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Quo vadis?
CITES,
Conservation
and Livelihoods



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Introduction

The small restaurant in Chinatown in the Japanese city of Kobe did not look suspicious. The food and beer were extraordinary and particularly the fish soup tasted delicious. Given that the menu was in Chinese (kanji) I chose my meals based on the pictures. Since I had never tasted this kind of fish before, I signalled the waitress that I'd like to take another look in order to find out what kind of fish that was. Much to my surprise GoogleTranslate® told me that I had just eaten shark fin soup – a soup which has come under international scrutiny due to its animal welfare and conservation implications. Naturally, I was not able to find out what kind of shark-parts I had just eaten, but irrespective of the species, some shark (and ray) species have since CoP16 in Bangkok been listed under Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), adopted 1973, some of which are also being used for the production of shark fin soup, such as the Thresher shark (*Alopias* spp.).

Japanese use of marine species has long come under heavy international fire, particularly due to the country's ongoing whaling activities in the Southern and Pacific Oceans – which Japan considers to follow scientific purposes, but critics see as a means to fulfil the need for whale meat – and for being one of the main producers of and

traders in shark fins. At the same time, Japan's drive hunt of small cetaceans in the village of Taiji has brought the country significant international criticism. Before the International Whaling Commission, however, Japan has defended its whale hunts as being part of the Japanese culture and local livelihoods. Discursively, however, the recognition of marine mammal utilisation as part of livelihoods has by and large not taken place.

This report, which was commissioned by the World Conservation Trust (IWMC) looks at the history, future and normative standing of livelihoods within the context of CITES. It builds on previous research on the link between livelihoods and CITES (e.g. Roe et al., 2002; Abensperg-Traun, 2009; Lewis, 2009), but takes a somewhat more legal angle and attempts to place the interests of the resource users into the centre of inquiry.

Livelihoods and Conservation

Without the utilisation of wildlife human civilisations would not exist. Even though in the wake of the Industrial Revolution and associated modernisation of (predominantly Western) societies and economies the perception of the environment has changed dramatically (Ingold, 2000), there are still millions that stand in direct

dependence to the natural environment and interact with it on a daily basis. Inevitably, their livelihoods have evolved as part of this dependence. This interaction, especially for indigenous communities, also translates into the right to a healthy environment *sine qua non* no effective human rights can be implemented (Heinämäki, 2010).

At the same time, while nation states have employed top-down initiatives to manage natural resources and to prevent over-exploitation, communities themselves as active resource users have become vital actors in the protection of their natural environment and thus in the conservation of species (see e.g. Brosius et al., 2005; Wiber & Kearney, 2009). From a conservation perspective, the protection of livelihoods is therefore crucial for protecting certain species. Although there are several definitions of a livelihood, for the purposes of this report we refer to 'livelihoods' as comprising "the capabilities, assets (stores, resources, claims and access) and activities required for a means of living; a livelihood is sustainable which can cope with and recover from stress and shocks, maintain and enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the short and long term" (Chambers & Conway, 1991, p. 5).

The separation of conservation and livelihood protection is thus detrimental for successful conservation strategies. While CITES focuses merely on one aspect of conservation – the regulation of trade in wildlife products – and therefore does not focus on other major threats to biodiversity, the issue of inclusion of livelihoods has found its reflection in CITES as well.

The Interplay between Livelihoods and Conservation

The discourse on protecting wildlife through trade found its origin in the 1900 London Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa which are Useful to Man or Inoffensive and the 1933 London Convention Relative to the Preservation of Fauna and Flora in their Natural State. While the former was never adopted due to insufficient signatories, the latter, which was mostly applicable in Africa, dissolved in the wake of decolonisation. The process to draft an "international convention on regulation of export, transit and import of rare or threatened wildlife species or their skins and trophies" (IUCN, 1963) was initiated by the International Union for the Conservation of Nature (IUCN) in 1963, leading to the Washington

conference in 1973, which resulted in the adoption of CITES.

No documentation can be found which points towards a normative recognition of the resource users during the negotiating process. Although, according to the Preamble, the Convention itself aims to protect wild flora and fauna for humankind as a whole ('peoples and States') as well as a natural heritage, livelihoods as part of conservation strategies are not recognised. This is hardly surprising. After all, the recognition and inclusion of civil society in international law-making has been a product of the 1970s and saw a steady rise in the 1990s. Yet, even up to this day, the impact of international legal orders on local societies is a surprisingly understudied element in international legal scholarship. Although numerous studies on the impact of international law on the domestic legal order exist, little scholarly and political regard have been paid to the application and effect of international law in a local context. The absence of the human dimension within CITES makes this convention significantly different to, for example, the Convention on Biological Diversity (CBD), which, 20 years after the adoption of CITES, in its Preamble recognises "the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and

practices relevant to the conservation of biological diversity and the sustainable use of its components." Moreover, article 8(j) establishes that nation states "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities." The CBD thus includes the local population into conservation discourses. Article 10(d) additionally seeks to "[s]upport local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced."

