numbers of rhinoceros to a critically low level in many areas primarily because of demand for its horn’.⁶⁹ The Resolution further recognised the persistence of illegal trade despite the Appendix I listing for all species.⁷⁰ In formulating this Resolution, the parties had regard to the findings of a IUCN/WWF study into international trade in rhino products based on the investigations of Esmond Bradley Martin.⁷¹ The Resolution recommended that the Secretariat make representations to parties and non-parties to the Convention and request a stop to all trade by means of a moratorium on the sale of ‘all government and parastatal stocks of rhino products’,⁷² as well as for parties to record stocks in annual reports to the Convention. The Secretariat was also recommended to make representations. The Resolution also recommended that all non-parties to CITES take measures to prevent the commercial import and export of rhino products where records showed they had done so within the preceding five years.⁷³ CoP3 also saw the first attempt by South Africa to down-list its population of white rhinos to Appendix II.⁷⁴

⁶⁷ Ibid 239.

⁶⁸ Ibid 256. A general introduction concerning the proposals relating to fauna and mammals is included in the Supporting Statement can be found at page 255.

⁶⁹ *Trade in Rhinoceros Horn*, CITES Resolution Conf. 3.11: ‘RECOGNIZING that illegal trading activities in rhinoceros horns are substantial and that urgent measures are needed to save rhinoceros species from extinction despite their listing on Appendix I of the Convention of International Trade in Endangered Species of Wild Fauna and Flora’.

⁷⁰ Ibid.

⁷¹ Esmond Bradley Martin, *The International Trade in Rhinoceros Products: A report for the World Wildlife Fund and International Union for Conservation of Nature and Natural Resources* (IUCN/WWF, 1980).

⁷² Michael ‘t Sas-Rolfe, ‘Assessing CITES: Four Case Studies’ in Jon Hutton and Barnabas Dickson (eds), *Endangered Species Threatened Convention: The Past, Present and Future of CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (Taylor & Francis, 2000) 69, 71.

⁷³ *Trade in Rhinoceros Horn* (n 69).

⁷⁴ *Transfer from Appendix I to Appendix II of the South African population of the Ceratotherium simum simum*, CITES CoP3 Prop. 18 (South Africa).

(c) *CoP6 Ottawa (Canada) 12 – 24 July 1987*

At CoP6 (Ottawa, Canada, 1987), the Secretariat presented a draft resolution in response to a report into the *Status of Rhino Populations and Associated Trade in Rhino Products* prepared by Martin on behalf of the African Elephant and Rhino Specialist Group within the International Union for Conservation of Nature and Natural Resources' Species Survival Commission.⁷⁵ The Secretariat did not mince words in calling for 'additional, stricter measures', expressing its belief that exceptional recommendations were 'totally justified in view of the catastrophic decline in African rhinoceros populations caused solely by trade'.⁷⁶ The resulting Resolution Conf. 6.10 'Trade in Rhinoceros Products' conceded that, despite 'the efforts of the Parties, the Secretariat and other interested agencies have failed to stem the flow of illegal trade in rhinoceros products, particularly horn; and that this trade is the primary factor responsible for the destruction of rhinoceros populations'.⁷⁷ Early references to what could later be classified as transnational crime are also alluded to in the Resolution's recognition that cross-border poaching activity and the use of non-range states acted as 'safe entrepots for illegal shipments of rhinoceros horn'.⁷⁸ The Resolution raised concerns regarding stockpile management, citing 'the security risk involved in holding large stocks of valuable rhinoceros horn in a routine fashion in government stores and the fact that this has already stimulated criminal action and theft of such stocks'.⁷⁹ Parties were urged to undertake steps to immediately and completely prohibit all domestic and international sale and trade of all rhino products. This included personal effects, except for the non-commercial movement of legitimate hunting trophies where appropriate full CITES documents are issued. Parties were also urged to destroy stockpiles, issue special instruction to all law enforcement, increase penalties for individuals and companies convicted of relevant offences, and take decisive action for actors along supply chains including poachers and middlemen. Parties were recommended to use substitutes for horn, develop national and continental conservation strategies, and, of particular interest by way of fostering compliance with the Convention:

use all appropriate means (including economic, political and diplomatic) to exert pressure on countries continuing to allow trade in rhinoceros horn, in particular Burundi and the United Arab

⁷⁵ *Interpretation and Implementation of the Convention – Trade in Rhinoceros Products*, CITES CoP6 Doc. 6.25 (12-24 July 1987).

⁷⁶ *Ibid* 629. It continues underscoring this sentiment with the clause 'AWARE that the situation will continue to deteriorate unless drastic measures are taken immediately' at page 639.

⁷⁷ *Trade in Rhinoceros Products*, CITES Resolution Con. 6.10.

⁷⁸ *Ibid* 1.

⁷⁹ *Ibid*.

Emirates, (including the 'passive' allowance of such trade), to take the necessary action to prohibit such trade and to enforce such a prohibition.⁸⁰

The Standing Committee was also directed to address rhinoceros conservation issues, which were subsequently considered at great length at its 28th-31st meetings.

(d) CoP8 Kyoto (Japan) 2 – 13 March 1992

Legal sustainable trade as a conservation tool aimed at harm minimisation was a major point of debate at CoP8 (Kyoto, Japan, 1992). CoP8 saw unsuccessful proposals to down-list the populations of both white and black rhinos of Zimbabwe,⁸¹ and move the southern white rhino population of South Africa to Appendix II.⁸² In deliberations before Committee I, the delegation for South Africa noted a 'complete failure of Appendix I listing' due to the non-abatement of poaching, suggesting that legal trade was urgently required. The delegation from Zimbabwe, which withdrew its southern white rhinoceros proposal following a heated debate of South Africa's proposal, spoke in favour of dehorning populations in response to a marked increase in poaching incursions across their borders. Citing the success of trade in vicuña, the delegation raised the possibility of using horns from dehorned rhinos and possibly those recovered from natural mortalities and poaching seizures be traded, with funds from legal sale going towards management programs. This proposal was opposed by delegations for Algeria, the United Republic of Tanzania, and Kenya, with an observer from the International Wildlife Coalition suggesting that any sales would disrupt attempts to control illegal trade. The proposal was subsequently voted down,⁸³ but not before the observer from WWF 'sought a positive message' rather than an outright rejection of the proposal. The parties, the Secretariat, NGOs and the Standing Committee were accordingly implored to use the media as a vehicle to campaign against the trade in rhinoceros horn.⁸⁴

⁸⁰ Ibid.

⁸¹ *Transfer of the Zimbabwe population of Ceratotherium simum from Appendix I to Appendix II*, CITES CoP 8 Prop. 16 (Zimbabwe); *Transfer of the Zimbabwe population of Diceros bicornis from Appendix I to Appendix II*, CITES CoP8 Prop. 18 (Zimbabwe).

⁸² *Transfer from Appendix I to Appendix II of the South African population of the Ceratotherium simum simum*, CITES CoP8 Prop. 17 (South Africa).

⁸³ *Summary Report of the Committee I Meeting*, CITES CoP8 Com.I 8.1 (Rev.).

⁸⁴ Ibid 37.

(e) CoP9 Fort Lauderdale (United States of America) 7 – 18 November 1994

A Resolution passed at CoP9 (Fort Lauderdale, USA, 1994) would come to be the central instrument through which the CoP would articulate the Convention's approach to rhinoceros trade and conservation. Resolution Conf. 9.4 on the 'Conservation of and trade in African and Asian rhinoceroses' repealed Resolution Conf. 3.11 and Resolution Conf. 6.10, and would later be amended at relatively regular intervals at the 11th, 13th, 14th, 15th, 17th, 18th and 19th meetings of the CoP. The resolution had regard to the work of both the Animals Committee and Standing Committee on issues of rhinoceros conservation, but lamented that populations had little respite despite efforts to reduce horn use and poaching. The Standing Committee produced its report on the status of trade, after which the IUCN/SSC Rhinoceros Specialist Groups introduced their report on the status of rhinoceros in Africa and Asia.⁸⁵ The document contained a draft resolution in Annex 2, which was subsequently debated, amended and approved.

The resulting resolution characterised the illegal trade in horn as a known global law enforcement problem 'extending beyond range States and traditional consuming countries',⁸⁶ while also noting that social, economic and cultural factors in producer and consumer states meant that as an 'emphasis solely on law enforcement has failed to remove the threat to rhinoceroses'.⁸⁷ In a reversal of the CoP's previous stance on stockpiles, the resolution suggested that the destruction of stocks would increase the risk to remaining rhinos. The Resolution also recognised that international measures had wrought unintended consequences, including driving the trade further underground and the price up in some countries. This statement is supported by estimates cited by Rademeyer, who writes that a kilogram of horn that could be purchased for USD17 in 1977 had risen to USD477 per kilogram in Taiwan. In Yemen, the price increased between 1980 and 1985 from USD764 per kilogram to USD1,159 per kilogram.⁸⁸ The actions requested of parties to the Convention was wide-ranging and added a degree of nuance to CITES' approach to specific issues, including stockpile management. An awareness of the role of traditional medicine in the consumption of rhino parts and derivatives further saw the addition of a new paragraph to the resolution as originally drafted, urging consumer states to collaborate with traditional medicine communities and industries towards reduced use.⁸⁹ This responded to findings reported by the Secretariat which included that significant numbers of doctors may be

⁸⁵ *Interpretation and Implementation of the Convention – Conservation of Rhinoceros in Asia and Africa*, CITES CoP9 Doc. 9.35.

⁸⁶ *Ibid* 644.

⁸⁷ *Ibid*.

⁸⁸ Rademeyer (n 3) 112.

⁸⁹ *Summary Report of the Committee II Meeting*, CITES CoP9 Com.II 9.1 (Rev.) 219.

defying legal prohibitions by continuing to prescribe rhino horn due to long-standing cultural traditions.⁹⁰

CoP9 was also of significance for CITES' treatment of rhinos, producing the first split-listing. In favour of legal trade, South Africa once again proposed to down-list its southern white rhinoceros populations to Appendix II,⁹¹ maintaining its stance that CITES' trade controls had failed to provide 'any significant protection to rhinoceros populations in the wild and should be discarded as a viable conservation measure'.⁹² The proposal cited South Africa's moratorium on trade in all rhino products. It indicated that, while South Africa's rhino populations had benefitted from anti-poaching and other security programs, the same could not be said for the African continent as a whole. It further suggested that poaching was rampant despite the enactment of legislation increasing penalties for poachers throughout the sub-continent.⁹³

Records from deliberations state that South Africa's delegates openly declared the State had no intention of initiating trade in horn. The proposal was approved and in turn produced an annotation to the proposal, specifying the 'transfer of the South African population of southern white rhinoceros *Ceratotherium simum simum* from Appendix I to Appendix II for sale of live animals to appropriate and acceptable destinations and hunting trophies only'.⁹⁴ While the observer from the Environmental Investigation Agency raised concerns about South Africa's future intentions for its trade in horn, the observer from IUCN stated that the annotated proposal qualified the population for down-listing consistent with the Berne Criteria and was supportive of CITES fostering parties to become self-sufficient. The amended proposal was supported by Japan, Kenya, Malawi, the Sudan, the United Republic of Tanzania, and Zimbabwe. The delegation for Germany opposed the proposal on the basis that split-listing was in contravention of the Convention, but was convinced otherwise by delegates for Switzerland and TRAFFIC who offered precedent and an endorsement of the legality of annotations similar to South Africa's by the Secretariat. Failing this line of argument, the delegation for Germany successfully negotiated that the annotation be maintained only until the next meeting of the CoP at which time it would be subject to review.⁹⁵ Following Austria's sponsorship of a proposal from the observer from

⁹⁰ *Interpretation and Implementation of the Convention – Conservation of Rhinoceros in Asia and Africa* (n 85).

⁹¹ *Transfer from Appendix I to Appendix II of the South African population of the *Ceratotherium simum simum** (n 82).

⁹² *Ibid* 133.

⁹³ *Ibid*.

⁹⁴ *Summary Report of the Plenary Meeting*, CITES CoP9 Plen. 9.9 (Rev.) 165. In response to a query from the delegation for Israel, the delegation for South Africa clarified that the classification of 'appropriate and acceptable destinations' would be guided by whether an importing country was found to be using exports against the spirit of the proposal. See also *Decision of the Conference of the Parties*, CITES CoP9, 134.

⁹⁵ *Summary Report of the Committee I Meeting*, CITES CoP9 Com.I 9.9-10 (Rev.) 189-90.

WWF, the phrasing of the clause requesting the Secretariat to review results of imports of live rhinoceros from South Africa as per the down-listing was made more directive in its choice of verbiage (ie 'Directs the Secretariat...' versus 'Calls').

Upon reading the document recalling in-session conversations, the overall tenor of CoP9's negotiations appears to have been one of frustration on the part of conservation experts, and uncertainty between states, delegates and observers as to how to forge a path forward in keeping with the scope of the Convention.⁹⁶ The observer from the IUCN/SSC Rhinoceros Specialist Groups is reported to have 'emphasized that the current problems included inadequate funding, lack of performance assessment for conservation initiatives and failure to consider all viable options'.⁹⁷ This was despite efforts in awareness, fund-raising and law enforcement as supported by UNEP, GEF, IUCN, IUCN/SSC Rhinoceros Specialist Groups and Traffic.⁹⁸ Those prominently involved in debates comprised 'the delegations of Australia, China, Germany, India, Indonesia, Israel, Japan, Kenya, the Republic of Korea, Niger, the United Republic of Tanzania, Thailand and the United States of America and the observers from the Environmental Investigation Agency, IUCN, SWAN International, TRAFFIC and WWF'.⁹⁹ Sticking points included:

...the destruction of rhinoceros horn stockpiles, the repeal of Resolution Conf. 6.10, the lack of funding for conservation measures, law enforcement efforts in range States and consumer countries, compensation associated with destruction of stockpiles and the problem of straying beyond the remit of CITES.¹⁰⁰

Kenya played a vital part in proposing more specific wording in the draft resolution in favour of urging 'all Parties to implement adequate legislation, including internal trade restrictions, aimed at reducing illegal trade in rhino products' [emphasis in original].¹⁰¹ However, opinions on restrictions on trade were mixed. With respect to Resolution Conf. 9.4, the delegation for Germany referred to the draft resolution as 'superfluous and more restrictive than the Convention'.¹⁰² Japan similarly objected, citing that adopting the resolution may lead to restrictions that would interfere with other existing conventions and agreements.¹⁰³ Disagreement also erupted between delegates for Namibia and Uganda in relation to remarks

⁹⁶ *Summary Report of the Committee I Meeting*, CITES CoP9; *Summary Report of the Committee II Meeting*, CITES CoP9.

⁹⁷ *Summary Report of the Committee II Meeting*, CITES CoP9 Com.II 9.10 (Rev.) 219.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.* 219-20.

¹⁰² *Summary Report of the Committee II Meeting*, CITES CoP9 Com.II 9.12 (Rev.) 223.

¹⁰³ *Ibid.*

made about the *Lusaka Agreement* as concluded between eight African States.¹⁰⁴ The intergovernmental agreement was created following a meeting of wildlife enforcement officers from the eight Eastern and Southern African countries as well as working group meetings with representation from organisations including the CITES Secretariat, INTERPOL, United States Fish & Wildlife Service, and lawyers from the Foundation for International Environment Law Development. As indicated in the *Lusaka Agreement's* Preamble, parties were motivated to enjoin out of mutual recognition for the need to conserve Africa's biodiversity as essential for sustainable development, as well as shared concern that poaching and illegal trade persisted despite existing national and international laws.

On behalf of the state parties to the Agreement, Uganda objected to the imputation that NGOs were involved in the negotiation process, resulting in a protectionist approach embedded in the instrument rather than one of self-determination. Uganda stressed that Namibia declined an invitation to participate and misrepresented the agreement, which the contracting parties agreed was aimed at ensuring sustainable development. Uganda closed out its clarification by recognising that, while people and states play a central role in safeguarding their own fauna and flora, treaties including CITES and the *Lusaka Agreement* 'are accepted by nations on the understanding that co-operation amongst nations holds the best answers to problems that require co-operative action'.¹⁰⁵

The debate on internal trade controls took place against the backdrop of substantial movement on the rhino horn trade issue between CoPs 8 and 9, driven at the Committee level. In 1993, the Standing Committee met for its 29th meeting and specifically drew attention to 'three countries, namely China (including Taiwan), the Republic of Korea and Yemen',¹⁰⁶ and put into motion a process to measure their compliance with resolutions of the CoP and decisions of the Standing Committee. Contrary to the law as understood at the time, it was put to the named countries that they had:

- I. continued to tolerate important and/or engage in internal commercial trade in rhinoceros horn; and/or
- II. had not:

¹⁰⁴ *Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora*, opened for signature 8 September 1994, 1950 UNTS 35 (entered into force 10 December 1996) ('*Lusaka Agreement*').

¹⁰⁵ *Summary Report of the Committee II Meeting* (n 99). Note that Uganda withdrew from the Agreement, taking effect on 10 September 2021.

¹⁰⁶ *Twenty-ninth Meeting of the Standing Committee – Summary Report*, CITES SC29 (1-5 March 1993) 23.

- i. enacted, enforced and implemented prohibition on all sale of, and commercial trade, internal and international, in rhinoceros parts and derivatives;
- ii. destroyed all government and parastatal stocks of horn; and
- iii. taken firm action against middlemen involve in trafficking.¹⁰⁷

The Standing Committee reviewed the core requirements for compliance with the Convention at its next meeting that year, and in its Decisions on Trade in Rhinoceros Horn and Tiger Specimens established the following criteria for minimum conditions for consumer countries to qualify as having met 'the adequate implementation of protection measures',¹⁰⁸ with a timeline set for the end of November 1993:

- I. identification and marking of stocks of rhinoceros horn;
- II. consolidation of both rhinoceros horn and tiger bone stocks and their adequate control by the state;
- III. adoption and implementation of adequate legislative measures; and
- IV. provision for adequate enforcement of the above measures.¹⁰⁹

With respect to compliance matters, the Standing Committee temporarily suspended judgement on the Republic of Korea and Yemen but conversely stated its concern that measures undertaken in China, including the province of Taiwan, were not sufficient to meet the standard. Technical assistance was offered in the form of a delegation to China, including the province of Taiwan, and the Republic of Korea. At this time, the Committee expanded the list of countries involved in the illegal trade of rhinoceros horn, including Zambia, the United Kingdom (Hong Kong), Myanmar, Vietnam, and the Lao People's Democratic Republic. Results from technical assistance missions to China (including the province of Taiwan), the Republic of Korea, and Hong Kong were returned at the 31st Meeting of the Standing Committee in 1994, acknowledging that further actions was required despite progress by China and the Republic of Korea. Actions to be implemented in Taiwan had not taken place. All other parties named were required to report progress to CoP9.

¹⁰⁷ *Interpretation and Implementation of the Convention – Conservation of Rhinoceros in Asia and Africa*, CITES Doc. 9.35 Annex 1, 640.

¹⁰⁸ *Ibid.*

¹⁰⁹ A previous stipulation by the Standing Committee for governments to acquire illegal stockpiles for immediate destruction was deemed to be beyond the scope of previous Resolution 6.10 and sought to overextend measures to be undertaken in domestic markets. Thus, the previous requirement to 'acquire' and 'destroy' was altered to 'consolidate' and institute 'adequate control'.

The Committee expanded the list of countries believed to be trading in rhino products, adding the United Arab Emirates and Oman.¹¹⁰

The Standing Committee's actions regarding China, including the province of Taiwan, the Republic of Korea, and Yemen were supported through domestic measures by the United States affecting international relations. In November 1992, the World Wildlife Fund and National Wildlife Federation petitioned the Secretary of the Interior to invoke the Pelly Amendment against Taiwan, China, South Korea and the Republic of Yemen for continuing trade of rhinoceros horn.¹¹¹ Following some negotiation with the US, both Korea and Yemen agreed to comply with CITES and cease domestic trade, thereby avoiding certification. The Secretary of the Interior subsequently certified China, including Taiwan. In 1993, US President Clinton decided against imposing trade sanctions, citing some positive efforts made towards international conservation standards, but threatened import prohibitions in the absence of substantial progress by March 1994. In response to the findings of the Standing Committee in 1994, President Clinton ordered a ban in April 1994 on certain wildlife specimens and products from Taiwan.¹¹²

Challenges raised at CoP9 were the subject of various measures towards the Convention's approach to understanding rhino horn trade. The Secretary-General conducted a mission to Yemen in 1995, accompanied by Esmond Bradley Martin, where negotiations towards Yemen's accession to CITES advanced.¹¹³ Progress was also made on the traditional medicine front, with TRAFFIC East Asia and the Agriculture and fisheries Department of Hong Kong hosting an International Symposium on Traditional Chinese Medicine and Wildlife Conservation in 1995.¹¹⁴ The Symposium brought to the fore that industry held a strong preference for regulatory measures as opposed to outright bans, and raised the possibility of farming to legally supply ingredients for manufacture. It became apparent that practitioners were not cognizant of the impacts of practices on wildlife populations, and that Westerners were likewise not abreast of eastern practices. These positive impacts on information flow between consumer countries and the Convention ought to be considered significant milestones in the development of CITES' approach to rhino horn trade. However, there remained legal questions as to the legality of trade restrictive measures. One of the decisions arising from CoP9 would progress conversation in the

¹¹⁰ *Interpretation and Implementation of the Convention – Conservation of Rhinoceros in Asia and Africa* (n 107).

¹¹¹ Steve Charnovitz, 'Environmental Trade Sanctions And The GATT: An Analysis Of The Pelly Amendment On Foreign Environmental Practices' (1994) 9(3) *American University Journal of International Law and Policy* 751, 770.

¹¹² See *Ibid.*

¹¹³ Yemen's accession to the treaty came into effect on 3 August 1997.

¹¹⁴ *Interpretation and Implementation of the Convention – Trade in and Conservation of Rhinoceroses: Implementation of Resolution Conf. 9.14*, CITES Doc. 10.47 (Rev.) 685.

form of a decision of the Standing Committee to commission a report into the effectiveness and efficiency of the Convention and its implementation, including consideration of CITES.¹¹⁵

(f) CoP10 Harare (Zimbabwe) 9 – 20 June 1997

CoP10 saw the presentation of a report to assess the effectiveness and efficiency of the Convention and its implementation (as outlined in Chapter V) which was timely considering the increasing tensions between parties along trade-restrictive/trade-permissive lines, including for those parties advocating in the interests of traditional medicines using wildlife products.

As to more rhino-specific matters, CoP10 was a much less momentous event than CoP9 with several challenges identified for wild populations and the Convention's capacity to assist. Progress towards developing a standardised set of indicators for success in Rhino conservation as called for in Resolution Conf. 9.14 had stalled following some activity due to lack of funding. Protective measures were flagged for populations of northern white rhino in Zaire, as well as black rhino in Cameroon, Sumatran rhino in Indonesia and Malaysia, and Javan rhino in Indonesia and Vietnam. As per Decision 10.45, range states were asked to provide a report containing measures they had undertaken to conserve their rhinoceros population to CoP11. Despite these challenges, a general resolution affecting rhinos was adopted following momentum on the traditional medicines front from CoP9. CoP10 saw the adoption of Resolution Conf. 10.19 on traditional medicines, which expressly promoted the adoption of adequate measures to avoid wildlife populations becoming so threatened that more severe measures may be required, citing rhinoceroses and tigers as examples of the latter.¹¹⁶

Delegates for South Africa presented a report on live animal and hunting trophy exports in accordance with the previous CoP's decision; however, this came in conjunction with a reversal of representations made regarding legal trade. Namely, South Africa submitted a proposal to alter the annotation for its white rhino populations to open the possibility of legal trade in rhinoceros products.¹¹⁷ This would entail a down-listing to Appendix II accompanied by a zero quota for international trade, with support sought to examine prospects for bilateral trade with appropriate controls. These would potentially include a well-regulated trade for traditional medicines. The proposal was debated. Delegates for the Netherlands acting on behalf of Europe

¹¹⁵ *Evolution of the Convention – Strategic Plan of the Secretariat*, CITES Doc. 9.17.

¹¹⁶ The resolution was subsequently revised at CoP18.

¹¹⁷ *Consideration of Proposals for Amendment of Appendices I and II*, CITES CoP10 Prop. 10.28 (South Africa).

and the United States congratulated South Africa on its conservation progress but stated their lack of approval of the proposal. European member states were not convinced that mechanisms for adequate trade controls existed as yet, and the US objected on the basis that such an amendment may undermine demand-reduction efforts. Delegates for Switzerland (who voiced support along with Senegal and Zambia) noted that the transfer from Appendix I to Appendix II with the annotation had not caused any issues. The matter was put to vote and was rejected upon failing to meet the two-thirds majority required. Had previous rules dictated the outcome – only requiring a simple majority, the amendment would have gotten up, as there were 60 in favour and 32 against.¹¹⁸

(g) CoP11 Gigiri (Kenya) 10 – 20 April 2000

CoP11 saw some positive progress with increases reported in black rhino from South Africa and Namibia as well as greater one-horned rhino in Nepal and India. South Africa's white rhino populations also continued to recover. However, these success stories were the exception, with some populations of rhino going extinct and others facing a similar fate. Progress was made in developing the system of standardised indicators of conservation success, with interim findings suggesting that an understanding of causality between range state indicators and trade indicators was required to proceed.¹¹⁹ The Secretariat expressed its concern regarding the additional resources required to fulfil the latter. Additionally, the Secretariat noted that while it had not received much information from parties or law enforcement agencies regarding rhino horn trafficking, it acknowledged that dedicated anti-rhino-poaching units and intelligence-driven patrols were showing promise. The Secretariat communicated its belief that specialised criminal routes were being utilised to traffic rhino horns and that penetrating the blackmarket economy would be difficult (more so in the absence of parties making reports).¹²⁰ Further complicating matters were reports that some traditional medicine practitioners did not believe in substitutes for rhino horn in the pharmacopeia. On the other hand, there appeared to be a widely held understanding among practitioners and traders that compliance with domestic and

¹¹⁸ *Summary Report of the Committee I Meeting*, CITES Com.I 10.11 (Rev.) 198.

¹¹⁹ *Interpretation and Implementation of the Convention – Conservation of and Trade in Rhinoceroses*, CITES Doc 11.32 (10-20 April 2000) 14.

¹²⁰ *Ibid* 2-3.

international trade bans ought to be respected until such a time that commercial trade may resume, guided by sustainable use.¹²¹

CoP11 saw the first revision of Resolution Conf. 9.4 on the 'Conservation of and trade in African and Asian rhinoceroses', largely in response to the Secretariat's queries as to the value of the resolution. It went so far as to recommend that the resolution be repealed or radically amended at CoP12 unless range states in particular request otherwise. The core objections underpinning this view were that the status of implementation of the operative components of the resolution were difficult to evaluate in the absence of a reporting mechanism and that no role was specified for the Secretariat. Following the establishment of a working group to revise the Resolution, where many African and Asian range states participated, a new draft was produced and agreed to by consensus.¹²² Resolution Conf. 9.4 (Rev. 11) saw a strengthening of language around party obligations,¹²³ with an amendment urging all parties to adopt and implement 'comprehensive legislation and enforcement controls, including internal trade restrictions and penalties' instead of 'adequate legislation, including internal trade restrictions'.¹²⁴ The urgency and scope for consumer state action was also underscored and expanded, with the revised resolution urging consumer states to work with 'all user groups and industries' 'as a matter of priority' (ie beyond the previous focus on traditional medicine). The Secretariat was given two primary roles in executing the resolution. Firstly, where possible, the Secretariat would be urged to assist parties with inadequate legislation, enforcement, or control of stocks. Secondly, the Secretariat was directed to develop a standard format for state reports, to evaluate reports as well as any information received regarding trade in rhinoceros products, and to submit a summary for each meeting of the CoP. The content for these State reports was also described in the resolution, with range states and other relevant parties urged to submit.¹²⁵

Resolution Conf. 11.20 on 'Definition of the term 'appropriate and acceptable destination' was also passed at CoP11, in relation to annotations on Appendix II listings such as those for South Africa's white rhino. The resolution stated that where the term 'appropriate and acceptable

¹²¹ Ibid 3.

¹²² *Summary Report of the Committee I Meeting*, CITES Com.I 11.14, 51.

¹²³ *Revised Resolutions of the Conference of the Parties – Conservation of and trade in African and Asian rhinoceroses*, CITES Resolution Cont. 9.14 (Rev.) 10-1.

¹²⁴ Ibid 10.

¹²⁵ Contents of reports should detail: a) the status of captive and wild rhinoceros populations; b) a summary of incidents of illegal hunting; c) a summary of incidents of illegal trade in rhinoceros parts and derivatives; d) the status, type, and frequency of law enforcement activities and monitoring programmes for all major rhinoceros populations; e) the status of development and implementation of national legislation and national conservation action plans; and f) the status of marking, registration and control of rhinoceros horn stocks.

destinations' appears in an annotation to the listing of a species in Appendix II of the Convention in relation to live animal trade, the term is to be defined as meaning a destination where the Scientific Authority of the state of import is satisfied that the proposed recipient is suitably equipped to house and care for it.

