



Council of Europe  
Conseil de l'Europe



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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

**Co-operation becomes effective when there is good co-ordination within each Party, ie. among its agencies and authorities, and among all Parties.**



## 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** – What is serious in your country?
- **Conservation impact statements** – Explaining science to lawyers!
- **Gravity factors** – How do you evaluate the crime?
- **Sentencing Guidelines** – Helping Judges get it right!

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**'.



What was the **task** of the Meetings of Special Focal Points and Group of Experts?

- 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.

**BUT to do this effectively, we need to consider how  
'wildlife' offences relate to 'environmental' offences? Are  
they the same?**



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

- The Bern Convention refers specifically to - '*Wild flora and fauna, their natural habitats...species*' (*Latin*) - 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'.
- Thus... '**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 also 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', 'damage', 'contamination', 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**.





## 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 33<sup>rd</sup> 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, and approach it with a similar understanding.
6. It assists in achieving the Convention's aim of **increasing 'co-operation'** within and 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 in a case, nor of the circumstances in which a criminal/penal prosecution should be taken.

So, (1) **Contracting Parties retain total flexibility over the choice of type of sanction used, where their national laws provide more than one.**

and, (2) **There is no Bern Convention equivalent of the E U's Environmental Crime Directive.**

**This indicates...the importance of the proposed Principles for informing the process for the imposition of sanctions.**



First, we should understand..... **the role of Judiciaries?**

- 'Judicial independence' is **a means to an end**, not an end in itself.
- The 'end' is a **rational, objective, informed** 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**.



And what is...the **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... **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 their aim?.....**

❖ **To promote a **common vision** with which to implement the Convention.**

❖ **To foster **'international judicial and enforcement****



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