From the outset and for more than 30 years within CITES' existence, livelihoods have not played a prominent role, if any at all. Only in the early 2000s this was about to change, as we will see in the following section. This being said, on a procedural level, two developments within CITES have had implications for the local use of wildlife: first, the Significant Trade Review mechanism was developed in the mid-1980s as a means to counter the hasty up-listing of species from Appendix II to Appendix I. The Animal and Plants Committees thus reviews trade in Appendix II species. Based on recommendations of the Committees as regards the implementation of Article IV of the Convention (trade in Appendix II species), the range state is able to fully implement CITES provisions. Merely failure to do so may result in the suspension of trade (see Resolution Conf. 12.8 [Rev. CoP17]). By extension, therefore, sustainable utilisation of these

species is protected. The second development is the Split Listing of species. This occurred in the case of the African elephant (*Loxodonta africana*) and the Peruvian vicuña (*Vicugna vicugna*) whose subpopulations saw different conservation statuses. Even though both species were species-wide listed on Appendix I, through the new mechanism several subpopulations were downlisted to Appendix II, inevitably benefiting those depending on their utilisation.

The Status of Livelihoods Within CITES

The first notable reference to livelihoods within CITES was made at CoP11 in 2000 when Germany proposed the listing of Devil's Claw (*Harpagophytum procumbens*) and its lookalike *H. zeyheri* on Appendix II of the Convention. Even though the proposal was withdrawn, one main reason for withdrawal referred to the impact a listing would have on the livelihoods of poor harvesters of this plant. Also in 2002, livelihoods-issues were raised when Fiji requested a lifting of trade sanctions on corals, which were imposed by the Standing Committee for Fiji failing to implement CITES provisions. The temporary lifting occurred *inter alia* due to the adverse socio-economic impact the ban had on local communities.

The issue of livelihoods has been brought onto the agenda at CoP13 in Bangkok in 2004. In Resolution Conf. 8.3. (Rev. CoP13) the parties to the Convention recognise the link between the role local communities play and the degree to which conservation of species is effective. The resolution also recognises that listing of specific species on the Appendices of the Convention may have impacts on the "livelihoods of the poor." In order to address the potential impacts of CITES-listings on the maintenance of livelihoods, the Standing Committee established a Working Group on CITES and Livelihoods in 2008.

We must note here that emphasis is put on the livelihoods of *the poor*, which is not defined more closely. Since the first paragraph of the resolution directly refers to the developing world in which most of the species occur which "CITES seeks to protect and enhance," 'poverty' is in all likelihood linked to *economic* capabilities of the communities in question and does not refer to the cultural richness these may employ. The approach towards livelihoods within CITES from the outset puts emphasis on a North-South axis and pays less attention to livelihoods dependent on flora and fauna that CITES seeks to protect in the Global North, such as in rural communities in Japan, Australia or Canada, or throughout the Arctic (see e.g. Glomsrød et al., 2017).

This being said, CITES follows a somewhat ambivalent approach to its

definition of livelihoods within a communal context. At CoP16 in Bangkok in 2013, Resolution Conf. 16.6. (Rev. CoP17) was adopted which recognises that “implementation of CITES is better achieved with the engagement of rural communities.” On the one hand, the resolution notes that “*poor* rural communities may attach economic, social, cultural and ceremonial importance to some CITES-listed species” (own emphasis), while on the other an explanatory footnote to the resolution’s utilisation of the term ‘rural communities’ notes that “[f]or the purpose of this Resolution, rural communities include indigenous and local communities.” This definition follows the practice established in the Convention on Biological Diversity, 1992, which in article 8(j) refers to the “knowledge, innovations and practices of indigenous and local communities.” This notwithstanding, the utilisation of the term ‘poor’ allows for two conclusions on how ‘rural communities’ and associated livelihoods are perceived: first, it is only economically disadvantaged rural communities which are to be addressed as regards the interlinkage of livelihoods and CITES-listings; second, the emphasis on the term ‘poor’ implies that communities which are not economically disadvantaged do not consider CITES-listed species as important. Especially the latter is problematic since cultural significance of the natural environment is not linked to economic standing, but

rather to the history of interaction with it. The explicit reference to the livelihoods of the poor may also be rooted in the realities of CITES-listed species since, as stated above, the vast majority of them is located in the Global South and thus in developing countries.

