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*Proposals for informing the process for the imposition of sanctions in wildlife
crime cases*

and

*Analysis of gravity factors to be used to evaluate offences and draft list of
standardized/harmonized gravity factors*



First, a glance back to the ... **Bern Convention**

It refers to:

*‘widespread requests for **common action** made by governments or by international bodies’ – Preamble*

*‘especially those species and habitats whose conservation requires the **co-operation** of several States, and to promote such **co-operation**’ – Article 1*

*‘Contracting Parties undertake: to **co-operate** whenever appropriate and in particular where this would enhance the effectiveness of measures taken under...this Convention’ – Article 11*



Then at the.... *Tunis Action Plan 2013 - 2020*

The **TAP** aimed to help Contracting Parties achieve the aims of the Convention by providing a pattern or model to assist '**co-operation**'.

The **TAP** had **three areas for action**:

Raising **Awareness** of the issues and problems

Co-ordinating **Biological and Institutional** aspects

Establishing mechanisms for assisting **Enforcement**

What is the overall goal of the **TAP**?

To increase self-compliance and reduce illegal acts, thereby improving conservation status of species



And to the components of the.... **Enforcement and Legal Aspects**

- National wildlife crime priorities
- Conservation impact statements
- Gravity factors
- Sentencing Guidelines

And also to some **principles** that underpinned this enforcement model.....

- ❖ Species and ecosystem are the '**beneficiaries**' of the legislation.
- ❖ Conservation of wildlife for its '**intrinsic value**' and '**socio-economic benefits**'.
- ❖ Use of '**full range**' of sentencing options – zero tolerance implemented through '**proportionate intolerance**'.



So what is our task?....

- To assist a more equal understanding and application of the ***gravity factors***.
- To propose common principles to guide the use of ***penalties and sanctions***.

And what is the aim?.....

- ❖ To assist Parties achieve the '***co-operation***' required by the Convention.
- ❖ And thus the better '***conservation status***' of species and the ecosystem.



Are 'Wildlife' offences the same as 'Environmental' offences?

- '*Wild flora and fauna, their natural habitats...species*' (*Latin*) are very specific - refer exclusively to **non-human organisms** and the **places they live**.
- These words are **used only in one context**, with **one specific meaning**.
- They are **separately listed** in the E U's 'Environmental Liability Directive' and 'Environmental Crime Directive'.
- '**Wildlife offences**' are usually **aimed at wildlife species specifically**: they relate to damage to and adverse effects on **wildlife and their habitats** exclusively.



So what do we mean by 'Environmental' offences?

- 'Environment' = 'Surroundings', usually physical, or a place (French).
- Refers primarily to air, land and water (lakes, rivers, seas), the physical planet Earth, may include living things, including agricultural animals, crops. It does not refer exclusively to 'wildlife'.
- But it is a general, non-specific word, and used in many different contexts: 'Work environment', 'Family', 'School', 'Rural', 'Urban' etc...
- 'Environmental offences' relate to 'purity', 'usability' – 'pollution', 'contamination', 'damage' ie. things that make human existence less healthy or pleasant: offences usually are a by-product of commercial activities.
- 'Environment' is not used in the Bern Convention ('wild flora and fauna, their natural habitats, species').



What does this difference mean for 'Wildlife offences' and their enforcement?

- Offence **analysis, understanding and evaluation** must be **specifically focussed** on 'Wild flora and fauna, their natural habitats...species'.
- Applying an **analysis based only on wider 'environmental offences'** is **inadequate** - it fails to meet the objectives of the Convention.
- Wildlife conservation and use legislation must be seen as a separate, stand alone Code – **'Sui Generis'**.
- It must be interpreted and enforced in accordance with **principles that give effect to its specific objectives**.
- This understanding and analysis is **fundamental to the TAP**.



Principles to guide the imposition of sanctions and penalties

- These are **not detailed sentencing guidelines or instructions**.
- They are **general principles** aimed to guide the imposition of **all forms of 'sanction'**, by all agencies and authorities involved, in all Parties.
- They apply to 'regulatory sanctions', administrative penalties and judicially imposed criminal/penal sentences.

And what is the aim?.....