(h) CoP12 Santiago (Chile) 3 –15 November 2002

CoP12 saw the first round of responses of the new reports required by Resolution Conf. 9.4 (Rev. 11), with the Secretariat noting that only two range states had met the deadline for submission (Namibia and South Africa). Both range states received praise for the ongoing efforts and refinement of national conservation planning and management, evident in the increase in population sizes and numbers of subpopulations of rhinos under stewardship. Canada and Spain were the only non-range states to make reports. Based on the lack of reporting, despite amendments at CoP11, the Secretariat expressed serious doubt as to the utility of the Resolution given the lack of implementation and went so far as to consider that implementation would unlikely result in improved trade controls or improved conservation for rhinos. The Secretariat concluded its report by again recommending that the Resolution be repealed.¹²⁶

(i) CoP13 Bangkok (Thailand) 2 – 14 October 2004

CoP13 was the most significant meeting of the parties for rhino conservation since CoP9 as it resulted in a successful resolution establishing export quotas for black rhinoceros hunting trophies, a down-listing of eSwatini's (then Swaziland) white rhinoceros population using the same annotation as South Africa's Appendix II listing, and a revision of Resolution Conf. 9.4 (Rev. 11).

The Resolution on the 'Establishment of export quotas for black rhinoceros hunting trophies' permitted an annual export quota of five hunting trophies of adult male black rhinoceros from South Africa and five from Namibia.¹²⁷ Namibia's proposal for an export quota received broad support from parties based on its scientific approach, effective monitoring systems and potential

¹²⁶ *Conservation of and Trade in Rhinoceroses*, CITES CoP12 Doc. 35 (3-15 November 2002).

¹²⁷ *Establishment of export quotas for black rhinoceros hunting trophies*, CITES Draft Resolution CoP13 Com.I. 2 (2-14 October 2004).

benefits to local communities.¹²⁸ Delegates from Chad, Nepal, Central African Republic and Pakistan were more cautious, with the latter two suggesting the quota be delayed by a decade (supported by India and Nepal on the basis that the species was classified as ‘Critically Endangered’ by IUCN). The specification ‘of adult males’ assisted in the resolution carrying.¹²⁹ Namibia’s proposal was immediately followed by South Africa’s who reduced their requested quota decrease from ten to five animals to shore up support.¹³⁰ India, Mali and Central African Republic opposed the proposal; the proposal was accepted following amendment. It is worth noting that both proposals passed despite objections from NGOs including Born Free Foundation, Save Foundation of Australia, WWF, and TRAFFIC.¹³¹

The delegation for Swaziland’s proposal to down-list its white rhino populations to Appendix II with a similar annotation to South Africa’s was accompanied by a more detailed annotation.¹³² However, this additional information was not included in the final amendment of Appendix II. The Netherlands, representing the 25 Member States of the European Community, recommended that the proposal remain in its original form, with the detail to be used as guiding principles recorded in the Committee’s report as an assurance of Swaziland’s intentions. Mozambique, Namibia, and South Africa supported the proposal; whereas delegates from Israel and Kenya objected, with Kenya citing that Swaziland was in category 3 of the National Legislation Project’s list. The vote was carried in favour of Swaziland with 88 in favour, 15 against, and 21 abstentions.¹³³

The Secretariat maintained the opinion that Resolution Conf. 9.4 (Rev. 11) be repealed, now noting that reporting requirements had become an administrative burden. This received overwhelming support from parties in both range states and non-range states,¹³⁴ with some

¹²⁸ Argentina, Benin, Botswana, Brunei Darussalam, Cameroon, Cuba, Guinea, Indonesia, Japan, Qatar, South Africa, Trinidad and Tobago, Saint Lucia, the United Republic of Tanzania, and Zimbabwe.

¹²⁹ *Thirteenth meeting of the Conference of the Parties – First session*, CITES COP13 Com.I Rep.1 (Rev. 1) 2.

¹³⁰ Botswana, China, the Democratic Republic of the Congo, Egypt, Gabon, Guinea, Iceland, Japan, Nigeria, Norway, Swaziland, Zambia, and Zimbabwe supported the proposal.

¹³¹ *Thirteenth meeting of the Conference of the Parties – First session* (n 129).

¹³² *Information document on white rhino population management pursuant to CoP 13 Proposal 9*, CITES CoP13 Inf. 59: ‘1. Swaziland’s annual harvest and export of live white rhino to appropriate and acceptable destinations will be limited to an upper limit of 7% of the population. Such take-off will go to National Parks, Game Reserves, Game Farms and other conservation projects. Most of the animals should go to Southern Africa and remain part of the managed metapopulation. There would also be an exchange of animals for genetic management reasons. 2. Only post reproductive males and identified problem animals will be exported as trophies, but not more than 1% of the population will be exported annually for this purpose, and then only if the live removal option is not practical. 3. All exported specimens will be marked with microchips.’

¹³³ *Thirteenth meeting of the Conference of the Parties – Fourteenth session*, CITES COP13 Com.I Rep.14 (Rev. 1) 3.

¹³⁴ Netherlands (on behalf of Europe), India, the US, Vietnam, Namibia, Botswana, South Africa and Swaziland, and Malaysia.

noting that the information sought was duplicative of that collected by the IUCN/SSC African Elephant and Rhinoceros Specialist Group. The observer from IUCN confirmed that their specialist groups could share information, except for confidential data. The revised Resolution Conf. 9.4 (Rev. CoP13) was passed, with the paragraphs concerning reporting deleted. This amendment was interesting in that the Secretariat had initially sought to repeal the resolution, citing the lack of a reporting mechanism, but had now effectively seen those provisions struck out.

(j) CoP14 The Hague (the Netherlands) 3 – 15 June 2007

CoP14 provided a moment of renewal for the information mix on rhino conservation in CITES. A summary report, entitled 'CITES rhino matters – A report back', was produced by IUCN and TRAFFIC in response to information requested at CoP13. The report followed up on recent decisions of the CoP. While population numbers remained 'precariously low with certain subspecies now feared extinct or close to extinction',¹³⁵ it was observed that populations had generally stabilised or improved. The greatest successes occurred in range states enjoying political stability and sustained political will, coupled with dedicated staff involved in protection and management (including translocations). Capacity building also played a part in successes, particularly between neighbouring countries. Several challenges were cited, including stockpile management in Asian range states and former consuming countries, insufficient penalties in Africa, and insufficient cross border collaboration (eg between Nepal and China, and Zimbabwe and South Africa).¹³⁶ Following the reception of IUCN and TRAFFIC's report, the Secretariat recommended amending Resolution Conf. 9.14 (Rev. CoP13) to embed a regular reporting role for the IUCN/SSC African and Asian Rhino Specialist Groups and TRAFFIC in place of an existing direction to the Standing Committee. The amendment and other decisions were agreed to by consensus following an amendment as to costs proposed by Germany. These were concerning party declarations of stockpiles, and directions to the Secretariat including collaboration with the World Heritage Convention regarding poaching and illegal trade in World Heritage sites in the Democratic Republic of the Congo and attending to range states where poaching was presenting a greater threat.¹³⁷ An attempt by the delegation for Kenya to strengthen the resolution by requiring parties to destroy their stockpiles except for educational purposes was rejected.¹³⁸

¹³⁵ *Interpretation and Implementation of the Convention – Rhinoceroses*, CITES CoP14 Doc. 54 (3-15 June 2007) 3.

¹³⁶ *Ibid.*

¹³⁷ These were identified as the Democratic Republic of the Congo, Nepal, and Zimbabwe.

¹³⁸ *Summary Record of the Third Session of Committee I*, CITES CoP14 Com.I Rep. 3 (Rev. 2) 1-2.

CoP14 also saw Kenya challenge South Africa and Namibia's export quotas for black rhinos at the first opportunity, citing new information about management issues in Namibia and an escalation of poaching in South Africa. Kenya, along with several other range states, formed the opinion that allowing hunting to fulfil these quotas could adversely affect their populations. The challenge was not successful. Following a vote, the proposal was rejected, with 15 votes in favour, 65 against and 11 abstentions.¹³⁹

(k) CoP15 Doha (Qatar) 13 – 25 March 2010

The period between CoPs 14 and 15 saw a ratcheting up of efforts by the Secretariat, with two missions conducted to Yemen and Vietnam,¹⁴⁰ and a CITES Rhinoceros Enforcement Task Force convened in November 2008. In its report, the Secretariat communicated that it had received information concerning illegal trade in rhinoceros horn. Individuals were found to be travelling internationally, especially North America and Europe, attempting to buy-up horns in private ownership, usually acquired as hunting trophies, and bearing increasing value.¹⁴¹ It also suggested that the increase in demand in recent years was driven to a significant degree, by a belief in parts of Asia (but particularly Vietnam and China) that horn had curative qualities for cancer treatment.¹⁴² A significant market in fake horn had also emerged due to escalating values.¹⁴³ As to who was involved, the Secretariat reiterated sentiments expressed at the Standing Committee that 'the illegal trade in rhinoceros horn is one of the most serious criminal activities currently faced by CITES. It consists of sophisticated and organized structures that CITES and wildlife law enforcement authorities cannot respond to effectively on their own.'¹⁴⁴ In response to the reported role of medicinal use in driving trade, the Secretariat also communicated with the World Health Organisation and traditional medicine community to seek guidance.¹⁴⁵

¹³⁹ *Summary Record of the Second Session of Committee I*, CITES CoP14 Com.I Rep. 2 (Rev. 1) 4-6.

¹⁴⁰ The Secretariat sent a list of confidential recommendations to the latter's Management Authority in follow-up communication.

¹⁴¹ *Report of the Secretariat*, CITES CoP15 Doc. 45.1 (Rev. 1) (13-25 March 2010) 4.

¹⁴² *Ibid* 4

¹⁴³ *Ibid* 4-5.

¹⁴⁴ *Ibid* 5.

¹⁴⁵ *Ibid*.

The IUCN/TRAFFIC report to CoP15 was not submitted in time for its designated deadline,¹⁴⁶ largely due to the absence of funding. Nonetheless, it provided comprehensive insight into rhinoceros populations and the impacts of poaching and illegal trade. Those rhino species most affected by illegal trade had increased in number between CoPs 14 and 15.¹⁴⁷ However, whereas the report to CoP14 found that poaching in several range states did not impact overall trends of increasing numbers, CoP15's report evidenced rhino populations suffering significant impacts due to poaching. Illicit activity had also changed in description between the CoPs, from non-highly-targeted and potentially disorganised (with a large portion occurring through use of snares) to more highly-organised operations involving acquiring horns from illegal mortalities, fraudulent hunting and private ownership. A decrease in snare usage occurred with an incline in poaching by firearms in the same areas, including heavier calibre arms.¹⁴⁸ Pseudo hunting by Vietnamese nationals was rife in South Africa due to the frequent involvement of a small number of individuals. Abuses of South Africa's hunting Appendix II annotation led to new trade controls and hunting regulations in effect from February 2008; however, there was an immediate escalation in rhino poaching in South Africa despite a decline in reported rhino hunts by Vietnamese nationals. The new regulations sought to control the issuing of hunting permits and to regulate and track live rhinos and horns in the private sector where some evidence suggested illegal hunting had shifted.¹⁴⁹ The nexus between Vietnam and South Africa is discussed in more detail in Chapter III.

A further revision of Resolution Conf. 9.14 (Rev. CoP14) was adopted following discussion of the IUCN/TRAFFIC report, but not before Kenya submitted a revision of the resolution. Kenya's draft cited numerous concerns. These included: the lack of consultation for range states or prior review of reporting by IUCN/TRAFFIC; that burdens placed on range states outweighed those on consumer states; and that consumer states were not required to report on demand reduction efforts within IUCN/TRAFFIC's reporting mandate.¹⁵⁰ Inspired by Kenya's desired amendments, the new Resolution Conf. 9.14 (Rev. CoP15) was adopted with Kenya leading its drafting in consultation with parties and observers.¹⁵¹ These amendments stressed the centrality of demand

¹⁴⁶ Tom Milliken, Richard H Emslie and Bibhab Talukdar, *A report from the IUCN Species Survival Commission (IUCN/SSC) African and Asian Rhino Specialist Groups and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP14) and Decision 14.89*, CITES CoP15 Doc. 45.1 (Rev. 1) Annex.

¹⁴⁷ That is, Africa's white and black rhinos and Asia's greater one-horned rhinos.

¹⁴⁸ Milliken, Emslie and Talukdar (n 146) 4.

¹⁴⁹ Ibid 9.

¹⁵⁰ *Revision of Resolution Conf. 9.14 (Rev. CoP 14) on Conservation of and Trade in African and Asian Rhinoceroses*, CITES CoP15 Doc. 45.2 (Rev. 1) (13-25 March 2010).

¹⁵¹ Ibid.

for rhinoceros parts and derivatives in threatening populations, directed the Standing Committee to pursue action aimed at 'ending' rather than simply 'reducing' illegal trade in rhinoceros parts and derivatives, sought reviewed of the 'effectiveness' of enforcement and trade control measures rather than 'adequacy', and expanded the mandate of the IUCN/TRAFFIC reports to include measures undertaken by states implicated in the consumption of rhino products. The report would also be distributed to range states and implicated states for comment ahead of the finalisation and formulation of recommendations to be informed by the report and comments received. All parties and stakeholders were also urged to provide financial support and cooperate with the IUCN/SSC African and Asian Rhino Specialist Groups and TRAFFIC in preparation of the report. A series of decisions were made in tandem with the revised resolution. The Secretariat was tasked to examine the implementation of the revised resolution in range states where illegal killing was posing a significant threat, particularly South Africa and Zimbabwe; examine progress with regarding to implicated states, particular Vietnam;¹⁵² and report its findings to the Standing Committee for its consideration and determination as to further action where necessary. Vietnam is on record as objecting to being named. The Secretariat was further tasked to facilitate bilateral exchanges between range states and consumer states to improve wildlife enforcement cooperation efforts; report to the Standing Committee on these efforts; and seek to convene a joint CITES Ivory and Rhinoceros Enforcement Task Force to undertake an exchange of intelligence regarding smuggling of ivory and rhinoceros specimens and develop strategies for combating illegal trade, and report on this work to the Standing Committee. A list of organisations from around the world (including INTERPOL, the UNODC, the *Lusaka Agreement* Task Force and ASEAN Wildlife Enforcement Network Programme Coordination Unit) were listed as requiring an invitation to join the Task Force, with priority to be given to parties in Africa and Asia most affected by the smuggling of ivory and rhinoceros specimens.¹⁵³

CoP15 was a major milestone for rhino conservation in construing, in no uncertain terms, the obligations of the parties (particularly those states most affected by trade), but particularly elevated those concerning consumer states. The view that illegal trade in wildlife is demand-driven was now evident plainly in the Resolution and accompanying decisions of the CoP. Greater

¹⁵² Vietnam is on record as objecting to being named. They reiterated their commitment to combating illegal trade in rhinoceroses and had instituted management measures at the national level. See *Fifteenth meeting of the Conference of the Parties – Summary record of the fourth plenary session, CITES CoP15 Plen 4 (Rev. 2) 6*.

¹⁵³ *Draft Decisions of the Conference of the Parties – Conservation of and trade in African and Asian rhinoceroses, CITES CoP15 Comm.II.27, 1*: 'Priority should be given to including the following Parties: Cameroon, China, Ethiopia, Kenya, the Lao People's Democratic Republic, Mozambique, Nepal, the Philippines, South Africa, Thailand, the United Arab Emirates, the United Republic of Tanzania, Viet Nam and Zimbabwe.'

collaboration and coordination between law enforcement across borders was increasingly being facilitated, and greater involvement by parties in reporting had the promise of retaining both engagement by range states and the factual richness of IUCN/TRAFFIC's reports from which discussions would arise and upon which decisions would rely. CoP15 was also noteworthy in the global fight against wildlife crime more broadly, with CITES Secretary-General Willem Wijnstekers announcing John Scanlon (then UNEP's Principal Advisor to the Executive Director on Policing and Programme) as his successor.¹⁵⁴ Scanlon would be Secretary-General from 2010-2018 and go on to become Chair of the Global Initiative to End Wildlife Crime, as will be discussed later in this Chapter.

(I) CoP16 Bangkok (Thailand) 3 – 14 March 2013

The Secretariat's report at CoP16, together with the report from IUCN/TRAFFIC indicates that the pervasiveness of organised crime involved in poaching and trafficking had continued, with groups operating in range states as well as Europe (where thefts from museums, auction houses, antique shops and taxidermists had occurred) coupled with seizures in Australia, Hong Kong SAR, the Philippines, and the United States.¹⁵⁵ Numbers of South African rhinos killed had increased to its highest in recent years to 455 reported mortalities. Vietnam's legal system evidenced loopholes for rhinoceros horn trophies and intelligence indicated that while significant quantities of horn were destined for Vietnam, those involved were 'increasingly flexible' in smuggling routes to evade law enforcement. Moreover, horns were continuing to flow into Vietnam despite counter-pseudo hunting measures regulations in South Africa.¹⁵⁶

Kenya continued to stress the importance of action in implicated consumer states (naming China and Vietnam in particular), drawing attention to the immense security burden placed on range states. It initially proposed an Amendment to the annotations of Swaziland and South Africa's Appendix II southern white rhino listings in response to an increase in blackmarket prices for illicit rhino horn and laundering of legally acquired horn through hunting trophies into illegal trade. This new annotation would introduce new text, 'Hunting trophies from South Africa and Swaziland shall be subject to a zero export quota until at least CoP18'.¹⁵⁷ Following discussion

¹⁵⁴ *Fifteenth meeting of the Conference of the Parties – Summary record of the first plenary session*, CITES CoP15 Plen 1, 6.

¹⁵⁵ *Sixteenth meeting of the Conference of the Parties – Report of the Secretariat*, CoP16 Doc. 54.2 (Rev. 1) 4.

¹⁵⁶ *Ibid* 7.

¹⁵⁷ *Sixteenth meeting of the Conference of the Parties – Consideration of Proposals for Amendment of Appendices I and II*, CITES CoP16 Prop. 10.

with South Africa, Swaziland, Members States of the European Union ('EU'), and the Standing Committee Working Group on Rhinoceroses, it withdrew the proposal, urging parties to support decisions drafted.

CoP16 Decisions 16.84-16.92 were even more extensive and directive than those in the previous meeting.¹⁵⁸ All parties were asked to step up law enforcement and investigatory capacity, together with an enhanced rigour in prosecuting members of organised crime groups involved in rhinoceros related crimes, stressing the importance of deterrence. Parties were to report seizures for which the provenance of horns could not be determined to the Secretariat, and to alert authorities in countries of origin, transit, and destination, as well as to alert the Secretariat where seizures were made. Samples from seizures were to be submitted to designated accredited forensic labs for DNA analysis. The measures called for long-term demand reduction strategies paired with community awareness programmes aimed at educating the public of the social, economic, and environmental impacts of wildlife crime.

Country-specific directions were adopted with respect to Vietnam, Mozambique, and South Africa and Mozambique jointly. The emphasis in Vietnam's directions concerned strengthening its national approach by establishing a secure registration database to track legal trophies; conducting consumer behaviour research and take demand reduction measures targeting consumers; and reporting its progress. Mozambique was tasked to develop its legislative approach to deter prospective offenders from committing a range of offences related to illegal trade in rhinoceros horn as a matter of priority. Mozambique and South Africa were encouraged to collaborate further on bilateral measures with each other and neighbouring states. Additional directions included: the Working Group on Rhinoceroses being tasked to evaluate reporting from Vietnam, Mozambique, South Africa and the Secretariat and to report to the Standing Committee; the Secretariat to convene a CITES Rhinoceros Enforcement Task Force (together with standard examinations of progress and implementation); and the Standing Committee to review the definition of 'hunting trophy' offers in Resolution Conf. 12.3 (Rev. CoP16) to consider if any revision would be required to prevent illegal trade.

¹⁵⁸ *Decisions of the Conference of the Parties to CITES in effect after its 16th meeting*, CITES Decisions 16.84 – 16.92, 21-3.

(m) CoP17 Johannesburg (South Africa) 24 September – 4 October 2016

The Secretariat's report to CoP17 found that while rhinoceros poaching and horn trafficking were increasingly being treated as serious crimes, conservation measures across range states continued to be undermined. The report noted the first decrease in poaching in South Africa following a peak of 1,215 poached rhino in 2014 followed by 1,175 in 2015; however, it noted that targeted efforts had displaced crime to other range states (poaching increasing in Zimbabwe and Namibia).¹⁵⁹ On a positive note, parties were reported to be taking a range of activities to enforce laws against persons implicated in illicit activity through 'increased exchange of information between countries, covert investigations, money laundering and tax fraud investigations, collection and submission of DNA samples for forensic analyses, increased use of INTERPOL Notices, the extradition of offenders involved in rhinoceros related crimes, and the initiation of asset forfeiture proceedings'.¹⁶⁰ Among key meetings held between meetings of the CoP, Ministers and high-level representatives from the Czech Republic, Mozambique, South Africa and Vietnam, together with observers from the African Ministerial Conference on the Environment, China and the International Consortium on Combating Wildlife Crime, had also convened in Geneva in February 2015 at the CITES Ministerial Dialogue for key states concerned with the illegal trade in rhinoceros horn. Parties present produced the *Geneva Statement on Combating Rhinoceros-Related Crimes*, affirming their commitment to long-term goals to be achieved through short and medium-term actions, including strengthening international law enforcement coordination.¹⁶¹ In a significant statement, mirroring the welcoming of the adoption of the first United Nations General Assembly ('UNGA') 'tackling illicit trafficking of wildlife' resolution, the Secretariat's report drew an analogy between organised crime involved in rhinoceros killings and illicit horn trade with other forms of illicit commodities. The resounding message was that authorities ought to utilise the same tools and techniques available under the UNTOC and *United Nations Convention Against Corruption* ('UNCAC') against groups involved in rhino-related offences.¹⁶²

¹⁵⁹ *Seventeenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)*, CoP17 Doc. 68, 5. See also Richard H Emslie et al, *A report from the IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Group and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP15)*, CITES CoP17 Doc. 68 Annex 5.

¹⁶⁰ *Seventeenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)*, CoP17 Doc. 68, 6.

¹⁶¹ *Geneva Statement on Combating Rhinoceros-Related Crime*, CITES Ministerial Dialogue and Senior Official Meeting for key states concerned with the illegal trade in rhinoceros horn (11-15 February 2015).

¹⁶² *Seventeenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)* (n 160) 11.

Swaziland submitted a proposal to change the annotation to its Appendix II southern white rhino listing to permit a limited and regulated trade in horns, a proposal Coetzee and Couzens suggest was ‘a proposal which Swaziland must have known was doomed to fail’.¹⁶³ These horns would include those collected in the past from natural and poaching mortalities, and harvested ‘in a non-lethal way’ from a limited number of rhinos in the future.¹⁶⁴ Bhutan, the European Union and its Member States, India, Indonesia, Israel, Kenya, Nepal, the United States of America and Born Free Foundation did not support the proposal, providing multiple counter-arguments, including that it would increase the burden on law enforcement measures (including identifying legal from laundered specimens), undermine demand-reduction efforts, and that the horn supplied by Swaziland would not come close to approaching the amount needed to quell global demand. The strongest voices of support came from delegates from the Democratic Republic of the Congo, Japan, Namibia, South Africa, Zimbabwe, and Wildlife Ranching South Africa. These delegates supported the proposal, stressing that the current approach had not succeeded and that a greater emphasis on sustainable use was worth a try. They also noted low incidences of poaching in Swaziland and the need for funds to support local conservation efforts. In the absence of a consensus, the Chair called for a vote to which Swaziland’s delegates requested it be conducted by secret ballot. The proposal was rejected following secret ballot votes totalling: 26 in favour, 100 against, and 17 abstentions.¹⁶⁵

The parties at CoP17 adopted further revisions to Resolution Conf. 9.14 (Rev. CoP15) alongside new resolutions of general scope but affecting trade in rhinoceros horn. Resolution Conf. 9.14 (Rev. CoP17) recognised the role of the ICCWC in supporting national wildlife enforcement agencies and networks defending natural resources, and now included a preambulatory clause dedicated to cross-referencing to the UNTOC and UNCAC.¹⁶⁶ It added a more optimistic tone to the previous statement ‘[c]oncluding that the above measures have not arrested the decline of most rhinoceros populations...’¹⁶⁷ through the insertion of ‘yet’ following ‘not’. An operative clause directed at the parties in their execution of law enforcement and prosecution measures

¹⁶³ Laurence Coetzee and Ed Couzens, ‘Keeping the rhino (debate) alive: Swaziland’s proposal at CITES CoP17 in 2016’ (2017) 23(1) *South African Journal of Environmental Law and Policy* 217.

¹⁶⁴ *Consideration of Proposals for Amendment of Appendices I and II*, CITES CoP17 Prop. 7 (Swaziland).

¹⁶⁵ *Summary record of the fourteenth session of Committee I*, CITES CoP17 Com.I Rec. 14 (Rev. 2) 2.

¹⁶⁶ *Conservation of and trade in African and Asian rhinoceroses*, CITES Resolution Conf. 9.14 (Rev. CoP17) 1: ‘RECOGNIZING the need to deploy the same tools and techniques as those used against other domestic and transnational organized crimes, provided for in the United Nations Convention against Transnational Organized Crime and the United Nations Convention Against Corruption, against the criminal groups involved in the illegal killing of rhinoceroses and the trafficking of rhinoceros horns, and in particular against those individuals managing and organizing these illegal activities’.

¹⁶⁷ *Ibid.*

against those implicated in rhino-related offences was further expanded to call for the establishment of extradition treaties and Mutual Legal Assistance in criminal matters.

Among other amendments concerning national laws was a specific provision recommending management of rhinoceros trophy imports, including measures to confirm provenance and changing ownership.¹⁶⁸ Significantly, to aid parties in contributing to data collection, the revised resolution now included a form in its annex for collection and sharing of data on rhinoceros horn seizures and on samples for forensic analysis. Resolution Conf. 11.20 on ‘Definition of the term “appropriate and acceptable destinations”’ was amended to communicate that ‘allowing commercial trade in parts and products of animals exported under an appropriate and acceptable destinations annotation will fuel demand and will contribute to poaching of elephants and rhinos’.¹⁶⁹ Resolution Conf. 17.4 on ‘Demand reduction strategies to combat illegal trade in CITES-listed species’¹⁷⁰ recalled Decision 16.85 on Rhinoceroses with respect to parties implicated in illegal trade, and welcomed the first UNGA resolution on ‘tackling wildlife trafficking’. Resolution Conf. 17.4 also urged member states to engage in efforts to influence consumer behaviour and raise awareness. Further, it recognised the impact of online trade in amplifying the threats of illegal trade; and called for collaboration and support towards targeted solutions. Lastly, Resolution Conf. 17.9 on ‘Trade in hunting trophies of species listed in Appendix I or II’ provided conditions for trade in trophies, including export quotas for black rhinos,¹⁷¹ and recommended considerations for parties in ensuring that hunting was sustainably managed and did not undermine the conservation of target species (and, where appropriate, offer benefits to local communities).

(n) CoP18 Geneva (Switzerland) 17 – 28 August 2019

Discussion of the Report of the Secretariat and Standing Committee underscored the importance of a coordinated evidence-based approach to issues surrounding rhino horn trade, noting the centrality of information sharing and use of forensic technologies for traceability. The Wildlife Justice Commission highlighted Vietnam as a key transit and destination country, including as a point of transit to China. China objected to being classified as a ‘priority country of concern’ based on its efforts in demand reduction and lack of due process in how this designation was

¹⁶⁸ Ibid.

¹⁶⁹ *Summary record of the eighth session of Committee II*, CITES CoP17 Com.II Rec. 8 (Rev. 1) 1.

¹⁷⁰ *Demand reduction strategies to combat illegal trade in CITES-listed species*, CITES Resolution Conf. 17.4.

¹⁷¹ *Trade in hunting trophies of species listed in Appendix I or II*, CITES Resolution Conf. 17.9.

reached. Subsequently, China successfully moved to have its name removed from a decision directed at those Parties (Mozambique, Myanmar, Namibia, South Africa, and Vietnam) regarding the initiation of joint investigations.¹⁷² Other decisions required parties to provide for timely reporting of seizures and submission of DNA samples to range states, coupled with a reporting deadline to the Secretariat.

Amendments to Resolution Conf. 9.14 (Rev. CoP17) were proposed by Kenya, supported by Nepal and Niger.¹⁷³ Amendments included new preambulatory clauses emphasising increasing demand for rhino horn and the problems associated with legal domestic markets and operative clauses urging parties to take measures to ‘close all existing domestic markets for trade in raw and worked rhinoceros horn or other rhinoceros parts and derivatives as a matter of urgency’; to collate information on privately-held stockpiles of rhino horn and include these in their annual declarations; and to specifically consider the destruction of horn stockpiles as a management option. The amendments were opposed by some parties who suggested it was duplicative of existing provisions,¹⁷⁴ with eSwatini, Namibia, South Africa and the United Republic of Tanzania specifically objecting to a provision urging parties to close all existing domestic markets upon the basis that it was beyond the scope of the Convention. As a compromise, a decision was drafted by the United States, with an amendment from South Africa incorporated and accepted. Instead of a blanket provision, the decision was directed ‘to Parties where illegal markets for rhino horn exist’ and urged these parties to close those markets contributing to poaching or illegal trade.¹⁷⁵ This kept open the possibility for legal regulated trade.

