



European Union Action to
Fight Environmental Crime

Contribution to WP7

**Contribution to conclusions and
recommendations on environmental crime:
the external dimension**



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LIST OF ABBREVIATIONS

AML	Anti-Money Laundering
BAN	Basel Action Network
B4Life	Biodiversity for Life
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CWIT	Project on Countering WEEE Illegal Trade
EEA	European Environmental Agency
ENPE	European Network of Prosecutors for the Environment
EU	European Union
EUROJUST	European Union Agency
EUROPOL	European Union
FLEGT	Forest Law Enforcement Governance and Trade Action Plan
ICCWC	International Consortium on Combating Wildlife Crime
IMPEL	EU Network for the Implementation and Enforcement of Environmental Law
ICCWC	International Consortium on Combating Wildlife Crime
INTERPOL	International Criminal Police Organization
JIT	Joint Investigation Team
MEAs	Multilateral Environmental Agreements
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of the Congo
MOU	Memorandum of Understanding
NGO	Non-governmental organisation
OCG	Organised crime groups
OECD	Organisation for Economic Cooperation and Development
SWOT	Strengths, weaknesses, opportunities and threats
TTIP	Transatlantic Trade and Investment Partnership Agreement between the EU and the USA
TWIX	European Union Trade in Wildlife Information eXchange (EU-TWIX)

UN	United Nations
UNEA	United Nations Environment Assembly
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	UN Convention on Transnational Organised Crime
WEEE	Waste of Electric and Electronic Equipment
WCW	Window Crisis in Wildlife
WP	Work Package

1 Introduction

This report formulates policy recommendations regarding the external dimension of the EU action to fight against environmental crime that complement the measures adopted at the internal level. This report also examines how this external dimension can serve to promote a concept of environmental crime at international level and to make it a serious crime. This external action of the EU has consisted of supporting United Nations' initiatives intended to promote environmental law and the implementation of Multilateral Environmental Agreements (MEAs) that foresee the possibility of using criminal law to protect the environment, such as the CITES or the Basel Conventions. These treaties propose enhancing the enforcement of environmental law, and, in particular, of international schemes, that impose criminal sanctions on infringements that cause severe damage to the environment. The EU has transposed these measures into the European legislation and its Member States have implemented them. Moreover, the EU's development cooperation policy and its neighbourhood policy serve as tools to achieve some of the goals of this external action and have promoted the implementation of these MEAs as well in developing countries and provided the conditions for stronger governance to protect the environment against harmful activities through criminal law.

Illegal trafficking of wildlife and waste are two sectors that are singled out in this report due to their often-transnational nature and their connection with organised crime. They also have a momentum in the United Nations institutions that are in the course of adopting initiatives, programmes and resolutions targeting this type of environmental crimes. International cooperation is being developed with origin, transit and destination countries of environmental crimes through international institutions and networks such as United Nations Office on Drugs and Crime (UNODC), International Criminal Police Organization (INTERPOL), International Consortium on Combating Wildlife Crime (ICWC), European Network for the Implementation and Enforcement of Environmental Law (IMPEL). The UN Security Council has linked wildlife crime and security and has adopted resolutions that demand states to adopt actions to fight against it.

2 Opportunities

Opportunities that were presented in the SWOT analysis of the external dimension¹ of environmental crime of WP6 are summarised in the points below. The opportunities fall into 5 categories:

¹ Farmer et al., "Evaluation of the Strengths, Weaknesses, Threats and Opportunities Associated with EU Efforts to Combat Environmental Crime," sec. 8; Area 6: External dimension of environmental crime – what can EU do (EU only)", 63-77,

Table 1: Overview of Opportunities, Weaknesses and Strengths

Opportunity		Weakness addressed	Strengths to build on
Global Action	EU and its MS consider promoting global action to fight against environmental crime	Lack of a common worldwide definition of environmental crime	Proposals of resolutions by the UNGA and UNEA, presented by MS
Priority setting	Use EU's influence to define political priorities to fight against environmental crime in international institutions and CoPs	Environmental crime is not a priority in many countries and in international institutions Crisis of illegal trafficking in wildlife	UN, UNEA, UNODC and CITES CoP are currently focusing on wildlife trafficking
MEAs and Environmental Crime	EU provides more funding for MEAs protecting the environment through criminal law	Lack of staff and financial resources	Funding through development cooperation initiatives such as B4Life
International Cooperation	The EEAS and the EU Delegations enhance international cooperation with third countries	Lack of or insufficient cooperation with third countries on environmental issues	The EEAS and the EU Delegations in third countries
	The EU contributes to enforcement networks: UNODC, INTERPOL, ICCWC	Lack of or insufficient mandate of enforcement networks and institutions	Instruments for judicial cooperation and mutual recognition in place
Environment and Security	Security Council's Resolutions linking environmental crime and security	Peacekeeping operations mandates do not contemplate environmental crime	EU and MS forces' mandates in Peacekeeping Operations
		Lack of effective measures to stop environmental crime profits fueling international conflicts	EU's Operations in place: Atalanta in Somalia, Operations in Central African Republic and Congo

Global Action

The EU promotes the adoption of a worldwide definition of environmental crime by UN institutions. In the first session of the UN Environment Assembly (UNEA) in 2014, in the preparatory meetings Kenya presented the draft decision prepared in collaboration with the EU² that was finally adopted as Resolution

² See UNEP/ EA.1/CW/CRP.5

1/3 on illegal trade in wildlife.³ It opened a debate “to mobilize political will, leadership and resources in response to the Rio+20 call for “firm and strengthened” action on this issue”.⁴

Priority setting

The EU uses its influence to define political priorities to fight against environmental crime in international institutions and CoPs. In July 2015, Germany and Gabon prepared a Resolution on *Tackling illicit trafficking in wildlife* that was adopted by the UN General Assembly and that all the EU Member States endorsed.⁵

MEAs and Environmental Crime

The EU promotes enforcement of MEAs protecting the environment through criminal law with different instruments such as adopting special measures on the Conferences of the Parties (CoP) and promoting compliance with MEAs through development cooperation. The EU promotes the adoption of criminal sanctions to enforce MEAs such as CITES and the Basel Conventions.

The EU Biodiversity for Life (B4Life) is a flagship initiative,⁶ launched on 22 May 2014 to help the poorest countries to protect ecosystems, combat wildlife crime and develop green economies. The initiative will have an estimated budget of up to EUR 800 million for 2014-2020.⁷

International Cooperation

The EU enhances international cooperation with Third States through the EEAS and the EU Delegations. In the case of wildlife crime, the Roadmap for an Action Plan against Wildlife Trafficking adopted by the European Commission argues “the Green Diplomacy Network will be used to discuss envisaged action through diplomatic tools”.⁸

³ Then, EU Environment Commissioner Janez Potočnik said: "The EU has long argued for a strong global voice on environmental issues. This first UNEA has demonstrated that countries around the world are facing shared global challenges and are resolved to step up joint action to tackle them together. I especially welcome UNEA's call for a strong environmental dimension in the future Sustainable Development Goals and the resolution on global wildlife crime, which broadens the issue to marine and timber species and sets targeted actions to eradicate supply, transit and demand for illegal wildlife products.", See European Commission, EU Commission welcomes Outcome of first ever UN Environment Assembly, 30 June 2014, available at http://eu-un.europa.eu/articles/en/article_15217_en.htm

⁴ See Summary of the First UN Environment Assembly of the UN Environment Programme: 23-27 June 2014, Earth Negotiations Bulletin, Vol. 16, No. 122, 30 June 2014, pp. 6-7, available at <http://www.iisd.ca/unep/unea/unea1/>

⁵ Resolution A/RES/69/314 on Tackling illicit trafficking in wildlife, 15 July 2015.

⁶ See European Commission, Report from the Commission to the European Parliament and the Council, 2015 Annual Report on the European Union's development and external assistance policies and their implementation in 2014, COM(2015) 578 final, 24.11.2015, p. 6.

⁷ B4Life will be financed initially from the EU Global Public Goods and Challenges (GPGC) thematic programme as well as from regional and national development cooperation envelopes, with an estimated budget of up to €800 million for 2014-2020.

⁸ See European Commission, Roadmap for the adoption of an EU Action Plan against Wildlife Trafficking http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_env_087_action_plan_wild_trafficking_en.pdf

The EU enhances cooperation with international organisations and law enforcement networks such as UNEP, UNODC, INTERPOL and ICCWC. It has funded many initiatives to assist UNODC and INTERPOL.

Environment and Security

In recent years the UN Security Council has adopted Resolutions acknowledging the link between environmental crimes, in particular, wildlife trafficking, and security.⁹ The EU and its Member States comply with the Security Council Resolutions targeting environmental crimes. A UNEP and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) report has examined the role of transnational environmental crime as one of several key factors fuelling the protracted conflict cycle in eastern Democratic of Congo (DRC)¹⁰ where EU has developed and extended its first civilian mission in Africa, EUPOL RDC since 2007.