As part of the documents relevant for the rather new CITES agenda item of livelihoods, the Secretariat provided the conference participants of CoP16 with two papers addressing CITES and Livelihoods, both available under CoP16 Inf. 21. Paper 1, ‘Rapid Assessment Tools’ clarifies the Secretariat’s understanding of the utilisation of the term ‘poor’ in this context, which is worth citing in full:

For CITES purposes, ‘the poor’ may mainly be considered as the rural poor who are directly involved with collection of specimens from the wild as part of their livelihoods and “coping strategies”.

These are the people with the fewest alternatives to harvesting or processing wild products, or that are otherwise dependent on the ecosystems necessary to support the species that supply such products, and those who use wildlife as part of their coping strategies. These people should be prioritized by Parties when considering how listing decisions impact livelihoods of the poor, including those directly involved in trade and those who depend on their own domestic use of wildlife

This category of poor therefore encompasses those pivotal stakeholders [...] for whom it is key to ensure they receive any benefits of trade, or any other benefits arising from the implementation of CITES listings, as incentives to conserve species and their associated habitats. In addition, there may be other traders and processors of wildlife products who could also be classed as 'poor', particularly as CITES becomes more involved with fishery and timber products. However, they are not pivotal stakeholders [...] (CoP16. Inf. 21, p. 7).

The definition of the term further underlines CITES' approach towards livelihoods in a context which puts less emphasis on the *socio-cultural* relevance of resource utilisation but rather on the *economic setting* in which this utilisation occurs.

Paper 2, 'Addressing livelihood impacts', highlights positive and negative impacts of CITES listings and how more precise action can be taken to reduce potential negative impacts. Eight key factors are emphasised which should be taken into consideration when species are listed on the CITES Appendices: (1) Compensation for costs associated with the implementation of CITES listings, taking into account trade structures and the equitable distribution of costs; (2) Equity, empowerment and tenure, making sure that especially the poorest of the poor are not disadvantaged; (3) Representation,

fostering interest groups and organisations representing local harvesters and traders; (4) Supportive international context, enabling the putting in place of stricter domestic measures while providing international market access; (5) Market mechanisms and access to micro-finance, aiming to support local communities in their entrepreneurial endeavours and by obtaining micro-credits; (6) Consumer confidence, meaning a perceptive shift of CITES not being trade restrictive but rather being protective against species overuse; (7) Certification, to increase consumer confidence by certifying sustainability; lastly (8) Cross-sectoral technical support, to be able to integrate CITES implementation in wider contexts of wildlife protection, sustainable development and poverty alleviation.

Following Resolution Conf. 16.6. (Rev. CoP17), the Conference of the Parties adopted several decisions that addressed the interplay of CITES listings and livelihoods (Decisions 16.17 – 16.25) for the time between CoP16 and CoP17, which was to be held in Johannesburg in late 2016. These decisions do not make reference to poverty or other economic factors relating to the economic status of the communities in question, but rather refer to them as 'rural communities.' However, the normative consideration of livelihoods in a context of poverty within CITES is once again highlighted in the *Handbook on CITES and Livelihoods*, which was published in 2015 as a co-publication between the CITES

Secretariat and the General Secretariat of the Organization of American States (GS/OAS). In the book, CITES sheds light on its understanding of what a 'livelihood' entails:

Livelihoods are the means that enable people to earn a living. This includes the capabilities, assets, income and activities people require in order to ensure that their basic needs are covered. A livelihood is sustainable when it allows people to cope with, and recover from, setbacks and stress (such as natural disasters and economic or social upheavals), and improve their welfare and that of future generations without degrading the environment or natural resources base.

This definition follows the framework established by Chambers and Conway (1991), which was introduced above. It is crucial to note that this definition does not limit the application of the concept within contexts of poverty, but rather the general right to secure fundamental elements for survival, following their basic needs – a discussion of which is found below. A livelihood is therefore not inevitably tied to the natural environment but rather corresponds to the everyday activities a person or group of persons follows in order to secure the monetary (or resource) base for present and future generations.

One particular livelihood, which may not be easily recognised as such, but

which is of relevance for CITES, is that of musicians. Ivory can be found in the bows of string instruments such as cellos, violas or violins as well as in the keys of keyboard instruments. Before 2013 musicians whose instruments or bows contained ivory were significantly hampered in their ability to travel due to the CITES-based import ban on ivory. Prior to each international travel, musicians were thus forced to obtain certification for their instruments stating that the ivory used was manufactured prior to the adoption of the ivory ban in 1989. This caused significant hardships for musicians worldwide and has also led to the seizure of instruments and bows, impeding the musicians' ability to sustain their livelihoods and their ability to maintain an economic standing.

With the listing of rosewood species (*Dalbergia* spp.) on Appendix II, and *Dalbergia nigra* on Appendix I in 2016, which are important species for the production of musical instruments, transboundary travel for musicians as well as the production of musical instruments have become more difficult. The implications of the listing became prevalent at the 23rd meeting of the Plants Committee in Geneva in July 2017 when *inter alia* the League of American Orchestras, the Confederation of European Music Industries as well as several other private sector representatives attended the meeting as observers.