Two proposals to amend the Appendices were submitted to CoP18 from eSwatini (formerly Swaziland) and Namibia seeking to remove the existing annotation to permit eSwatini’s southern white rhinos to be classified unencumbered under Appendix II;¹⁷⁶ and to transfer Namibia’s southern white rhino population from Appendix I to II with an annotation akin to others similarly attached.¹⁷⁷ eSwatini’s proposal was rejected following votes totalling: 25 in favour, 102 against,

¹⁷² *Rhinoceroses (Rhinocerotidae spp.) – Draft Decision of the Conference of the Parties*, CITES CoP18 Com.II.12.

¹⁷³ *Rhinoceroses (Rhinocerotidae spp.) – Revisions to Resolution Conf. 9.14 (Rev. CoP17) on Conservation of and trade in African and Asian rhinoceroses, and associated Decision*, CITES CoP18 Doc. 83.2.

¹⁷⁴ The United States of America, supported by Botswana, eSwatini, the European Union, Japan, Namibia, Singapore, South Africa, Tanzania, the United Arab Emirates, and Zimbabwe.

¹⁷⁵ *Summary record of the Ninth session for Committee II*, CITES CoP18 Com.II Rec. 9 (Rev. 1) 3.

¹⁷⁶ *Eighteenth meeting of the Conference of the Parties – Consideration of proposals for amendment of Appendices I and II*, CITES CoP18 Prop. 8 (eSwatini).

¹⁷⁷ *Eighteenth meeting of the Conference of the Parties – Consideration of proposals for amendment of Appendices I and II*, CITES CoP18 Prop. 9 (Namibia) 1: ‘For the exclusive purpose of allowing international trade in: a) live animals to appropriate and acceptable destinations; and b) hunting trophies.’

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

and 7 abstentions. Among its reasons, eSwatini stated that all its white rhinoceros populations had been DNA sequenced and would thus be traceable, and rejected the notion that it would open the floodgates to illegal trade as such assertions had never been tested. This claim was rejected with concern by Nigeria, Kenya, the EU, and Qatar, as well as by the Environmental Investigation Agency, representing a long list of NGOs, which also opposed the proposal.¹⁷⁸ Zimbabwe, Botswana, the Democratic Republic of the Congo, Japan, South Africa, and the United Republic of Tanzania supported the proposal on the basis that trade could promote the long-term conservation of the species. Japan also cited Resolution Conf. 8.3 (Rev. CoP13) on the 'Recognition of the benefits of trade in wildlife' in its approval. The parties in support were joined by organisations that emphasised the sheer cost of rhino conservation and management being reliant on donor income.¹⁷⁹ Namibia's bid was rejected 82 to 39, leading to some Southern African Development Community ('SADC') members, including Namibia and Botswana, threatening to withdraw from the Convention due to the influence of non-range states and non-state actors (naming animal welfare NGOs based in the West).¹⁸⁰

South Africa's export quota for black rhinoceros trophies as provided in Resolution Conf. 13.5 was increased to establish an annual export quota of five hunting trophies of adult male black rhinoceros and a total number of hunting trophies of adult males not exceeding 0.5% of the country's current total black rhino population in the year of the export (equally applied to all three subspecies, essentially 0.5% of the total population of each of the three subspecies). South Africa committed to setting a minimum science-based threshold for black rhinoceros populations, below which the above quota would not apply (no detail was provided as to how the threshold is to be calculated).

CoP18 also saw the adoption of Decision 18.171 to move towards a simplified procedure around scientific exchange of specimens, as well as a series of decisions related to trade in products

¹⁷⁸ Animal Welfare Institute, Born Free Foundation, Born Free USA, CCA, Center for Biological Diversity, David Shepherd Wildlife Foundation, Eurogroup for Animals, HSI, Japan Tiger and Elephant Fund, NRDC, Outraged South African Citizens Against Rhino Poaching (OSCAP), Pan African Sanctuary Alliance, ProWildlife, Species Survival Network and World Animal Protection.

¹⁷⁹ *Summary record of the Thirteenth session for Committee I*, CITES CoP18 Com.I Rec. 13 (Rev. 1) 2: 'The Private Rhino Owners Association (PROA) spoke also on behalf of Conservation Force and IWMC-World Conservation Trust and other like-minded organizations.'

¹⁸⁰ 'Southern African nations threaten to quit wildlife trade monitor', *News24* (online, 1 September 2019) <<https://www.news24.com/News24/southern-african-nations-threaten-to-quit-wildlife-trade-monitor-20190901>>. Rejections of proposals by Botswana, Namibia, and Zimbabwe to sell ivory acquired through natural mortalities, seizures, and culling were also among decisions that sparked disappointment with the Convention's operations.

produced from synthetic or cultured DNA such as ‘fake horns’, which involved the presentation of studies and how such products would apply under the Convention’s ‘lookalike’ provision.¹⁸¹

(o) CoP19 Panama City (Panama) 14 – 25 November 2022

Two proposals to amend the Appendices were submitted to CoP19. The first was to split-list the southern white rhinoceros population of Namibia to Appendix II ‘for the exclusive purpose of allowing international trade in: a) live animals for in-situ conservation only; and b) hunting trophies’.¹⁸² The second was to remove eSwatini’s Appendix II annotation.¹⁸³ Namibia’s proposal was accepted with amendments suggested by the EU, which argued against international trade in hunting trophies but approved of trade in live animals for in-situ conservation purposes, provided this occurred exclusively within the species’ natural and historical range in Africa. Deliberation on the proposal saw strong support from Botswana as co-proponent, Cambodia, China, the Democratic Republic of the Congo, eSwatini, Japan, Mexico, Mozambique, South Africa, the United Republic of Tanzania, Zambia, Zimbabwe, and the International Council for Game and Wildlife Conservation, with the latter also speaking on behalf a range of other sustainable use observer organisations.¹⁸⁴ eSwatini’s proposal was rejected (15 votes in favour, 85 against, and 26 abstentions), despite support from Botswana, the Democratic Republic of the Congo, Japan, Lesotho, Mozambique, Namibia, the United Republic of Tanzania, Zambia, Zimbabwe and the International Association for Wildlife. Congo, the European Union and its Member States, Ghana, Israel, Kenya, Niger, Nigeria, Panama, Rwanda, Senegal, Uganda, the United Kingdom, and Born Free Foundation (also speaking on behalf of several other observer organisations) opposed, citing concerns over national-level safeguards and the potential for the proposal to increase trafficking and challenge conservation efforts in other range states.

The Report of the Secretariat and Standing Committee,¹⁸⁵ together with the IUCN/SSC African and Asian Rhino Specialist Groups and TRAFFIC report on status, conservation and trade of African and Asian Rhinoceroses in Annex 4 as commissioned pursuant to Resolution Conf. 9.14

¹⁸¹ *Decisions of the Conference of the Parties to CITES in effect after its 18th meeting*, CITES Decisions 18.149-18.150, 50.

¹⁸² *Nineteenth meeting of the Conference of the Parties – Consideration of proposals for amendment of Appendices I and II*, CITES CoP19 Prop. 2 (Botswana, Namibia).

¹⁸³ *Nineteenth meeting of the Conference of the Parties – Consideration of proposals for amendment of Appendices I and II*, CITES CoP19 Prop. 3 (Kingdom of eSwatini, formerly Swaziland).

¹⁸⁴ *Summary record of the Tenth session for Committee I*, CITES CoP19 Com.I Rec. 10, 1.

¹⁸⁵ *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)*, CITES CoP19 Doc. 75 (Rev. 1).

(Rev. CoP17),¹⁸⁶ provided a comprehensive overview of the status of African and Asian rhino populations, including threats, killings, impacts of trade dynamics, and actions undertaken (including presentation of a diagram demonstrating the linkages of various activities that enhance rhino populations).¹⁸⁷ Lending further weight to the information mix underpinning decisions to be considered by the CoP, the United Kingdom submitted the Wildlife Justice Commission's 2022 global threat assessment of rhino horn trafficking as a form of transnational organised crime as an information document on behalf of the Wildlife Justice Commission and WWF.¹⁸⁸ As a result, the CoP agreed to an amendment of Resolution Conf. 9.4 (Rev. CoP17) (as further amended at CoP18). As per these amendments, the pre-CoP reports of the IUCN/SSC African and Asian Rhino Specialist Groups and TRAFFIC would expressly require information on challenges and best practices associated with addressing rhinoceros poaching and horn trafficking. To this end, the IUCN/SSC African and Asian Rhino Specialist Groups and TRAFFIC were requested to conduct a survey focusing on range, and implicated states and relevant experts in gathering information on these challenges and best practices. Further, by incorporating a suggestion of the EU and its Member States, the report commissioned by the Secretariat would 'continuously review trends associated with the illegal killing of rhinoceroses and illegal trade in rhinoceros specimens, and the measures and activities they are implementing to address these crimes, to ensure that these measures and activities remain effective'.¹⁸⁹

With respect to decisions, Decision 18.116, which was directed to the parties in which illegal markets for rhinoceros horn exist, was renewed,¹⁹⁰ thus continuing the encouragement of those parties to develop demand reduction programmes targeted at key identified audiences with regard to Resolution Conf. 17.4 on 'Demand reduction strategies to combat illegal trade in CITES-listed species' and taking advantage of the experience and expertise from other jurisdictions and organisations. This also renewed the call for those countries to 'close those markets that contribute to poaching or illegal trade'.¹⁹¹ Eight additional decisions were passed. The first two were agreed to without issue as these pertained largely to the tools and processes by which parties would execute their obligations. For example, one decision related to scaling up existing

¹⁸⁶ *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)*, CITES CoP19 Doc. 75 (Rev. 1) Annex 4, 1.

¹⁸⁷ *Ibid* 71 (Annexure 13).

¹⁸⁸ *Rhino horn trafficking as a form of transnational organised crime (2012-2021): 2022 Global Threat Assessment*, CITES CoP19 Inf. 81.

¹⁸⁹ *Summary record of the Eleventh session for Committee II*, CITES CoP19 Com.II Rec. 11 (Rev. 1) 3. See also *Conservation of and trade in African and Asian rhinoceroses*, CITES Resolution Conf. 9.14 (Rev. CoP19).

¹⁹⁰ *Summary record of the Eleventh session for Committee II*, CITES CoP19 Com.II Rec. 11 (Rev. 1) 2.

¹⁹¹ *Supplemental Information on the Closure of Domestic Ivory Markets*, CITES SC74 Inf. 18, 2.

forensic efforts, using the form in Annex to Resolution Conf. 9.14 (Rev. CoP17), and using the simplified procedures provided for under the ‘Regarding the use of simplified procedures to issue permits and certificates’ in Resolution Conf. 12.3 (Rev. CoP18) on “‘Permits and certificates’ for law enforcement purposes’. This would facilitate the exchange of rhinoceros horn samples for DNA analyses. Parties were also encouraged to utilise the ‘Directory of illegal trade in rhinoceros horn focal points’ as maintained by the Secretariat for inter-agency communication.

The bulk of remaining decisions were subject to further discussion. This included deliberation through the formation of a working group comprised of parties and NGOs, which was ultimately unable to reach consensus and present the original language.¹⁹² A decision was directed at Botswana and South Africa with respect to reviewing trends related to illegal killing and illegal trade as well as action implemented to address these crimes; and to ensure that these actions were effective and adaptable to newly identified trends. China (including Hong Kong SAR), Mozambique, South Africa, and Vietnam¹⁹³ were encouraged to strengthen their engagement, including undertaking joint operations, and enhancing information and intelligence exchange to collaborate in addressing illegal trade. Malaysia, Qatar, and the United Arab Emirates were urged to cooperate with parties known to be associated with illegal rhinoceros specimens transiting through their territories, including building rhino specific risk profiles targeting cargo, luggage, and passengers. The Secretariat was directed to examine the implementation of Resolution 9.14 (Rev. CoP17) and decisions directed at parties, and to convene a follow up CITES Rhinoceros Enforcement Task Force meeting comprising of representatives of national enforcement agencies to inform responses alongside standard reporting to the Standing Committee. Representatives were drawn from those involved in combating organised crime and parties affected by rhino poaching and illegal trade in specimens. The Standing Committee was further directed to consider the Secretariat’s report at subsequent meetings.¹⁹⁴ As to demand reduction, Resolution Conf. 17.4 was revised to include an annex containing CITES guidance on demand-reduction strategies to combat illegal trade in CITES-listed species, underscoring a five-step

¹⁹² *Summary record of the Eleventh session for Committee II*, CITES CoP19 Com.II Rec. 11 (Rev. 1) 2: The Working Group ‘comprised of Botswana, China, Czech Republic, European Union, Kenya, Namibia, South Africa, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States, Viet Nam, Zimbabwe, Amboseli Ecosystem Trust, Conservation Force, Dallas Safari Club, Environmental Investigation Agency (US), TRAFFIC, World Wide Fund and Wildlife Justice Commission...’

¹⁹³ This decision would have included Botswana, Lao People’s Democratic Republic, Namibia, and Zimbabwe has a proposed amendment from the UK been accepted. See *Summary record of the Tenth session for Committee II*, CITES CoP19 Com.II Rec. 10 (Rev. 1) 5.

¹⁹⁴ *Summary record of the Sixteenth session for Committee II*, CITES CoP19 Com.II Rec. 16 (Rev. 1) 2-3. See also *Draft Decisions of the Conference of the Parties – Rhinoceroses (Rhinocerotidae spp.)*, CITES CoP19 Com.II. 12.

approach to achieve behaviour change. Recommendations directed at parties implicated in illegal trade in rhinoceros horn remain in the preambulatory text of the resolution.¹⁹⁵

Continuing the sentiment raised at CoP18, the Secretary General of the SADC, Augustin Amuri of the DRC, issued remarks at the CoP19 closing plenary critical of the Convention's treatment of member countries. Speaking on behalf of Angola, Botswana, Comoros, Democratic Republic of the Congo, eSwatini, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, and Zimbabwe. Amuri questioned 'whether there are any meaningful benefits from our membership to CITES'.¹⁹⁶ In expressing its concerns, the SADC drew on broader principles of public international law, such as the importance of multilateralism to collective action, state sovereignty over natural resources and obligations to manage activities within their jurisdiction to not cause damage to the environment in other territories, as well as the principle that the peoples and states are and ought to be 'the best protectors of their own wild fauna and flora' as expressed in the CITES Preamble and art 3 of the *Convention on Biological Diversity* ('CBD'). Amuri submitted that the contemporary operation of CITES runs counter to its founding principles, discarding working conservation models and science in favour of 'ideologically driven anti-use and anti-trade models' perpetuated largely by 'protectionist NGOs'. References to 'iconic African wildlife' (emphasis on 'African') and the 'great discomfort' observed by SADC countries in 'polarized discussions on African charismatic large animals at this CoP19' indicate how the dialogue around rhino-related matters contributed to tensions.

III CITES' RESPONSE TO HORN TRAFFICKING: REFLECTING ON REGULATION, REGIMES, AND RHINOS

The final part of this Chapter analyses the chronology of the Convention's treatment of rhinos outlined in Part II with the aim of contributing directly to the thesis question: *To what extent does the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ('CITES') address illegal wildlife trade to support species conservation? As a case study, how has the Convention responded to rhino horn trafficking as a threat to rhinoceros conservation?* It does so through an integrated analysis highlighting two aspects. The first examines whether the

¹⁹⁵ *Demand reduction strategies to combat illegal trade in CITES-listed species*, CITES Resolution Conf. 17.4 (Rev. CoP19).

¹⁹⁶ 'SADC's Final Words to CITES at the Closing Plenary', *SUCo-SA* (online, 30 November 2022) <https://sucosa.org.za/sadcs-final-words-to-cites-at-the-closing-plenary-2/?fbclid=IwAR2sWNMdvj1PTg40i0BHEuf8uIn_I02OdzhNa6Q2xno2SlkpdGz2I7OqqFo>.

Convention's response to the crises facing rhino species is consistent with the conservation schema provided in the Declaration to Save the World's Terrestrial Megafauna as discussed in Chapter II (hereon referred to as 'the Declaration for Megafauna'). The second extracts and reflects on key hallmarks of CITES' approach to rhino horn trafficking as a case study of its response to IWT. For currency and a contextually informed analysis, this Part builds on the analysis of rhino horn trade provided in Chapter III by including more contemporary evidence of trafficking dynamics. Of note, frequent reference will be made to the Wildlife Justice Commission's 2022 global threat assessment,¹⁹⁷ which analyses data compiled covering the decade from 1 January 2012 to 31 December 2021.¹⁹⁸ The report draws on a range of authoritative sources including TRAFFIC, UNODC, eminent scholars such as Lucy Vigne,¹⁹⁹ as well as its own investigations and that of the Environmental Investigation Agency. Material related to rhinoceroses from CITES CoP19 also informed the report, including the most recent prior report prepared by the Standing Committee and the Secretariat containing an updated 'African and Asian Rhinoceroses – Status, Conservation and Trade' assessment from IUCN Species Survival Commission's African and Asian Rhino Specialist Groups and TRAFFIC.²⁰⁰ The report was presented at CITES CoP19 where it fed into decisions by the CoP.²⁰¹ The balance of this Part will discuss the hallmarks that have emerged from the preceding chronology of CoP, analysed through the lens of how CITES-based efforts have sought to regulate IWT in rhino horn.

A The primacy of the Convention's mandate

To commence with the most fundamental of hallmarks, CITES' approach to rhino horn trafficking has been dictated by the parties' understanding of the Convention's mandate. The Convention's aim to regulate international trade in specimens of wild species to ensure that trade does not threaten their survival is consistent with the Declaration for Megafauna's recognition of human activity threatening species with population decline and even extinction. It also aligns with the Declaration's call for action by 'the international community', given the global reach of the Convention through its membership. As outlined above, rhinos have been included in the

¹⁹⁷ See Chapter I for commentary on the Wildlife Justice Commission's establishment.

¹⁹⁸ Wildlife Justice Commission, *Rhino horn trafficking as a form of transnational organised crime 2012-2021: 2022 Global Threat Assessment* (Report, 2022).

¹⁹⁹ See, eg, Lucy Vigne, 'The rhino horn and ivory trade: 1980-2020' (PhD Thesis, Oxford Brookes University, 2020).

²⁰⁰ See *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)* (n 186).

²⁰¹ *Rhino horn trafficking as a form of transnational organised crime (2012-2021): 2022 Global Threat Assessment* (n 198).

Appendices lists since the Convention came into force. Listing on the Appendices is the dominant means through which trade is regulated, and proposals for down-listings for rhino species and sub-species (including split-listings with various annotations aimed at balancing conservation and sustainable use) have been fielded by the CoP regularly. However, the scope of legitimate operation of the Convention has been subject to continuous examination regarding the Convention's relationship with other international regimes as well as the domestic affairs of territories including those implicated in activity inconsistent with the Convention's conservation and sustainable use objectives. The flurry of activity was undertaken by the Standing Committee with respect to China (including Taiwan), Korea, and Yemen which commenced after CoP8, together with the United States' use of its *Pelly Amendment Act*. These actions have formed part of a body of decisions requiring clarity as to whether restrictions on trade (including bans) under CITES and actions (including trade sanctions) undertaken by countries to support compliance with CITES standards would not run afoul of the multilateral trading system. Since questions regarding compatibility with the GATT/WTO were by-and-largely answered at CoP10, with a mutually cooperative relationship between the ensuing regimes, questions around CITES' mandate as it pertains to rhino horn trade have primarily concerned the extent to which the CoP may control domestic markets. Despite furore from observer NGOs, South Africa (whose 'prickly'²⁰² relationship with CITES involves historic challenges regarding permit quality control, timely annual reporting, and the narrow avoidance of sanctions for failure to public national CITES regulations in 2010)²⁰³lifted its moratorium on domestic trade in rhino horn in 2015 with subsequent discourse confirming that domestic trade was beyond CITES' remit.²⁰⁴ Kenya's proposed amendment to Resolution Conf. 9.14 (Rev. CoP17) at CoP18 urging the closure of all domestic markets was rejected on the basis that this was beyond the scope of the Convention's mandate. This further affirmed that the Convention's use of TREMs is intended to target parties where illegal markets for rhino horn contribute to species endangerment through feeding international trade in contravention of the Convention. Thus, decisions may not be made arbitrarily in applying to some or all parties, or disproportionately in response to the nature and

²⁰² Rademeyer (n 3) 113.

²⁰³ Ibid 114-5.

²⁰⁴ The moratorium was judged not on its merits but legality following the Department of Environmental Affairs' imposition of the moratorium without consulting private rhino owners who were substantially affected by the measure. The Government appealed the decision which was upheld by the Constitutional Court in 2017. See Catherine Jakins, 'A discussion of rhino horn domestic trade legislation in South Africa' (2018) 31(4) *Acta Criminologica: Southern African Journal of Criminology* 169.

extent to which species are threatened. This leads to a second hallmark, which goes to how the information upon which these decisions are based.

B A collaborative evidence-informed decision-making architecture

A second hallmark of CITES' response to rhino horn trafficking is the ongoing development of a network of collaborators and forums for expertise to inform decisions. This is particularly important as it was identified in Chapter V that the operation of CITES fundamentally relies on the quality of information received upon which decisions are based. This hallmark is consistent with the Declaration for Megafauna's emphasis on international collaboration and the need for interdisciplinary scientific interchange between nations to better comprehend drivers for decline and increase capacity for megafauna science and conservation. IUCN and its Species Survival Commission Rhinoceros Specialist Groups have long played a role in providing reports regarding the status of rhino species and the trade in rhino products: from early engagement with Esmond Bradley Martin presented at CoP3; to the formalising of its regular reporting role together with TRAFFIC at CoP14; to the further expansion of the terms of reference of these reports; and, most recently, at CoP19 to include information on challenges and best practices associated with addressing rhinoceros horn (including poaching and horn trafficking). An avenue for greater correspondence between IUCN/TRAFFIC and range states and implicated parties was successfully secured under Kenya's stewardship at CoP15, which meant that reports would be sent to them for comment ahead of finalisation. The information mix has been further enhanced from time to time with CITES missions, including the Secretary-General's mission to Yemen advancing Yemen's accession to the Convention, and technical assistance missions including those to China (including Taiwan), Korea, and Hong Kong in the 1990s. Finally, the convening of task forces (ie the CITES Rhinoceros Enforcement Task Force and CITES Joint Ivory and Rhinoceros Task Force) have delivered on the promise for better coordination and enforcement through capacity building and information exchange prioritising those parties most affected. This spirit of collaboration has contributed to greater political will as embodied through such agreement as the 'Geneva Statement on Combating Rhinoceros-Related Crimes', the conducting of joint operations between parties, and the development of important tools such as the establishment of the RhODIS® Rhino DNA Indexing System in 2010.²⁰⁵ This is not to say that efforts to maximise

²⁰⁵ University of Pretoria, 'The eRhODIS Project', *RhODIS – Rhino DNA Index System* (Website) <<https://erhodis.org/#:~:text=RhODIS%C2%AE%20was%20first%20used,at%20OR%20Thambo%20International%20Airport>>.

the CITES information mix on rhino horn trade has been without issue. Some have argued that CoP decisions have been taken against the availability of the best scientific information in violation of its own guidelines, citing the CoP's rejection to ease trade controls for Namibia's white rhinos at CoP18.²⁰⁶ Resolution Conf. 9.4 on the 'Conservation of and trade in African and Asian rhinoceroses' has persisted, despite multiple recommendations from the Secretariat that it be repealed due to lack of implementation (including timely reporting by parties). There is also a need for a greater number of registered forensic laboratories to enhance the capacity and speed with which DNA forensic evidence may be processed.²⁰⁷ Further, increasing collaboration does not mean that parties are necessarily eager to accept attribution where evidence of implication in illegal trade is suggested at CoPs (see, for example, Vietnam at CoP15 and China at CoP18). While the experience of IUCN/TRAFFIC's regular engagement with CITES has developed to be generally well-received by parties, this does not mean that the involvement of non-state actors is universally welcomed by all. This links to the third hallmark of CITES' response to rhino horn trafficking concerning the involvement of non-state actors.

C Tensions between range states and non-state actors

Tension between some range states and non-state actors has been an ongoing theme in CITES' response to illicit trade in rhino products. It provides a microcosm of where the twin objectives of the Convention (sustainable use and conservation) have been debated and contrasted. Namibia has featured prominently in these discussions, including at CoP9 where delegates alleged that NGOs had influenced the formation of the *Lusaka Agreement*, at CoP18 where some members of the SADC (including Botswana and Namibia) threatened to withdraw from the Convention in objection to the influence of non-range states and Western-based conservation and animal welfare NGOs, and most recently at CoP19 with the Secretary General of the SADC's closing remarks.²⁰⁸ Eugène Lapointe (former Secretary General of CITES from 1982-1990) remains an ardent critic of the Convention's operation, noting that the Convention risks bordering on irrelevance and mediocrity²⁰⁹ as a legitimate conservation institution in large part

²⁰⁶ Arie Trouwborst, 'Global large herbivore conservation and international law' (2019) 28 *Biodiversity and Conservation* 3891, 3908.

²⁰⁷ *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)*, CITES CoP19 Doc. 75, 4.

²⁰⁸ 'SADC's Final Words to CITES at the Closing Plenary' (n 196).

²⁰⁹ Emmanuel Koro, 'Start Reclaiming Sovereign Wildlife User Rights', *The True Green Alliance* (online, 21 October 2022) <<https://www.mahohboh.org/start-reclaiming-sovereign-wildlife-user-rights/>>.

due to the involvement of NGOs ('prohibitionist NGOs and prohibitionist animal welfare activists').²¹⁰ At CoP17, Lapointe spoke in favour of removing restrictions on rhino horn trade suggesting that the international ban had not only failed to achieve its objectives but had fuelled poaching.²¹¹ He went on to advocate for well-managed, controlled legal trade.

Proposals to down-list or remove annotations have been treated with caution. While the possibility of opening-up well-regulated trade in horns derived from non-lethal sources have not been well-received (see South Africa at CoP8), there is an acknowledgement that funds from trophy hunting as per export quotas play an important role in funding and sustainable development. As parties, including Japan at CoP18, have continuously recognised, the Convention recognises the tangible benefits and value of wildlife trade.²¹² Coetzee and Couzens' analysis of Swaziland's CoP17 proposal is most telling as it succeeded in arousing significant response from 'both pro-trade and anti-trade groups', keeping dialogue open on the possibility of what part a well-regulated legal trade could look like, and, in particular, forcing audiences to see the frontline realities of anti-poaching laid bare. For instance, the information document submitted to explain the rationale for the proposal included crime scene photographs not only of rhinos but of a ranger who had been 'hacked to death' by a poacher's machete.²¹³ Similar to Lapointe's critique and that of the SADC, the proposal was critical of the preservationist rhetoric fuelled by Western NGOs as crippling true conservation for the sake of maintaining donations for their own survival.²¹⁴ Further, the proposal was critical of Western NGOs for imposing their views on the efficacy of Eastern traditional medicine on practitioners, stating that '[i]t is the height of arrogance to equate rhino horn to fingernails and despairingly label what Westerners do not understand, as fictitious'.²¹⁵ Returning to Amuri's question as to what benefits CITES offers its membership, particularly SADC countries in the current climate, Coetzee and Couzens explain what would occur should a country seeking to trade in rhino horn would experience should they withdraw from the Convention.²¹⁶ Firstly, the country would not be able to benefit from free trade until such a time as prospective trading partners would likewise withdraw from the treaty.

²¹⁰ Eugène Lapointe, *Wildlife Betrayed: Why prohibition is bad for conservation and development* (SUCo-SA, 2023).

²¹¹ Eugène Lapointe, 'Remarks by IWMC's President at the Closing Ceremony of CITES CoP17' (Speech, IWMC World Conservation Trust, 4 October 2016) <<https://www.iwmc.org/remarks-by-iwmc-president-at-the-closing-ceremony-of-cites-cop17/>>.

²¹² See *Recognition of the benefits of trade in wildlife*, CITES Resolution Conf. 8.3 (Rev. CoP13).

²¹³ Coetzee and Couzens (n 163) 231. The image of the murdered ranger is located at *Rationale for Swaziland's Proposal to CITES to Legalize Trade in its Rhino Horn*, CITES CoP17 Inf. 17, 17.

²¹⁴ Coetzee and Couzens (n 163) 238.

²¹⁵ *Rationale for Swaziland's Proposal to CITES to Legalize Trade in its Rhino Horn*, CITES CoP17 Inf. 17, cited in Coetzee and Couzens (n 163) 232.

²¹⁶ Coetzee and Couzens (n 163) 247-248.