3 Options

An overview of the different options for action at the policy level of the opportunities shows that the EU can choose:

Global Action

➤ **EU and its Member States promote a worldwide concept of environmental crime**

The EU and its MS consider promoting global action to fight against environmental crime. This global action includes promoting a worldwide concept of environmental crime in the UN institutions and, in particular, the United Nations Environment Programme (UNEP) and its Environment Assembly (UNEA). This concept includes illegal trade in wildlife and illegal logging, illegal traffic of hazardous waste and WEEE and illegal, unregulated and unreported fishing (IUU).

➤ **EU and its Member States promote a worldwide partnership to fight against wildlife crime**

The EU and its Member States have the option of making wildlife crime a priority of the EU Green Diplomacy Network.¹¹ This policy option is to be achieved through a diplomatic action consisting of a common *demarche*

⁹ On these Resolutions, see Anne Peters, “Novel practice of the Security Council: Wildlife poaching and trafficking as a threat to the peace”, published on 12 February 2014 in EJIL Talk! Blog of the European Journal of International Law, <http://www.ejiltalk.org/author/anne-peters/>

¹⁰ UNEP-MONUSCO-OSESG. 2015. Experts’ background report on illegal exploitation and trade in natural resources benefitting organized criminal groups and recommendations on MONUSCO’s role in fostering stability and peace in eastern DR Congo. Final report. April 15th 2015, pp. 33-34, available at www.unep.org

¹¹ The Green Diplomacy Network (GDN) is an informal diplomatic instrument to represent the interests of the Member States in common with those of the EU. It was created in June 2003 by the Thessaloniki European Council when the Member States assigned to the EU Presidency the task of representing both the EU’s and Member States’ interests in the environmental international organisations through the combined actions of the national officials of Ministries of Foreign Affairs in charge of international environmental issues and their diplomatic missions, with full association with the European Commission. Its main goal was “to promote the use of the EU’s extensive diplomatic resources (diplomatic missions, development co-operation offices) in support of environmental objectives, orchestrating campaigns and demarches that bring the EU messages to third parties all over the world, gathering also our partners’ views”; See the Working Guidelines for the ‘Green Diplomacy Network’, in http://ec.europa.eu/external_relations/environment/gdn/index_en.htm.

for the Member States and the EU External Action Service. Following the model proposed by the UK in the London Conference on Illegal Wildlife Trade 2014, the EU's diplomatic action will include and focus on illegal wildlife.

Priority Setting

- **The EU uses its influence to define political priorities to fight against environmental crime in international institutions and CoPs.**

The EU and its MS participate actively in international initiatives to fight against criminal activities in those sectors most affected by serious environmental crime such as wildlife and waste trafficking.

- **To classify environmental crime as a serious crime when organised crime is involved**

To achieve this goal, the EU and its MS support the initiatives of UNODC to qualify environmental crime as an "emerging threat" and a "serious crime". In this direction, they participate in the debates on the adoption of a new Protocol on environmental crime or wildlife crime for the UNTOC proposed by NGOs. Transnational environmental crimes will be included as predicate offences in EU legal instruments on money laundering, confiscation or extradition according with international recommendations of UNODC, INTERPOL and, in particular, the 40 Recommendations of the Financial Action Task Force (FATF/OECD).

MEAs and Environmental Crime

- **The EU promotes enforcement of MEAs that protect the environment through criminal law**

The EU promotes the adoption of criminal sanctions in the CoPs of MEAs. The European Commission Report "Larger than elephants" says "The EU should continue as an important financier of CITES' core functions and mandated actions, and more especially should not only continue, but also expand, its support for all ICCWC operations, especially those of UNODC which is taking the lead in so many relevant fields, ranging from forensics to controlled deliveries to indicators".¹²

International Cooperation

- **The EU enhances international cooperation with Third States through the EEAS and the EU Delegations.**
- **The EU enhances international cooperation with international organisations and law enforcement networks.**

The EU and its MS continue financing initiatives such as the International Consortium on Combating Wildlife Crime (ICCWC). Now, the B4Life wildlife crisis window will scale-up the means allocated to foster wildlife crime, "while addressing both supply- and demand-side, at local, national, regional and international levels. This will include increased protection of priority areas, monitoring and investigation measures and support to organisations specialised in the fight against international trafficking of endangered species"¹³.

¹² European Commission, "Larger than elephants. Inputs for an EU strategic approach for African Wildlife Conservation", 2015, p. 16, available at <http://capacity4dev.ec.europa.eu/b4life/document/eu-strategic-approach-african-wildlife-conservation-all-volumes-draft-document>

¹³ European Commission, MEMO 14/373 New EU initiative to protect biodiversity and fight wildlife crime, 22 May 2014.

- **The future European Border and Coast Guard has a mandate to fight against environmental crime.**

The proposal setting up a European Border and Coast Guard foresees the protection on the environment but not fighting environmental crime. This option should be considered in the final instrument.¹⁴

- **The EU makes serious environmental crime one of the priorities of international judicial cooperation**

The EU makes serious environmental crime one of the priorities of international judicial cooperation through the adoption of both non-binding and binding instruments. Soft law instruments such as guidelines, recommendations and memoranda of understanding (MOUs) have been negotiated and adopted by Member States' law enforcement authorities and those of third countries affected by environmental crime.¹⁵ The option of adopting binding instruments will lead to the negotiation of agreements on judicial cooperation with third countries, adopted by the EU or the Member States on a bilateral basis that include environmental crimes.

Environmental Crime and Security

- **EU and its Member States comply with Security Resolutions on environmental crime and security**

The EU and its Member States adopt measures to comply with the UN Security Council Resolutions targeting environmental crimes in third countries. The Security Council incorporates the goal and the legal tools to fight against environmental crime in the mandate of peacekeeping operations in areas affected by these crimes, first to gather intelligence and if possible to adopt measures on the spot to prevent and fight it.

The EU and its MS adopt more efficient sanctions against third countries targeted by Security Council Resolutions in order to stop wildlife crime flows. The EU and its MS consider an option to ask the Security Council to adopt mandates that incorporate measures and strategies to fight against environmental crime.

- **The EU and its MS ask the Security Council to adopt mandates for Peace keeping operations that incorporate measures and strategies to fight against environmental crime**

4 Critical analysis of options

The EU External Action policy options depend on the capacity of the EU to gain the support of third countries to adopt either binding or non-binding instruments in the framework of international organisations and CoPs. This support is most needed in UN institutions for the adoption of EU initiatives related with the protection of the environment through criminal law and presented on its behalf by the EU

¹⁴ See European Commission, Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, COM(2015) 671 final, 15.12.2015.

¹⁵ Law enforcement agencies of Member States have adopted Memoranda of Understanding with third countries authorities to enhance policy cooperation to fight transnational organised crime, that have served to curb illegal trafficking of waste between the Netherlands with China and to fight against illegal trafficking of chemicals, (CFCs) between Spain and Latinoamerican countries, This information is in interviews with Member States representatives, Chatam House rules apply.

Member States or by itself with its limited status of observer. Now that the EU is a party to CITES, it must take advantage of its membership to lead new initiatives. In addition, the EU needs the support of its own Member States with whom it shares the competence on the environment, and that on occasions have taken the lead to promote initiatives such as in the case of the UK with the London Conference on Illegal Wildlife Trade and Germany with the Resolution of the General Assembly on Wildlife Crime, which the EU endorsed.

4.1 Global Action

➤ EU and its Member States promote a worldwide concept of environmental crime

To promote a worldwide concept of environmental crime, the EU participates in the adoption of non-binding instruments, mostly Resolutions of the General Assembly or the UNEA. These Resolutions, regardless of their lack of binding effect, have an important value because they raise political and social awareness and promote the further adoption of either international or domestic measures to fight against environmental crime. However, as was shown in the 13th United Nations Congress on crime prevention and criminal justice held in Doha in April 2015, there is no unanimous worldwide position on the concept of environmental crime. The resulting Declaration of Doha avoids using the term environmental crime and uses the expression “crimes that have an impact on the environment”, which exemplifies the lack of consensus on the concept.¹⁶

The EU and its Member States support the UN’s programmes that promote environmental law and foresee an increased use of criminal law to protect the environment, such as the Montevideo Programme which is the UN Programme for the Development and Periodic Review of Environmental Law. In its midterm revision, the experts assessing this programme are going to propose the UNEA *“Addressing as a priority enforcement in respect of environmental offences and developing a holistic approach to environmental offences from prevention and detection to sanctions and remediation through developing and strengthening laws to provide administrative, civil and criminal sanctions for environmentally harmful activities”*.¹⁷

At the regional level, in 1998 the Council of Europe adopted the Convention on the protection of the environment through criminal law that has never entered into force, even though it only requires three ratifications to do so. This Convention has contributed to a common understanding of the concept of environmental crime at the regional level and has had an undeniable influence in the EU Environmental Crime Directive and on the EU Member states legal initiatives; however none of them have ratified it except

¹⁶ The Declaration of Doha proposes: “9. (e) To adopt effective measures to prevent and counter the serious problem of crimes that have an impact on the environment, such as trafficking in wildlife, including flora and fauna as protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, timber and timber products and hazardous waste, as well as poaching, by strengthening legislation, international cooperation, capacity-building, criminal justice responses and law enforcement efforts aimed at, inter alia, dealing with transnational organized crime, corruption and money-laundering linked to such crimes”. See Draft Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation, A/CONF.222/L.6, 31 March 2015, p. 11, available at http://www.unodc.org/documents/congress//Documentation/IN_SESSION/ACONF222_L6_e_V1502120.pdf

¹⁷ See UNEP, Report of the meeting of senior government officials expert in environmental law on the midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law, 2015, UNEP/Env.Law/MTV4/MR/1/5, p. 28.