At CoP16, following a proposal by the United States (CoP16 Doc. XX), a

passport programme was adopted that implements a permanent certification scheme for ivory-containing instruments, thus easing international travel (Resolution Conf. 16.8 [Rev. CoP17]). Not surprisingly, however, neither the proposal nor the resolution locate musicianship within a context of livelihoods. By recognising Resolution Conf. 13.7 (Rev. CoP17) on *Control of Trade in Personal and Household Effects*, which itself abstains from a definition of 'household', it can be argued that by linking 'household effects' with CITES' definition of 'livelihoods,' the concept of 'household livelihood security' is applicable. This concept holds that "livelihoods are secure when households have secure ownership of, or access to, resources and income earning activities, including reserves and assets, to offset risks, ease shocks and meet contingencies" (Frankenberger & McKaston, 1998, p. 31). Consequently, impeding a musician's ability to travel as part of his/her work constitutes a violation of this standard. The adoption of a passport programme is thus a means to alleviate adverse effects of the ivory ban as well as the listing of rosewood species on cross-border travels by musicians and the *ad hoc* certification scheme that went with it. The institutional learning process by CITES and evolving nature of the convention are apparent in this context. Whether or not musicianship is considered a livelihood – either officially or behind

closed doors – remains unresolved, however.

Part I of the *Handbook on CITES and Livelihoods* is titled 'How to rapidly assess the effects of the application of CITES decisions on livelihoods in poor rural communities,' thus providing guidelines on how to identify and tackle potential effects of CITES listings on communities with low economic standing.

The approach CITES has chosen as regards its recognition of livelihoods, namely its location within contexts of poverty, follows the Convention's strategic support for the United Nations Millennium Development Goals, particularly concerning the eradication of poverty and hunger (Goal 1) and ensuring environmental sustainability (Goal 7). This support was expressed in Resolution Conf. 14.2. at CoP14 in 2007 in The Hague as part of *CITES Strategic Vision: 2008–2013*. While this may politically explain the conceptual linking of 'livelihoods' with 'poverty', another aspect should be considered, namely that of 'sustainable use' of species, which also falls under the ambit of CITES. Here, the inevitable clash of normative stances towards the use of, particularly, charismatic megafauna such as elephants rises to the fore – a clash which has, for instance, for many decades paralysed the International Whaling Commission. Since CITES was at its inception one of the first international treaties to actively seek the support of non-governmental organisations

(Article XII), this has translated into a significant presence of organisations lobbying state representatives to either support or reject arguments for sustainable use. The large delegations of organisations opposing sustainable utilisation of animals, such as the International Fund for Animal Welfare, the Humane Society International/United States or the Species Survival Network bear witness to the efforts these organisations make in order to influence decision-making within CITES towards an end of non-utilisation. Linking poverty and livelihoods thus appears to be a means to appease both sides of the sustainable use argument: on the one hand, utilisation of wild resources is still possible *despite* NGO pressure; on the other, it does not allow for economically advantaged communities to make unrestricted commercial use of the abundant wild resources. By and large, however, although the CITES Convention does not define ‘sustainability’ or ‘sustainable use’, Article IV (a) clarifies that it is under the authority of a CITES member state to ensure that “export will not be detrimental to the survival of that species.” In other words, a textual interpretation of the convention (see below) allows for the conclusion that it does indeed recognise the sustainable utilisation of resources. One might even go further and argue that Appendix II is not to stand in the way of sustainable utilisation. Notably, the economic status of the resource users is not made

reference to (see also Abensperg-Traun, 2009, p. 142).

This being said, the strategic safeguarding of the ‘livelihoods of the poor’ raises the question of what happens when/if the communities in question have abandoned poverty and have reached an economic standing which would prompt the international community to no longer label them as ‘poor.’ Would they still be able to conduct trade in species listed on the CITES Appendices I or II? Would they still be considered under the CITES and livelihoods initiatives? These questions inevitably lead to whether or not there is a ‘need’ for these communities to make use of and engage in trade in these resources.

The Blurry Question of ‘Needs’

The question of need has been debated for decades, particularly since Gro Harlem Brundtland’s famous definition of ‘sustainable development’ of 1987, which reads: “Sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future” (WCED, 1987). The question of *who* is defining these needs has thus far not been answered in a satisfactory manner and different, somewhat irreconcilable, approaches towards this issue exist.