Therefore, should the likes of China and Vietnam remain Party to the treaty and thus subject to existing trade controls and compliance measures (including trade sanctions as discussed in Chapter V) it is unlikely to elicit any substantial benefit.²¹⁷ It is also highly unlikely that trading in rhino horn under present circumstances would be a worthwhile trade-off for any country given what it would stand to lose by way of existing trade in other species.²¹⁸

It should be noted that organisations involved in hunting and advocates of sustainable use have progressively formed a larger contingent of non-state actors involved in CoPs. A consistent question continues to be one of equity to range states that have long held the administrative burden of monitoring, reporting, and implementing in line with resolutions and decisions of the CoP, while also having to secure substantial funds for conservation management, law enforcement and security for as long as rhinos persist in their territories. The Declaration for Megafauna stresses the development of funding mechanisms to support research, conservation actions and local people who bear the cost of living with wildlife, and this is certainly an area where improvement is needed. It also recognises the need to better align human development and biodiversity conservation through a community-centred approach to conservation. Upon reflection, it appears that the strengthening of sustainable use objectives under the Convention's Strategic Vision is broadly consistent with this approach. While the adage 'worth more alive' is frequently employed by NGOs to rally support for conservation, Loon suggests that this will only be meaningful to those carrying the economic and security burden when the value of live animals is greater than that fetched by the horn. Loon opines that prioritising indirect use values through ecotourism and the existence value of rhinos as vehicles for donor funding need to be greater; however, the value of horn may be considered an asset rather than a liability.²¹⁹ Contemporary moves to 're-wild' parts of Africa where rhinos used to roam (supported by annotations on the Appendices specifying that certain populations are approved for live animal trade for in situ conservation purposes exclusively within that species' natural and historical range) will, in the best case scenario, see an increase in range states carrying the burdens of conservation efforts and an increase in numbers of rhinos requiring resources and protection.

It is unlikely that the tension between some range states and NGOs will be resolved until such a time as the weight of responsibility and resourcing for in situ conservation is more equitably distributed. This calculus is not an easy one to balance, however. It is clear from eminent experts

²¹⁷ Ibid 247-248.

²¹⁸ Ibid 248.

²¹⁹ Rael Loon, 'The Time to Think Differently About CITES and Trade in Upon Us', *IWMC World Conservation Trust* (online, 2 October 2012) <<https://www.iwmc.org/the-time-to-think-differently-about-cites-and-trade-is-upon-us/>>.

on the illegal trade in rhinoceros horn, notably Vigne, that buy-in from local communities is essential for trade controls to be effective: ‘we have learned that rhino horn and ivory bans in range and consumer states lacking local community support and also effective law enforcement do not work’.²²⁰ It ought to be noted, though, that some of the NGOs involved in these discussions play a vital role in campaigning, fundraising, conducting research and supporting community-centered conservation efforts and wildlife crime law enforcement. This is consistent with Principle 7 of the Declaration for Megafauna, which embraces the role of NGOs, and with Principle 8, which centres on awareness-raising. In fact, it was the research conducted by IUCN/WWF presented at CoP3 that prompted a shift in focus to consumer countries and effectively planted the seeds that saw parties other than range states compelled to act. This leads to the fourth hallmark: a growing emphasis on demand reduction.

D Demand reduction as a key element in supporting trade controls

The demand-driven decline of rhino species was first put to resolution in Resolution Conf. 3.11 ‘Trade in Rhinoceros Horn’ following the IUCN/WWF study. Upon its repeal by Resolution Conf. 9.4 on the ‘Conservation of and trade in African and Asian rhinoceroses’ at CoP9, the new resolution continued recognising the role of consumer countries, including the role of social, economic, and cultural factors influencing consumption, and continued stressing that law enforcement alone would not abate threats. The compliance processes undertaken by the Standing Committee and missions to consumer countries, together with engagement with the traditional medicine industry in the period surrounding CoP9, were not merely a flash in the pan. Subsequent investigations into demand, including expanding the scope beyond traditional medicine to all user groups and industries (see CoP11), potential use of products produced through synthetic or cultured DNA (see CoP18) and species substitution (see CoP6 and CoP11),²²¹ continue to be live topics within the Convention. Mindful of the need to ground behaviour change initiatives in empirical research canvassing consumer usage and motivations to purchase, CoP16 saw a country-specific direction to Vietnam requiring consumer behaviour research aimed to inform demand reduction efforts. CoP16 also saw an emphasis on sustained, long-term demand reduction strategies paired with community awareness programmes which continues to be a

²²⁰ Vigne (n 199) 52.

²²¹ As discussed in Chapter III, horns from water buffalo and saiga antelope have been used as substitutes for rhino horn however it is important to note that substitution can threaten species where the substitute’s wild populations come under threat. For example, the saiga antelope declined to the point of being listed on Appendix II in 2008 following a significant outbreak of disease. See Ibid 53.

focus. For example, at CoP18 and CoP19, parties where illegal markets for rhino horn exist were directed to target such programmes at key identified audiences having further regard to the general demand reduction resolution, ie Resolution Conf. 17.4 on ‘Demand reduction strategies to combat illegal trade in CITES-listed species’ (Rev. CoP19). The emphasis on demand reduction in CITES’ approach to rhino horn trafficking is well placed, as experts including Felbab-Brown have commented on the interaction of demand reduction, campaigning, and the international trade ban:

So was the ban effective or not? It is invoked to demonstrate both the effectiveness of bans and their failures. Clearly, the ban was not effective on its own; it was only effective when demand also dropped. But demand dropped only as a result of intense campaigning and international pressure enabled by the ban. Yet campaigning did not extend to suppressing new demand in new markets. And the new rise in demand overwhelmed both in situ law enforcement and legal regulations to prevent poaching.²²²

Thus, it is apparent that the implementation of CITES trade controls in response to illegal trade requires an ongoing, dynamic, and evidence-based approach to researching and targeting consumer groups. Recent consolidation of the literature concerning end users continues to glean insights. End users of rhino horn in Asian destinations tend towards two primary and distinct markets: luxury products (as status symbols and potential investments valued for their durability which has become increasingly attractive since the stock market crash in 2009) and a smaller market for alleged medical purposes (‘for dispelling heat, detoxification, cooling the blood and treating *wenbing* or warm-heat infectious diseases’).²²³ Surveys indicate a growing demand for rhino horn jewellery and décor items, including traditional libation bowls, rather than medicine, with medicinal products usually made from the offcuts and leftover pieces following the carving process.²²⁴ The antiques market also presents a pathway for laundering poached horns into legal trade when labelled as fake ‘pre-CITES’ artefacts.²²⁵

While reporting requirements for states implicated in consumption of rhino horn are now an entrenched part of the CITES information mix, the introduction and maintenance of such requirements can be attributed to the instigation and insistence of range states, led mainly by Kenya (see, for example, CoP 15 and CoP16). This was largely motivated by the desire to balance the burden of reporting and action between parties on either side of the supply chain, coupled

²²² Vanda Felbab-Brown, *The Extinction Market: Wildlife Trafficking and How to Counter It* (Oxford University Press, 2017) 109.

²²³ Wildlife Justice Commission (n 198). See Chapter III of this Report regarding antipyretic effects.

²²⁴ *Ibid.*

²²⁵ Hübschle (n 61).

with the understanding that it was demand rather than supply driving poaching and other means of illicit acquisition and trade. This emphasis on demand reduction aligns with the Declaration on Megafauna's Principle 7, which emphasizes a multi-stakeholder approach to stopping practices harmful to the survival of megafauna, as well as the focus on education and awareness raising in Principle 8. Further, with demand for rhino horn as a driver for species decline requiring interdisciplinary research inclusive of social dimensions of trade, CITES' approach also aligns with Principle 11 of the Declaration. However, the Convention's expanding focus on territories implicated in illicit rhino horn trade did not stop with better inclusion of consumer destinations in its resolutions and decisions. The next hallmark characterises the contemporary approach as one that seeks to engage those parties where illicit shipments transit.

E The emergence of a whole-of-chain approach: expanding focus to include territories of transit in addition to supply and demand

Efforts of the CoP to better recognise territories of transit in rhino horn trafficking saw greater political will in the era post-CoP16, culminating most recently in CoP19's decisions that had regard to its usual information mix, with the notable addition of the Wildlife Justice Commission's Global Threat Assessment.²²⁶ The Convention has maintained its core commitment to evidence-based decision-making by adopting a 'whole-of-chain' approach and directing decisions to parties accordingly. Such an approach is consistent with the spirit of the Declaration for Megafauna and is most directly related to the emphasis of Principles 7 and 9 on the international community, including governments, to coordinate in halting practices that threaten the survival of megafauna.

The dynamics of illegal trade have clearly continued to develop since the publication of Chapter III; it is therefore important to consider the updated data concerning implicated locations. As at CoP19, CITES parties continue to predominate the supply chains associated with rhino horn trafficking. Virtually all rhino range states are parties,²²⁷ and the criminal networks driving rhino horn trafficking throughout the global supply chain are also attributed to two CITES Parties:

²²⁶ Wildlife Justice Commission (n 198).

²²⁷ See Bram Janssens and Arie Trouwborst, 'Rhinoceros Conservation and International Law: The Role of Wildlife Treaties in Averting Megaherbivore Extinction' (2018) 21(2-3) *Journal of International Wildlife Law and Policy* 146. Angola, Botswana, DRC, Chad, Ethiopia, Kenya, Malawi, Mozambique, Namibia, Rwanda, South Africa, Sudan, eSwatini, UR Tanzania, Uganda, Zambia, Zimbabwe, Bhutan, India, Indonesia, Malaysia, Myanmar, Nepal, and Vietnam are Parties. South Sudan is the only outlier.

Vietnam²²⁸ and China.²²⁹ By way of a brief overview of the past decade's trafficking profile, the Wildlife Justice Commission examined recorded data concerning more than 7.5 tonnes of rhino horns seized globally from illegal trade in 674 incidents. The Commission identified the involvement of 54 countries and territories, with the six countries implicated as the primary nodes in illicit supply chains being (from most to least represented in the seizure data): South Africa, Vietnam, Mozambique, China, Malaysia, and Hong Kong SAR.²³⁰ South Africa (linked to 49% of horns seized globally in the last decade) and Mozambique (linked to 17% of horns seized globally in the last decade) sit at point of entry into the market; Malaysia (linked to 12% of horns seized) and Hong Kong SAR (linked to 9% of horns seized) are transit nodes; and Vietnam and China were the main destinations, linked to 27% and 16% of horns seized respectively.²³¹ The CoP19 report prepared by the Standing Committee and CITES Secretariat, observing data in the period 2018-2021, further names Qatar and the United Arab Emirates in the list of Parties most affected by illegal trade in rhinoceros' horn as transit points, noting an Operation Golden Strike seizure of 10kg of horns in Qatar originating from Mozambique in 2021.²³²

²²⁸ Party to CITES commencing 1994.

²²⁹ Party to CITES commencing 1981.

²³⁰ Wildlife Justice Commission (n 198) 10, 63.

²³¹ Ibid 63.

²³² *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)* (n 207).

Weight (kg) and proportion of horns seized (%) per period												
Country/territory	2012-2013		2014-2015		2016-2017		2018-2019		2020-2021		Total	
South Africa	424	(45%)	303	(26%)	975	(55%)	1,357	(56%)	695	(54%)	3,754	(49%)
Vietnam	284	(30%)	395	(34%)	307	(17%)	598	(25%)	431	(34%)	2,015	(27%)
Mozambique	169	(18%)	435	(38%)	240	(14%)	411	(17%)	39	(3%)	1,294	(17%)
China	122	(13%)	236	(21%)	167	(9%)	657	(27%)	42	(3%)	1,224	(16%)
Malaysia	42	(4%)	142	(12%)	51	(3%)	239	(10%)	414	(32%)	888	(12%)
Hong Kong SAR	70	(7%)	56	(5%)	270	(15%)	255	(10%)	3	(1%)	654	(9%)
Kenya	62	(7%)	33	(3%)	282	(16%)	3	(1%)	6	(1%)	386	(5%)
Qatar	70	(7%)	89	(8%)	90	(5%)	103	(4%)	15	(1%)	367	(5%)
United Arab Emirates	6	(1%)	22	(2%)	24	(1%)	273	(11%)	0	-	325	(4%)
Namibia	0	-	12	(1%)	107	(6%)	25	(1%)	83	(7%)	228	(3%)
Thailand	89	(9%)	42	(4%)	75	(4%)	2	(1%)	0	-	207	(3%)
Uganda	52	(5%)	122	(11%)	23	(1%)	0	-	0	-	197	(3%)
Malawi	0	-	15	(1%)	164	(9%)	0	-	0	-	179	(2%)
Nigeria	85	(9%)	62	(5%)	3	(1%)	0	-	5	(1%)	155	(2%)
Turkey	0	-	0	-	25	(1%)	117	(5%)	6	(1%)	148	(2%)
Angola	0	-	5	(1%)	15	(1%)	29	(1%)	87	(7%)	136	(2%)
Philippines	13	(1%)	0	-	0	-	0	-	113	(9%)	126	(2%)
Singapore	8	(1%)	22	(2%)	49	(3%)	15	(1%)	24	(2%)	117	(2%)
Czech Republic	101	(11%)	0	-	0	-	0	-	0	-	101	(1%)

Note: In this table, rhino horn seizures were attributed to all the jurisdictions that were reported to be along the trafficking route, not only the jurisdiction that made the seizure. The % in this table represents the weight of rhino horn seizures each jurisdiction was implicated in as a proportion of the total weight of rhino horn seized globally during each period. Because a seizure can be counted more than once if it is attributed to multiple jurisdictions as source, transit, or destination locations, the % do not add up to 100%.

Table 2: Countries and territories implicated in 100kg or more of rhino horn seizures as origin, transit, or destination locations, 2012-2021.²³³

As to the final destinations, a 'substantial proportion'²³⁴ of horn entering Vietnam was later sold to Chinese nationals and smuggled overland into China with other routes into China identified as transcontinental flights from Africa transiting through Hong Kong SAR.²³⁵ Cambodia,²³⁶ Lao PDR,²³⁷ Myanmar,²³⁸ Thailand,²³⁹ Japan,²⁴⁰ South Korea,²⁴¹ and Taiwan²⁴² also maintain small retail markets.²⁴³

²³³ Wildlife Justice Commission (n 198) 63.

²³⁴ Ibid 16.

²³⁵ Party status listed as 'Dependent territory' of China.

²³⁶ Party to CITES commencing 1997.

²³⁷ Party to CITES commencing 2004.

²³⁸ Party to CITES commencing 1997.

²³⁹ Party to CITES commencing 1983.

²⁴⁰ Party to CITES commencing 1980.

²⁴¹ Party to CITES commencing 1993.

²⁴² 'International Participation', *Forestry Bureau, Council of Agriculture* (Web Page, 8 August 2016) <<https://conservation.forest.gov.tw/EN/0001638>>. Status of Taiwan regarding CITES is addressed through the following official statement: 'Because Taiwan is not a member of the United Nations, it has not been able to participate in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Nevertheless, Taiwan supports international agreements to halt the trafficking of endangered species and has enacted legislation which, as closely as possible, complies with CITES requirements. The Council of Agriculture serves as the equivalent of the CITES Scientific Authority and, together with the Board of Foreign trade, serves as the equivalent of the Management Authority.' See also Govindasamy Agoramoorthy and Minna J Hsu, 'CITES Implementation through the wildlife conservation law of Taiwan' (1999) 2(1) *Journal of International Wildlife Law and Policy* 64.

²⁴³ Wildlife Justice Commission (n 198) 16.

Enhancing the international community's focus on territories of transit is critical to combatting IWT, including rhino horn trafficking, and is certainly one of a range of law enforcement issues requiring more targeted attention. As evident in the Wildlife Justice Commission's global threat assessment, detection rates by law enforcement in key transit locations is generally low, particularly in relation to Malaysia's largest rhino horn shipments, as well as in the United Arab Emirates and Qatar.²⁴⁴ The Commission suggests that shipments transiting through to a further jurisdiction may be a lower priority for inspection and profiling by local authorities. Shining a light on key transit countries through targeted decisions, supported by opportunities for capacity building for authorities, will foreseeably continue to be a hallmark of the Convention's approach. This is consistent with the final hallmark presented in this Chapter which deconstructs the Convention's increasing focus on 'transnational organised crime'.

F An increasing focus on 'transnational organised crime'

This final hallmark, which reflects Principles 7 and 9 of the Declaration for Megafauna, arguably provides the most direct response to this thesis's thesis question; and is currently comprised of five aspects.

1 The involvement of non-state actors relevant to the international response to transnational organised crime

The Convention's increasing and evolving focus on rhino horn trafficking as an example of IWT involving transnational organised crime elements has seen relevant international non-state actors (notably partners within the ICCWC, including the UNODC) and national level authorities within the jurisdictions of parties incorporated into the Convention's response, to the extent that it remains within its mandate. As discussed above, ongoing development of this approach has been demonstrated by the creation of forums for information exchange and capacity building for law enforcement, particularly those from implicated territories, coupled with the formation of CITES task forces, missions and more broadly by the introduction of annual illegal trade reports and the integration of the UNODC's Guide on Drafting Legislation,²⁴⁵ into CITES' Model Law.²⁴⁶ The Convention's response to rhino trafficking offers one of the clearest case studies of this

²⁴⁴ Wildlife Justice Commission (n 198) 83.

²⁴⁵ *Guide on Drafting Legislation* (n 28).

²⁴⁶ *Model Law* (n 21).

approach, in no small part due to the sustained action of parties and the Secretariat in attempting to abate threats to the survival of all five extant species of rhino as charismatic megafauna. The role of NGOs in cultivating political will in this space is also to be noted.

2 Profiling and responding to 'transnational organised crime' as defined by UNTOC

'Transnational organised crime' is defined by international law according to definitions under the UNTOC.²⁴⁷ As per Article 2(a), an 'organised criminal group' refers to:

a structured group²⁴⁸ of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes²⁴⁹ or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.²⁵⁰

Article 3 further defines the meaning of 'transnational' where an offence is committed in more than one state, or where an offence 'is committed in one State but has substantial effects in another State or involved an organized criminal group engaged in criminal activities in more than one State or was substantially prepared, planned, directed or controlled in another State'.²⁵¹ The beginnings of CITES' approach to rhino horn trafficking as a form of transnational organised crime are evident in the above description of CoP6, with its emphasis on cross-border poaching and role of non-range states in relation to illegal shipments, together with driving the language around targeting all actors along supply chains inclusive of poachers and 'middlemen'. In encouraging parties to implement national laws regarding wildlife crime consistent with the UNTOC, reports of the Secretariat and Standing Committee at CoPs have more recently referenced whether parties were treating rhino poaching and horn trafficking as 'serious crime' as per UNTOC Article 2(b) (see, for example, CoP17).

As per the findings of the Wildlife Justice Commission, 'rhino horn trafficking remains a severe problem that needs to be addressed with a new sense of urgency as transnational organised crime'.²⁵² This assessment is evidenced thoroughly, having regard to relevant definitions under

²⁴⁷ For example, by the UNODC and Wildlife Justice Commission. See Wildlife Justice Commission (n 209) 51.

²⁴⁸ A 'structured group' is defined under art 2(c) as meaning 'a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.'

²⁴⁹ A 'serious crime' is defined under art 2(b) as meaning 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.'

²⁵⁰ These offences are those established in accordance with Articles 5, 6, 8 and 23 together with offences qualifying as 'serious crime' as per the definition in Article 2 as discussed above.

²⁵¹ UNTOC (n 2) art 3.

²⁵² Wildlife Justice Commission (n 198) 7.

the UNTOC, including reference to the actors involved and *modus operandi* observed. The Commission identifies actors involved in supply chains and delineates them into three stages: 'poaching and supply of rhino horn', 'transportation and trafficking of rhino horn', and 'sale of rhino horn in destination markets'. The following descriptions are taken directly from the report as follows:

Poaching and supply of rhino horn

- Poaching coordinators who organise teams to poach rhino horn on their behalf.
- Facilitators/brokers who support rhino horn transactions by brokering introductions and meetings with traffickers to facilitate the onward movement of products through the criminal supply chain.
- Traffickers who sell and/or smuggle larger quantities of products to the international market. Their role involves the acquisition, storage, and consolidation of rhino horns for packing and smuggling to Asia.
- Beyond the three primary actors listed above directly handling the sourcing and supply of rhino horn products (poachers, coordinators, brokers, and traffickers), there is a substantial layer of secondary actors who provide essential support services such as transportation, facilitation, and money laundering.

Transportation and trafficking of rhino horn

- Transporter whose primary role is to facilitate the international trafficking of the products, ensuring that shipments are cleared through seaports and airports by utilising their connections in customs authorities, freight forwarding agencies, airlines, and shipping and logistics companies. After being smuggled out of Africa, whether by air or by sea, rhino horn shipments generally move through one or more transit points before reaching the intended destination. The Commission identified three trafficking modus operandi: trafficking via an independent operator, trafficking handled within a criminal network, and through recruiting couriers (such as newly released prisoners from China) to hand-carry shipments.

Sale of rhino horn in destination markets

- Sellers are the true product owners at the top of the supply chain who have provided the investment and finance for the smuggling operations. They are deliberately removed from the day-to-day operations and often remain anonymous.
- Brokers play a key facilitating role as the intermediary between the sellers and the buyers and are responsible for product pricing, quantity, quality, security, storage, price negotiations, and payment.
- Storage owners provide a safe physical space to store the products after they are imported and waiting to be sold.
- Caretaker/packers clean, prepare and briefly process products.
- Transporters/couriers deliver the rhino horn products to the location specified by the buyer and bear responsibility if the products are seized.
- Currency converters are suspected to be Vietnamese nationals who are based in China and hold Chinese bank accounts, which are used to receive payments in Chinese Renminbi (RMB) directly from the buyers. Chinese networks also appear to rely on payments to Chinese bank accounts, which could be held by third Parties to conceal the identity of the product owner.
- Buyers at the wholesale level in both Vietnam and China are identified as predominantly Chinese customers.

Figure 1: Actors involved in rhino horn trafficking supply chains.²⁵³

The preponderance of evidence pointing to transnational organised crime involvement in rhino horn trafficking and trends in preferred modus operandi now provides a level of insight into the

²⁵³ Ibid 15-17.

resilience of networks, including crime convergence with other illicit commodities. Evidence of crime convergence with other commodity types was observed in 10% of seizures analysed by the Commission.²⁵⁴ The majority of these cases involved the seizure of firearms in conjunction with horns from poachers on the poaching grounds, with a smaller proportion of events including the seizure of illicit drugs with horns (including the high profile Kromah network who trafficked ivory and horn alongside an opportunistic trade in heroin).²⁵⁵ Several others involved counterfeit money and stolen vehicles. Attention has also turned to the role of the dark web where illegal wildlife products appear to be sold opportunistically by criminals already in forums selling other illicit goods. Investigators for the Wildlife Justice Commission found 27 mentions of ‘rhino horn’ in the ‘Gold & Diamonds’ forum between July 2016 and December 2021, with evidence of prospective buyers, offers made, and users alleging to have purchased rhino horn also located in a dark web forum.²⁵⁶

Another aspect of convergence of note is the extent to which actors involved in the trafficking of rhino horn are involved in trafficking other wildlife products. While rhino horn appears to be most often smuggled as a sole wildlife commodity (ie 80% of the seizures examined by the Commission),²⁵⁷ these networks have been shown to deal in other wildlife. For example, Angola (identified by the Commission as a source and transit country in every Wildlife Justice Commission ivory operation since 2015) is emerging as a country of concern for rhino horn trafficking. The Commission references intelligence collected, stating that Vietnamese criminal networks operating in Angola are using the country ‘as a transit country for wildlife originating from southern Africa (rhino horn, captive-bred tiger and/or lion items) and central Africa (ivory, pangolin scales) and it is reported to be where some consolidation of rhino horn to be moved by air takes place’.²⁵⁸ The decline in demand for ivory and retention of a comparatively high interest and value for rhino horn appears to be causing some ivory traffickers to switch to rhino horn,

²⁵⁴ Ibid 88.

²⁵⁵ Ibid 87.

²⁵⁶ Ibid 32.

²⁵⁷ Ibid 14, 86, 88. The 20% of shipments that were mixed shipments included raw elephant ivory in the form of whole tusks or tusk pieces is the wildlife product most commonly associated with rhino horn seizures, representing 92% (124 cases) of the mixed shipments. Big cat parts including skeletons, claws and teeth were present in 65 (48%) of the seizures; and pangolin scales and occasionally live pangolins or pangolin carcasses were present in 23 (17%) seizures. Overall, however, no consistent patterns were found. Other species combinations that occurred in just a few cases involved bovine horns, bear products, hippopotamus teeth, deer antlers, helmeted hornbill skulls and abalone.

²⁵⁸ Ibid 35.

most notably in Mozambique where Vietnamese crime networks are becoming more entrenched.²⁵⁹

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total reported African rhinos poached	60	62	262	201	426	532	751	1123	1324	1349	1167	1125	930	773	503	556

Table 3: Reported African rhinoceros poaching mortalities 2006-2021.²⁶⁰

Year	2013	2014	2015	2016	2017	2018	2019 - 2021
Total reported Asian rhinos poached	41	34	24	22	12	7	11

Table 4: Reported Asian rhinoceros poaching mortalities 2013-2021.²⁶¹

Examination of the composition of shipments and the methods employed to transport them over the past ten years confirms the involvement of organised criminal networks and subversion of CITES regulatory controls aided by apparent corruption. Despite a reduction in poaching across Africa, rhino horn seizures increased in weight. While poaching peaked in 2015, the average shipment weight increased after 2017 by 52% in 2018-2019, then by an additional 55% to 44.5kg in 2020-2021, despite a decline in the number and volume of seizures (likely associated with the reduction in smuggling due to border closures and travel restrictions and reduction in poaching). During the last decade horns were most often smuggled on commercial airlines. However, a trend has emerged shifting from smaller amounts in passenger luggage to large shipments by air cargo commencing in the pre-pandemic 2018-2019 period.²⁶² The persistence of this trend in increasing weight per seizure may be explained by larger involvement of transnational organised crime groups, with the trade being monopolised by a smaller number of key networks (rather than many disparate actors) and higher volumes of product being moved to increase the profit margins per shipment. Resilience during the COVID-19 pandemic supports this hypothesis.

²⁵⁹ Ibid 35.

²⁶⁰ *Nineteenth meeting of the Conference of the Parties – Rhinoceroses (Rhinocerotidae SPP.)* (n 207) 30-31. An additional 55 rhinos were added to 2021 based on an additional 55 rhino estimated to have been poached in Botswana not represented in the CITES report but accounted for in the 2022 State of the Rhino Report.

²⁶¹ Ibid 32. Mortalities tabled are all greater one-horned rhinoceros, with all but one carcass located in Nepal in 2017 reported by India. Indonesian authorities are not aware of illegally killed Javan rhinos since the mid-1970s. Indonesian authorities have not detected a Sumatran rhino carcass since 2006, when rangers found a rhino snared and its horn removed in Way Kambas National Park.

²⁶² Wildlife Justice Commission (n 198) 81-82. Land vehicle transportation was the second most frequently recorded mode of transportation.

Trafficking via maritime shipping containers (while only comprising 12 seizures in the last decade of recorded seizures)²⁶³ may be a growing area of concern for a few reasons. Firstly, a larger volume of illicit product may be shipped in comparison to by air and are subject to generally fewer security checks (particularly in comparison to airport security checks during COVID-19); and further, because the seizures by sea comprise a fraction of total seizures, this may be explained by fewer interceptions due to less targeting and detection by law enforcement.

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Overall total
<i>No. of seizures</i>	43	59	62	84	68	94	99	72	52	41	674
<i>Total weight (kg)</i>	426	524	494	655	843	926	969	1,467	464	818	7,586
<i>Proportion of the overall weight (%)</i>	5.6	6.9	6.5	8.6	11.1	12.2	12.8	19.3	6.1	10.8	100

Table 5: Total number and weight of reported rhino horn seizures 2012-2021.²⁶⁴

While the rising number of seizures and reduction of poaching could signal increased effectiveness of law enforcement to disrupt global supply chains, another factor is the entry of horns other than from recently poached rhinos entering the supply chain. According to the Wildlife Justice Commission, up to one-third of all rhino horns seized globally may have originated from legal horn stockpiles.²⁶⁵ Most rhino range states have government-owned stockpiles of horns acquired through dehorning procedures and horns collected from natural mortalities, as well as horns confiscated from illegal trade incidents. In South Africa and Namibia, rhinos and subsequently their horns can be legally owned; and so, both government and private stockpiles exist. Horns may also be legally exported as hunting trophies from South Africa, eSwatini and Namibia. Other countries may hold stockpiles of horns confiscated from seizures but for where confiscated horns are returned to countries of origin or destroyed. Legally harvested horns can infiltrate the blackmarket because of thefts from government or private stockpiles, thefts from other sources (such as from museums or zoos), or by being illegally sold from private or government stocks. Intelligence collected during the Wildlife Justice Commission’s investigations indicates that criminal groups ‘routinely’ access stockpiles of harvested rhino horns for the illegal trade.²⁶⁶ Investigations indicate that a major source of rhino horns in illegal trade comes from privately owned stockpiles of harvested horns in South Africa. The Commission also uncovered that ‘Vietnamese and Thai nationals who own game ranches in South Africa’ were similarly

²⁶³ Ibid 82. Most of these cases involved shipping containers combining rhino horns with elephant ivory and/or pangolin scales.

²⁶⁴ Ibid 57.

²⁶⁵ Ibid 39.

²⁶⁶ Ibid 77.

equipped to South African nationals in supplying harvested horns.²⁶⁷ According to their investigations, some suppliers send mixed shipments comprising 20-40% poached horns with 60-80% harvested horns, suggesting they have connections to rhino poaching networks, indicating entrenched and organised criminality.²⁶⁸ A further indication of organised criminality is the apparent reliance on corruption to facilitate movement along supply chains, with one third of horns having been smuggled without attempts to conceal cargo.²⁶⁹ This suggests high confidence in the protection of their shipments, which is a noticeable departure from other illicit products that include wildlife products with a similar Africa-to-Asia supply chain such as elephant ivory and pangolin scale, which are almost always concealed.

