

THE POSITIVE AND NEGATIVE OBLIGATIONS OF THE STATE FOR THE PROTECTION OF WILDLIFE AND FOREST

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Abstract

The study aims to analyze the legal system for wildlife conservation and make recommendations for the implementation of negative and positive obligations of the state. The study analyzes the methods, results and discussions of legislation related to wildlife and forest violations and other illegal activities. It includes a review of international law, CITES, implementation and regional initiatives, as well as domestic wildlife and forest violations and associated illegal activities. The aim of the present study is to avoid in the future the already identified weaknesses in the implementation of the positive and negative obligations of the states for the protection of wildlife and forests and to increase their effectiveness.

Key words: wildlife, forest, protection, obligations, implement, legal mechanisms

JEL: Q230, K4

Introduction

Wildlife and forests cover all animals, birds and fish, as well as woody and non-woody forest products. Infringements against wildlife concern the taking, import, export, processing, possession, acquisition and consumption of wild fauna and flora in violation of national or international law (Cf. Cooper, Cooper and Budgen, 2009, p. 1). Wildlife and forest disturbances are accelerating significantly the destruction of forest and wild resources and contribute to deforestation, desertification and other forms of environmental degradation. They also affect biodiversity as they decline or even eliminate species, destroy many unique natural habitats and deprive many countries and their populations of scarce renewable resources according to Schneider (2008, pp. 274-289). Disorders of wildlife and forests threaten the existence of many plant and animal species. The more endangered the species becomes, the greater the commercial value of the rest of the specimen. The fact that part of the trade in wild animals and flora is regulated and some types of trade are prohibited, provides opportunities to circumvent the relevant laws and regulations (United Nations, 2003). Loss of income from illicit trade in plants, plant material, wildlife and animal derivatives undermines

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governments' revenues and undermines their ability to implement development programs and strengthen the rule of law (Zimmermann, 2003, pp. 1657-1659).

Methods in the state for the implementation of its positive and negative obligations for the protection of wildlife

For most countries, the fight against wildlife disturbances is not a priority at the moment and often remains neglected and poorly understood, despite the actual and potential scale and consequences. This trend is no different for the Republic of Bulgaria. Bulgarian national legislation for the protection of natural biodiversity provides for general measures, but there are no specific effective mechanisms for implementation and control.

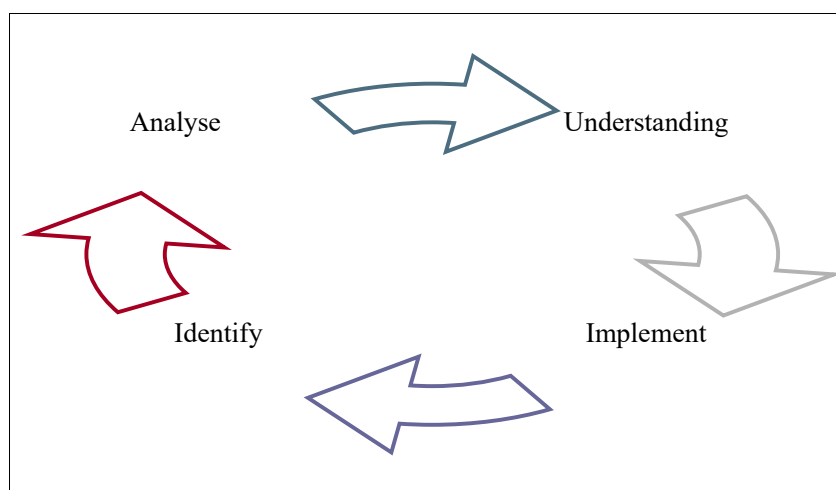
Positive and negative obligations of governments to protect wildlife and laws and their application have not always been appropriate for ever-changing patterns of negative impact on wildlife. The underdeveloped legal framework and the lack of compliance with the ever-changing factors for the protection of flora and fauna have led to unprecedented illegal logging, illegal timber trade, poaching and trafficking according to Marinov (2020, p. 13). Wildlife legislation remains a low priority in most parts of the world and does not even exist in the rest of it. Implementing the few international treaties aimed at preventing trade in this horrible biological bazaar is insufficient and inefficient. The fight against violations in sectors that are the backbone of many countries' economies is crucial to the country's political, social and economic future and is a key pillar of any country in fulfilling its negative obligations. In this regard, it is necessary to create specialized law enforcement and investigative bodies that can effectively and purposefully fulfill their obligations to protect wildlife. The use of such a mechanism to increase efficiency in combating flora and fauna disturbances can be achieved through concrete changes in national legal systems.