Estonia and there is no publicly available evidence that the EU has ever considered ratification. Among the reasons for its failure is that some EU Member States are critical of the goal of harmonizing environmental offences; moreover, some EU Member States also criticised the foreseen corporate criminal liability.¹⁸

4.2 Priority Setting

- **EU and its Member States consider an option to make environmental crime a serious crime when involving organized crime**

The *option of making environmental crime a serious crime when involving organised crime* is currently being discussed in many international debates. In March 2015, the UN Secretary-General made a statement for the World Wildlife Day advocating for “all consumers, suppliers and governments to treat crimes against wildlife as a threat to our sustainable future. It’s time to get serious about wildlife crime”.¹⁹ In the Doha Congress, the UNODC Executive Director promoted the idea that “making wildlife crime a serious crime in accordance with the United Nations Convention on Transnational Organized Crime will also facilitate international cooperation”.²⁰ However the political influence of these statements is unclear and will depend on the level of States cooperation and their willingness to consider illegal wildlife trade as a crime and what it is more difficult, classify it as a serious crime.

The General Assembly Resolution on Wildlife Trafficking . However, promoting the adoption of stiffer penalties for environmental crime and, in particular, for wildlife crime is also considered as a major requirement to effectively fight against this crime. This is because offences with lesser penalties are not classified as serious or organized crime and so they are denied the law enforcement and judicial resources needed to act effectively.²¹ Because they are not considered as a serious crime, it is more difficult or even impossible to initiate the necessary advanced modalities of international cooperation, both law enforcement and judicial. UNTOC omitted all reference to the environment but introduced a wide definition of serious crime in its Article 2, paragraph b, which enables the CoP to identify new forms and

¹⁸ See Ricardo Pereira, *Environmental Criminal Liability and Enforcement in European and International Law*, Brill, 2015, pp. 20-21.

¹⁹ See Secretary-General's message on World Wildlife Day, 3 March 2015, available at <http://www.un.org/sg/statements/index.asp?nid=8429>

²⁰ Yury Fedotov, UNODC Director-General/Executive Director, Remarks at the High-Level Special Event on Wildlife and Forest Crime: A Serious Crime, 13th Congress on crime prevention and criminal justice, Doha, 13 April 2015, available at <http://www.unodc.org/unodc/en/speeches/2015/cc-wildlife-130415.html>

²¹ The United Nations Digest on Organised Crime acknowledged “Out of 27 countries participating in the Digest, only two, Brazil and Spain, provided cases on environmental organized crime. This must not be interpreted as a lack of awareness of this kind of crime, and it is not necessarily an indication of defective criminalization. However, in general, the criminal penalties for environmental crimes are relatively low, with the risk that important offences are excluded from the categories of organized or serious crimes for which reinforced legal tools and law enforcement resources are usually provided. The four environmental organized crime cases submitted by Brazil and Spain involved an organized criminal group dedicated to the illegal extraction, trade and export of fragments of coral reefs; two groups hunting and trading endangered animal species; and one group trafficking in rare timber extracted from protected forests for domestic and international markets. The Brazilian expert noted that environmental crimes are a significant new form of organized criminal activity alongside the traditional activities of drug trafficking. The criminal conduct in the four cases adheres to the same structure as in traditional organized crime cases, including a “business model” and the use of modern technologies. The groups’ high level of organization requires law enforcement agencies to dedicate significant time and human, financial and technological resources to combating their criminal activities, p. 8.

dimensions of transnational organised crime, with a view to facilitating a more uniform global approach²².

- **EU and its Member States consider a priority to classify transnational environmental crime as a predicate offence of traditional transnational crimes**

The connection of transnational environmental crimes with corruption, money laundering and drugs trafficking has been acknowledged by many reports such as those of INTERPOL, UNODC²³ EUROPOL, EUROJUST or IFAW. Without further legal measures being taken at national or European level, money launderers are finding in wildlife trafficking an alternative to other organised crimes under stricter surveillance²⁴.

The involvement of organised crime in IUU activities is also a requirement in order to consider it as a serious crime as has been the case of Operation Sparrow in Spain.²⁵

4.3 MEAs and Environmental Crime

- **The EU promotes the enforcement of Multilateral Environmental Agreements through criminal law**

To promote the enforcement of Multilateral Environmental Agreements through criminal law is an option that has been widely examined in an EFFACE report on international instruments.²⁶ Then it was argued that MEAs, and in particular, CITES and the Basel Convention are “representatives of the *raison d’être* of the international environmental criminal law since they seek the protection of the environment from environmentally harmful actions that the international community has identified as being so serious that they must be subject to criminal law”.²⁷ The criminal provisions of these agreements constitute “an ‘indirect’ criminal law emanating from international mandates of criminal sanctions for the violation of certain environmental norms”²⁸, however, “they are the source of obligations for the States Parties and have to be implemented in domestic legislation. The international origin of these rules explains their difficulties in taking root in the domestic legal systems, where on most occasions criminal laws are just ancillary to relatively new administrative laws protecting the environment”.²⁹

²² See Fajardo, T., “Organised Crime and Environmental Crime: Analysis of International Legal Instruments.” Study in the Framework of the EFFACE Research Project. Granada: University of Granada, 2015.

²³ UNODC, The Globalization of Crime, A Transnational Organized Crime Threat Assessment, p. 20.

²⁴ IFAW, Criminal Nature: The Global Security Implications of the Wildlife Trade, 2008, p. 15, <http://www.ifaw.org/sites/default/files/Criminal%20Nature%20Global%20security%20and%20wildlife%20trade%202008.pdf>.

²⁵ See Gabriela A. Oanta (2015), “New Steps in the Control of Illegal, Unreported and Unregulated Fishing”, in Hans-Joachim Koch and alter (Edits.), *Legal Regimes for Environmental Protection Governance for Climate Change and Ocean Resources*, Brill, pp. 229-258.

²⁶ See Mitsilegas, V., Fitzmaurice, M., Fasoli, E., Fajardo, T. (2015). *Analysis of International Legal Instruments Relevant in the Fight Against Environmental Crime*, Study in the framework of the EFFACE research project, London: Queen Mary University of London.

²⁷ Mitsilegas, V., Fitzmaurice, M., Fasoli, E., Fajardo, T. (2015), *op. cit.*, p. 9.

²⁸ *Ibidem*.

²⁹ Mitsilegas, V., Fitzmaurice, M., Fasoli, E., Fajardo, T. (2015), *op. cit.*, p. 10.

The Roadmap of the European Commission for the adoption of an EU Action Plan against wildlife trafficking notes “To strengthen CITES’ implementation and enhance enforcement in the countries affected by wildlife trafficking, other international agencies (such as Interpol, the UN Office on Drugs and Crime, the World Customs Organisation) have stepped up their engagement against wildlife trafficking. This has been done notably through the creation of the “International Consortium for Combating Wildlife Crime”, which is supported financially by the EU and EU Member States”.³⁰

The incorporation of MEAs obligations in domestic law poses problems related with the quality of the legislation – because of the vague terms of the provisions of MEAs. This is, for example, the case of the definition of waste adopted in the UN Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal and the one adopted by the EU in its Waste Shipment Regulation. One of the recommendations proposed by the experts attending the final Conference of the 7EAP Project Countering WEEE Illegal Trade (CWIT) was that adopting “consistent clear guidelines will make inspections and prosecutions easier and thereby increase the likelihood of conviction. This measure is essential as currently there are a large number of diverse practices. The existing system is hard to understand and implement for many actors in the value chain. Following up on this recommendation will ensure a level playing field. Proper knowledge and training are important and to reach this goal consistent guidelines are essential.”³¹ As in the case of the Basel Convention, the EU has adopted a different system of codification from the one adopted in this Convention, an option that doubles the burden of work for EU Customs services.³²

➤ **The EU and its MS promotes the enforcement of CITES adopting rules on confiscation**

The European Commission has funded many CITES initiatives seeking to improve human resources and governance in third countries. Thus, it funded a workshop on electronic permit systems organized by the CITES Secretariat in China in 2012.³³ However, there are many outstanding issues to be solved, thus the European Parliament has called on the Commission to engage the CITES Standing Committee regarding Decision 16.47 from CoP on provisions to streamline the disposal of illegally traded and confiscated specimens in order to ensure coordinated approaches to information exchange and rapid rehoming of confiscated live animals.”³⁴ The adoption of either binding or non-binding rules at international level regarding confiscation is also a major issue. The UNEP discussions on the revision of the Montevideo Programme IV for the Development and Periodic Review of Environmental Law, have noted the importance of “preventing the proceeds of illegal activities in wildlife trade and mining from being used to finance armed conflict and organized crime”.³⁵ In the sector of wildlife trafficking, Article 8.1.b) of CITES

³⁰ See European Commission, *Roadmap EU Action Plan against Wildlife Trafficking*, 2015, p. 1, http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_env_087_action_plan_wild_trafficking_en.pdf.