IWT can manifest in ways that meet the international definition of transnational organised crime. This is evident from the profile of actors implicated in rhino horn trafficking (including levels of organisation) alongside the extent of cross-border activity involved in sourcing, transporting, and selling rhino horn. The presence of corruption in facilitating shipments, convergence with other wildlife and non-wildlife commodities, and the infiltration of criminal networks into legal stockpile supplies all contribute to the mounting challenge posed to the operation of CITES. However, the approach to understanding the dynamics of illegal trade and examples of best practice, as solidified at CoP19, demonstrate a willingness to continue forward.

3 The interaction between trade controls and blackmarket values

Further to the above, CITES' approach to rhino horn as a form of transnational organised crime as defined under UNTOC is complemented by its ongoing interest into how its approach to regulation has affected the illegal trade, notably in whether trade controls positively or negatively impact how lucrative trafficking can be for those involved. As discussed by parties around the drafting of Resolution Conf. 9.4 at CoP9, international measures had actually driven up the price in some countries while simultaneously driving the trade further underground.²⁷⁰ More recent data from the Wildlife Justice Commission indicates that the overall gross illicit income generated by rhino horn trade at the wholesale level during the 10 years from 2012-2021 is estimated to be between USD874 million – 1.13 billion.²⁷¹ This estimate is based on the African rhino poaching

²⁶⁷ Ibid 100.

²⁶⁸ Ibid 78.

²⁶⁹ Ibid 79.

²⁷⁰ See also Enrico Di Minin et al, 'Dismantling the poachernomics of the illegal wildlife trade' (2022) 265 *Biological Conservation* 109418.

²⁷¹ Wildlife Justice Commission (n 198) 22.

figures reported to the CITES Secretariat over this period (a total of 9,561 reported), and therefore does not account for the value of retail trade of processed products to consumers. Prices in Vietnam are consistently found to be less than one third (USD10,694/kg – 22,257/kg) of the commonly cited USD65,000/kg value, while in source countries such as South Africa or Mozambique prices can be as low as one tenth of that rate (USD3,382/kg – 10,667/kg). The notion that profit-driven criminal organisations will trade in whatever is lucrative was confirmed by the Commission, who underscore that ‘rhino horn trafficking is not controlled by dedicated criminal networks’²⁷² and that rhino horn is still considered profitable, despite the actual value being substantially lower than figures circulated in media. One of the trafficker’s quotes by the Commission in May 2021 went so far as to suggest that ‘wildlife is not profitable anymore except for rhino horn...’.²⁷³

4 The impacts of law enforcement measures by parties on crime displacement

Just as parties have sought to understand the relationship between regulation and the value of rhino horn, there is also consideration given to how efforts undertaken by parties to adhere to resolutions and decisions related to rhinos under the Convention in some jurisdictions have affected others. The spatial displacement of poaching (see, for example CoP17) and re-routing of shipments to safer ports are of particular significance in the case of rhino trafficking (see, for example, CoP19). The spatial displacement of crime over the last decade further confirms that networks are responding to successful law enforcement efforts. On the supply-end, the Wildlife Justice Commission notes that rhino poaching appears to be relocating from Kruger National Park to other parks and provinces in South Africa (such as Hluhluwe-iMfolozi Park in KwaZulu-Natal province), as well as to other countries in southern Africa (such as Botswana and Namibia).²⁷⁴ As to trends in transit, Cambodia and European countries have been flagged as locations for future concern, following the trend in re-routing of shipments from Hong Kong SAR to Malaysia.²⁷⁵ This spatial displacement of trafficking in response to law enforcement efforts demonstrates the resilience and capacity for actors to adapt, stressing the need for enhanced measures along supply chains.

²⁷² Ibid 87

²⁷³ Ibid 130.

²⁷⁴ Ibid 34.

²⁷⁵ Ibid.

5 *The impact of online trade*

The impact of online trade is one of the more recent variables in CITES' approach to illegal trade in species, with references in the core resolutions on 'Demand reduction strategies to combat illegal trade in CITES-listed species' and 'Compliance and enforcement'. Efforts to investigate and counter 'wildlife crime linked to the Internet' began at CoP15 with the first related amendment of Resolution Conf. 11.3, which has been subsequently revised to include lengthy recommendations. Online advertisements for alleged rhino horn products have been documented in the IUCN/TRAFFIC reports, such as the results of surveys including illegal internet trading.²⁷⁶

The impact of online trade and payment gateways on the illegal trade in rhinoceros horn continues to be a growing area of concern in connecting actors along illicit supply chains and facilitating illicit financial flows across borders. The Commission's findings identified the majority of illicit rhino horn transactions as being brokered between close trusted contacts, with traders favouring direct messaging and social media applications, in contrast to 'extremely low' levels of trade occurring on e-commerce platforms (eg GUCN, Alibaba, 1688, Taobao, and Tmall).²⁷⁷ WhatsApp is commonly used by traffickers globally, with many opting to move communications to WhatsApp after initially making contact with buyers via a social networking platform such as Facebook. WeChat, Telegram and Signal were also named as communication platforms.²⁷⁸ The movement to transactions using mobile phones and social media in response to increasing restrictions was recently described by the eminent expert, Lucy Vigne, as follows:

As restrictions on rhino horn and ivory trade have increased, more items are sold from mobile phones and on social media. Traders have shown me their products for sale on smartphones in Indochina and China. Blackmarket sales 'under the counter' have been increasing. Social media especially WeChat that started in China in 2011, makes closed chat groups and sales of ivory and rhino horn simple. Sellers on different sites can switch accounts to cover their tracks and stay anonymous.²⁷⁹

A key observation from Vigne's account is the role that online anonymity plays in enabling trade, which presents a challenge to platform moderation and law enforcement efforts. Studies by TRAFFIC have revealed that code words can be employed to keep online sales covert. While such

²⁷⁶ See, eg, Richard H Emslie et al, *A report from the IUCN Species Survival Commission (IUCN SSC) African and Asian Rhino Specialist Group and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP15)*, CITES CoP17 Doc. 68 Annex 5.

²⁷⁷ Wildlife Justice Commission (n 198) 18.

²⁷⁸ Ibid.

²⁷⁹ Vigne (n 199) 50.

codewords are generally kept confidential, TRAFFIC found that ivory was often called ‘XY’, ‘jelly’, and ‘blood material’; whereas rhino horn was called ‘XJ’ and ‘Xi Jiao’.²⁸⁰ TRAFFIC reports that wildlife cybercrime in China now sees sellers employing a couple of tactics to avoid detection. These include using images, emojis and icons rather than text for advertisements (which requires regulators to manually filter listings); and deliberately posting between the hours of 9pm and 6am the following day to capitalise on periods of weaker manual detection.²⁸¹ These counter-detection strategies for listings are of great effect on social media. Social algorithms, which are designed to connect account holders and prospective buyers with supply chain actors, operate faster than accounts can be reported or removed by moderators. The movement of payment methods are similarly evasive. According to the Commission, the four methods most frequently identified are cash payments, bank transfers, alternative funds transfer systems (such as hawala or feiqian) and mobile payment services.²⁸² The reduction in physical markets due to COVID-19 saw rhino horn and a host of other wild-sourced products touted as cures and health tonics to boost immunity online, including generating a greater audience of social media users on platforms such as TikTok during lockdowns. Angong Niu Huang Wan pills, also known as ‘Bezoar Chest Functioning pills’, were listed by China’s National Health Commission as approved COVID-19 treatments.²⁸³ These pills were traditionally made using rhinoceros horn by traditional medicine practitioners until it was banned in 1993 and subsequently substituted with buffalo horn.²⁸⁴ However, the CITES Secretariat’s report cites to Cheung et al who found that practitioners were prescribing rhino horn to treat ailments, including those caused by SARS and COVID-19. Trends in online marketing of rhino horn continue to emerge in the post-pandemic outbreak period, with monitoring in Vietnam by TRAFFIC (2022) identifying online marketing for a new product for a ‘glue’ reported to be a combination of rhino horn, rhino skin, pangolin, seahorse, gecko, and other components. The rhino horn ‘glue’ was found in 27% of online advertisements for rhinoceros specimens as an all-purpose treatment, including ‘as a treatment

²⁸⁰ See TRAFFIC, *Combating Wildlife Crime Linked to the Internet: Global Trends and China’s Experiences* (TRAFFIC, 2019).

²⁸¹ Ibid 8.

²⁸² Wildlife Justice Commission (n 198) 22.

²⁸³ ‘China and Laos wildlife traffickers exploiting coronavirus fears top peddle illegal wildlife’, *Environmental Investigation Agency* (Web Page, 7 February 2020) <[²⁸⁴ *Nineteenth meeting of the Conference of the Parties – Rhinoceroses \(Rhinocerotidae SPP.\)* \(n 207\) 23.](https://eia-international.org/news/china-and-laos-wildlife-traffickers-exploiting-coronavirus-fears-to-peddle-illegal-wildlife-fake-cures/#:~:text=7%20February%202020-,China%20and%20Laos%20wildlife%20traffickers%20exploiting%20coronavirus%20fears%20to%20peddle,and%20other%20endangered%20species%20products.>.</p></div><div data-bbox=)

for male sexual enhancement, as a tonic for the liver, kidneys, and eyes, as a detoxicant, to strengthen joints, and potential cancer cure'.²⁸⁵

IV CONCLUSION

In the absence of any express mention of wildlife crime in the Convention's Preamble or operative clauses, the Convention's approach to IWT has developed largely through soft law, such as CoP resolutions and decisions, especially those regarding compliance and enforcement measures. CITES' governing bodies may take action against parties implicated in trade in contravention of the Convention using the procedures outlined in Chapter V. Criminal elements of the trade are addressed only insofar as their trade involves listed specimens and where parties act against those involved within their jurisdictions. Albeit, this will not always take the form of a criminal justice response with appropriately deterrent penalties. Secondary elements of CITES' approach to IWT include: the collection of information on illegal trade through various sources (eg third-party intelligence from NGOs, annual illegal trade reports, and task forces); promotion of the UNODC's *Guide on Drafting Legislation to Combat Wildlife Crime* (2018)²⁸⁶ within its *Revised Draft Model Law on International Trade in Wild Fauna and Flora* (2021);²⁸⁷ and emphasis on capacity-building and collaboration through the ICCWC and other forums, including those created under the auspices of the Convention. Other actions by the parties will affect IWT including through demand reduction efforts, which have become more commonplace in the resolutions and decisions of the CoP.

The hallmarks of CITES' response to rhino horn trafficking as a threat to the survival of rhinos are broadly consistent with the principles embodied in the Declaration on Megafauna, which is further informed by the Convention's expression of intrinsic and instrumental values of nature advancing a multi-pronged justification for species conservation. Six hallmarks typifying CITES' response to rhino horn trafficking may be drawn from its past fifty years of operation. These include: the primacy of the Convention's mandate; the emergence of a collaborative evidence-informed decision-making architecture; tensions between range states and non-state actors;

²⁸⁵ Ibid 25.

²⁸⁶ United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018).

²⁸⁷ *Model Law on International Trade in Wild Fauna and Flora – Revised Draft* (CITES Secretariat, 2021); CITES (Secretariat), *National Laws for Implementation of the Convention*, CoP19/Doc.28 (14-25 November 2022) [37]: the UNODC Guide was developed with the express intention of complementing the CITES Model Law in response to the increasing focus on combating wildlife crime by parties to the Convention.

demand reduction as a key element in supporting trade controls; the emergence of a whole-of-chain approach expanding focus to include territories of transit in addition to supply and demand; and an increasing focus on transnational organised crime. The sixth hallmark features several sub-components: emphases on profiling and responding to transnational organised crime as defined under UNTOC; the interaction between trade controls and black-market values; the impacts of law enforcement measures by parties on crime displacement; and the impact of online trade. The conclusions and implications that may be drawn from this case study will be provided in this thesis's concluding chapter.

This thesis has examined how the illegal wildlife trade ('IWT') transcends its conventional characterisation as a conservation challenge. The involvement of criminal actors requires a more appropriate international architecture to combat wildlife crime, such as rhino horn trafficking. IWT threatens security through the presence of organised crime and the corruption that enables it undermines good governance and the rule of law. This may contribute to civil conflict and elicit militarised responses. The overlapping geographies of armed conflict and biodiversity-rich areas gives further rise to investigate the relationship between conservation and security, including what roles, actors and legal architectures are in-play on more complex landscapes, such as where armed groups or eco-guards have been implicated in IWT.

This final chapter considers how enforcement ought to be guided in tackling IWT in three parts. Part I reflects on the conservation-security nexus, including consideration within CITES. Part II turns to the question of wildlife as 'conflict resources' and the novel practice of the United Nations Security Council where actors within its purview have engaged in wildlife trafficking. In conclusion, Part III considers some of the rhetoric that feeds and fuels the securitisation of conservation. Specifically, it canvasses 'poachers-as-terrorists', 'war talk' and 'green militarisation'. Ivory and rhino horn trafficking, as the case study commodity, is employed to explore the concepts and responses throughout the Chapter. Through examining the broader securitised discourse during a period where IWT rose in profile in international law, including CITES, this Chapter rounds off the thesis by recommending that IWT be dominantly understood through the lens of crime rather than of war, strengthening the case for a global agreement on wildlife crime to complement CITES' regulation of legal trade as raised in the thesis's conclusion.

I THE CONVERGENCE OF CONSERVATION AND SECURITY CONCERNS

The relationship between environmental factors and violent conflict is well-recognised. On 6 November 2020, the *International Day for Preventing the Exploitation of the Environment in War and Armed Conflict*, United Nations Secretary-General Antonio Guterres highlighted: 'Conflict and the environment are deeply interlinked...All too often, the environment is among the

casualties of war, through deliberate acts of destruction or collateral damage, or because during conflicts, governments fail to control and manage natural resources'.¹

Guterres stressed the geospatial intersection between armed conflict and areas boasting natural resources, citing a natural resource dimension in 'at least 40 per cent of all intrastate conflicts'.² This claim is supported by studies suggesting that, between 1950 and 2000, over 90% of major armed conflicts occurred in countries with biodiversity hotspots, with more than 80% of these conflicts having taken place directly within the bounds of hotspots themselves.³ Between 1989 and 2018, armed conflicts occurred in 78% of the species ranges for terrestrial mammals and 85% of the species ranges for birds,⁴ and armed conflict is associated with declining populations of threatened species.⁵ With 36 species-rich biodiversity hotspots now accounting for a fraction of Earth's land surface, there are concerns that wild species both fall victim to and may be among the natural resources exploited during armed conflict.

Just as wildlife conservation has expanded its scope to include criminality, it has also evoked securitised language in identifying threats to human and environmental security.⁶ Indeed, the emergence of green criminology served to highlight the security dimension of harm associated with wildlife trafficking, broadening the scope of actors, tools, and expertise required as well as illuminating the extent of criminal activity involved, including the involvement of transnational organised crime syndicates. While the concept of security is definitionally contested, 'securitisation' may be defined as the process whereby a threat is deemed to be sufficiently serious to merit particular and prioritised attention the diversion of government resources to mitigate or otherwise resolve the threat, including militarised measures.⁷ In 2012, a United States Senate Committee on Foreign Relations held a hearing on *Ivory and Insecurity: The Global Implications of Poaching in Africa*. Evidence submitted to the committee by Global Financial

¹ 'The natural environment is also a casualty of war, Guterres warns', *UN News* (Web Page, 6 November 2020) <<https://news.un.org/en/story/2020/11/1077032>>.

² *Ibid.*

³ Thor Hanson et al, 'Warfare in Biodiversity Hotspots' (2009) 23(3) *Society for Conservation Biology* 578. 'Major' armed conflicts were defined in this research as those with more than 1,000 casualties.

⁴ Uttara Mendiratta et al, 'Mammal and bird species ranges overlap with armed conflicts and associated conservation threats' (2021) 14(5) *Conservation Letters* <<https://doi.org/10.1111/conl.12815>>. These findings were noteworthy as it revealed that global species assessments such as the IUCN Red List under-estimate the number of species adversely affected by armed conflict, with the Red List recognising only 107 species as threatened by 'war, civil unrest and military exercises' as opposed to the 615 species identified in the study as exposed to both widespread and frequent conflicts.

⁵ *Ibid.*

⁶ This phenomenon, inclusive of many of the seminal political events noted in this Chapter, has been chronicled meticulously by Keith Somerville. See Keith Somerville, *Ivory: Power and Poaching in Africa* (Oxford University Press, 2016).

⁷ Peter Hough et al, *International Security Studies* (Routledge, 2017).

Integrity's Tom Cardamone described wildlife trafficking as posing 'serious national security concerns for the United States and our partners'.⁸ In commenting on the situation in Central Africa in 2013, United Nations Secretary-General Ban Ki-moon referred to wildlife poaching as 'a grave menace to sustainable peace and security'.⁹ However, it was the International Fund for Animal Welfare's report entitled *Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade* that saw the convergence of crime and global security concerns introduced into mainstream conservation discourse: '[i]n the post 9/11 world...illegal wildlife trade is no longer only a conservation or animal welfare issue. It is a national and global security issue...'.¹⁰ The report refers extensively to elephant poaching, likening ivory to blood diamonds, and looks beyond Africa in referring to reports of militants affiliated with al-Qaeda tapping into the illegal trade in ivory, tiger pelts, and rhino horns in India, Nepal, Burma, and Thailand.¹¹

Analyses of documents submitted to CITES CoPs detailing the response to elephant poaching in the mid-2000s illuminates how security concerns began to permeate the international legal architecture for high-level conservation decision-making. TRAFFIC submitted its report on the Elephant Trade Information System ('ETIS') and illicit trade in ivory to CoP13 in 2004, noting that large consignments of ivory frequently moved out of conflict areas in the northern and eastern parts of the Democratic Republic of the Congo ('DRC') which was the most significant source of ivory on the Western African market.¹² The situation was not assisted by a lack of effective law enforcement in Kinshasa which served as an ivory centre away from major conflict zones. Evidence suggesting the same was then presented at CoP14 which further elaborated that the DRC was the primary source of ivory in West African and Sudanese markets, with demand in Asian markets being met through the movement of consignments via Uganda, through seaports in East Africa (eg in Kenya and Tanzania).¹³

Subsequently, it was in the lead-up to and at CoP16 where the relationship between large-scale poaching and armed conflicts rose to prominence. In late 2012, CITES Secretary-General, John

⁸ Committee on Foreign Relations United States Senate, *Ivory and Insecurity: The Global Implications of Poaching in Africa* (US Government Printing Office, 2012) 17.

⁹ 'UN works to protect great apes, habitat, amid ongoing instability in DR Congo', *UN News* (Web Page, 7 November 2013).

¹⁰ Marina Ratchford, Beth Allgood and Paul Todd, *Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade* (International Fund for Animal Welfare, 2013) 7.

¹¹ *Ibid* 15.

¹² Tom Milliken et al, 'The Elephant Trade Information System (ETIS) and the Illicit Trade in Ivory: A report to the 13th meeting of the Conference of the Parties to CITES' as contained in Annex of CITES CoP13 Doc.29.2. See also Marianne Courouble, Francis Hurst and Tom Milliken, *More Ivory than Elephants: Domestic Ivory Markets in Three West African Countries* (TRAFFIC Online Report Series No 8, December 2003).

¹³ TRAFFIC, *Monitoring of Illegal Trade in Ivory and Other Elephant Specimens*, CITES CoP14/Doc.53.4 (3-15 June 2007).

Scanlon, welcomed the United Nations Security Council's call for an investigation into the alleged involvement of the Lord's Resistance Army ('LRA') in elephant poaching and ivory smuggling and communicated the Secretariat's willingness to cooperate in investigations of rebel militias implicated in wildlife crime.¹⁴ At CoP16, by way of confirmed incidents relating to elephants, the Secretariat cited the following: the Government of Cameroon's deployment of soldiers into Bouba N'Djida National Park in response to heavily armed and well-organized groups from Chad and Sudan; the slaughter of 22 elephants in the Garamba National Park in the DRC in a single raid aided by a helicopter and high marksmanship; a heavily armed rebel attack on the headquarters of the DRC's Okapi Wildlife Reserve requiring military intervention; and the reprisal killings of park rangers in Zakouma National Park in Chad.¹⁵ The Secretariat's report noted that some military personnel had also been implicated in illegal activities, and acknowledged reports suggesting ivory was being sold or exchanged for weapons and ammunition by 'some of Africa's most notorious armed groups, such as the Lord's Resistance Army, the Shabab or Darfur's Janjaweed'.¹⁶ The Secretary-General provided comment on the UN Secretary-General's report to the Security Council following the closure of CoP16, citing 'serious impacts on people and on national and regional security'.¹⁷

At CoP17, a document on the 'Closure of Domestic Markets for Elephant Ivory' drew attention to the security threat posed by ivory trafficking, suggesting that some cases involved the funding of militia and terrorist groups.¹⁸ Following debate regarding how to encapsulate these linkages in resolutions, an amended preambulatory clause was added into Resolution Conf 10.10 on 'Trade in Elephant Specimens', which outlined the myriad of consequences associated with the increasing scale of poaching of elephants and trafficking in ivory, including the phrases: 'undermines the rule of law and security' and 'in some cases provides funding to groups that destabilize governments'.¹⁹ This wording remains in the current version of the resolution. It is

¹⁴ 'CITES welcomes United Nations Security Council call to investigate links between elephant poaching, ivory smuggling and illicit financing of the LRA' (Press Release, CITES, 12 January 2021) <https://cites.org/eng/news/pr/2012/20121222_UNSC_elephant_LRA.php>.

¹⁵ CITES Secretariate, *Monitoring of illegal trade in ivory and other elephant specimens*, CITES CoP16/Doc.53.2.1 (3-14 March 2013).

¹⁶ *Ibid* 2.

¹⁷ 'UN Secretary-General's report on Central Africa links illegal ivory trade to the Lord's Resistance Army' (Press Release, CITES, 12 January 2021) <https://cites.org/eng/news/pr/2013/20130523_un_lra.php>.

¹⁸ *Closure of Domestic Markets for Elephant Ivory*, CITES CoP17/Doc.57.2 (24 September-5 October 2016) [4]: 'The poaching of elephants and trafficking in ivory is facilitated by international criminal networks and syndicates, fuels and is fuelled by corruption, undermines the rule of law and security, and in some cases provides funding to those involved with militia and terrorist activities.'

¹⁹ *Trade in elephant specimens*, CITES Resolution Conf. 10.10 (Rev. CoP17): 'CONCERNED that the increasing scale of poaching of elephants and trafficking in ivory threatens the survival of many elephant populations; undermines the ecological integrity of African forest and savannah ecosystems; is facilitated by international criminal networks and

worth noting that parties to CITES have also noted the risks posed by heavily armed groups and the need to take active measures to discourage military personnel from involvement in the poaching and consumption of illegal wildlife products in the operative clauses of more general resolutions, notably operative paragraph 10 of Resolution Conf 11.3 (Rev CoP19) on 'Compliance and Enforcement'.²⁰

Just as CITES began to address the convergence of transnational organised crime and security concerns, so too did other organs of public international law. For example, through Economic and Social Council ('ECOSOC') Resolution 2012/19, the Council not only recognized 'the involvement of transnational criminal organisations in all aspects of crimes that have a significant impact on the environment',²¹ but went further in 'recognizing that transnational organized crime had diversified and represented a threat to health and safety, security, good governance and the sustainable development of States'.²² Similarly, the General Assembly's *Tackling illicit trafficking in wildlife* suite of resolutions recognised that:

illicit trafficking in wildlife contributes to the extinction of many species and damage to ecosystems and rural livelihoods, including those based on ecotourism, undermines good governance and the rule of law and, in some cases, threatens national stability and requires enhanced transnational and regional cooperation and coordination in response.²³

These sentiments were echoed by the United Nations Environment Assembly in resolutions 2014, 1/3 and 2016, 2/14. 2016 also saw the publication of two significant publications from UNEP and INTERPOL recognising natural resource exploitation, and trafficking in particular, as a serious threat to security, peace and rule of law.²⁴ Moreover, both reports expanded the framing of wildlife and other natural resources as casualties of conflict to additionally being used to fuel sustained regional instability. Research into the linkages between wildlife outcomes and armed conflict have described how wildlife may directly support armed conflict, notably through the use of high-value wildlife products (eg so called 'conflict ivory') in conflict financing as well as the

syndicates; fuels and is fuelled by corruption; undermines the rule of law and security; harms the sustainable economic development of local communities; is a serious risk to the lives and families of those charged with protecting elephants and other wildlife species, and in some cases provides funding to groups that destabilize governments.' The wording remains following subsequent amendment at CoP19. See *Trade in elephant specimens*, CITES Resolution Conf. 10.10 (Rev. CoP19).

²⁰ *Compliance and enforcement*, CITES Resolution Conf. 11.3 (Rev. CoP19).

²¹ *Strengthening international cooperation in combatting transnational organised crime in all its forms and manifestations*, ESC Res 2012/19, UN ESCOR. UN Doc E/RES/2012/19 (17 September 2012) 3.

²² *Ibid* 1.

²³ *Tackling illicit trafficking in wildlife*, GA Res 73/343, UN Doc A/RES/73/343 (16 September 2019, adopted 20 September 2019) 2.

²⁴ INTERPOL and UN Environment, *Strategic Report: Environment, Peace and Security – A Convergence of Threats* (International Criminal Police Organization, 2016); C Nellermann et al (eds), *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security* (UNEP, 2016).

harvesting of wildlife to feed combatants.²⁵ Megafauna, including elephants, are particularly vulnerable during periods of conflict due to their size and need for large areas of suitable habitat,²⁶ in addition to being a prime target for ivory and meat hunters.²⁷

II WILDLIFE AS 'CONFLICT RESOURCES' & NOVEL PRACTICE BY UNITED NATIONS SECURITY COUNCIL

In central Africa, wildlife trade has become an important means of financing armed conflicts. Armed groups on both sides of conflicts, with the means and access to valuable wildlife, frequently take advantage of their situations to reap financial benefits.²⁸

The term 'conflict resource' has been largely defined through identifying characteristics inherent in the resources themselves coupled with modes of access and intended uses. Most notably, Le Billon's classic definition encompasses: 'the control, exploitation, trade, taxation or protection of natural resources, which contributes to, or benefits from, the context of armed conflict'.²⁹ In articulating the relationship between resources and conflict, Le Billon explains that conflict resources exist where the 'resource sector rewards belligerents, making the escalation and prolongation of violent conflict more likely'.³⁰ With respect to conditions that create 'spaces of opportunity',³¹ or at the very least enhance the prospective 'exploitability' of a resource,³² the literature observes that the presence of local, regional and transnational actors facilitates the networked flow of commodities. This is compounded exponentially in regions experiencing an absence of a stable formalised state possessing the capacity to effectively govern and regulate within and around its borders. Classic examples of conflict resources include diamonds, natural gas, oil, uranium, gold, coltan and other precious gems and minerals. The United Nations has offered its definition of conflict resources arising from the example of conflict diamonds, wherein such resources 'originate from areas controlled by forces or factions opposed to legitimate and

²⁵ Kaitlyn W Gaynor et al, 'War and wildlife: linking armed conflict to conservation' (2016) 14(10) *Frontiers in Ecology and the Environment* 533.

²⁶ Rene L Beyers et al, 'Resource Wars and Conflict Ivory: The Impact of Civil Conflict on Elephants in the Democratic Republic of Congo – The Case of the Okapi Reserve' (2011) 6(11) *PLoS One* <<https://doi.org/10.1371/journal.pone.0027129>>. The authors cite the impact of the 1994 Rwandan genocide as a prime example. The displacement of people saw significant habitat loss during the refugee crisis, including 300km² of deforested land in Virunga National Park.

²⁷ Ibid; Hanson et al (n 3); Joseph P Dudley et al, 'Effects on War and Civil Strife on Wildlife and Wildlife Habitats' (2002) 16(2) *Society for Conservation Biology* 319.

²⁸ Natasha White, 'The Political Economy of Ivory as a "Conflict Resource"' (2014) 21(2) *Peace and Conflict Studies* 172.

²⁹ Philippe Le Billon, 'Diamond Wars? Conflict Diamonds and Geographies of Resource Wars' (2008) 98 *Annals of the Association of American Geographers* 345, 349.

³⁰ Ibid 348.

³¹ Ibid.

³² Eugene Silberberg and Gregory Ellis, *Principles of Microeconomics* (Pearson, 2007).

internationally recognised governments, and are used to fund military opposition to those governments'.³³ As to whether a high-value natural resource must be the dominant cause of conflict or simply a factor fuelling it, White, citing Wennmann, observes that the resource typology has 'come to be understood in terms of financing hostilities, as well as shaping motives of violence, the behaviour of armed groups and the duration of conflict, not just its onset.'³⁴ Thus, the contemporary position appears to suggest that a high-value natural resource may satisfy the classification where it influences conflict dynamics as opposed to being the direct and complete cause for the outbreak of hostilities aimed at resource capture. For further detail, a consolidated taxonomy of criteria for determining whether a resource may be defined as a conflict resource is offered below:

Criterion	Description
Lootability ³⁵	<ul style="list-style-type: none"> • Exploitation of the resource more likely to benefit locals • Accessible and convenient • Low skill required to harvest
Location ³⁶	<ul style="list-style-type: none"> • Resources are diffuse, therefore so actors using the resource can switch location easily³⁷ • Resources often located in protected areas (eg national parks)³⁸
Portability	<ul style="list-style-type: none"> • Item is easily concealed and therefore easily transported • Size: smaller items are less likely to be detected • High weight-to-value ratio³⁹

³³ 'General Assembly Adopts Resolution Encouraging Strengthening of Kimberley Process, Recognizing Diamond Certification Scheme's Key Role in Peacebuilding, Development' (Press Release, United Nations, 3 March 2020) cited in Shireen Daft, *The Relationship between Human Security Discourse and International Law: A Principled Approach* (Routledge Research in International Law, 2017) 192.