By and large, community planners, managers as well as conservationists are the ones that define the needs for the community in question – a process which in the age of increasing globalisation has gained momentum on the international stage. The ‘Needs Statement’ which clearly outlines *why* certain communities are in need of the hunt for whales underlines this in the context of the International Whaling Commission. Similarly, little discussion within CITES can be found which normatively deals with the question of *who* defines the need for trade in the products of certain species. This notwithstanding, it can be argued that in light of the dominant position non-community members have in the definition of needs, the voice of the community itself is silenced. This constitutes a gross breach of fundamental human rights as regards the access to resources, cultural rights and self-determination. At the same time, the divergence between the definition of needs from the outside and the definition of needs from the inside constitutes the fundamental dilemma between the universal (norms) and the contextual (local needs). While there appears to be a chasm between these two spheres, both are nevertheless influencing one another through partnerships, knowledge, or management practices. Needs and practices are therefore embedded in a local as well as global context, which has prompted the emergence of the term

‘glocal’ – defined by local and global considerations.

While this may be the case, normative shifts in the perception of human-wildlife interactions have challenged the notion of protecting a species based on considerations rooted in utilitarian conservation towards strict non-utilisation. In other words, the utilisation of charismatic megafauna such as elephants has been normatively rejected, particularly as regards the trade in ivory. Kenya’s high-profile burning of its ivory stockpile in 1989 stands synonymous for this approach. In other words, there appears to be a normative understanding, even within Africa and particularly Eastern African countries, that there is no longer a need for the commercial trade in elephant (and especially ivory) products. Southern African countries such as Zimbabwe, Namibia or South Africa, however, challenge this approach and have repeatedly asked for several one-off permissions to sell their ivory stockpiles, with varying success.

It can be argued that the normative baseline (the universal norm) for CITES members is the recognition of protecting species through the regulation of trade – indeed, this is the *raison d’être* of the convention. By using the example of elephants and ivory it can be shown that the institutionalisation of this norm varies. While there are bodies, which oversee CITES implementation, this does not mean that the norm is accepted throughout all levels of

population or government. As an inevitable consequence, poaching still exists, pointing toward the empirical fact of other needs overriding the norm of species protection. While on a CITES-level, the norm of non-utilisation of elephants and ivory appears to be a 'settled norm' – which means that “it is generally recognized [and] any argument denying the norm (or which appears to override the norm) requires special justification” (Frost, 1996, p. 105) – on a community level this appears not to be the case. Social, communal circumstances and structures thus do not subscribe to or implement this norm.

Two distinct strains of approaching the protection of wildlife under CITES are thus discernible: (1) norm-emergence – creation and institutionalisation of norms on an international level through the listing of species on the Appendices. The question thus circles around which species can legitimately be traded in and which not; (2) governance – domestic mechanisms that implement and enforce the norm. Here, however, also cultural or ideational norm-implementation must be considered, which is reflected in the adherence to the norm on a day-to-day basis by all stakeholders, thus reflecting into the everyday lives of the people affected.

On 8 September 1994 the Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (Lusaka Agreement) was concluded,

coming into force on 10 December 1996. Current parties to the Agreement are Congo (Brazzaville), Kenya, Liberia, Tanzania, Uganda, Zambia and the Kingdom of Lesotho with South Africa, Ethiopia and the Kingdom of Swaziland as signatories. The Lusaka Agreement aims to enforce three multilateral conventions, the African Convention on the Conservation of Nature and Natural Resources, the Convention on Biological Diversity, and CITES. With the above in mind the Agreement is a means to implement the norm of species conservation and to curb poaching activities on a national level. As per Article 2 of the Agreement, its objective is “to reduce and ultimately eliminate illegal trade in wild fauna and flora and to establish a permanent Task Force for this purpose.” The means of achieving this objective include prosecution, the collection of data on poaching as well as public awareness campaigns to report poaching activities. The Agreement, however, does not address the causes for poaching, but rather aims to tackle the symptoms of other reasons overriding the norm of species protection. As a consequence the Agreement falls short on identifying and assessing the reasons for poaching and unsustainable wildlife utilisation. This shortcoming was indirectly addressed at CoP14 in The Hague in document CoP14 Doc. 32 on *Interpretation and Implementation of the Convention*. In paragraph 44 the document states:

In order to put the right incentives in place, a better understanding of the value of wildlife and the *socio-economic factors driving wildlife trade* is needed. Once the market and non-market values, root causes, drivers and patterns of legal and illegal trade are better understood, it is easier for the Parties to identify potential incentives and disincentives. Particular attention should be paid to the value of species for indigenous and local communities for subsistence, cultural or commercial purposes [own emphasis].

In other words, in order to effectively tackle issues of poaching and illegal trade, CITES has recognised the need for an assessment of the need to do so in the first place. While the Lusaka Agreement is a tool for governing (or even policing) CITES, above paragraph shows that a discourse on understanding the normative drivers behind illegal trade has been initiated. Anthropological research amongst people and/or communities in which poaching is conducted should therefore constitute a key element in this regard. Framed differently, the paragraph enables processes initiated by CITES to identify the need(s) which bolster poaching activities and which override the need for species protection. Indeed, the carrying out of case studies under the Working Group on CITES and Livelihoods is crucial (see <https://cites.org/eng/prog/livelihoods>).