³¹ See Huisman, J., Botezatu, I., Herreras, L., Liddane, M., Hintsa, J., Luda di Cortemiglia, V., Leroy, P., Vermeersch, E., Mohanty, S., van den Brink, S., Ghenciu, B., Dimitrova, D., Nash, E., Shryane, T., Wieting, M., Kehoe, J., Baldé, C.P., Magalini, F., Zanasi, A., Ruini, F., Männistö, T., and Bonzio, A., *Countering WEEE Illegal Trade (CWIT) Summary Report, Market Assessment, Legal Analysis, Crime Analysis and Recommendations Roadmap*, August 30, 2015, Lyon, France, p. 41.

³² See Geeraerts, K., A. Illes, and J.-P. Schweizer. “Illegal Shipment of E-Waste from the EU: A Case Study on Illegal E-Waste Export from the EU to China.” Study in the Framework of the EFFACE Research Project. London: Institute for European Environmental Policy, 2015.

³³ The workshop, held in Guangzhou, China, from 9 to 11 May 2012, provided participants with an opportunity to express their needs, share knowledge, establish partnerships and develop funding strategies.

³⁴ EP Resolution of 15 January 2014 on wildlife crime, 2013/2747, p. 1-3.

³⁵ See the discussion on the adoption of Priority areas for action in the field of environmental law for the

establishes that its Parties shall take appropriate measures “to provide for the confiscation or return to the State of export of such specimens”. However, as analysed in EFFACE reports³⁶, because of the lack of implementation of this provision, the confiscation of proceeds of illegal wildlife trafficking is still a major problem for CITES. The EU has not yet adopted a legal instrument on confiscation of assets of environmental crime, which has been addressed just through non-binding instruments.³⁷ The Commission Recommendation of 2007 proposed, in order to increase the enforcement capacity of Regulation 338/97, that Member States should take measures “ensuring that facilities are available for the temporary care of seized or confiscated live specimens and mechanisms are in place for their long-term rehoming where necessary.”³⁸ Because of this loophole in the EU legislation and the fact that environmental crime is considered as a non-serious crime, it is outside the scope of mandates and action plans of different networks dealing with recovery assets such as the national Asset Recovery Offices (ARO) and the Europol Asset Recovery.

➤ **The EU promotes the enforcement of MEAs in third countries**

Improving the enforcement of MEAs through enhancing environmental law is not an alternative to the promotion of criminal law to protect the environment in third countries but a prerequisite. In order to enforce MEAs, third countries need to adopt environmental law and to develop a corpus of administrative law with standards of protection³⁹ whose serious violation can lead as a last resort to the imposition of criminal sanctions. This was one of the conclusions of the EFFACE report on Kosovo. However, in many developing countries as discussed in the INTERPOL Conference on WEEE there is neither administrative environmental law nor are there the required administrative authorities or the law enforcement agencies that can monitor and control its implementation. In those countries, as argued by the Ghana representative, all measures adopted are criminal provisions and, then, instead of being used as a last resort, criminal law is the only law regulating illegal trade in natural resources, wood, wildlife, etc and sanctioning poachers and smugglers.

➤ **The EU promotes the enforcement of CITES with its initiative B4Life and its funds**

The EU initiative B4Life has been received very positively in the CITES Secretariat. The EU has previously funded CITES initiatives such as the “Wildlife Enforcement Network” for West Asia which was established

period up to 2020, bearing in mind Montevideo Programme IV, in UNEP, UNEP, “Report of the meeting of senior government officials expert in environmental law on the midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law, (Montevideo Programme IV)”, UNEP/Env.Law/MTV4/MR/1/5, 31 October 2015, p. 20.

³⁶ See Mitsilegas, V., Fitzmaurice, M., Fasoli, E., Fajardo, T. (2015). *Analysis of International Legal Instruments Relevant in the Fight Against Environmental Crime*, Study in the framework of the EFFACE research project, London: Queen Mary University of London.

³⁷ The adoption on 14 March 2014 of a new Directive on the freezing and confiscation of proceeds of crime in the European Union can be considered a missed opportunity since it fails to regulate environmental crime and in particular, organized environmental crime. Thus it does not address the problem of confiscation related to illegal wildlife trafficking.

³⁸ See Commission Recommendation of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (notified under document number C(2007) 2551) (2007/425/EC), OJ L 159, 20.06.2017, p. 45.

³⁹ EFFACE members have attended the two conferences of the CWIT Project that took place in the Interpol headquarters in Lyon and that gathered experts and representatives of the State Parties of the Basel Convention and the EU Member States.

in 2013 to build capacity on CITES enforcement and implementation in the region and assembled a committee of 4 countries (Kuwait, UAE, Jordan and Yemen) was formed to further the network activities.

4.4 International Cooperation

➤ **The EU enhances international cooperation with Third States through the Green Diplomacy Network, the EEAS and the EU Delegations.**

By using the resources of Member States and the Commission, the Green Diplomacy Network develops “the diplomatic capacity to spread and give visibility to the EU initiatives and proposals to third parties, lobbying for their support and the creation of alliances between EU partners in preparation for international negotiation rounds, aiming at sensitising them to the EU position and gathering feedback on their views in preparation of CoPs of the MEAs”.⁴⁰ The GDN should be used to promote the EU’s position on environmental crime and on the different sectors of this type of crime, according to the priorities previously fixed in the EU institutions.

The EU delegations should develop on the spot better intelligence on third countries. They should as well promote direct actions with civil society and NGOs as proposed in the *Demarche* of the Portuguese Presidency of the Green Diplomacy Network in 2007.⁴¹ The EU should support and encourage cooperation in third countries between environment correspondents in Commission delegations and Member State embassies. It was agreed initially to focus attention on key emerging economies, Brazil, Russia, India, China and South Africa. With the creation of the European External Action Service, the formalization of these approaches and the increase in the number of States should be considered, targeting them according to the most important issues of illegal wildlife trafficking and improving national governance to achieve better compliance.

➤ **The EU enhances international cooperation with international organisations and law enforcement networks**

The EU with EUROJUST has the option to promote legal assistance and judicial cooperation with third countries affected by transnational environmental crime. At international level, UN Member States have at the UN Congress of Doha of April 2015 supported the adoption of treaty-based legal tools for international cooperation in criminal matters⁴² and mutual recognition.⁴³ Practice shows that EU Member States have

⁴⁰ See Fajardo, T., “Revisiting the External Dimension of the Environmental Policy of the European Union: Some Challenges Ahead”, *JEEPL*, Vol. 7, N°4, 2010, p. 385.

⁴¹ See EEAS, The EU Green Diplomacy Network, 2011, available at http://eeas.europa.eu/environment/gdn/docs/gdn_more_en.pdf

⁴² See the Working Paper on International cooperation, including at the regional level, to combat transnational organized crime, prepared for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, A/CONF.222/7, 22 January 2015. It says “For international cooperation practitioners, the legal basis employed, including the terms of the relevant bilateral or multilateral instrument, can have a significant impact on the success of individual requests for cooperation. Even where a State is able to provide assistance without a treaty, reliance on the agreed terms of a bilateral or multilateral instrument can assist in bridging diverse legal traditions and cultures and national differences in procedural law. In addition, the existence of legal rights and obligations within the bilateral or multilateral instrument provides a clear framework governing the manner in which the requested State should respond to requests”, para. 9, p. 4.

negotiated agreements and memoranda of understanding with third countries to cooperate on a wide range of issues related with legal assistance. Most of these agreements respond to the principle of dual criminality required for coercive investigative measures (such as search and seizure, restraint and confiscation of assets) and take a “conduct” based approach. This means that the conduct underlying the alleged offence is considered when assessing dual criminality, rather than seeking to match the exact same term or offence category in both jurisdictions. However, some Member States do not require this principle adopting a case by case approach or apply it when it is required by international agreements.⁴⁴ Member States’ law enforcement agencies have also adopted non-legislative and administrative agreements and MoUs with third countries correspondents to facilitate cooperation. These types of agreements are in place for the implementation, for example, of CITES, involving police forces. However they are not under the scrutiny of Parliaments and are not accessible or published.⁴⁵

On 17 July 2013, the Commission presented a EUROJUST’s reform proposal that distinguishes as forms of crime: illicit trafficking in endangered animal species, illegal trafficking in endangered plant species and varieties and environmental crime, including ship source pollution.⁴⁶ This proposal also envisages in its Section III on “International Cooperation” the possibility for EUROJUST to post liaison officers to third countries to improve judicial cooperation and to request judicial cooperation to and from third countries.⁴⁷ However, environmental crimes are not among those triggering the exchange of information with Member States and between national members as foreseen in Article 21 of the proposal.

The **EU Agenda on Security**⁴⁸ foresees that Joint Investigation Teams and Joint Customs Operations may serve to enhance cross-border cooperation. Thus “[w]here criminal cases have an international dimension, Member States should make use of the possibility to involve third countries in JITs”.⁴⁹ Moreover, Joint

⁴³ It points to the EU as an example to follow after acknowledging that “in an attempt to adjust to ever more complex and sophisticated crime challenges, more recent initiatives at the regional level use the principle of mutual recognition, to go beyond arrangements for mutual assistance”, Working Paper on International cooperation, including at the regional level, to combat transnational organized crime, A/CONF.222/7, 22 January 2015, para. 29, p. 10.