³⁴ White (n 28) 175, citing Achim Wennmann, 'A political economy of armed conflict?' (Presentation, Second Global International Studies Conference, July 2008).

³⁵ See, particularly Richard M Auty, *Resource Abundance and Economic Development* (Oxford University Press, 2001); Roger Mac Ginty, 'Looting in the context of violent conflict: a conceptualisation and typology' (2004) 25(5) *Third World Quarterly* 857.

³⁶ See Le Billon (n 29) 28.

³⁷ See Silberberg and Ellis (n 32).

³⁸ Leo R Douglas and Kelvin Alie, 'High-value natural resources: Linking wildlife conservation to international conflict, insecurity, and development concerns' (2014) 171 *Biological Conservation* 270, 273.

³⁹ Michael Ross, 'Oil, drugs, and diamonds: How do natural resources vary in their impact on civil war?', in K Ballentine and J Sherman (eds), *Beyond greed and grievance: The political economy of armed conflict* (Lynne Reinner, 2003). Ross frames a high value to weight ratio and ease of transportation through a characteristic of 'obstructibility'.

Liquidity	<ul style="list-style-type: none"> • Resource can satisfy the short-term needs of the group exploiting it (eg it can be traded for arms, munitions, food)
Ready-to-use	<ul style="list-style-type: none"> • Raw item has inherent value • Resource does not have to be heavily processed the item for it to be valuable
Traceability	<ul style="list-style-type: none"> • Difficult to trace resource back to source • Difficult to distinguish between legal/illegal sources
Legality	<ul style="list-style-type: none"> • If trade in resource is subject to sanctions, the state is less likely to exploit the resource, leaving access to rebel groups open • Conversely, illicit resource may be able to enter a legitimate international market through illegitimate means
Role of the state and market	<ul style="list-style-type: none"> • Corruption, poor leadership/governance and social fragility leave resources vulnerable to exploitation by rebel groups • Exploitation of the resource driven by cultural/societal demand • Global economy facilitates trade
Nexus with Violence	<ul style="list-style-type: none"> • Group exploiting the resource constitutes an armed non-state actors • Nexus exists between exploitation of the resource and armed conflict and/or human rights violations

Table 1: A taxonomy of conflict resources.

Prior to the megafauna poaching crisis, there was sparse reference to IWT as a threat to security or to wildlife within the theoretical framework of high value natural resources, the most common exception being Naylor’s discussion of ‘conflict ivory’ in 2005.⁴⁰ There is no mention of ivory in Le Billon’s *Wars of Plunder*, nor any account on wildlife in Ljala and Rustad’s *High-Value Natural Resources and Post-Conflict Peacebuilding*.⁴¹ This modest treatment of wildlife as

⁴⁰ RT Naylor, ‘The underworld of ivory’ (2005) 42 *Crime, Law and Social Change* 261.

⁴¹ Philippe Le Billon, *Wars of Plunder: Conflicts, Profits and the Politics of Resources* (Oxford University Press, 2014) (*‘Wars of Plunder’*); Paivi Lujala and Siri Aas Rustad (eds), *High-Value Natural Resources and Post-Conflict Peacebuilding* (Routledge, 2012).

influencing conflict dynamics is noteworthy given earlier involvement of both state and non-state actors in the poaching and trafficking of wildlife, notably the elephant poaching crisis of the 1970s and 1980s prior to the global ivory trade ban in 1989. As Naylor writes ‘the ivory trade was associated with civil strife long before “blood diamonds” or “conflict timber” came into vogue’.⁴² The trafficking of ivory and rhino horn was used to sustain Apartheid South Africa’s involvement in military campaigns.⁴³ The National Union for the Total Independence of Angola (UNITA) and the Mozambican National Resistance (RENAMO) were also involved in trafficking, with evidence suggesting members of South Africa’s special forces (many of whom had been employed in the wildlife sector, for example, as game wardens or professional hunters) facilitated the export of ivory through Pretoria.⁴⁴ With respect to Namibia, collusion with criminal groups and front companies saw food and other support sent to UNITA, and ivory, rhino horn and timber brought out of UNITA-held territory.⁴⁵

While wildlife commodities such as ivory and rhino horn have exhibited many of the scholarly criteria to qualify as conflict resources, there is an aversion to formalising this classification in international law. The United Nations declined to classify ivory as a conflict resource in 2015 despite publication of a letter to the General Assembly disseminated by National Geographic. This letter drew analogy between ivory and conflict diamonds as described under Resolution 55/56.⁴⁶ This refusal to classify ivory as a conflict resource may have disappointed conservationists; and runs contra to the claims of writers such as White and Douglas and Alie who suggest the ivory specifically, and wildlife more generally, are high-value natural resources befitting of the ‘conflict resource’ designation.⁴⁷ However, it must be noted that it should not be interpreted as the United Nations turning a blind eye to the involvement of armed groups in IWT. Rather, those actions should be viewed as an indication that the dynamics present were far more remote and complex in comparison to other resources listed at the time. In fact, prior to the classification request in 2015, the UN Security Council had taken unprecedented steps on the issue of IWT within its mandate.

⁴² Naylor (n 40) 261.

⁴³ Jasper Humphreys and MLR Smith, ‘War and wildlife: the Clausewitz connection’ (2011) 87(1) *International Affairs* 121, 129.

⁴⁴ Stéphane Crayne and Cathy Haenlein, ‘Poaching, Wildlife Trafficking and Conflict’ in Cathy Haenlein and MLR Smith (eds), *Poaching, Wildlife Trafficking and Security in Africa: Myths and Realities* (Routledge, 1st ed, 2017) 38.

⁴⁵ Stephen Ellis, ‘Of Elephants and Men: Politics and Nature Conservation in South Africa’ (1994) 20(1) *Journal of Southern African Studies* 53.

⁴⁶ *The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts*, GA Res 55/56, UN Doc A/RES/55/56 (29 January 2001, adopted 1 December 2001).

⁴⁷ White (n 28); Douglas and Alie (n 38).

IWT was raised before the Security Council several times over the course of 2013, culminating in two landmark resolutions adopted by the United Nations Security Council in January 2014.⁴⁸ The resolutions designate trade in ‘wildlife as well as wildlife products’ as a criterion to be considered when imposing Security Council sanctions in the DRC (pursuant to Res 2136) and Central African Republic (‘CAR’) (pursuant to Res 2134). The resolutions were primarily designed to target known armed rebel groups and authorise sanctions in the form of travel bans and the freezing of funds, other financial assets and economic resources against targeted individuals engaged in poaching and trafficking, as well as against individuals or entities supporting their activities.⁴⁹

The resolutions also provide mechanisms for identifying and monitoring poachers and traffickers through investigative and reporting tools. The CAR resolutions relating to illicit natural resource exploitation were initially focused on disrupting the mining and trade in ‘blood diamonds’ before broadening its scope to include wildlife and wildlife products. Similarly, the DRC resolutions identify the trade in minerals, particularly gold, as parallel commodities of concern. The Preamble to SC Res 2121, passed 10 October 2013, contains the first express reference to ‘poaching and trafficking of wildlife’ in ‘Condemning the devastation of natural heritage and noting that poaching and trafficking of wildlife are among the factors that fuel the crisis in the CAR...’⁵⁰ SC Res 2127 expressly reiterates this condemnation and imputed an additional dimension through repeated references to the illegality of activities as well as their role in ‘perpetuating’ ongoing conflict, wherein the Security Council:

condemns the illegal exploitation of natural resources in the CAR which contributes to the perpetuation of the conflict, and underlines the importance of bringing an end to these illegal activities, including by apply the necessary pressure on the armed groups, traffickers and all other actors involved.⁵¹

Subsequently, the Preamble to Res 2134 provides that the Security Council is ‘expressing concern that diamond smuggling and other forms of illicit natural resource exploitation, including wildlife poaching, are destabilizing forces in CAR, and encouraging the Transitional Authorities and the State Authorities to address these issues through all possible avenues...’⁵² Similar language was evoked in Res 2136 on the DRC, which recalls ‘the linkage between the illegal

⁴⁸ Hugh S Wilkins, ‘Linking Environment with Peace and Security – Decisions on Sanctions on Illicit Wildlife Trafficking’ (2014) 44(3) *Environmental Policy and Law* 277.

⁴⁹ See SC Res 2134, UN Doc S/RES/2134 (28 January 2014) paras 30, 32, 37; SC Res 2135, UN Doc S/RES/2135 (30 January 2014) para 4.

⁵⁰ SC Res 2121, UN Doc S/RES/2121 (10 October 2013) 2.

⁵¹ SC Res 2127, UN Doc S/RES/2127 (5 December 2013) para 16.

⁵² SC Res 2134, UN Doc S/RES/2134 (28 January 2014) Preamble.

exploitation of natural resources, including poaching and illegal trafficking of wildlife, illicit trade in such resources, and the proliferation and trafficking of arms as one of the major factors fuelling and exacerbating conflicts in the Great Lakes region of Africa'.⁵³

Given the prevalence of misinterpretation and misinformation in the rhetoric connecting wildlife trafficking and threats to peace and security, it is appropriate to examine what evidence prompted the Security Council to adopt this novel approach. This requires examination of the primary sources underpinning these decisions, namely the contemporaneous reports provided by the Group of Experts on the DRC and the Panel of Experts on the CAR.

The DRC Group of Experts first noted the use of ivory to fund armed groups in 2012, surmising that 'the Congolese armed forces continue to be plagued by criminal networks generating revenue for senior officers through their control over natural resources and contraband, including the trafficking of ivory from armed groups'.⁵⁴ Elements of Congolese armed forces were found to be operating a criminal network involved in mining and poaching with Mai Mai Luc. Mai Mai Morgan's raids on the armed forces and Congolese Wildlife Authority positions, included the commission of serious abuses against civilians plagued the region, followed by the killing of personnel and okapi at the Okapi Reserve ranger station. Ivory was exchanged for military supplies, arms, ammunition, uniforms, and communication equipment with a military region commander who had himself intervened in poaching-related cases and arrests, and who was found to have ordered substantial consignments of confiscated ivory to be shipped from Bunia to Kisangani. The exchange of ivory to supply militia resources was reported, with one figure of \$90 per kilogram recorded.⁵⁵ Mai Mai Morgan had also attacked mines and poached elephants for ivory between 2012 and 2013. In 2014, the Group decried 'the slaughter of elephants in the Democratic Republic of Congo' as 'one of the most tragic consequences of years of war and poor governance'.⁵⁶

The Group delineated between two tiers of actors involved in poaching in Garamba National Park: a major tier constituting local poachers, FARDC and international poachers from South Sudan; and lesser actors including the LRA,⁵⁷ park rangers and unknown aerial hunters. The LRA

⁵³ SC Res 2136, UN Doc S/RES/2136 (30 January 2014) 2.

⁵⁴ SC Let 843, UN Doc S/2012/843 (15 November 2012) 4.

⁵⁵ SC Let 433, UN Doc S/2013/433 (19 July 2013).

⁵⁶ 'UN sanctions on DR Congo militia finances by poaching', *BBC News* (online, 31 January 2014) <<https://www.bbc.com/news/world-africa-25978768>>.

⁵⁷ SC Let 42, UN Doc S/2014/42 (23 January 2014) 46-47. Ugandan authorities informed the Group that in February 2013 Ugandan and United States forces recovered six ivory tusks in the Central African Republic that were reportedly stashed by LRA members who came from the Democratic Republic of the Congo. On 18 May, park rangers engaged in a firefight with the LRA inside the park, killing two girls and wounding and capturing an 18-year-old boy.

was found to engage in a practice of taking most of their poached ivory to the CAR and burying some for later retrieval. They continued to be a group active in poaching in the DRC while committing human rights abuses against civilians. In 2016, this was reported to entail a dedicated poaching unit in Garamba and surrounding hunting reserves, comprised of approximately 30 combatants operating in small, decentralised teams. According to Kony's former personal assistant, the LRA ivory was graded according to 25 different pricing categories relating to weight, size and quality.⁵⁸ It was apparently Kony's policy to reserve the heaviest (and thus most valuable) pieces for later sale to another buyer or as a cache for future contingencies.⁵⁹ As to the future of elephant poaching in the region, the Group, in 2016, cited the widespread decline in elephants as making ivory 'an ever-diminishing and increasingly marginalised source of armed group financing, especially in comparison with other resources found in the eastern Democratic Republic of Congo, such as gold, tin, tantalum and tungsten'.⁶⁰

The Panel of Experts on the CAR has likewise reported on wildlife poaching activity in executing its mandate. The Panel attributed Séléka, a loose coalition of factions and armed groups, as among the key players said to use ivory akin to a conflict resource, with some commentators going further in referring to 'blood ivory' as Séléka's 'savings account'.⁶¹ By way of some background, prior to the first report of the Panel of Experts, Séléka forces ransacked and looted the WWF headquarters in April 2013. In June 2014, the Panel reported that poaching and wildlife trafficking have been central elements of the Séléka rebellion, including profiting from the bushmeat trade either through hunting themselves or by supplying arms and ammunition for others.⁶² The Panel provided a disturbing account of the defection of sixty 'ecoguards' ('those engaged through the European Union-funded Ecofaune project to patrol northern Bamingui-Bangoran and Manovo-Gounda-Saint Floris national parks), who joined the Séléka in looting a ranger post in Sangba and were involved in the killing of twelve elephants in the area in February 2013.⁶³ Once the group took control in Bangui in March, the Ministry of Water and Forestry was also looted, including the theft of 135 AK-47 assault rifles and 124 confiscated ivory tusks. In May, the group authorised the activities of heavily armed poaching, resulting in the killing of 26 elephants and the removal of their tusks in Dzanga-Ndoki National Park. In October 2014, the

⁵⁸ SC Let 466, UN Doc S/2016/466 (23 May 2016) 35.

⁵⁹ Ibid. See also SC Let 1102, UN Doc S/2016/1102 (28 December 2016). The Group's investigations show that only a small portion of ivory from elephants in the Garamba National Park is sold locally in the Democratic Republic of the Congo.⁵⁹

⁶⁰ SC Let 466, UN Doc S/2016/466 (23 May 2016) para 169.

⁶¹ Crayne and Haenlein (n 44) 51.

⁶² SC Let 452, UN Doc S/2014/452 (1 July 2014). This meat would travel to Bangui as well as Chad and the Sudan.

⁶³ Ibid 19.

Panel produced a dollar per kilogram estimate of Central African ivory, finding that it was generally traded through Cameroon for a local selling price of \$180 per kilogram.⁶⁴

In December 2015, the Panel's Final Report⁶⁵ offered details as to how porous borders escalated instability in the region.⁶⁶ Emboldened by the porous border, the Lord's Resistance Army, originally from Uganda, was able to find a 'safe haven in the Kafia Kingi enclave, a disputed area between the Sudan and South Sudan' from where Joseph Kony and his inner circle were able to 'instruct the few remaining loyal military commanders to loot and poach, inside the CAR and as far north as the northern DRC and bring back ivory, gold and diamonds'.⁶⁷ Aligning with the findings of the Group of Experts, the Panel found that this poached ivory predominantly originated from Garamba National Park in the DRC. Professional Sudanese poachers, two groups of approximately two hundred, competed with the LRA in some parts, and were found to be active in northern and eastern parts of the CAR. Sudanese poaching gangs were found to 'usually cohabit with ex-Séléka forces. The Panel found that Nyala (South Darfur) was home to the organisers of poaching gangs and the main destination for poached ivory and other wildlife products. The next Final Report in 2016 provided an update on the LRA movement, observing a 'spree' in the east, 'carrying out a number of civilian abductions',⁶⁸ and a reduction in trading activities in Kafia Kingi due to the expulsion of some fighters due to a 'fallout with local traders'; but maintained that 'the group continues to loot gold and diamonds and to poach wildlife, as do competing groups of Sudanese poachers'.⁶⁹

The 2017 Final Report underscored the extent of danger in the region, with 2017 being labelled 'the deadliest year for peacekeepers' in the CAR with 12 peacekeepers killed, and 'the most dangerous place for humanitarian actors to operate' with 13 humanitarians killed and three abducted.⁷⁰ The report notes that the Sudanese poaching groups remain active in the northeast and south-east of the CAR, 'especially inside Chinko National Park...but also the northern Bamingui-Bangoran and Manovo-Gounda-Saint Flores national parks'. Seizures revealed that gangs were equipped with AK-type assault rifles and sub-machine guns. The Panel chose to emphasise the importance of careful recruitment of rangers, given that conservation projects

⁶⁴ SC Let 762, UN Doc S/2014/762 (29 October 2014).

⁶⁵ SC Let 936, UN Doc S/2015/936 (21 December 2015).

⁶⁶ See, eg, *ibid* para 167: 'inhabitants of villages visited on three routes towards the Chadian border reported armed men identified as Janjaweed or poachers moving with fully loaded donkeys from either the Sudan or Chad in late September'.

⁶⁷ *Ibid* 2.

⁶⁸ SC Let 1032, UN Doc S/2016/1032 (5 December 2016) 3.

⁶⁹ *Ibid*.

⁷⁰ SC Let 1023, UN Doc S/2017/1023 (6 December 2017).

operate in areas under the control of armed groups. In 2018, hunting ammunition was found being sold openly in violation of the arms embargo,⁷¹ with similar types of ammunition found by rangers in Dzanga Sangha Special Reserve by individuals involved in hunting and poaching of protected species. Elephants were also found to be shot using high calibre ammunition. In 2019, the Panel reported that the CAR and Republic of Congo signed 12 agreements, including one on poaching and the illegal exploitation of forest products and wildlife and took efforts to address cross-border criminality,⁷² such as by supporting protected area patrols through an exemption to the Arms Embargo.⁷³

Involvement in the illicit exploitation of wildlife continues to feature in the criteria for designating individuals and entities on the Security Council sanctions regime lists for both the CAR and DRC. With respect to the former, the Security Council Committee concerning the CAR is mandated to consider designating individuals or entities on the basis of the criteria contained in paragraphs 20 and 21 of Res 2399 (2018), as extended by paragraph 5 of Res 2507 (2020) and reaffirmed by paragraph 5 of Res 2588 (2021).⁷⁴ Paragraph 21(e) of Res 2399 maintains the criterion for individuals or entities ‘[p]roviding support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, wildlife as well as wildlife products in or from the [CAR]’.⁷⁵ With respect to the latter, the Security Council Committee concerning the DRC⁷⁶ is guided by the general criterion for designation under paragraph 7 of Res 2293 in relation to those ‘engaging in or providing support for acts that undermine the peace, stability or security of the [DRC]’,⁷⁷ including but not limited to a list of activities under paragraph 7(g) ‘supporting individuals or entities, including armed groups or criminal networks, involved in destabilizing activities in the DRC through the illicit exploitation or trade of natural resources, including gold or wildlife as well as wildlife products’.⁷⁸ The LRA

⁷¹ The hunting ammunition produced in Italy and Spain, and legally sold to ‘ARICAM’ in Douala, Cameroon, is of recent manufacture (one of the boxes indicates 22 May 2017 as production date).

⁷² One establishing a subcommittee on defence and security and one establishing a subcommittee on borders.

⁷³ SC Res 2588, UN Doc S/RES/2588 (29 July 2021) para 1(f).

⁷⁴ ‘Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic’, *United Nations Security Council* (Web Page) <<https://www.un.org/securitycouncil/sanctions/2127>>; SC Res 2127, UN Doc S/RES/2127 (5 December 2013); SC Res 2399, UN Doc S/RES/2399 (30 January 2018) paras 20-21; SC Res 2507, UN Doc S/RES/2507 (31 January 2020) para 5; SC Res 2588, UN Doc S/RES/2588 (29 July 2021) para 5.

⁷⁵ SC Res 2399, UN Doc S/RES/2399 (30 January 2018) para 21(e).

⁷⁶ ‘Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo’, *United Nations Security Council* (Web Page) <<https://www.un.org/securitycouncil/sanctions/1533>>; SC Res 1533, UN Doc S/RES/1533 (12 March 2004).

⁷⁷ SC Res 2293, UN Doc S/RES/2293 (23 June 2016) para 7

⁷⁸ *Ibid* para 7(g).

remains listed on the Security Council 2127 sanctions list,⁷⁹ as are Joseph Kony,⁸⁰ subject to an arrest warrant issued by the International Criminal Court,⁸¹ and his sons Ali Kony and Salim Kony.⁸² Involvement in ivory trafficking features in the narrative summaries for all listings.

The significance of including trade in wildlife and wildlife products as a criterion in imposing Security Council sanctions served to integrate the illicit trade in wildlife into the Security Council's scope under Chapter VII of the United Nations Charter with respect to 'the existence of any threat to the peace, breach of the peace, or act of aggression', the determination of which permits coercive countermeasures, including the use of peacekeeping forces to fight armed groups involved. As Peters observes, this 'novel, eco-sensitive practice of the Security Council' serves as an extension of its post-Cold War practice of expanding the concept of a 'threat to the peace' beyond inter-state armed conflict.⁸³ As Wilkins explains, the reason the move was so innovative was that while the exploitation of natural resources already existed as a designation criterion for sanctions regimes in the past, it has largely been restricted to the exploitation of minerals and timber.⁸⁴ In providing these examples of novel practice, the Security Council highlighted the importance of expanding the conventional scope of security and mainstreaming concern for environmental issues where these intersect with those issues within an organ's remit. Indeed, Wilkins notes that the 2014 London Conference on the Illegal Wildlife Trade welcomed the resolutions of the Security Council and General Assembly, noting that the Security Council's action 'demonstrates the wider security, economic, social and development implications of the illegal wildlife trade'.⁸⁵ However, it is important to reflect on the extent to which the issue of illegal wildlife ought to be securitised, including consideration of consequences that may misdirect enforcement efforts.

⁷⁹ United Nations, 'Security Council Committee Concerning Central African Republic Lists One Individual and One Entity Subject to Measures Imposed by Resolution 2262 (2016)' (Press Release, SC/12272, United Nations Security Council, 7 March 2016).

⁸⁰ Ibid.

⁸¹ The ICC has charged Kony with twelve counts of crimes against humanity including murder, enslavement, sexual enslavement, rape, inhumane acts of inflicting serious bodily injury and suffering, and twenty-one counts of war crimes including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape, and enlisting, through abduction, of children under the age of 15 years.

⁸² United Nations, 'Security Council Committee Concerning Central African Republic Lists Two Individuals Subject to Measures Imposed by Resolution 2262 (2016)' (Press Release, SC/12487, United Nations Security Council, 23 August 2016).

⁸³ Anne Peters, 'Novel practice of the Security Council: Wildlife poaching and trafficking as a threat to the peace', *EJIL:Talk!* (Blog Post, 12 February 2014) <<https://www.ejiltalk.org/novel-practice-of-the-security-council-wildlife-poaching-and-trafficking-as-a-threat-to-the-peace/>>.

⁸⁴ Wilkins (n 48) 283.

⁸⁵ Ibid; *Conference Declaration on Illegal Wildlife Trade* (London, 14 February 2014) [7] <<https://allafrica.com/stories/201402172274.html>>.

Critical analysis of the relationship between armed conflict and wildlife as high-value natural resources has also come to the fore in recent years with the uptake of rhetoric around the 'war for biodiversity', 'green militarisation', 'poachers-as-terrorists' in academic circles, political discourse, and popular media. As noted by 't Sas-Rolfes et al., this discourse demonstrates a 'conflation of global security concerns with biodiversity loss'.⁸⁶ It must be said, however, that these narratives were successful in attracting greater political will to the wildlife crime arena.⁸⁷ In that sense, securitisation of the issue had fulfilled its promise of making wildlife crime of greater priority in domestic and international forums, attracting greater political and financial capital. On World Wildlife Day 2015, coupled with the occasion's theme of 'it's time to get serious about wildlife crime', President of the United Nations General Assembly, Sam Kahamba Kutesa, reiterated the involvement of 'rebel groups and terrorist groups' in the illicit trafficking of wildlife.⁸⁸ The names of groups implicated circulated around this time, many with sparse evidence of their precise involvement, included Boko Haram, Séléka, the Al-Qaeda-affiliated Jama'atul Mujahideen Bangladesh and Harkat-ul-Jihad-Islami, the Janjaweed, and most notoriously, the Lord's Resistance Army (led by the subject of the viral 'KONY 2012' campaign, Joseph Kony) and Al-Shabaab.⁸⁹

⁸⁶ Michael 't Sas-Rolfe et al, 'Illegal Wildlife Trade: Scale, Process, and Governance' (2019) 44(1) *Annual Review of Environment and Resources* 201, 209.

⁸⁷ Articles published by the New York Times and Spiegel International evoked the language of 'conflict ivory' and 'blood ivory' in 2012, statements from then US Secretary of State, Hillary Clinton, Senate Foreign Relations Committee Chairman, John Kerry, Deputy Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs, Brooke Darby, and the United States National Intelligence Council asserted the involvement of non-state actors including terrorists, rogue security personnel, rebel militias in wildlife trafficking to support their activities. See, eg, Jeffrey Gettleman, 'Elephants Dying in Epic Frenzy as Ivory Fuels Wars and Profits', *The New York Times* (online, 3 September 2012) <[https://www.nytimes.com/2012/09/04/world/africa/africas-elephants-are-being-slaughtered-in-poaching-frenzy.html#:~:text=Twenty%2Dtwo%20dead%20elephants%2C%20including,their%20prey%20from%20the%20ground](https://www.nytimes.com/2012/09/04/world/africa/africas-elephants-are-being-slaughtered-in-poaching-frenzy.html#:~:text=Twenty%2Dtwo%20dead%20elephants%2C%20including,their%20prey%20from%20the%20ground;)>; Horand Knaup and Jan Puhl, 'Brutal Elephant Slaughter Funds African Conflict', *Spiegel International* (online, 13 September 2012) <<https://www.spiegel.de/international/world/blood-ivory-brutal-elephant-slaughter-funds-african-conflicts-a-855237.html>>. See, in particular, Crayne and Haenlein (n 44) 46-48; Somerville (n 6) 233-236.

⁸⁸ The President went on the stress '[t]here is growing recognition worldwide that trafficking in wildlife poses a serious security risk, in addition to environmental and economic concerns'. Sam Kahamba Kutesa, 'Statement by the President at the Commemoration of World Wildlife Day' (Statement, General Assembly of the United Nations, 4 March 2015).

⁸⁹ Mark R Jacobson and Max Daurora, 'Significant Trends in Illicit Trafficking: A Macro View of the Problem and Potential Means to Address It' (Scientific Paper No 8, CIDOB, December 2014); Cathy Haenlein, Thomas Maguire and Keith Somerville, 'Poaching, Wildlife Trafficking and Terrorism' (2016) 86(1) *Whitehall Papers* 58; Leo R Douglas and Kelvin Alie, 'High-value natural resources: Linking wildlife conservation to international conflict, insecurity, and development concerns' (2014) 171 *Biological Conservation* 270; Justin S Brashares et al, 'Wildlife decline and social conflict' (2014) 345(6195) *Science* 376; Vanda Felbab-Brown, 'Wildlife and Drug Trafficking, Terrorism, and Human Security: Realities, Myths, and Complexities Beyond Africa' (2018) 7(4) *PRISM* 124.

The 'poacher-as-terrorist' archetype served as an extension of concerns for anti-Western radicalisation and regional conflicts as breeding grounds for terrorism in the post-9/11 era. Implicating Islamic extremist groups in violence against charismatic species, such as elephants and rhinos, let alone the claim that such groups were using the proceeds of wildlife crime to bankroll attacks and reprisals against the West, served to further the agenda to dismantle their operations. This narrative was swiftly taken up by the conservation community, with a report from IFAW stating outright that 'illegal wildlife trade links to violence, radicalism, and terror'.⁹⁰ Most sensationally, the California-based NGO Elephant Action League released their report entitled *Africa's White Gold of Jihad* in 2013 which became the 'go-to' source by media outlets.⁹¹ Haenlein, Maguire and Somerville refer to the 'tenuous tusk-terror tie' in their deconstruction of this archetype, noting from the outset that the designation of 'terrorist' was applied to groups ranging in composition, motivations, histories, and modus operandi, with the most commonly cited with respect to ivory trafficking being Al-Shabaab, the LRA and the Janjaweed, despite that only one of these three were classified as such by the US State Department (ie Al Shabab), with the LRA receiving inconsistent classification and the Janjaweed perhaps more appropriately classified as an irregular militia from pastoral and nomadic Sudanese communities with an extensive practice of long-distance trade on horseback for financial gain rather than political or ideological objectives.⁹² While relationships with ivory may exist for all three, these are substantially overstated as to the extent to which groups rely on ivory to fund their activities. For example, the Elephant Action League's reported figures would require all of Kenya's poached ivory in addition to industrial sized consignments from elsewhere to pass through Somalia for such numbers to be believed. The group's income is dominated by charcoal supplemented by taxing other commodities.⁹³ The UNODC has offered its assessment, observing that 'the assertion of African terrorist groups making large sums by poaching elephants for ivory in the areas they control is difficult to conceive given that most groups active are operating in elephant-poor areas,

⁹⁰ Ratchford, Allgood and Todd (n 10) 11.