The need for species protection inevitably opens up the question of who the species is protected for and to what degree. Two different strains of approaches have shaped the global discourse on this matter: (1) the species is being protected for the sake of the species itself since it holds an inherent value (biocentrism); (2) the species is being protected in order to humans to further benefit from it (anthropocentrism). Along with the latter goes the concept of 'ecosystem services' – services that emerge from the natural (or urban) environment in order to benefit the people living in it. CITES is *prima facie* rather silent in this regard. This being said, the Chapeau outlines the objective of the Convention by stating 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*" while being "[c]onscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view" (own emphasis). While it is not clear whether the 'generations to come' refer to human generations or the generations of wildlife, the second paragraph underlines the (potential) need of human populations to make use of the abundant wildlife. In this sense it appears reasonable to assume that species protection under CITES occurs for anthropocentric purposes. As shall be shown in the next section, however,

treaty interpretation is not clear-cut and depends on the school of interpretation it follows.

This notwithstanding, in order to overcome the biocentrism/anthropocentrism dichotomy, it may be advisable to insert a systems-based approach into the discourse (system-centric), which analyses the interplay between different actors within a given locality and its system. This approach has given rise to the socio-ecological systems theory (Berkes, 2000), which aims to integrate the interplay between natural resources, humans and institutions, and the ability for this system to withstand stress and pressure. In the interplay of livelihoods and conservation and the complexity of the socio-ecological systems in resource-dependent communities, two important stress factors can be identified. On the one hand, unsustainable resource utilisation puts enormous stress on the conservation status of a species and ultimately on the livelihood of exploiting it. On the other, trade restrictions put limitations on the maintenance of livelihoods of resource exploitation and either cause the resource users to seek alternate employment (i.e. relocation in areas with little resource diversity), bring poverty, or drive the trade in specific species underground (i.e. enable poaching, which in turn runs contrary to the objective of CITES). Trade restrictions thus feed poaching, which in turn feed

the need for trade restrictions. In order to break this cycle of adverse continuity, CITES' approach of identifying the drivers of illegal trade is crucial. Here, it can be argued, that it is not the poaching itself which is the cause of stress for the ecosystem, but rather the motivations behind it. Top-down environmental governance without close consultation and cooperation with the local population – in indigenous contexts known as the doctrine of 'free, prior and informed consent' – may thus lead to confrontational situations. The evictions of indigenous forest users in Tanzania as a result of the implementation of the Reduction of Emissions from Deforestation and Forest Degradation (REDD) scheme under the UN Framework Convention on Climate Change (UNFCCC) stands symbolic for this dilemma (see Odgaard & Maganga, 2009). While the protection of the forest in order to tackle human-induced climate change was not the sole reason for the eviction of forest-users and larger political decisions were at play in this case, trade restrictions due to conservation concerns hold the potential for conflict without including the needs of the local population to engage in this trade.

Reading and Interpreting CITES

The above has on several occasions raised the issue of the correct interpretation of the Convention. However, standard practice in international law, especially with regard to the appliers of a treaty (i.e. those authorities that directly apply the treaty in question), is rooted in different schools of treaty interpretation which do not allow for a definite or a 'correct' interpretation of a given treaty. There are at least three different types of treaty interpretation, all of which are also relevant in the context of CITES. First, in accordance with article 31 of the 1969 Vienna Convention on the Law of Treaties, the textual analysis of a treaty follows the 'ordinary meaning' of the words written in the law. This allows for a *prima facie* interpretation of the scope of the treaty in question. The second school of interpretation is based on teleological analysis, which, also by including the drafting history of a treaty, aims to determine the 'objective and purpose' of the treaty. While, depending on the wording of the treaty, the textual equates with the teleological, it is in cases in which treaty formulation does not allow for a clear-cut analysis of its object and purpose. In the case of CITES, its object and purpose are defined in the Preamble as a need for protecting wild flora and fauna "for this and the generations to come." The textual analysis of this object

and purpose are somewhat ambiguous, however. Merely through the teleological approach that takes the drafting history of the Convention into consideration the meaning of this object and purpose open up more clearly: the drafters of the Convention, meaning primarily the IUCN as the main body to initiate the conclusion of CITES, were primarily driven by incentives of species conservation which was to be achieved through limiting international trade. However, in order to reconcile the differences of the two blocs that had arisen during the 1960s – one driven by strong conservation incentives and the other driven by economic incentives – that were however unified in their intention to protect wild flora and fauna, it appears reasonable to assume that the human dimension ("this and the generations to come") was inserted in addition to the different types of value associated with wildlife and its protection. A textual reading of CITES therefore allows for an anthropocentric approach to wildlife protection with human being benefactors of this protection while a teleological reading may allow for the conclusion of preservation, meaning protection for the sake of the species, overriding human needs.