⁴⁴ See Saunder, J. and Hein, J. (2015), analyzing the practices of the UK, the Netherlands, Italy and the Czech Republic, p. 41.

⁴⁵ Interview with the special Spanish Police for the protection of nature, SEPRONA.

⁴⁶ See Article 3 and Annex 1 of the Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (First reading), Doc. 6643/15, 27 February 2015.

⁴⁷ See Article 43 of the Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (First reading), Doc. 6643/15, 27 February 2015.

⁴⁸ As foreseen in the EU Agenda on Security “Judicial cooperation in criminal matters also relies on effective cross-border instruments. Mutual recognition of judgments and judicial decisions is a key element in the security framework. Tools like the European Arrest Warrant have proved effective but other instruments, such as freezing and confiscation of criminal assets, are not yet used systematically in all appropriate cases. National judges should take advantage of the European Judicial Network (EJN) for the execution of European Arrest Warrants and freezing and confiscation orders. The implementation of the European Investigation Order will add a further essential tool. Member States should use Eurojust more often to coordinate cross-border investigations and prosecutions. Eurojust can also be a great help for complex mutual legal assistance requests with countries outside the EU, especially with the network of the Eurojust contact points”, EU Agenda on Security, p.10.

⁴⁹ See the EU Agenda on Security, p. 9.

Customs Operations can also “allow customs authorities to tackle cross-border crime in the customs area, using a multi-disciplinary approach”.⁵⁰

➤ **EU and its Member States enhance cooperation with INTERPOL and fund its programs related with Environmental Crime**

In 2010, Interpol adopted a Resolution on its Program on Environmental Crime.⁵¹ Ever since then, the EU and its MS have funded and participated in projects led by INTERPOL and the International Consortium on Combating Wildlife Crime, such as MIKE (Monitoring the Illegal Killing of elephants) to protect the African Elephant.⁵² This international cooperation has recently produced one of the major wildlife crime operations, the Operation Cobra.⁵³

The Commission also cooperates with INTERPOL to fight IUU. In 2013, the Commission became an observer in the Fisheries Crime Working Group created under the umbrella of INTERPOL's Environmental Crime Programme. Along with Member States, the Commission supports INTERPOL's Project SCALE, a global initiative to detect, suppress and combat crime in fisheries.⁵⁴

➤ **The EU funds international cooperation to fight against wildlife crime through its initiative B4Life and its Wildlife Crisis Window**

⁵⁰ The EU Agenda on Security acknowledges and foresees that “The Commission and the Member States have jointly developed common risk criteria for security risk assessments by customs of international goods movements. In line with the EU Strategy and Action Plan for customs risk management, the EU should continue to strengthen its capacity for detection of illicit trade in goods or cash”, p. 9.

⁵¹ See INTERPOL General Assembly Resolution on its Environmental Crime Programme 2010. This resolution called upon national law enforcement authorities to recognize that “environmental crime is not restricted by borders and involves organized crime networks which engage in other crime types including murder, corruption, fraud and theft”. On this resolution see the note of CITES available at https://cites.org/eng/news/pr/2010/20101108_Interpol.php

⁵² The EU is the main donor to the ICCWC which brings together Interpol, the UN Office on Drugs and Crime, the World Customs Organisation, CITES and the World Bank.

⁵³ EUROPOL participated in Operation COBRA III, “conducted in two phases between mid-March and the end of May 2015, saw the participation of law enforcement teams and agencies from 62 countries in Europe, Africa, Asia and America. Europol supported the operation across Europe by facilitating operational information exchange and coordinating the activities of police, customs, forestry and other law enforcement authorities from 25 participating EU Member States. The operation was organised by the Association of Southeast Asian Nations Wildlife Enforcement Network (ASEAN-WEN) and the Lusaka Agreement Task Force (LATF), and supported by numerous international agencies and organisations such as Interpol, see EUROPOL “Europol supports largest ever coordinated operation against wildlife crime”, The Hague, June 18 2015, available at <https://www.europol.europa.eu/content/europol-supports-largest-ever-coordinated-operation-against-wildlife-crime>

⁵⁴ See European Commission Communication from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, COM(2015)480 final, 1.10. 2015, p.12.

The European Commission' flagship initiative B4Life –part of its development cooperation policy- includes a special 'Wildlife Crisis Window' (WCW), dedicated to combating the increase in the illegal trade of endangered species, particularly in Africa, in addition to threatening species of flora and fauna, wildlife poaching and trafficking that harm local and national security.

The WCW will tackle poaching and trafficking at all levels: “at a local level by securing the management of priority protected areas; at a national level by reinforcing the rule of law by tackling corruption and improving investigation; at a regional level by promoting anti-criminal networks and the creation of cross-border protected areas, and by improving species monitoring; and internationally by supporting organisations specialised in the fight against wildlife crime, illegal trade and smuggling”.⁵⁵

One of the projects funded by this initiative is MIKES, Minimising the Illegal Killing of Elephants and other Endangered Species, (2014-2018). This 12 million euro project builds on the successful MIKE Programme implemented in African elephant range states by INTERPOL and CITES with the support of the European Commission from 2001 until 2014.⁵⁶

At the end of 2015, the Commission has produced a study "Larger than elephants. Inputs for an EU strategic approach for African Wildlife Conservation" aiming at defining a consistent approach for the EU investments for the next 10 years. “This work, supported by the broad conservation community, includes activities in 85 Key Landscapes for Conservation covering 300 National Parks (protection of key ecosystems and local development around the sites), institutional strengthening and capacity-building of national authorities, and global action against wildlife crime (fight against organised crime organisations, demand reduction, political dialogue). This work is now discussed with EU and non-EU donors in order to identify very concretely the priority actions, the gaps and the overlaps”.⁵⁷

➤ **The EU enhances *international cooperation with authorities in targeted Third States***

There is a lack of sufficient cooperation with neighbouring countries whose borders often serve as entry into the EU Member States and there are no instruments that foster this cooperation.⁵⁸ There is no customs cooperation agreement with third countries related with environmental crimes and illegal activities concerning the environment. In the case of the EU just a few Member have national customs action plans providing specifically for environmental crime.⁵⁹

There is no EU legal instrument addressing the possibility of prosecuting European companies abroad for environmental crimes or activities causing environmental damage. The EU does not have similar tools to

⁵⁵ See European Commission, The EU Biodiversity for Life – B4Life Flagship Initiative, 2014, p. 24.

⁵⁶ Ibidem

⁵⁷ Commission Staff Working Document EU Assessment of Progress In Implementing the EU Biodiversity Strategy To 2020, Accompanying the document, Report from the Commission to the European Parliament and the Council The Mid-Term Review of the EU Biodiversity Strategy to 2020, Doc. 12683/15 ADD 3, 6 October 2015, p. 35.

⁵⁸ As Sollund and Maher (2015) report CITES and EU Wildlife Trade Regulations are implemented in many of the countries bordering the EU (e.g. Norway as an EEA member), yet these offences are given limited attention by law enforcement agencies, wildlife trade is not recognized as a priority and there is a general ignorance among law enforcement agencies. See also Maher, J., Sollung, R., Fajardo, T. (2014), p. 3.

⁵⁹ See Progress Report on Action 7.10, *loc. cit.*, these data have very limited scope because only 6 Member States have participated.

those that allow the USA to fight against environmental crimes beyond their borders thanks to their numerous mutual legal assistance agreements with third countries.

4.5 Environmental Crime and Security

➤ EU and its Member States comply with Security Resolutions on environmental crime and security

The UN Security Council has adopted Resolutions acknowledging *the link between environmental crimes and, in particular, wildlife trafficking and security*.⁶⁰ Even though, the Resolutions of the UN Security Council have an executive rather than a legislative nature, they serve as a mandate to States. The EU and its Member States have adopted measures to implement this type of resolutions through embargo measures and bans on importation. The Resolutions on the conflict of Liberia that led to control of illegal logging and mining and the adoption of trade schemes such as the Kimberly Process to eradicate blood diamonds trade are a good example and were supported by the EU from the beginning.⁶¹

In January 2014, the UN Security Council adopted two Resolutions regarding the Democratic Republic of Congo and the Central African Republic (CAR) in which it acknowledges the links between wildlife trafficking and the funding of militia groups and establishes sanctions against wildlife poachers and considers wildlife trafficking as a threat to peace. In the case of Resolution 2134 on the CAR, it establishes “that all Member States shall, for an initial period of one year from the date of the adoption of this resolution, freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee established pursuant to paragraph 57 of Res. 2127, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities designated by the Committee” (para. 32). These sanctions were renewed in 2015. Ever since then, the EU Member States have adopted measures to increase control on goods, especially timber from these countries.⁶² UNODC has pointed out that at least one component of the supply chain of illegal trafficking flows lies outside West Africa, so the EU and its MS have to improve border and Customs controls.⁶³

➤ EU and its Member States ask the Security Council to adopt mandates for Peace keeping operation that incorporate measures and strategies to fight against environmental crime

The mandate of EU Operation Atalanta to control piracy on the coasts of Somalia that is based on the Security Council Resolutions was reformed to introduce as a new task to control illegal fishing. However, the EU forces have no tools to face those activities, even though their presence is considered to have a dissuasive effect on

⁶⁰ On these Resolutions, see Anne Peters, “Novel practice of the Security Council: Wildlife poaching and trafficking as a threat to the peace”, published on 12 February 2014 in EJIL Talk! Blog of the European Journal of International Law, <http://www.ejiltalk.org/author/anne-peters/>

⁶¹ See Adelle, C., T., Fajardo del Castillo, M., Pallemarts, S., Withana, K., Van Den Bossche, (2010), *The External Dimension of the Sixth Environment Action Programme: An Evaluation of Implementing Policy Instruments*, Report for the IBGE-BIM, IEEP, London.