⁹¹ Tom Maguire and Cathy Haenlein, *An Illusion of Complicity: Terrorism and the Illegal Ivory Trade in East Africa* (Royal United Services Institute, 2015) 8: A survey of English-language stories dated between 2011 and 2015 by Western and East African outlets regarding Al Shabaab's part in ivory poaching found that of 115 articles identified, only eight provided any independent critique; 48 used the report as their primary (if not only) source; 16 relied on circular reporting; and 18 provided no sources.

⁹² The authors go on to suggest a more appropriate designation as 'a Baggara/Rizeigat criminal organisation- cum-trading network that hires itself out to the Sudanese army': Cathy Haenlein, Thomas Maguire and Keith Somerville, 'Poaching, Wildlife Trafficking and Terrorism' (2016) 86(1) *Whitehall Papers* 58, 63.

⁹³ *Ibid* 66, citing Tom Keatinge, *The Role of Finance in Defeating Al-Shabaab* (Whitehall Report No 2-14, 2014), suggest that the EAL figure (USD2.4-7.2 million) is much less significant when compared to Al-Shabaab's annual income (USD70-100 million in 2011).

depleted, in part, due to years of conflict'.⁹⁴ Subsequent to greater fact-checking by the likes of UNEP, INTERPOL and the UNODC, there was widespread detraction from the 'poacher-as-terrorist' narrative, with the security dimension of wildlife trafficking re-orienting once more in international forums to that of corruption and transnational organised crime threatening good governance and the rule of law, with the potential to contribute to civil conflict.⁹⁵

While the terror-tusk tie has been deconstructed, this does not necessarily mean anti-poaching efforts have become less militarised on the ground, with rhinos offering a key case study. The persistent narrative of rhino horn being a source of threat finance, including terrorist organisations, arose largely from the same narratives around elephant ivory in the mid-2010s. Indeed, as Anagnostou observes, much of the popular discourse around rhino horn, elephant ivory and wildlife tends to conflate and utilise terms interchangeably.⁹⁶ Likewise, commentary, including a widely cited article from *Scientific American*, conflates conflict and criminal actors by generalising that profit from elephant ivory, rhino horn and illegal wildlife trafficking 'is bankrolling extremists, terrorists and other criminal groups around the globe'.⁹⁷ The article, published originally with the title *Terrorism's Red Gold* in December 2013, was paired with an image depicting a white rhino in profile with melted gold dripping down its face in place of both its horns.⁹⁸ While standalone references to rhino horn funding terrorism or conflict more broadly are rare in recent times (ie without analogy to elephant ivory), a noteworthy example can be found on Global Financial Integrity's website. In an explanatory section of its website discussing transnational organised crime, under a heading *Transnational Crime*, the organisation goes so far as to say '[t]errorists often finance their operations by selling drugs, poaching rhinos, or counterfeiting goods'.⁹⁹

Conflict has wrought terrible consequences for rhinos, including in Garamba, which was the final stronghold of the northern white rhino.¹⁰⁰ Incursions by armed groups caused the withdrawal of

⁹⁴ United Nations Office on Drugs and Crime, *World Wildlife Crime Report: Trafficking in Protected Species* (United Nations, 2016) 21.

⁹⁵ Francis Massé et al, 'Conservation and crime convergence? Situating the 2018 London Illegal Wildlife Trade Conference' (2020) 27(1) *Journal of Political Ecology* 23.

⁹⁶ Michelle Anagnostou, 'Synthesizing knowledge on crime convergence and the illegal wildlife trade' (2021) 5 *Environmental Challenges* <<https://doi.org/10.1016/j.envc.2021.100222>> 5.

⁹⁷ 'How to Stop the Illegal Wildlife Trade from Funding Terrorist Groups', *Scientific American* (online, 1 December 2013) <<https://www.scientificamerican.com/article/how-to-stop-the-illegal-wildlife-trade-from-funding-terrorist-groups/>>.

⁹⁸ 'Terrorism's Red Gold' (2013) 309(6) *Scientific American* 10, 10.

⁹⁹ Global Financial Integrity, 'Transnational Crime' <<https://gfintegrity.org/issue/transnational-crime/>>.

¹⁰⁰ The subspecies previously ranged across north-western Uganda, southern Chad, south-western Sudan, the eastern part of the Central African Republic, and north-eastern Democratic Republic of Congo, but sustained armed conflict across Central Africa in the 1970s and 1980s claimed all but those in Garamba.

the International Rhino Foundation's staff from the area in 2005, with subsequent hopes to translocate healthy specimens from the park snuffed by evidence of their likely extinction in the park. The Group of Experts on the DRC noted in 2014 that Garamba had been home to more than two thousand rhinoceroses in the 1960s, with park authorities sighting one rhino in 2013, and with no rhino or signs of their presence detected since.

Today's South African 'rhino wars', characterised by some as a 'low-level conflict' owing to the number of casualties,¹⁰¹ sees the proliferation of securitised idioms and militarised responses. In his two-part investigation of rhino horn trafficking in Southern Africa,¹⁰² investigative journalist Julian Rademeyer identifies the proliferation of 'war talk' in Kruger National Park, with military phraseology employed to characterise the threat of poaching 'as an insurgency, attack, fight, or war' now 'typical of statements by many SANParks and government officials'.¹⁰³ The appointment of retired apartheid-era General Johan Jooste to head anti-poaching efforts in 2012 saw SANParks specifically laud his abilities to 'adapt military doctrine' for present purposes. Jooste himself has referred to the country as being 'under attack from armed foreign nationals' in rousing support for the 'war on poaching'.¹⁰⁴ There is little room for nuance in what Duffy and Humphreys refer to as the 'idealistic rhino wars narrative',¹⁰⁵ and labels evoking the language of conflict resources such as 'blood horn' have been employed to advance the case for a legalised trade to see proceeds benefit private owners rather than insurgents.¹⁰⁶ It must be said, however, that even Jooste himself described South Africa's rhino wars as unwinnable.¹⁰⁷ As Shaw and Rademeyer write in attribution to Jooste: 'It is a fallacy to think we can get any joy or satisfaction

¹⁰¹ Mark Shaw and Julian Rademeyer, 'A Flawed War: Rethinking 'Green Militarisation' in the Kruger National Park' (2016) 43(2) *Politikon* 173, 186.

¹⁰² Julian Rademeyer, *Tipping Point: Transnational organised crime and 'war' on poaching – Part 1 of a 2-part investigation into rhino horn trafficking in Southern Africa* (Global Initiative Against Transnational Organised Crime, 2016); Julian Rademeyer, *Beyond Border: Crime, conservation and criminal networks in the illicit rhino horn trade – Part 2 of a 2-part investigation into rhino horn trafficking in Southern Africa* (Global Initiative Against Transnational Organised Crime, 2016).

¹⁰³ Julian Rademeyer, 'An Unwinnable War: Rhino Poaching in the Kruger' in Lucia Bird Ruiz-Betinez de Lugo and Sasha Jespersen (eds), *Militarised Responses to Transnational Organised Crime – The War on Crime* (Palgrave Macmillan, 2018) 43, 46 ('Unwinnable War').

¹⁰⁴ Julian Rademeyer, *Tipping Point: Transnational organised crime and 'war' on poaching – Part 1 of a 2-part investigation into rhino horn trafficking in Southern Africa* (Global Initiative Against Transnational Organised Crime, 2016) 9 ('Tipping Point').

¹⁰⁵ Rosaleen Duffy and Jasper Humphreys, 'Poaching, Wildlife Trafficking and Human Security' in Cathy Haenlein and MLR Smith (eds), *Poaching, Wildlife Trafficking and Security in Africa: Myths and Realities* (Routledge, 1st ed, 2017) 40.

¹⁰⁶ Ibid 40-41; Susan Njanji, 'S.Africa's first online rhino horn auction sparks anger', *Phys.Org* (online, 23 August 2017) <<https://phys.org/news/2017-08-africa-online-rhino-horn-auction.html>>; Ed Stoddard, 'Want to buy some rhino horn? Log in here, DNA required', *Reuters* (online, 6 March 2016) <<https://www.reuters.com/article/us-wildlife-rhinos-trade-idUSKBN1GH2N1>>.

¹⁰⁷ Rademeyer, *Tipping Point* (n 104) 10.

out of this conflict...It is a war of attrition. We are forced into it to buy time. But victory will not occur in the bush. You can do what you will and can save a lot of rhinos, but you're not going to win'.¹⁰⁸

The proliferation of war rhetoric has altered the paradigm from which conservation operates. As chronicled by Duffy, it appears that the traditional 'defensive' approach to protecting wild areas, 'fortress conservation', has not only progressed to a more proactive 'war for biodiversity' paradigm, but further still to a 'war by conservation'.¹⁰⁹ This war by conservation may be distinguished in character from earlier iterations as it not only incorporates global security concerns into its approach, but prioritises it to the extent that biodiversity loss becomes a secondary subject of concern. Contemporary discourse concerning the wildlife conservation-security nexus inevitably sees discussion of 'green militarisation'.¹¹⁰ The term was first coined by Lunstrum in 2014 and broadly refers to 'the use of military and paramilitary actors, techniques, technologies, and partnerships in pursuit of conservation'.¹¹¹ As observed by Marijnen and Verweijen, green militarisation is prevalent in protected areas due to the geospatial overlap between armed conflict, poaching and other illicit activities that adversely impact local ecosystems wherein its deployment is legitimised as part of 'saving' narratives.¹¹² This militarised approach to conservation has resulted in a wider range of actors entering the fray in protected areas with rangers and armed forces trained by Western foreign military actors and private security companies (including those employing former military personnel seeking to translate knowledge and skills adapted in conflict zones in the Middle East into anti-poaching ethos), as well as collaborations between UN Peace-Keeping Operations and anti-poaching patrols.¹¹³ Green militarisation operates as a powerful framing device transforming the dominant conception of IWT as a form of green crime into a realised threat to global peace and security.¹¹⁴ As Massé and Lunstrum advance, the 'militarization of conservation practice is driven and rationalized by discourses of war and national/regional security that transform poaching from a

¹⁰⁸ Ibid.

¹⁰⁹ Rosaleen Duffy, 'War, by Conservation' (2016) 69 *Geoforum* 238, 239.

¹¹⁰ Ibid; Francis Massé and Elizabeth Lunstrum, 'Accumulation by securitization: Commercial poaching, neoliberal conservation, and the creation of new wildlife frontiers' (2016) 69 *Geoforum* 227.

¹¹¹ Elizabeth Lunstrum, 'Green Militarization: Anti-Poaching Efforts and the Spatial Contours of Kruger National Park' (2014) 104(4) *Annals of the Association of American Geographers* 816, 817.

¹¹² Esther Marijnen and Judith Verweijen, 'Selling green militarization: The discursive (re)production of militarized conservation in the Virunga National Park, Democratic Republic of the Congo' (2016) 75(1) *Geoforum* 274, 274.

¹¹³ Ibid; Rosaleen Duffy et al, 'Why we must question the militarisation of conservation' (2019) 232 *Biological Conservation* 66, 70.

¹¹⁴ Ibid.

conservation into a security issue'.¹¹⁵ As Simms explains, what is noteworthy about the current manner and form of military deployment in conservation is 'the escalation of violence, its broad adoption across geographical space, and how it is not only a defensible response, but becoming normalised and institutionalised'.¹¹⁶ As to broad adoption, Simms notes that use of military style enforcement and deployment of national armies to patrol conservation spaces extends beyond the well-publicised case study of Kruger National Park in South Africa, and mirrors experiences in Guatemala, Nepal, Pakistan, Ecuador, and Laos.¹¹⁷

There are two streams of critical analysis with respect to green militarisation: firstly, whether it is desirable; and secondly, whether it is effective. Simms provides an overview of the major arguments for and against green militarisation, whereby those in favour defend it and conceive it as a 'stop-the-bleeding' approach to control the current climate of violence; or hold that it is the only option to combat the threats posed by the scale of commercial poaching. With poachers in some regions more heavily armed and armoured, and deploying more sophisticated tactics with greater technological assistance, the use of lethal force may well be a proportionate response in some cases. However, there are concerns that continuous upskilling and outgunning is contributing to the escalation and normalisation of violence as justifiable. The more permissive attitude to violence is one that is also more permissive to human rights breaches, including violations of due process, excessive force, torture, and extra judicial killings of suspects.¹¹⁸ This aspect of militarisation is of particular significance across biodiverse regions where local

¹¹⁵ Francis Massé and Elizabeth Lunstrum, 'Accumulation by securitization: Commercial poaching, neoliberal conservation, and the creation of new wildlife frontiers' (2016) 69 *Geoforum* 227, 229.

¹¹⁶ Matt Simms, "'Green Militarization? So What?": Assessing perspectives of what can be done about the militarization of wildlife conservation' (Master of Science Thesis, University of Charleston, 2020) 5-6 citing Lunstrum (n 111); Rosaleen Duffy et al, 'Why we must question the militarisation of conservation' (2019) 232 *Biological Conservation* 66; Bram Büscher and Robert Fletcher, 'Under Pressure: Conceptualising Political Ecologies of Green Wars' (2018) 16(2) *Conservation & Society* 105.

¹¹⁷ Matt Simms, "'Green Militarization? So What?": Assessing perspectives of what can be done about the militarization of wildlife conservation' (Master of Science Thesis, University of Charleston, 2020), citing Wendy Annecke and Mmoto Masubelele, 'A Review of the Impact of Militarisation: The Case of Rhino Poaching in Kruger National Park, South Africa' (2016) 14(3) *Conservation & Society* 195; Matt Simms, "'Green Militarization? So What?": Assessing perspectives of what can be done about the militarization of wildlife conservation' (Master of Science Thesis, University of Charleston, 2020), citing Megan Ybarra, 'Taming the jungle, saving the Maya Forest: sedimented counterinsurgency practices in contemporary Guatemalan conservation' (2012) 39(2) *The Journal of Peasant Studies* 479; Matt Simms, "'Green Militarization? So What?": Assessing perspectives of what can be done about the militarization of wildlife conservation' (Master of Science Thesis, University of Charleston, 2020), citing Elizabeth Lunstrum, 'Green Militarization: Anti-Poaching Efforts and the Spatial Contours of Kruger National Park' (2014) 104(4) *Annals of the Association of American Geographers* 816; Matt Simms, "'Green Militarization? So What?": Assessing perspectives of what can be done about the militarization of wildlife conservation' (Master of Science Thesis, University of Charleston, 2020), citing Michael B Dwyer, Micah L Ingalis and Ian G Baird, 'The security exception: Development and militarization in Laos's protected areas' (2016) 69 *Geoforum* 207.

¹¹⁸ For further examination of the human rights abuses occasioned through the strategies employed to address IWT as a security threat, see: Rosaleen Duffy, 'Crime, Security, and Illegal Wildlife Trade: Political Ecologies of International Conservation' (2022) 22(2) *Global Environmental Politics* 23.

communities continue to live with the legacy of dispossession, exclusion and marginalisation from land and resources embedded in a history of colonialism.¹¹⁹ The recognition of community-centred conservation, most recently in the Kunming-Montreal Global Biodiversity Framework 2030 adopted under the auspices of the CBD,¹²⁰ may well be at odds with the militarisation of conservation. Militarisation may undermine the long-term sustainable management of national parks and the species that live within their bounds or migrate through them by exacerbating existing tensions between park officials and the local communities that are most directly reliant upon biodiversity for wellbeing and livelihood.¹²¹ In essence, green militarisation is inconsistent with and potentially fatal to reconciliation efforts aiming to engage customary and local institutions towards sustainable biodiversity stewardship.¹²² Blanket measures permitting militarised responses leave little margin for nuance, viewing all who encroach as targets to be neutralised, be they involved in industrial scale activity tied to transnational organised crime syndicates, or a local subsistence hunter employing customary practices. It also glosses over the involvement of governments, including military personnel, in exploiting, damaging and even illegally extracting natural resources.¹²³

The escalation of violence is further evident in the expansion of duties for wildlife rangers. Rangers have always contributed to conservation law enforcement efforts as one of a wide range of responsibilities that include managing the ongoing health and wellbeing of wildlife in their charge, research and monitoring, game capture and introductions, population management, controlled fire burning, infrastructure and equipment maintenance, public relations, environmental education, and acting as a liaison with local communities.¹²⁴ Global surveys of ranger experiences depict the cost of increasing danger associated with the job, including homicide rates ranking among some of the highest for any occupation in the world.¹²⁵ Returning

¹¹⁹ Wendy Annecke and Mmoto Masubelele, 'A Review of the Impact of Militarisation: The Case of Rhino Poaching in Kruger National Park, South Africa' (2016) 14(3) *Conservation & Society* 195; Annette Hübschle, 'The social economy of rhino poaching: of economic freedom fights, professional hunters and marginalized local people' (2017) 65(3) *Current Sociology* 427.

¹²⁰ *Kunming-Montreal Global Biodiversity Framework*, Decision, UN Doc CBD/COP/DEC/15/4 (19 December 2022).

¹²¹ Duan Biggs et al, 'Developing a theory of change for a community-based response to illegal wildlife trade' (2017) 31(1) *Conservation Biology* 5; Derek Armitage et al, 'Governance principles for community-centered conservation on the post-2020 global biodiversity framework' (2020) 2(2) *Conservation Science and Practice* <<https://doi.org/10.1111/csp2.160>>.

¹²² Derek Armitage et al, 'Governance principles for community-centered conservation on the post-2020 global biodiversity framework' (2020) 2(2) *Conservation Science and Practice* <<https://doi.org/10.1111/csp2.160>>.

¹²³ Rosaleen Duffy et al, 'Why we must question the militarisation of conservation' (2019) 232 *Biological Conservation* 66, 70 ('*Why Question*').

¹²⁴ John Jooste and Sam M Ferreira, 'An Appraisal of Green Militarization to Protect Rhinoceroses in Kruger National Park' (2018) 18(1) *African Studies Quarterly* 49, 50.

¹²⁵ WWF, *Life on the Frontline 2019: A global survey of the working conditions of rangers* (2019); WWF and RFA, *Ranger Perceptions: Asia* (2016); WWF, *Ranger Perceptions: Africa* (2016).

to Kruger National Park, Annecke and Masubelele's review of the impact of militarisation found that the rangers and their families were struggling to contend with the disparity in expectations prior to recruitment versus the reality on the job (that is, that the parties 'did not sign up for the trauma and tension of being on stand-by or in combat').¹²⁶ Multiple participants lamented that they were now 'mercenaries' despite it being illegal to be a mercenary in South Africa.¹²⁷

The role of rangers has expanded from one of conservationists with some law enforcement duties to personnel in sustained counter-insurgent styled operations. This is not the only example of mission creep in the contemporary climate of green militarisation. Conservation groups acting in partnership with military and paramilitary actors fundamentally alters the relationship between local communities, authorities, and conservationists. Conservation NGOs active in protected areas have expended funds on private intelligence companies operated by former operatives from intelligence agencies, including the former South African Bureau of State Security and Mossad among others.¹²⁸ As a result of this mission creep, conservationists lacking training in the rules of engagement or counter-insurgency risk undermining the integrity of more properly constituted intelligence-led law enforcement operations. For example, conservation groups active in surveillance and cultivating informant networks may unintentionally compromise the identity of informants and sensitive data due to inadequate security infrastructures, thus endangering lives and the viability of prosecutions arising from those investigations.

As to the effectiveness of green militarisation, Duffy et al,¹²⁹ Lunstrum,¹³⁰ and colleagues advance that the militarisation of conservation compromises long term goals and is misguided,¹³¹ as 'weaponizing conservation' may serve to further entrench rather than alleviate conflict dynamics. The presence and escalation of militarised engagement, coupled with the growing list of actors involved in high conservation areas who hold an expectation for lethal force, increases the opportunity for critical incidents detrimental to human security in a region. Further, there are numerous instances where the equipment and training provided to advance militarised conservation efforts have been turned against local communities and even wildlife, including, for

¹²⁶ Wendy Annecke and Mmoto Masubelele, 'A Review of the Impact of Militarisation: The Case of Rhino Poaching in Kruger National Park, South Africa' (2016) 14(3) *Conservation & Society* 195, 200.

¹²⁷ Ibid.

¹²⁸ Duffy et al, *Why Question* (n 123) 70. See also Francis Massé, Elizabeth Lunstrum and Devin Holterman, 'Linking green militarization and critical military studies' (2018) 4(2) *Critical Military Studies* 201, 205-207.

¹²⁹ Rosaleen Duffy et al, *Why Question* (n 123) 69-70.

¹³⁰ Lunstrum (n 111) 829.

¹³¹ Rosaleen Duffy et al. 'The militarization of anti-poaching: undermining long term goals?' (2015) 42(4) *Environmental Conservation* 345.

instance, the defection of sixty ‘ecoguards’ in the CAR as relayed to the Panel of Experts in 2013 (see Part II, where it was noted that a defector even became a rebel leader with the Séléka).¹³²

IV CONCLUSION

The capacity for securitised responses to quell IWT on a global scale is constrained by the same reasons that a ‘law enforcement-only’ response is doomed to fail. Much of IWT is demand-driven and influenced by a complex interaction between socio-economic-cultural factors. Enforcement alone does not alleviate the underlying conditions driving poaching, and there may be no empirically established link showing that greater presence of rangers and law enforcement officers in the field deters poachers.¹³³ Likewise, enforcement alone does not combat the corruption that enables illicit trafficking. As Smith and Haenlein conclude, the ‘war’ ‘is ultimately a symptom of an emerging form of transnational organised crime’—one that is demand driven from locations far removed from range states.¹³⁴ Felbab-Brown likens combatants from militant groups involved in poaching to ‘cogs in much larger wildlife smuggling networks’.¹³⁵ They advance that preoccupation with militants without dismantling the broader architecture of smuggling and demand reduction ‘guarantees failure’.¹³⁶ Even General Johan Jooste conceded that unabated demand ‘means that poaching cannot be defeated with force on force. The only thing that can make a difference is taking on the crime networks’.¹³⁷ This position is consistent with the 2015 Small Arms Survey which found data supporting military anti-poaching policies to be inconclusive, and underscored the role of demand reduction in breaking the cycle of exploitation: ‘[w]ithout a substantial reduction in the demand for ivory and rhino horn, efforts to deter poachers through armed interventions may disrupt poaching, but not stop it’.¹³⁸

While engaging in securitised rhetoric may appear appealing to conservationists in advancing their cause, militarised conservation can re-direct capital away from the less politically-charged

¹³² Duffy et al, *Why Question* (n 123) 70.

¹³³ Chris Barichievy et al, ‘Do armed field-rangers deter rhino poachers? An empirical analysis’ (2017) 209 *Biological Conservation* 554.

¹³⁴ Cathy Haenlein and MLR Smith (eds), *Poaching, Wildlife Trafficking and Security in Africa: Myths and Realities* (Routledge, 1st ed, 2017) 112.

¹³⁵ Vanda Felbab-Brown, ‘It’s corruption, stupid: Terrorism, wildlife trafficking, and Obama’s Africa trip’, *Brookings* (Blog Post, 22 July 2015) <<https://www.brookings.edu/blog/up-front/2015/07/22/its-corruption-stupid-terrorism-wildlife-trafficking-and-obamas-africa-trip>>.

¹³⁶ *Ibid.*

¹³⁷ Rademeyer, *Unwinnable War* (n 103) 10. Jooste went on to state that ‘Victory will only occur in the courts’ emphasising the importance of prosecutions.

¹³⁸ ‘In the Line of Fire: Elephant and Rhino Poaching in Africa’ in *Small Arms Survey 2015* (Cambridge University Press, 2015) 6.

aspects of conservation essential for safeguarding and fostering ecological integrity.¹³⁹ For CITES' part, its information-gathering architecture and concentration of expertise has been useful in collating early indications of wildlife trade being influenced by changing conflict dynamics; and in the case of ivory specifically, empirical research was able to place the more sensational claims of NGOs seeking to consolidate support behind securitised rhetoric within the context of region, trade, and species alleged to be affected. Importantly, while resolutions passed by parties acknowledge the threat posed by heavily armed groups, including those who may seek to destabilize governments, the phrasing of these threats has always been proportionate to the information received and presented as part of the range of threats to species survival. The focus on discouraging military personnel from involvement in poaching and consumption of IWT products aligns with the graver concerns around corruption.

From both conservation and law enforcement perspectives, it is more desirable and feasible to limit securitisation of IWT. Based on the current preponderance of evidence, the participation of non-state armed groups (be they described as militant groups, insurgents, rebels, terrorists, or any other descriptor) sits at the lower end of the value chain and accounts for a minute portion of the industrial-scale exploitation of wildlife through illicit trade. Where evidence arises as to the involvement of such groups, interested states may utilise the Security Council framework, given its actions with respect to the DRC and CAR. However, the power to disrupt the larger-scale networked forces involved in wildlife crime sits with those with the mandate to challenge transnational organised crime and the corruption that enables it. Mischaracterisation of the problem, including by media outlets, dignitaries engaged in international relations and conservation NGOs, stifles the sorts of more targeted and evidence-based responses required against the ticking clock of extinction. The cost to human life and, to that end, respect for due process where illegal activity is suspected, must be mandatory considerations in forging a path forward.

¹³⁹ Duffy et al, *Why Question* (n 123).

This thesis contributes to the evolving body of illegal wildlife trade ('IWT') scholarship through an interdisciplinary analysis integrating scientific (eg conservation science), social science (eg criminology), and humanities (eg history) inputs to inform a doctrinal analysis of the *Convention on the International Trade in Endangered Species of Wild Fauna and Flora* ('CITES' or 'the Convention').¹ The doctrinal legal methodology undertaken seeks to fill the gap in the literature regarding the scarcity of legal methodology in multidisciplinary conservation scholarship and amongst conservation practitioners.² This includes treaty interpretation of the core multilateral instruments of international wildlife conservation law using the Vienna Convention on the Law of Treaties ('VCLT') (as demonstrated in Chapter VI).³ Interdisciplinary approaches to researching IWT, including understanding intersecting frameworks such as international legal regimes, ought to enlighten decision-makers in their understanding of the nature, scale and prevalence of IWT, as well as how to target efforts to counter it.⁴ Such an approach is also pragmatic as understanding the multiple dimensions of harm associated with IWT enables decision-makers to take full advantage of a range of motivators to build cases for support, strengthen responses and take 'bolder steps'⁵ to truly prevent, detect and disrupt actors along illicit supply chains.

While IWT may be a more recent issue of concern in the field of biodiversity conservation, in comparison to more conventional areas such as site management and species monitoring, its significance now sees it forming part of the mainstream suite of matters requiring global coordinated efforts. This is evident, for example, under Target 5 on 'the use, harvesting, and trade of wild species' under the *Global Biodiversity Framework 2030*, which was adopted in December 2022 at the 15th CoP of the *Convention on Biological Diversity* (as discussed in Chapter IV).⁶ This thesis contributes to an increasingly high-impact area of academic inquiry towards real-

¹ *Convention of International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) ('CITES').

² Arie Trouwborst et al, 'International Wildlife Law: Understanding and Enhancing Its Role in Conservation' (2017) 67(9) *BioScience* 784, 788 citing Eric Freyfogle, 'Conservation Biology and Law: Only a Start' (2006) 20 *Conservation Biology* 679 and Guillaume Chapron et al, 'Bolster legal boundaries to stay within planetary boundaries' (2017) 1(3) *Nature Ecology and Evolution* 86.

³ *Ibid*; *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered in force 27 January 1980) ('VCLT').

⁴ Nafeesa Esmail et al, 'Emerging illegal wildlife trade issues: A global horizon scan' (2020) 13(4) *Conservation Letters* <<https://doi.org/10.1111/conl.12715>>. See also Caroline S Fukushima et al, 'Challenges and perspectives on tackling illegal or unsustainable wildlife trade' (2021) 263 *Biological Conservation* <<https://doi.org/10.1016/j.biocon.2021.109342>>.

⁵ Ricardo Jorge Lopes, Juliana Machado Ferreira, and Nadia Moraes-Barros, 'Bolder steps to fight global wildlife illegal trade' (2019) 33(1) *Conservation Biology* 7.

⁶ *Mechanism for planning, monitoring, reporting and review*, Draft Decision, UN Doc CBD/COP/15/L.27 (18 December 2022).

world problem solving. The engagement resulting from the research underpinning this thesis to-date, as outlined in its introduction, illustrates the appetite and need for interdisciplinary contributions across domestic and international law and policy applications.

A The rhino in the room: Closing the case study

This thesis sought to answer the research question: *To what extent does the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ('CITES') address illegal wildlife trade to support species conservation? As a case study, how has the Convention responded to rhino horn trafficking as a threat to rhinoceros conservation?*

Before drawing conclusions from the case study, and as highlighted in the Introduction, a caveat must be considered. The examination of CITES' response to rhinoceros horn trafficking in contravention of its trade controls provides an exceptional example of the Convention's capabilities in contending with IWT. This is because the plight of rhinos, like elephants, big cats and other charismatic species has attracted the sustained political will of the parties. While the case study of CITES' treatment of rhinos demonstrates the extent to which the Convention may provide a framework for parties to take action, it is not feasible to expect this treatment to be applied to all species listed on the Appendices.