A treaty is hardly ever an isolated body of law – particularly in the case of international environmental law. To this end, the teleological interpretation considers a treaty also in a contextual manner, including all

subsequent agreements concluded under the treaty in question, all annexes, amendments, or other treaties which are related to the treaty. For CITES, some of the most obvious agreements that provide further context are those concluded at the 1992 Rio Summit, first and foremost the CBD and the UNFCCC as well as the Rio Declaration and Agenda 21. These multilateral agreements thus provide further context under which the provisions, the 'ordinary meaning' of the terms and thus the 'object and purpose' of CITES are to be considered. Since especially the Rio Summit and thus the CBD have placed great emphasis on human wellbeing in conservation contexts, it can be argued that also the contextual consideration of CITES identifies livelihoods as increasingly relevant in trade-based conservation.

Closely hand in hand with the teleological interpretation goes the third kind, the evolutionary interpretation of a treaty. This approach implies that a treaty is not static in time and that its overall object and purpose have moved away from its original scope, thus making the treaty a 'living instrument.' The reasons may be manifold and may stem from the input of the civil society or the shifting away of state parties from a treaty's original purpose. In the context of the International Convention for the Regulation of Whaling (ICRW), for instance, some argue that its purpose is no longer "to provide for the proper conservation of whale stocks and *thus*

make possible the orderly development of the whaling industry" (Preamble, own emphasis) but rather the "proper conservation of whale stocks" as a stand-alone objective of the convention (see Fitzmaurice, 2016). For CITES, two trends are recognisable. On the one hand, treaty interpretation (i.e. application) leads to the conclusion of limited utilisation of those species listed on the Appendices. While legally no difference is made between species, in the public discourse non-utilisation narratives are particularly prevalent in the context of 'charismatic megafauna' species such as elephants. This occurs irrespective of the species' (or subspecies') listing on Appendix I or II. On the other hand, the discourse on livelihoods has been opened up. The interplay with international human rights regimes, fundamental rights of local and indigenous peoples and livelihood-based resource utilisation has been normatively brought onto the Convention's agenda despite the absence of these issues during the drafting process and arguably the overall *telos* of CITES. This inevitably leads to a normative shift from an inchoately implemented preservation approach towards that of (limited and strictly controlled) sustainable use (see also Abensperg-Traun, 2009; Lewis, 2009).

Quo vadis?

Since CoP13 in 2004, livelihoods have officially moved onto the agenda of CITES and a gradual institutionalisation of livelihood-issues has been taking place since then. The focus lies on the livelihoods of the poor and strategies have been developed to assess these livelihoods and in how far species conservation and the maintenance of livelihoods under the auspices of CITES are reconcilable. The shifting of livelihoods onto the Convention's agenda can be considered a shift towards an increasing recognition of sustainable use and thus, in essence, a return to the original intention of the Convention *for* current and future generations (CITES, Preamble), if read textually. At the same time, certain species are discursively fully excluded from this process. First and foremost 'poster species' such as elephants do not meet the standards for consideration under livelihood pretexts.

CITES is therefore facing two potentially irreconcilable trends, which may lead to the Convention's full stall: that of sustainable use based on livelihoods (see for example Resolution Conf. 8.3 *Recognition of the Benefits of Wildlife Trade*); and that of full preservation (of at least some species). In order to prevent this looming stall, authors have suggested a closer cooperation between other international bodies such as the CBD in order to develop strategies for conservation and

livelihood protection (see Abensperg-Traun, 2009). CITES has furthermore developed Memoranda of Understanding (MoUs) with UN bodies such as the FAO in order to foster capacity-building in poor rural communities. This trend should be expanded to include other UN organs such as the International Labour Organization (ILO) and its poverty-reduction and employment enhancement programmes as well as the UN Permanent Forum on Indigenous Issues (UNPFII). The Secretariat has recognised the need to find the motivations behind unsustainable wildlife utilisation (see above) and the conclusions of MoUs between the Convention and other international institutions and organisations underlines this trend and should be enhanced and further developed. Arguably, the increasing focus on livelihoods may lead to a shift from a conservation agenda to a livelihood protection one within CITES, making the core objective of CITES – conservation of biodiversity through the regulation of trade therein – void. Indeed, it may even work contrary to this objective: since it is the Contracting Parties that, according to Article IV, propose an uplisting from Appendix II to Appendix I, due to limited means for the assessment of biological and trade data onto which data based on livelihood considerations would have to be added, an uplisting might not occur (Lewis, 2009). However, since the process on livelihoods has been

set in motion, the treaty may, according to the evolutionary development of the regime, start to develop and include mechanisms to (1) support Contracting Parties in order to conduct livelihood and other assessments, and (2) to establish mechanisms that provide for species-based funds that flow back into the communities in question.