⁶² Interview with law enforcement agencies, applying Chatham House rules.

⁶³ See UNODC report *Organized Crime and Instability in Central Africa: A Threat Assessment*

vessels dedicated to IUU fishing activities.⁶⁴

In the case of the DR Congo, the experts that assessed the results of MONUSCO have proposed to the Security Council that new mandate:

“Authorizes MONUSCO to support national and regional efforts to investigate, prosecute and sanction members of armed groups and criminal networks engaged in national and transnational organized crime including, but not limited to, the illicit exploitation and trade in natural resources, such as gold and other minerals, wildlife, charcoal and timber, with special emphasis on addressing sources of conflict and safeguarding protected areas from armed groups, particularly, but not limited to, UNESCO World Heritage Sites.”

However, mandates are still ambiguous and require the close cooperation of local authorities to be properly implemented.

5 Alternative policy options

Global Action

To face the difficulties posed by the adoption of a common concept of environmental crime, the alternative policy option is to renounce the adoption of generic concepts and **to focus on sectorial definitions** that are backed up by institutional practice as in the case of CITES or Basel Conventions. It is in the CoP of these conventions where discussions on legal aspects of definitions take place leading to the clarification of these definitions. The feedback of the national enforcement authorities, such as in the case of the CITES Management Authorities helps to interpret these definitions and to solve problems related with criminal activities on wildlife trafficking such as poaching, smuggling and laundering of bred in captivity specimens, etc.

Priority Setting

Given the lack of feasibility of the proposal to classify environmental crime as a serious crime, an alternative would be to decide to incorporate in international agreements, guidelines and recommendations specific and clear references to classifying **environmental crime as a predicate offence of traditional serious crimes** such as money-laundering or corruption, regardless of the seriousness of the environmental crime. Transnational environmental crime is connected to a wide variety of crimes, such as organized crime or money laundering that are linked by opportunistic circumstances.⁶⁵ As remarked in the IPEC Report, some Member States make a cost-risk assessment which leads law enforcement agencies to focus on those crimes that are easier and cheaper to successfully prosecute. The difficulties in investigating and bringing

⁶⁴ Joana Ama Osei-Tutu argues “Foreign warships patrolling the Somali coastline should act not only as a military deterrent, but should also serve as coastguards for the Somali people. Operation ATALANTA's mandate specifies, amongst other objectives, that it 'monitors fishing activities off the coast of Somalia' and 'supports other EU missions and international organisations working to strengthen maritime security', Joana Ama Osei-Tutu, “Somalia: Beyond Naval Interventions in Somali Piracy”, 30-09-2015, available at http://www.stopillegalfishing.com/portuguese/news_article.php?ID=1704

⁶⁵ See Sollund, R., and J. Maher, “The Illegal Wildlife Trade: A Case Study Report on the Illegal Wildlife Trade in the United Kingdom, Norway, Colombia and Brazil.” Study in the Framework of the EFFACE Research Project. Oslo and Wales: University of Oslo and University of South Wales, 2015.

evidence to prove more sophisticated forms of crimes such as money laundering and corruption are conditioning the enforcement of the law on environmental crime, so environmental crimes are classified as predicate crimes or ancillary crimes of more traditional forms of crime such as fraud,⁶⁶ theft, forging permits and smuggling. This is why EU Member States' law enforcement agencies assume the existence of more sophisticated crimes although they do not have the means to prosecute them.⁶⁷

In the case of focusing on money laundering, this alternative can help to overcome the lack of jurisdiction over environmental crimes that occur outside the EU but whose profits are laundered in the EU without considering the wildlife crime that was committed in countries of origin and transit. This alternative implies that the EU should finally adopt the Council of Europe Convention on Money Laundering that has been ratified by all EU Member States. The European Union signed this Convention after its reform of 2005 with its Member States as a mixed agreement but it has not been ratified so far. Both Conventions incorporate in their Appendices on predicate offences the environmental crimes.

Besides, practice of countries such as the United States of America shows that transnational environmental crime can be prosecuted charging traditional offences, thus, wildlife traffickers can face Title 18 United States Code offences –such as money laundering, smuggling, and tax and currency transaction violations – once reserved for drug and white collar offenders and Title 16 USC conservation sanctions, such as forfeiture, civil penalties and permit revocation.⁶⁸

MEAs and Environmental Crime

The EU has developed the alternative of promoting implementation of MEAs such as CITES or Basel Conventions through trade mechanisms such as the EU Generalised System of Preferences that offers incentives to those countries agreeing to adhere to and implement these MEAs.⁶⁹

Saunders and Heine (2015) reported that there are on-going discussions between Member States and the European Commission about developing and financing a mutually supportive platform for the EU Timber Regulation enforcement officials, and possibly those responsible for the US Lacey Act.⁷⁰

⁶⁶ See the Spanish case law on illegal shipment of used tires that finally was prosecuted as a crime of fraud, Chapter III of the last Annual Report of the Spanish General Prosecutor's Office, available in Internet at https://www.fiscal.es/memorias/memoria2015/FISCALIA_SITE/recursos/pdf/capitulo_III/cap_III_3.pdf

⁶⁷ Regarding trafficking in endangered species, EUROJUST reported "Most Member States who replied to the Questionnaire launched by Eurojust began by recognising the low number of cases they are dealing with in terms of trafficking in endangered species. They also generally recognised that the reason behind this situation is not that this type of crime does not exist (actually many of them tend to think that much more could be done at investigative and prosecutorial level in this area), but that a conjunction of factors is responsible for this situation, starting with the lack of seriousness with which these crimes are 'labelled' at national level"; EUROJUST, Strategic Project on Environmental Crime Report, 2014, p. 10.

⁶⁸ See Sh. Patel, "What Is CITES and How It Work for Prosecutors?", pp. 4-16 and K. Goepp and E. Colbourn, Forfeiture Primer for Plant and Wildlife Cases, pp. 17-30, both in the Issue on Environmental Crimes of the *United States Attorneys' Bulletin*, Vol. 60, Number 4, 2012

⁶⁹ See Adelle, C., T., Fajardo del Castillo, M., Pallemmaerts, S., Withana, K., Van Den Bossche, (2010), The External Dimension of the Sixth Environment Action Programme: An Evaluation of Implementing Policy Instruments, Report for the IBGE-BIM, IEEP, London.

⁷⁰ Instruments of international cooperation such as the EU Timber Regulation has lead to informal networks and personal relationships established as part of the on-going Forest Law Enforcement Governance and Trade Action Plan (FLEGT) policy dialogue between the two countries. Saunder, J. and Hein, J., *loc.cit.*, p. 19.

The new EU Sustainable Fisheries Partnership Agreements with developing countries such as Liberia foresee different approaches to fight IUU that contemplate criminal sanctions as a last resort depending on the legislation of the third country.

The EU FLEGT Voluntary Partnership Agreements are important mechanisms for establishing collaboration to prevent imports of illegal timber, however, as INTERPOL and UNODC put it “they are not primarily law enforcement initiatives to combat illegal logging or transnational crime and corruption, and face many challenges regarding the actual crime”.⁷¹

International Cooperation

An enhanced transnational judicial cooperation can be achieved with the negotiation of *bilateral agreements by Member States*.

Environmental Crime and Security

EU Member States can implement the measures and sanctions dictated by the Security Council Resolutions and having an external dimension on an individual basis, as far as they do not involve trade measures for which the EU has an exclusive competence.

6 Harmonization and coordination

6.1 Harmonization of Environmental Offences at Global Level

Regarding the concept of environmental crime, harmonization of offences has been considered at different international organisations with varying degrees and for different reasons. In the case of the Council of Europe’s Convention on environmental crime, the harmonisation of the environmental offences was meant to create “obligations for contracting States to introduce, if necessary, new elements or to modify existing criminal law provisions, on the understanding that the harmonisation of legislation in this area also enhances international co-operation. The extent to which States will enact new legislations or amendments to existing laws will however depend on both the use they will make of reservation possibilities, offered by the Convention in respect of certain provisions, and the compatibility of their existing criminal law provisions with the Convention”⁷². However, as discussed, this harmonisation is one of the reasons why this convention has never entered into force. The Resolution of the General Assembly of July 2015 calling for the harmonization of fines on wildlife crime and related and predicate offences is not binding but just a recommendation that attempts to enhance cooperation.