- ❖ To promote a **common vision** with which to implement the Convention.
- ❖ To foster '**international judicial and enforcement mutuality**'.



What is the role of Judiciaries

- 'Judicial independence' is a means to an end, not an end in itself.
- The 'end' is a rational, objective and impartial application of the law.
- This applies equally to the imposition of sentences and orders after a criminal/penal conviction through a judicial process.
- To ensure that such sentences are 'proportionate' to the offence (ECHR).
- To apply the full range of penalties allowed within their jurisdiction and identify circumstances justifying the use of the upper range of such.
- To adopt a sentencing regime that informs and guides citizens towards voluntary compliance.



Role of Sanctions and Penalties for Convention offences

- To **remove** any financial **gain** or other 'benefit' or 'acquisition' from offence.
- To provide '**pay back**' or compensation from offender.
- To demonstrate social or communal **disapproval** of offending behaviour.
- To **deter** others minded to behave similarly – '**dissuasive**'.
- To support the achievement of internationally agreed goals.
- To ensure no Party becomes a 'weak link' through the use of sanctions which are at a level that is markedly lower than in others.
- Convention aim.....Benefit wildlife species.....through Co-operation.



What are the options to assist the Parties use the 'Gravity Factors' more effectively?

1. Leave TAP factors just as they are? *This may not do justice to the matters raised by Parties with the Secretariat since 33rd Standing Committee meeting Dec 2013.*
2. Start again and create a new list? *All or most of the TAP list would continue and having two lists would create confusion and complexity.*
3. Add a few different factors to the TAP list? *This would also create two lists and undue confusion and complexity.*
4. Create an 'Explanatory Guide' to the TAP list? This ***incorporates additional matters into the existing list by defining and explaining existing factors where possible – the Amplified (Expanded) List.*** *This would allow the existing TAP to remain as a complete, self-contained plan but allow additional relevant features to be taken into account in an equally authoritative document.*



What is the 'Amplified/Expanded List' meant to achieve?

1. Provides **additional explanation** for each Factor.
2. Provides **examples** of what some Factors might cover or include.
3. Makes the List more **'user friendly'**.
4. Encourages a more **uniform pattern of enforcement** across the Parties' jurisdictions.
5. It **assists with cross-border enforcement** – enforcers use same method of evaluation.
6. It assists in achieving the Convention's aim of **increasing 'co-operation'** among Parties for the **benefit of 'European wildlife and natural habitats'**.



Choosing Enforcement Methods – Sanctions, Penalties or Sentences?

- I. Use Criminal or Penal provisions - **Prosecution**: *judicial proceedings*.
- II. Use pre-determined **Administrative (Fixed) Penalties or On-the-spot Fines**: *imposed by national enforcement (police/customs) authority*.
- III. Use **Administrative sanctions** - removing profit obtained and restoring damage done: *imposed as a civil debt or order*.
- IV. Use **Regulatory sanctions** - restrain future breaches, remove profit and compensate for damage done: orders *imposed by an authorised national agency responsible for regulating activities*, especially commercial (breach of which may be a criminal offence).

Can the Gravity Factors assist in guiding which to use?



How does the TAP list of Gravity factors assist in choosing which Enforcement method to use?



By providing a common list of factors to be **used by ALL agencies** in evaluating the seriousness of each incident reported or investigated.



But the **list is not prescriptive as to what weight should be given** to each factor, nor of the circumstances in which a criminal/penal prosecution should be taken.

Contracting Parties retain total flexibility over the choice of type of sanction used, where their national laws provide more than one.

There is no Bern Convention equivalent of the E U's Environmental Crime Directive.

Thus the importance of proposed Principles for informing the imposition of sanctions.



International Co-operation benefits Birds...by all singing the same tune!





Proposed revision to amplified 'Impact risk for ecosystem'

'Impact risk for ecosystem' includes an assessment of: (i) the actual or potential damage to habitat; if reparable, the cost of actual damage or loss eg. of restoration, restocking, or whether damage was irreparable; (ii) the actual impact on local, national or regional population(s) of the species affected by the offence(s); (iii) the potential or actual damage the type of offence, the way it was committed, has previously caused or could have caused.

Listed as a criterion for national priorities.