With this in mind, the change of the listing criteria would be inevitable. In Conf. 9.24 (Rev. CoP 15), however, the Criteria Work Group did not go beyond biological and trade data for Appendix-amendment. Socio-economic factors are merely to contribute to meet these criteria but themselves are not considered as full, stand-alone criteria. However, in order for CITES to live up to its intention to also safeguard the interests of the local population, strategic social impact assessments are necessary. While these are costly in terms of finances and time, it is up to the Secretariat and the Standing Committee to decide what status livelihoods play in the overall working structure of CITES. In light of the increasing presence of indigenous peoples on the national and international stage of governance, it is advisable to seek strategic cooperation with indigenous organisations and bodies as well as / or with international human rights organisations and bodies in order to prevent potential human and indigenous rights violations based on CITES listings. To this end, incentives to foster community-based natural resource management (CBNRM) should

be enhanced – a necessity which also the Secretariat has recognised in its response to the tabled proposal for the establishment of a Rural Communities Committee by Namibia, Tanzania, Zambia and Zimbabwe at CoP17 in Johannesburg (see CoP17 Doc. 13). The Rural Communities Committee has not found its formal recognition at the time of writing although the CoP adopted Decisions 17.28, 17.29 and 17.30 on a more formal and strategic recognition and incorporation of rural communities. The issue is therefore still on CITES' agenda. Otherwise the convention would run the danger of **manifesting** the “discourse of the powerful [CITES] about the powerless [poor rural communities]” (Ife, 2009, p. 126). In order to prevent this from happening, strategies and mechanisms should be put in place to enable rural communities to participate in the decisions of the listing of species. CITES-sponsored or -initiated CBNRM programmes might serve as a tool to achieve this aim. The Secretariat, the Standing Committee as well as CITES Parties are thus to consider how much resources they are willing to allocate to these programmes, which, in the long run, are capable of tackling the drivers of poaching. In order to fruitfully engage in this matter, resource allocation to policing (deterrence) may not be the only option, but resource allocation to the understanding of the norms within a community and thus to tackle the root causes for poaching are advisable.

At the same time, the economic benefits stemming from legal and illegal trade in wildlife constitute significant contributors to biodiversity loss. In order for CITES implementing bodies to adequately assess the socio-economic drivers for unsustainable use of wildlife, the *Handbook on CITES and Livelihoods* introduces several methodologies which can be used to do so. A particularly relevant method is the Most Significant Change (MSC) method, developed by several non-governmental organisations (Davies & Dart, 2005). Based on this technique, it is the resource users themselves which communicate what they perceive as most significantly affecting their livelihoods. Based on this technique it is thus possible to discern the relevance of particular wildlife and other factors in a specific socio-economic setting. This furthermore corresponds and enhances the indicator of 'subjective well-being', which was developed as part of Arctic Social Indicators. Subjective well-being "is an inclusive concept, which covers all aspects of living as experienced by individuals and includes a person's subjective evaluation of his/her objective resources and other living conditions" (Poppel, 2014, p. 229). In lieu of CBNRM mechanisms, through MSC and subjective wellbeing indicators, CITES implementing bodies would be able to include the views of the local population into the decision-making procedures. While this has been criticised as lying outside the scope of CITES and potentially leading to (1) the

subjugation of conservation interests to livelihoods; and (2) stalling debates on species protection *vis-à-vis* livelihoods (SSN, 2007), it must be borne in mind that the discourse of livelihoods within CITES has been opened up and should be considered in full. If livelihoods were to fully lie outside the scope of CITES, a Working Group on Livelihoods and associated documents should not exist in the first place. While indeed a full consideration of livelihoods are likely to stall rapid listing of species, a normative consideration of livelihoods and governance of CITES should be considered as two different elements within the future work of the Convention. Moreover, as Lewis points out, "international trade is neither the only, nor the greatest, threat to species survival. Of far greater significance is the threat posed by habitat loss" (Lewis, 2009, p. 254–255). Consideration of livelihoods within CITES is thus not a stand-alone issue of governance but underlines the need for the strategic establishment of partnerships: between CITES and other international institutions and organisations, and between CITES and local stakeholders.

CITES must thus determine which way forward it is to go. If it is to fully and merely focus on conservation issues, livelihood considerations should be removed from its agenda. This would inevitably lead to human rights and conservation implications since rural communities are not given any incentives for species protection and

may not correspond to the normative context of environmental governance in which CITES is located. If CITES is to further advance livelihood considerations, it must do so in full in order to produce and support tangible effects of community-based species conservation – both on a normative and on a governance level.

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