6.2 Harmonization of Sanctions at Global Level

According to UNTOC, environmental crimes with a transnational dimension and with the involvement of criminal groups have to be sanctioned with penalties of imprisonment of at least 4 years of imprisonment

⁷¹ Nellemann, C., INTERPOL Environmental Crime Programme (eds). 2012. Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the Worlds Tropical Forests. A Rapid Response Assessment. United Nations Environment Programme, GRID- Arendal, p. 45, available at www.grida.no

⁷² See Council of Europe, Explanatory Report on the Convention on the Protection of Environment through Criminal Law Strasbourg, 4.XI.1998, p. 2.

to be considered as one of the serious crimes that triggers international cooperation. Harmonization of sanctions was discussed in the EFFACE Workshop Report on "Environmental Crime in the EU: Is There a Need for Further Harmonisation?" as "a pre-requisite for cooperation".⁷³ However, many Member States are not willing to adopt heftier sanctions so this harmonisation is not feasible but always recommendable.⁷⁴ Due to the clear opposition of some Member States to the harmonisation of sanctions, it seems that the only instruments available to deal with this issue for the foreseeable future will be soft ones, such as the Final Declaration adopted in the 13th United Nations Congress on Crime Prevention and Criminal Justice celebrated in Doha in April 2015.

MEAs do not foresee harmonization of environmental offences as an obligation. In this case, harmonization does not have an accurate meaning since it does not envisage a proper harmonization but just an approximation of national legislations. If finally, the European Commission decides to adopt an Action Plan to fight wildlife trafficking, a Directive could be proposed to cover all the different criminal activities related with this type of crimes – including those meant to implement the Resolutions of the Security Council linking wildlife crime with security. In this case, a maximum minimal penalty could be the best attempt of harmonising penalties⁷⁵. The European Commission adopted in July 2015 a *Roadmap EU Action Plan against Wildlife Trafficking* that just proposes a global partnership.⁷⁶

In its report "Larger than elephants. Inputs for an EU strategic approach for African Wildlife Conservation" it is said that "the harmonisation of policies and legal frameworks is particularly important with respect to wildlife crime in order to avoid the 'migration' of wildlife criminal networks to countries where penalties are weakest. In Central Africa, the harmonisation of forestry and fiscal policies is a key pillar of the COMIFAC Convergence Plan and should continue to be supported".⁷⁷

⁷³ The Report says that "Harmonisation as a pre-requisite for cooperation was one of the points put forward during the general discussion. Some participants argued that EU Member States only start cooperating when forced to do so by harmonised legislation. Some participants supported the idea that harmonised sanctions are necessary, while others believed that less intrusive measures such as sentencing guidelines could be employed". See EFFACE Workshop Report on "Environmental Crime in the EU: Is There a Need for Further Harmonisation?", The Hague, 5 September 2015, p. 4, available at <http://efface.eu/sites/default/files/publications/EFFACE%207.2%20Environmental%20Crime%20in%20the%20EU%20Is%20there%20a%20need%20for%20harmonisation.pdf>

⁷⁴ The 2015 Spanish reform of its Criminal Code has lower sanctions for environmental crime (sanctions of two years of imprisonment that the Judge can suspend in case of lack of criminal records). It foresees heftier sanctions in case of aggravating circumstances such as recidivism and serious affectation of ecosystems.

⁷⁵ This was the proposal presented by the Spanish Chief Prosecutor for the Environment to the European Commission consultation of 2014, "Respuesta al cuestionario incorporado a la Comunicación de la Comisión Europea al Consejo y al Parlamento Europeo sobre estrategia de la UE contra el tráfico de especies silvestres". See European Commission, *Commission Staff Working Document: Summary of the Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking*, 2014, http://ec.europa.eu/environment/cites/pdf/responses_consultation_WildlifeTrafficking.pdf.

⁷⁶ European Commission, *Roadmap EU Action Plan against Wildlife Trafficking*, 2015, http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_env_087_action_plan_wild_trafficking_en.pdf.

⁷⁷ "Larger than elephants. Inputs for an EU strategic approach for African Wildlife Conservation", p. 73.

6.3 Cooperation at Global Level

Regarding international cooperation, in the framework of the United Nations, harmonisation is among the recommendations of one of the recent Resolutions of the General Assembly on Wildlife trafficking that :

6. Encourages Member States to harmonize their judicial, legal and administrative regulations to support the exchange of evidence regarding and criminal prosecution of illicit trafficking in wildlife, as well as to establish national- level inter-agency wildlife crime task forces, consistent with national legislation.”⁷⁸

However the Resolutions of the General Assembly are not binding instruments, so this recommendation could hardly trigger the approximation of national legislations due to the divergences among them and the reluctance of states to limit their sovereignty in the field of criminal law. It foresees the promotion of an enhanced cooperation among international and national law enforcement agencies sharing working methods, information and best practices developed by the countries that have been the most involved in combating this form of crime.

6.4 Environment and Security

In the case of the adoption of measures to implement the Security Council Resolutions, the EU can harmonise the measures to be adopted by Member States when consisting in embargoes and other trade restrictive measures since this is an EU exclusive competence. The illegal logging assets from conflicts such as those targeted by the Security Council that arrive at the EU market will be dealt with by applying the national provisions that have been adopted in accordance with the EU Environmental Crime Directive that only requires the adoption of sanctions that are effective, proportionate and dissuasive.

Table 2: Overview of Policy Options for the EU and the MS

	Policy Option EU	Policy Option MS
Global Action	➤ To speak with one voice	To act on behalf of the EU
	➤ To promote a worldwide concept of environmental crime	To support EU's initiatives
	➤ To promote a worldwide partnership to fight against wildlife crime	
Priority setting	➤ To use its power of agenda setting and put environmental crime on the list of priority areas of crime	To support EU's initiatives
	➤ To classify environmental crime as a serious crime when organised crime is involved	
	➤ To classify transnational environmental crime as a predicate offence of traditional transnational crimes	

⁷⁸ The text of Resolution A/RES/69/314 is not yet available in the website of United Nations but the Draft of the Resolutions has been published in the website of cites.org, see Tackling illicit trafficking in wildlife A/69/L.80, 15 July 2015.

MEAs	➤ To promote enforcement of MEAs	
	➤ To promote the adoption of confiscation measures	
International Cooperation	➤ To enhance international cooperation with third countries through the EEAS and GDN	To enhance international cooperation with third countries through GDN
	➤ EU Delegations should develop on the spot better intelligence on source countries.	Environmental correspondents in Member State embassies enhance cooperation with those of the EU delegations in third countries
	➤ EU and EUROPOL strengthen cooperation with INTERPOL and its programs on Environmental crime	MS law enforcement agencies cooperate with INTERPOL
	➤ To enhance international cooperation with international organisations and law enforcement networks	
	➤ Provide funding for training measures and guidance for third countries to enhance enforcement of MEAs including the adoption of criminal sanctions	
	EUROJUST posts liaison officers to third countries to improve judicial cooperation and to request judicial cooperation to and from third countries	MS share information and working methods
	➤ Make more use of JITs in case of cross-border environmental crimes	
Environment and Security	➤ Peacekeeping operations mandates target environmental crime	
	The EU better controls illegal trafficking flows entering the EU Member States from African countries in conflict	MS EU better control illegal trafficking flows from African countries in conflict

7 Effectiveness

The effectiveness of the EU external action has to be assessed from both political and legal perspectives and to assess whether any changes should be introduced at the level of regulation (norm drafting) or implementation (practice).

Global action

Regarding a worldwide concept of environmental crime, legislative measures are still needed at international level. Now environmental crime is a new issue on the UN agenda and is considered an emerging threat despite its apparition decades ago and its current surge. The political value of the UN statements and resolutions and international initiatives are triggering the adoption of domestic measures in many countries affected by this type of crimes. For example, UNEP has implemented the Resolution 1/3 on illegal trade in wildlife adopted by the UNEA in its first session mostly through the provision of capacity building and technical support to legal and judicial systems and enforcement measures, communication and outreach and enhancing regional cooperation in African and Asian countries, with the financial support of the EU.⁷⁹ The legal effect of these soft instruments cannot be neglected, even though they might not lead to the adoption of binding international instruments, they are inspiring domestic legislation.

Priority Setting

Regarding the second option on fighting serious environmental crime with an organised crime element, legislative measures are also needed as a prerequisite for further cooperation and enhanced implementation. Unless heftier penalties are adopted to sanction serious environmental offences, criminals and organised crime groups will continue finding environmental crime to be a high profit-low risk criminal activity (as a driver). The effectiveness of international operations such as COBRA by INTERPOL depends on the continuing efforts and cooperation grounded on a common understanding of wildlife crime as a serious crime. This operation showed that serious environmental crime exists waiting to be unveiled and prosecuted, the only thing that is required is a mandate for the law enforcement agencies to act. Some Member States have created specialised police forces that make controls to fight against cross-border wildlife on regular bases and not just triggered by a groundbreaking operation such as COBRA. However this type of operations is fundamental to gathering the intelligence to lead further research and generate more effective actions and cooperation.

MEAs and Environmental Crime

The effectiveness of provisions of MEAs seeking to fight environmental crime cannot be assessed since there are no significant data on results at the international level. In the case of CITES, data are presented on a national basis in the Biennial reports that States Parties must present but not all of them report on criminal prosecutions of illegal wildlife trafficking. However, these reports in them-selves are a proof of the effectiveness of CITES on promoting domestic legislation and compliance.