This thesis situates a legal examination of CITES' fifty years of operation within a more expansive analysis depicting humankind's relationship with the taxonomic family *Rhinocerotidae*. The contemporary criminogenesis of rhino horn trafficking is inextricably rooted in the historical, cultural and scientific dimensions of trade explored in Chapter III. Informed by Chapter IV and V's analyses of international wildlife conservation law and CITES' operation within it, Chapter VI extracts six hallmarks typifying CITES' response to rhino horn trafficking. These include: the primacy of the Convention's mandate; the emergence of a collaborative evidence-informed decision-making architecture; tensions between range states and non-state actors; demand reduction as a key element in supporting trade controls; the emergence of a whole-of-chain approach expanding focus to include territories of transit in addition to supply and demand; and an increasing focus on transnational organised crime. The sixth hallmark features several sub-components: emphases on profiling and responding to transnational organised crime as defined under UNTOC; the interaction between trade controls and black-market values; the impacts of law enforcement measures by parties on crime displacement; and the impact of online trade.

The hallmarks of CITES' response to rhino horn trafficking as a threat to the survival of rhinos are broadly consistent with the engagement emphasised in the Declaration on Megafauna, which is further informed by the Convention's expression of intrinsic and instrumental values of nature advancing a multifaceted justification for species conservation (as examined in Chapters II and V). That is not to say that perfect balance has been achieved with respect to the normative direction of the treaty.

The Chapter VI case study illuminated the thematic clash of values between some range states and non-state actors wherein the twin objectives of the Convention (as outlined in Chapter V) have been debated and contrasted. The extent of this conflict across CoPs rises above simply being characterised as the proverbial elephant (or rather, rhino) in the room, and may materialise as an existential challenge to the Convention's membership and operation into the future should the SADC withdraw. A 'playthrough' of what the fallout of such a withdrawal would look like is offered in Chapter VI. What is clear is that withdrawal would likely be economically detrimental to detractors in the short term at the very least, though it is not beyond the realm of possibility that such a move could be motivated by non-economic reasons - including to symbolically reject the imposition of 'Western prohibitionist' restrictions on the Global South and, in turn, assert sovereignty over a state's natural resource. Of the documents surveyed for this thesis, it was Swaziland's CoP17 proposal that was the most unnerving-by-design as it laid bare the unvarnished realities of poaching for wildlife and people, raised questions about certain NGOs which could amount to conflicts of interests rather than merely conflicts of values,⁷ and brought to the fore questions concerning the compatibility of the rights of sovereign states with their membership of an international agreement that requires a two-thirds majority for decisions irrespective of whether parties have any experience of the species in question. The argument that 'African rhinos belong to Africa and they should surely benefit those countries in African which own them...'⁸ was fervently supported by economic analyses and a direct assessment of the inequity of the Convention's status quo:

...illogical is the disparity in CITES voting rights, with 171 member states who do not have rhinos, dictating the destiny of rhinos to those states which do have rhinos, and who pay the very substantial human and economic costs of protecting them. This is seen as inference in the management integrity

⁷ See *Rationale for Swaziland's Proposal to CITES to Legalize Trade in its Rhino Horn*, CITES CoP17 Inf. 17, 24: '[t]his gives rise to a very serious question: is CITES still serving the best interest of species survival (and indeed Nature conservation generally) or is it being hijacked to serve the agendas and financial interests of certain powerful NGOs whose economies are best supported by perpetuating crises? These questions are being asked and discussed increasingly in conservation circles'.

⁸ Ibid 22.

of sovereign states over their own resources. How sovereign states manage their own rhinos should be their own sovereign prerogative.

CITES was conceived by its founding member states to help nations control illegal cross border trade. It surely cannot possibly have been conceived in order to restrain sovereign states from legally utilizing their own resources, so preventing the functions of conservation being practiced on the wildlife they own?⁹

Regardless of whether the SADC remains or leaves, it will undoubtedly continue to critique whether CITES can truly live up to its vision of sustainable trade as part of broader international sustainable development priorities. This is but one of a range of questions arising from this thesis' research that are deserving of their own research projects, with others prospective critiques including the role of Secretariats in MEAs (in particular the legitimacy and functions of the Secretary-General in directing, influencing or facilitating the development of soft law), a comparative deconstruction of 'precaution' between MEAs (including CITES and the CBD as well as the other agreements canvassed in Chapter IV), and the extent to which some Western NGOs are complicit in neo-colonial conservation law and policy-making (adopting a Third World Approaches to International Law ('TWAIL') lens for critique, for instance).

Returning to the research question at hand, a key consideration in concluding a case study on CITES' treatment of rhino horn trafficking must be whether the threat to rhinos has been abated. In some respects, as identified in Chapter III's examination of the present conservation status of the five extant species of rhino, some populations have benefitted from a mixture of measures aimed at habitat protection, the control of invasive species, breeding programs, translocations, enhanced law enforcement and security, community-centred conservation initiatives and education and demand reduction campaigns. However, uneasy home truths emerge when focusing on the specific threat of poaching as the most visible indicator of the threat posed by rhino horn trafficking. Current global assessment of the threat of rhino horn trafficking as outlined in Chapter VI, coupled with the historical examination provided in Chapter III, illustrates the persistence of a demand-driven illicit trade. While African rhino poaching has decreased from the 2015 peak (1349), reported poaching mortalities remain on par with levels recorded a decade ago. As the Wildlife Justice Commission identified, this trend was described as 'alarming', contemporaneous to the time (501 mortalities in 2021 compared to 532 in 2011).¹⁰ COVID-19 saw a reduction in detected African rhino poaching from 773 in 2019 to 503 in 2020; however,

⁹ Ibid.

¹⁰ Wildlife Justice Commission, *Rhino horn trafficking as a form of transnational organised crime 2012-2021: 2022 Global Threat Assessment* (Report, 2022) 209-11.

rates picked up.¹¹ Asian rhinos may also be facing a new threat in the form of an emerging smuggling route ‘from India to Myanmar and onwards into Southeast Asia and China’.¹² Clearly, the current approach has not been sufficient to abate the threat; however, this does not preclude future success. Future action will no doubt benefit from the more holistic reporting requirements as outlined at CoP19.

The treatment of rhino horn trafficking under CITES has not been fruitless. In many respects, as identified in Chapter VI, it serves a vital purpose in using the CITES architecture for sustained information gathering to reveal the ever-growing complexity, resilience, and objective seriousness of the involvement of transnational organised crime. Future approaches must reorient from treating IWT predominantly as a challenge to biodiversity conservation to one that has the political will, legal architecture, and tools to tackle criminality. In the case of rhinos, while the Wildlife Justice Commission identified that examples of good law enforcement were found in the six most prominent countries and territories involved in horn trafficking, these countries and territories have also been slow to reorient their response from ‘conservation crisis’ to ‘crime problem’.¹³ The approach needed to secure a future for rhinos, despite sitting well outside the traditional tools of conservation science or the use of trade-related environmental measures (‘TREM’s’) to influence the dynamics of wildlife trade, requires, but is not limited to: adequate offence provisions and penalties within domestic criminal law; intelligence-led investigations that adopt a whole-of-network scope rather than focusing on sole targets; successful prosecutions and appropriate sentencing for high-level criminals, rather than limiting scope to those directly caught in relation to a shipment; better coordination between customs and police; continuous research into the online dimensions of crime; tackling money laundering and corruption; and the recognition of wildlife trafficking as a form of serious organised crime. As this thesis contends, pursuing a new approach that more directly addresses wildlife trafficking through international law would serve to safeguard the integrity of the legal trade in wildlife permitted under the auspices of CITES. This would enable parties to focus primarily on regulating trade towards the twin objectives of conservation and sustainable use (as analysed in Chapter V).

¹¹ At the time of writing an amendment to this thesis (April 2024) it is worth noting that the recorded 2023 poaching mortalities for South Africa alone were 499 (93 on privately owned parks, reserves and farms; 406 on state properties) which is an increase from 448 in 2022. This remains more than one rhino killed per day.

¹² Ibid 13. Asian rhino horns are much less frequently seized in illegal trade compared to African rhino horns, representing 14.4% of the number of global rhino horn seizures.

¹³ Ibid 211.

B Drawing Conclusions: CITES at Tipping Point

The extent to which CITES can address IWT as a driver of species extinction is fundamentally constrained by its mandate. From its inception, as described in Chapter IV, CITES was envisioned to operate as a MEA governing the trade in specimens of certain wildlife species direct-listed in its Appendices. It adopts a regulatory approach¹⁴ designed to sustain wildlife trade¹⁵ through its system of permits and certificates and penalises rather than criminalises non-compliance. The findings of this thesis align with Rademeyer's assessment that 'CITES is an environmental trade agreement, nothing more'.¹⁶ As explained in Chapter V, the use of TREMs to ensure that international trade in specimens of wild species does not threaten their survival is supported by an information-gathering architecture to underpin decisions within the CITES framework. Within this construction, the Convention may 'justifiably claim much of the credit' for the greater regulation of international trade in the majority of Appendix I and II species in comparison with the era before it entered into force (as explored in Chapter IV).¹⁷

Chapter VI analysed that in the absence of any express mention of wildlife crime in the Convention's Preamble or operative clauses, the Convention's approach to IWT has developed largely through its Strategic Vision and soft law, such as resolutions and decisions of the CoP which may relate to IWT through compliance and enforcement measures. The Convention's governing bodies may take action against parties implicated in trade in contravention of its provisions, and so criminal elements of the trade are addressed only insofar as their trade involves listed specimens and where parties are compelled to pursue those involved within their jurisdictions. However, this will not always take the form of a criminal justice response with appropriately deterrent penalties. This thesis identified secondary elements of CITES' approach to IWT include: the collection of information on illegal trade through various sources; promotion of the UNODC *Guide on Drafting Legislation to Combat Wildlife Crime* (2018)¹⁸ within its *Revised Draft Model Law on International Trade in Wild Fauna and Flora* (2021);¹⁹ and emphasis on

¹⁴ See Julie Ayling, 'What sustains wildlife crime? Rhino horn trading and the resilience of criminal networks' (Working Paper 2/2012, Australian National University, 18 October 2012).

¹⁵ See Ragnhild Sollund, 'Wildlife Trade and Law Enforcement: A Proposal for a Remodeling of CITES Incorporating Species Justice, Ecojustice, and Environmental Justice' (2022) 66(9) *International Journal of Offender Therapy and Comparative Criminology* 1017, 1029.

¹⁶ Julian Rademeyer, *Killing for Profit: Exposing the Illegal Rhino Horn Trade* (Zebra Press, 2012) 111.

¹⁷ Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2nd ed, 2010) 533.

¹⁸ United Nations Office on Drugs and Crime, *Guide on Drafting Legislation to Combat Wildlife Crime* (United Nations, 2018).

¹⁹ *Model Law on International Trade in Wild Fauna and Flora – Revised Draft* (CITES Secretariat, 2021). CITES (Secretariat), *National Laws for Implementation of the Convention*, CoP19/Doc.28 (14-25 November 2022) [37]: the

capacity-building and collaboration (eg through the ICCWC). Actions undertaken by parties can affect IWT directly or indirectly, for example through demand reduction efforts which have become more commonplace in CoP resolutions and decisions.

As discussed in Chapter V, CITES faces scrutiny as to whether its operation is fit-for-purpose in averting the extinction of traded species. Some commentators suggest that the Convention tends towards ‘tracking over-exploitation or extinction but not in tackling issues causing decline’²⁰ with species often continuing to decline once listed.²¹ Scheffers et al²² go so far as to suggest that listing a species can stimulate further decline by effectively signalling their imminent scarcity to interested actors. Rarity drives both higher demand and higher prices in both legal and illegal trade in wildlife, with traded species found to occur in higher categories of threat than nontraded species.²³ TREMs, most notably bans, can work as short-term interim tools to ‘buy time’ for affected species and/or populations while longer-term solutions are calibrated. Recovery is unlikely, however, in the absence of longer-term action plans and involvement of local communities.²⁴ Having examined the issue through a legal lens of this thesis, the findings align with Vigne’s empirical evaluation that the CITES ban on international trade in rhino horn was ineffective in range and consumer states without the support of local communities and effective law enforcement.²⁵

There is an urgent need to recalibrate the international legal framework’s response to IWT, not only for those species currently at risk of extinction, but for those who are next in-line for trade as viable substitutes. There are thousands of species for which no buying and selling has yet been established, but which possess the desirable characteristics that make them ‘probable

UNODC Guide was developed with the express intention of complementing the CITES Model Law in response to the increasing focus on combating wildlife crime by parties to the Convention.

²⁰ Diana S Weber et al, ‘Unexpected and undesired conservation outcomes of wildlife trade bans – An emerging problem for stakeholders?’ (2015) 3 *Global Ecology and Conservation* 389, 390.

²¹ RB Martin, ‘When CITES works and when it does not’ in Jon Hutton and Barnabas Dickson (eds), *Endangered Species Threatened Convention: The Past, Present and Future of CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (Routledge, 2000) 29.

²² Brett R Scheffers et al, ‘Global wildlife trade across the tree of life’ (2019) 366(6461) *Science* 71. See also ‘Erratum for the Research Article: “Global wildlife trade across the tree of life,” by BR Scheffers, BF Oliveira, I Lamb, DP Edwards’ (2020) 369(6502) *Science* <<https://www.science.org/doi/full/10.1126/science.abd8164>>.

²³ Ibid. Using CITES and IUCN databases, the authors found that trade occurs in 65% of all terrestrial vertebrate families, spanning 18% of all extant terrestrial vertebrate species on Earth, some 40-60% higher than prior recorded estimates.

²⁴ Diana S Weber et al, ‘Unexpected and undesired conservation outcomes of wildlife trade bans – An emerging problem for stakeholders?’ (2015) 3 *Global Ecology and Conservation* 389. See also Kirsten Conrad, ‘Trade Bans: A Perfect Storm for Poaching?’ (2012) 5(3) *Tropical Conservation Science* 245.

²⁵ Lucy Vigne, ‘The rhino horn and ivory trade: 1980-2020’ (PhD Thesis, Oxford Brookes University, 2020) 33.

candidates' for future trade.²⁶ Given the time-lag in a species being exploited to being newly listed on the Appendices, the Convention's reactive architecture (as detailed in Chapter V) may result in unfavourable conservation outcomes for these 'probable candidates'. As demonstrated by the emergence of more contemporary markets and end-uses for rhino horn as identified in Chapters III and VI, there is always the risk that species may become vulnerable to future exploitation, subject to new trends, even where prior action pursuant to CITES was successful. The threat of IWT persists, and the conventional approach to regulating over-exploitation through trade controls may, in some cases, drive the blackmarket for international trade, hastening rates of decline. As Weber et al contend, '[i]n a sense illegal wildlife trade is a monopoly protected from competition'.²⁷

C New horizons: An ally in the UNTOC?

The CITES experience underscores that IWT is a complex problem that cannot be retrofitted into a regime designed to regulate legal trade. Addressing IWT to improve conservation outcomes requires a legal framework that is fit-for-purpose as conceived, resourced, implemented, and enforced. While promoting legal sustainable trade and taking action against IWT may well be two sides to the same coin in achieving species conservation, these tasks require different emphases and expertise. Both aspects benefit distinct legal frameworks through which to discharge their respective mandates; however, it would be desirable for these frameworks to be mutually supportive. Increasing political will to combat wildlife crime is evident from discourse within CITES and other organs of international law-making, notably the UNGA, and even the UNSC as analysed in Chapter VII. It may therefore be the time to close the gap and tackle IWT directly, rather than incidentally through the regulation of legal, sustainable, and traceable international trade under CITES. Harkening back to Chapter VII once more, an appropriately positioned agreement adopting language aimed to counter crime rather than insurgency would also go some

²⁶ Brett R Scheffers et al, 'Global wildlife trade across the tree of life' (2019) 366(6461) *Science* 71. These desirable traits and characteristics include 'possessing rare phenotypes, such as conspicuous plumage color, body shape and size, behavior, and/or (perceived) medicinal value tend to bring high market prices.' As per an erratum published following the discovery of a data download error, the authors found a significant positive relationship between evolutionary distinctiveness and trade probability 'not just for birds, as originally stated, but also for mammals and reptiles...'. See 'Erratum for the Research Article: "Global wildlife trade across the tree of life," by BR Scheffers, BF Oliveira, I Lamb, DP Edwards' (2020) 369(6502) *Science* <<https://www.science.org/doi/full/10.1126/science.abd8164>>.

²⁷ Weber et al (n 20) 392, referring to Michael 't Sas-Rolfes, 'The Rhino Poaching Crisis: A Market Analysis' (2012) <http://www.rhinoresourcecenter.com/pdf_files/133/1331370813.pdf>; See also Kirsten Conrad, 'Trade Bans: A Perfect Storm for Poaching?' (2012) 5(3) *Tropical Conservation Science* 245.

way to ground discourse and ward off conflation with other securitised narratives as seen in the past.

While the manner and form of an alternative to the current status quo extends beyond the scope of this thesis, a more fit-for-purpose solution may lie in greater involvement by the UNODC, such as through a dedicated wildlife trafficking Protocol under the *United Nations Convention against Transnational Organised Crime* ('UNTOC').

In considering the viability of such an approach, it helps to look to those with prior extensive knowledge of CITES. John Sellar (former Chief of Enforcement at the CITES Secretariat and conductor of 234 missions to 66 countries in his 14 years with the Convention) has expressed his views regarding the response needed:

Wildlife crime and trafficking warrant a considerably more coordinated and collaborative response from the law-enforcement and criminal-justice communities. Historically, there has been a lack of appreciation among those communities for the involvement of organized-crime groups, the vast criminal profits being amassed, the levels of violence and corruption employed on occasions or the links to other forms of organized criminality.²⁸

Former Secretary-General of CITES (2010-2018) and present chair of the Global Initiative to End Wildlife Crime, John Scanlon, frequently employs his experience of the treaty's capabilities and limitations in advocating for a dedicated wildlife trafficking Protocol under the UNTOC. This approach would be consistent with the most recent UNGA resolution, which '[i]nvites Parties to the United Nations Convention against Transnational Organized Crime to more effectively use the Convention to address illicit trafficking in wildlife...'.²⁹

As Scanlon opined,

I am often asked about CITES, which I know well. It sets rules regarding international trade in wildlife for about 38,000, or 0.5%, of the world's eight million species. We made best use of CITES over the last decade to galvanise collective action. It's an important Convention but it is not a Convention to combat wildlife crime...Wildlife crimes are not trade-related matters, they are serious crimes: it is time we unequivocally treat them as such.³⁰

As to the primacy of CITES' mandate, this thesis aligns with Scanlon's conclusions, wherein: 'CITES has an important role to play in providing a framework for regulating legal and sustainable trade,

²⁸ John M Sellar, 'Wildlife trafficking: Time for a radical rethink', *Global Initiative Against Transnational Organised Crime* (Web Page, 27 May 2020) <<https://globalinitiative.net/analysis/wildlife-trafficking-covid/>>.

²⁹ Ibid.

³⁰ Ibid.

which is what it was designed to do. But CITES' mandate in tackling wildlife trafficking has been stretched to the limit'.³¹

UNTOC is the principal international instrument combatting transnational organised crime, benefiting from a wide membership of 190 state parties and administered by the UNODC, which has been seminal to elevating the profile of wildlife crime in the last decade. The UNODC serves as Secretariat for the *United Nations Convention Against Corruption* and convenes the Commission on Crime Prevention and Criminal Justice and Congress on Crime Prevention and Criminal Justice. It thus provides the ideal architecture to mobilise parties against wildlife trafficking as a form of transnational organised crime and enliven parties to criminalise illicit activity at the national level.

Mutual support and clearer delineation between the frameworks to regulate legal trade and criminalise wildlife trafficking would assist in addressing the causes for species decline within the appropriate forums and fill gaps in international law. Not all instances of wildlife crime concern a specimen of a species already listed on the CITES Appendices;³² and by the same token, not all instances of unsustainable trade in wildlife or trade in contravention of CITES will include an element of criminality, despite the harmfulness of the act (as discussed in Chapters I and V). Herein, it is possible to envision a legal landscape where both treaties fulfil their respective roles; one to counter transnational organised crime, and the other to regulate legal and sustainable trade. Each regime would mobilise its respective expertise, tools, authorities, and agencies to contend with the multivariate threats to wildlife, empowered by appropriately construed mandates. While further exploration of the prospective UNTOC reform falls outside the scope of this thesis, it nonetheless offers an example of a measure available to address IWT more directly and in a manner that is mutually supportive and beneficial to the operation of CITES in its mission.³³ Zoellick and Scanlon endorse an approach that would see the UNODC become the

³¹ Ibid.

³² The ICCWC is open to expanding its scope beyond CITES-listed species as alluded to in the Letter of Understanding at the time of its establishment. See *Letter of Understanding Establishing the International Consortium on Combating Wildlife Crime*, <https://cites.org/sites/default/files/i/iccwc/mou_0.pdf>.

³³ Ibid. *Strengthening the international legal framework for international cooperation to prevent and combat illicit trafficking in wildlife*, ESC Res 31/1, UNESCOR, UN Doc E/CN.15/2022/14. At the time of writing, Angola, Gabon, Costa Rica, and Malawi have called for a Protocol, with progress made through Resolution 31/1 of the Commission on Crime Prevention and Criminal Justice (co-sponsored by Angola, Kenya, and Peru). See also *End Wildlife Crime*, (Web Page) <<https://endwildlifecrime.org/>>.

‘centre of gravity’ in addressing wildlife trafficking and enable CITES to ‘focus more effort on its core scientific, regulatory, and management functions’.³⁴

D A future in plain-CITES?

The 50th anniversary of CITES in 2023 provides an opportunity to aggregate perspectives and reflect on what is required to combat wildlife crime into the future. The knowledge base at the international community’s disposal to formulate a path forward is certainly richer today than at any other juncture in history. In 2019, the World Bank estimated the value of wildlife crime to be in the range of USD1 trillion – 2 trillion per annum inclusive of the ability for species to sequester carbon and the loss of government revenues.³⁵ In 2021, University of Adelaide researchers and their global counterparts published research expanding on this area of inquiry, placing figures against some of the specific ‘hidden costs’³⁶ of IWT.³⁷ This included an estimated USD162.7 billion per annum due to the accidental introduction of predators and pests which threatens the biological integrity of native systems.³⁸ This research also drew attention to the adverse impacts on human health, citing the oft-quoted figure of some two-thirds of emerging infectious disease outbreaks affecting humans having zoonotic origins with the vast majority originating in wildlife. Indeed, the outbreak of COVID-19 has attracted significant attention from policymakers and the public alike, and particularly to the relationship between disease spillover and wildlife trade. As of April 2024, the drafting and negotiation of the World Health Organization Pandemic Agreement continues, albeit with grave concerns that primary prevention is not receiving adequate attention.³⁹ The 2020 IPBES report on pandemics estimated 1.7 million currently undiscovered viruses thought to exist in mammal and avian hosts, of which 631,000-827,000 could have the capacity to infect humans.⁴⁰ Some 70% of emerging diseases and nearly all known

³⁴ John Scanlon and Robert Zoellick, ‘Interagency Cooperation at Its Best: ICCWC – What Next?’, *IISD* (Web Page, 1 February 2023) <<https://sdg.iisd.org/commentary/guest-articles/interagency-cooperation-at-its-best-iccwc-what-next/>>.

³⁵ World Bank, *Illegal Logging, Fishing, and Wildlife Trade: The Costs and How to Combat It* (World Bank, 2019).

³⁶ Annemarie Gaskin, ‘The Hidden Costs of the Global Wildlife Trade’, *Environment Institute Blog* (Web Page, 25 October 2021) <<https://blogs.adelaide.edu.au/environment/2021/10/25/the-hidden-costs-of-the-global-illegal-wildlife-trade/>>.

³⁷ Pedro Cardoso et al, ‘Scientists’ warning to humanity on illegal or unsustainable wildlife trade’ (2021) 263 *Biological Conservation* <<https://doi.org/10.1016/j.biocon.2021.109341>>.

³⁸ *Ibid.*

³⁹ See also the work of the *Lancet-Preventing Pandemics at the Source Commission on Prevention of Viral Spillover*, (Web Page) <<https://www.preventingfuturepandemics.org/commission>>; see, eg, Neil M Vora et al, ‘The Lancet-PPATS Commission on Prevention on Prevention of Viral Spillover: reducing the risk of pandemics through primary prevention’ (2024) 403(10427) *The Lancet* 597.

⁴⁰ *IPBES Workshop on Biodiversity and Pandemics* (Workshop Report, 2020) 2.

pandemics are zoonoses caused by microbes of animal origin spilling over. The cost of preventing the next pandemic pales in comparison to the economic and human costs of COVID-19; and CITES has been flagged as a convention necessary to enact transformative change in the regulation of legal wildlife trade, such as through supporting a One Health approach. It must also be emphasised that the international legal trade in wildlife is an important source of government revenue and household livelihood, particularly in the Global South. In fact, the value of international legal wildlife trade increased more than five times in the 14 years preceding an estimated figure of USD107 billion in 2019.⁴¹ Therefore, as this thesis has concluded, it is vital that wildlife crime be effectively combatted to safeguard the value and integrity of legal trade. This can only occur however, when the limitations of the current international regulatory framework to address IWT to support species conservation are properly understood. One cannot simply 'retrofit-for-purpose' when the legitimacy of actions undertaken pursuant to the Convention rests on whether decisions fall within the mandate of the agreement and are executed by the relevant governing bodies in accordance with their defined functions.

As for rhinos, 2023 has proven to be a year of radical change. On 4th September, non-profit organisation African Parks purchased the entire southern white rhino herd operated by John Hume.⁴² Hume, a private owner, had sought to sell the world's largest private herd (representing one in every eight of its species remaining on Earth) at auction but to no avail. The 'Platinum Rhino' operation was successful in terms of breeding but escalating costs for keeping the herd rendered the venture untenable. Daily operating costs totalled nearly ten thousand dollars with security being the most significant item. African Parks aims to rewild the entire herd over the next decade to 'well-managed and secure areas...'⁴³ however the threat of IWT remains. Hume has been an outspoken advocate for legalising horn trade as a conservation tool and was instrumental in having South Africa's moratorium on trade lifted, however the exclusion of international buyers from sales limited the experiment from achieving its sustainable use and harm minimisation goals. Recent surveys of international consumers continue to question

⁴¹ Ibid.

⁴² Jim Tan, 'World's largest private rhino herd doesn't have a buyer – or much of a future', *Mongabay* (online, 11 August 2023) <<https://news.mongabay.com/2023/08/worlds-largest-private-rhino-herd-doesnt-have-a-buyer-or-much-of-a-future/>>.

⁴³ '2,000 Southern White Rhino to be Released into the Wild Over Next 10 Years', *African Parks* (online, 4 September 2023) <<https://www.africanparks.org/2000-southern-white-rhino-be-released-wild-over-next-10-years>>.

whether legalising trade would achieve its desired aims, including those that suggest that legal markets would ‘continue to face competition from a parallel black market’.⁴⁴

Over the course of writing of this thesis, there have been waves of discourse concerning how to manipulate the market for rhino horn or generate funds for rhino conservation, including: the legal sale of stockpiles from dehorning programs, natural mortality and/or seizures, ‘flooding the market’ with synthetic horns, discolouring or poisoning horns, use of cryptocurrencies, non-fungible tokens, and bonds. Returning to Chapter I’s ‘Snapshot’ of IWT in rhino horn written nearly a decade ago, it is eye-opening to reflect on the legacy of the two events described as ‘landmark’ at the time of writing: the establishment of the Wildlife Justice Commission and the passage of the first UNGA resolution on ‘tackling illicit trafficking of wildlife’. While the impressive track record of the Wildlife Justice Commission is discussed in the Conclusion of Chapter I, for present purposes it is most important to note that its research on rhino horn trafficking was not only pivotal to discussions during CoP19 but has influenced the scope of reporting for future meetings, elevating the quality and rigour of the information mix to ground future decisions. As for the UNGA resolution passed at the 69th session, it would be the first of five passed over the course of the author’s doctoral candidature. Much has transpired; however, this serves to drive home how little the dial has moved in some respects.

With all five species of rhino continuing to face extinction (three classified as ‘critically endangered’, one as ‘endangered’, and one as ‘near-threatened’) there is a clear need to critically reflect on what values ought to drive rhino conservation and how these values align with the approaches and tools available. However, harkening back to Chapter II’s deconstruction of conservation ethics and the analysis from Chapters IV-VII it appears that the more fundamental and presupposing question to define the next epoch in conservation is ‘conservation by whom?’ In the case of rhino conservation, which serves as a microcosm of the broader discussions within CITES and international wildlife conservation law, it is evident that the equitable distribution of benefits and burdens of conservation action, particularly between the Global North and Global South, will be determinative of whether the current megafauna poaching crisis will be the last as well as whether multilateralism itself is threatened with extinction.

⁴⁴ Hoai Nam Dang Vu, Martin Reinhardt and Jette Bredahl Jacobsen, ‘Conserving rhinos by legal trade: Insights from a choice experiment with rhino horn consumers’ (2022) 193 *Ecological Economics* 107287.

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