⁷⁹ See UNEP, Update on the implementation of the UNEA-1 Resolutions, 20 November 2015, available at http://www.pnuma.org/forodeministros/20-reunion-intersesional/documentos/UNEA2/15_102630_ASC_item_3_on_implementation_status.pdf and UNEP Regional Office for Asia and the Pacific, Implementation of resolutions of the United Nations Environment Assembly of UNEP and Future Priorities for Asia Pacific, 22 April 2015, pp. 4-5, available at http://www.unep.org/roap/Portals/96/Ministerial%20Forum%20Agenda/UNEA%20Background%20Paper_22%20April%202015_FINAL.pdf.

As argued a previous EFFACE report, EU instruments of development cooperation do not address environmental crime directly but just consider illegal activities related to the environment as possible consequences of the poor performance of development programmes and plans. This poor performance can reveal the fragility of states,⁸⁰ particularly when a “lack of administrative resources, collusion between private and public interests and the resulting lack of political will and outright corruption are responsible for the lack of enforcement”⁸¹ of environmental rules. Country profiles should also take into account the existence of environmental crime when assessing the States’ needs. Therefore, the protection of the environment that is one of the goals of the conditionality policy applied by the EU in its external relations should also incorporate the fight against environmental crime, especially, when environmental crime is of such gravity as to undermine the rule of law and governance and to provoke corruption and conflict in third countries. So EU instruments of development cooperation should address expressly the fight of environmental crime as one of their goals. This is what the new flagship initiative B4Life does with its Window Crisis Wildlife project to fight against wildlife crime.

Regarding the effectiveness of the EU Neighbourhood Policy in promoting the protection of the environment through criminal law, the EFFACE report on Kosovo pointed out that even though Kosovo has assumed the task of guaranteeing environmental protection taking the EU environmental laws as models to follow, it still suffers from weak governance and serious problems of enforcement and compliance that so far have prevented the achievement of the desired results.⁸² As such, legislative measures are still needed as well as their implementation. Lack of respect and compliance with laws are at the root of illegal practices that are openly carried on in most of the territory of Kosovo: illegal logging, illegal hunting, illegal waste management, illegal dump sites, illegal building, destruction of cultural heritage of minorities, etc. The EU has helped to shape Kosovo’s legal instruments and institutions for the protection of the environment, and has provided funds and expertise to deal with problems at the regulatory level – such as harmonization with EU legislation- and at the enforcement level. However, the effectiveness of this help is quite limited in terms of positive outcomes. On 27 October 2015, the European Union signed a Stabilisation and Association Agreement with Kosovo that will be the legal basis for further developments from now on.

International Cooperation

The EEAS and the EU delegations in third countries need to develop further their functions and to incorporate on their agenda an enhanced cooperation to fight environmental crime. The initiative B4Life can serve to identify best practices and shortcomings.

International cooperation among law enforcement agencies to implement MEAs and other legal instruments is already in place but it lacks the necessary resources to have good results. The lack of resources also dictates the number of operations as the IPEC Report notes. The initiative B4Life will provide resources to UNODC, INTERPOL and ICCWC for the implementation of measures at site, national and international levels.⁸³

⁸⁰ See EuropeAid (2011), *Guidelines on the Integration of Environment and Climate Change in Development Cooperation*, available at <http://capacity4dev.ec.europa.eu/t-and-m-series/blog/guidelines-nr-4guidelines-integration-environment-and-climate-change-development-cooperation>

⁸¹ See Stepes, C. and Weingartner, K. (2015), *loc. cit.*, p. 3.

⁸² See Fajardo, T. “A Case Study on the EU’s Promotion of Environmental Protection through Criminal Law in Kosovo.” Study in the Framework of the EFFACE Research Project. Granada: University of Granada, 2015.

⁸³ See Annex I.

Environment and Security

Unless the mandates of the Security Council Resolutions are more detailed on the measures that states can adopt to fight environmental crime committed in armed conflicts, the EU forces deployed in these countries cannot react against these crimes because of their lack of jurisdiction. Former Resolutions focusing on embargoes and trade related environmental measures were most effective under the control of the UN Committees of sanctions based on Chapter VII of the UN Charter. However the new environmental crimes are more challenging since they are committed by rebels and terrorist groups and the Resolutions propose a wide range of measures such as confiscation of assets or anti-money laundering that the EU and its Member States have not yet adopted. Consequently, more detailed mandates adopted by the Security Council are required in order to facilitate a better enforcement by States and the EU. Mandates also require the close cooperation of local authorities to be properly implemented.

8 Conclusions

This report has examined the EU's options for an external action to fight against environmental crime that are complementary to those adopted at the internal level. These options can be core proposals by themselves but also could complement some of the core proposals adopted at the internal level.

Options 1 and 2 must be considered as core proposals since they complement the internal dimension of the EU action to fight environmental crime according to the Environmental Crime Directive. The EU and its MS should continue supporting the United Nations' initiatives on environmental crime and the implementation of those MEAS that promote the use of criminal law such as the CITES or the Basel Conventions. Environmental crime should be considered as a serious crime when involving organised crime and should also be considered as a predicate offence of other serious crimes such as money laundering or corruption.

Option 5 regarding the Resolutions of the Security Council on wildlife crime and conflicts should also be a core proposal since the EU Member States are obliged to comply with them and there are many reasons related with the nature of the competence to be exercised that points to the EU. The competence for adopting trade related measures to implement them belongs to the EU. On the other hand, the adoption of strategies to control and stop the flows of wildlife trafficking from areas of conflict in Africa is an option to be decided by Member States and EU institutions. They also can adopt a wide range of measures from border and Customs controls to a specific Directive on wildlife crime that could bring together all the different modalities of criminal activities related with wildlife.

The other options for promoting MEAs and enhancing international cooperation are supplementary proposals: The EU could adopt a more substantial position on criminal sanctions in the CoPs of these treaties for those infringements that cause severe damage to the environment. These positions should be adopted in particular in the CoPs of CITES and the Basel Convention, since illegal trafficking on wildlife and waste are two sectors that given their prevalence in the EU as an area of destination, transit and origin and due to their often-transnational nature and their connection with organised crime should be singled out and given special treatment. Illegal, unreported and unregulated fishing is also a sector that should be considered since it is now one of the Sustainable goals adopted by the UN General Assembly and poses many challenges ahead.

International cooperation with source, transit and destination countries of environmental crimes should be enhanced through international institutions and networks such as UNODC, INTERPOL, ICCWC or IMPEL and also on bilateral basis by Member States. The new EU flagship initiative B4Life supports these institutions and funds their programs and strategies, in particular bottom-up strategies and guidelines to improve international cooperation to fight against wildlife crime at local, national and international level,

involving countries of origin, transit and destination. The EU Member States should adopt bilateral agreements and MoUs to enhance their cooperation with third states until they agree that the EU can have a better tool box of its own, containing the fundamental legal instruments, for example, on confiscation of assets of environmental crime. Until such time as the EU has the necessary tools for effectively addressing the problems identified in this paper, Member States should adopt bilateral agreements and MoUs to enhance their cooperation with third countries.

Table 3: Summary of Policy Options

<i>Level</i>	<i>Option</i>	<i>Recommended</i>	<i>Political feasibility</i>	<i>Priority</i>
EU	• Speak with one voice	Yes	high	+
	• Promote a worldwide concept of environmental crime	Yes	high	+
	• Use its participation in the CoP of MEAs to introduce measures to fight against environmental crime	Yes	high	+
	• Promote a worldwide partnership to fight against wildlife crime	Yes	high	+
	• Classify environmental crime as a serious crime when organised crime is involved	Yes	high	+
	• Classify transnational environmental crime as a predicate offence of traditional transnational crimes	Yes	high	+
	• Promote enforcement of MEAs	Yes	high	+
	• Provide funding for training measures and guidance for third countries to enhance enforcement of MEAs including the adoption of criminal sanctions	Yes	high	+
	• Consider increased specialization of enforcement institutions	Yes	medium	+
	• Promote confiscation measures	Yes	medium	+
	• Promote extradition treaties	Yes	medium	+
	• Enhance international cooperation with third countries through the EEAS and GDN	Yes	medium	+
	• EU Delegations develop better on the spot intelligence in source countries.	Yes	high	+
	• Increase the involvement of Eurojust and Europol in international investigations and JITs with associated third states	Yes	medium	+
	• Facilitate the utilization of WENs and send officials of government agencies to targeted third countries	Yes	medium	+
• EU and EUROPOL strengthen cooperation	Yes	medium	+	

with INTERPOL and its programs on Environmental crime				
Member States	<ul style="list-style-type: none"> Consider giving environmental crime a higher priority in their international agendas 	Yes	easy	+
	<ul style="list-style-type: none"> Consider including references to environmental crime in bilateral treaties and MOUs with targeted third countries 	Yes	medium	+
	<ul style="list-style-type: none"> Make more use of JITs in case of cross-border environmental crimes 	Yes	high	+/-
	<ul style="list-style-type: none"> Environmental correspondents in Member State embassies enhance cooperation with those of the EU delegations in third countries 	Yes	high	+/-
	<ul style="list-style-type: none"> MS law enforcement agencies cooperate with INTERPOL 	Yes	high	+/-

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