The implementation of the negative obligations of the state is a complex process and requires the participation of all levels and all sectors of government and civil society. Prevention, deterring and detecting disturbances in wildlife and forests requires determination and consistency as well as a comprehensive understanding of the root causes and drivers of such behavior. Building integrity and building trust in sectors that sometimes have a long history with illegal activities can only be successful by highlighting positive examples that can be a source of optimism.

Wildlife offences and forests of this nature vary from country to country. Within a country, violations of wildlife laws or regulations may lead to administrative, civil or criminal liability, with some countries relying more on criminal sanctions while others relying more on civil or administrative sanctions. The article sought

to provide an overview of assessment guidelines in securing the country's negative and positive obligations to curb illegal trade in wildlife. The methods of these obligations has four key elements:

1. Identifying current patterns of wildlife and forest disturbances, including their leaders and perpetrators;
2. Analysis of the administrative penal response, in relation to the legislative framework and the judicial systems used;
3. Understanding the different links between violators in the wildlife and forest chain and
4. Implementing legislative measures to address and prevent wildlife and forest disturbances by offering alternative incentives.



Source: UNODC (2012, p. 6).

Figure 1: Four keys elements

The main activities and methods foreseen in the positive and negative obligations of governments are:

- The protection of species, including measures to combat illegal trade in these species, is important for preventing the extinction of certain animals and plants and preventing their unnecessary exploitation. However, species protection measures cannot prevent the destruction of natural habitats and whole ecosystems.
- Mechanisms for the protection of national parks, ecosystems or geographical areas for the protection of a specific area from specific ecological, biological or natural value. These areas may be placed under international protection due to their rare or unique nature or their wild fauna or flora.

- The protection of biological diversity includes the protection and conservation of habitats. Conservation of biological diversity usually involves the protection of certain lands – reserves, from any encroachment. In contrast, habitat protection refers to the protection of human land use, inclusive sustainable development, income generation opportunities and habitat maintenance.
- Preparation and implementation of an educational program in educational institutions for the acquisition of vital knowledge in the field of wild flora and fauna for the purpose of effective conservation.
- Training of customs officers and representatives of other law enforcement agencies related to the application of CITES requirements.

Legislation and results

Wildlife and forest offence of this nature vary from country to country. Within a country, violations of wildlife and forest laws or regulations can give rise to administrative, civil or criminal liability, with some States relying more on criminal sanctions, while others relying more on civil or administrative sanction (Georgieva, Bankova, 2020, p. 32). At the end of the 20th century, a number of treaties, agreements, declarations emerged that sought to protect the world's environment, natural resources, habitats and wildlife – fauna and flora. Although not all of these initiatives are specifically aimed at the prevention and suppression of violations of wildlife and forests, many international treaties and domestic laws provide a framework that, directly or indirectly, regulate, control and restrict international trade in wild fauna and flora, and sanction illegal activities in the wildlife and forestry sectors. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the main international instrument for control and regulation of international trade in protected areas species and deters any illegal transactions with wildlife. As a result, the Convention was quickly ratified and became part of the domestic law of the states as a negative obligation in this field. In addition, international cooperation is the basis for the formation of the legal framework for the implementation of the positive obligations for the countries that have ratified CITES.

Existing international law insofar as it concerns illegal activities in the wildlife and forestry sectors, consists mainly of agreements designed to protect the environment and the sustainable use of Natural Resources (Boer, Ramsay and Rothwell, 1998, p. 100). As a result, the Convention on Biological Diversity (United Nations, 1993) focuses mainly on habitat protection, seeking to balance the need for economic development with the protection of biological diversity, especially by nominating reserves in developing countries. The main focus of The Convention is on the sustainable development and use of natural resources

(Article 1), inclusive wildlife and recognition, recognizing “the interaction between habitats and human populations” (Boer, Ramsay and Rothwell, 1998, p. 111).

In relation to wild fauna and flora, the Convention seeks to protect ecosystems, including forests. To this end, the Convention requires, Parties to, *inter alia*, take steps to limit activities that threaten the extinction of species or the degradation of ecosystems within their territory. Specifically, the Convention calls on Parties to take active steps with rapid results, through positive obligations, in the rehabilitation and restoration of degraded ecosystems, to create and enforce laws and regulations to protect endangered species, to establish special protection areas, and to conduct environmental impact assessments of development projects (articles 8 and 9).

The purpose of the Convention Concerning the Protection of the World Cultural and Natural Heritage (United Nations, 1975) also referred to as the World Heritage Convention, is to protect designated cultural and natural sites from destruction, encroachment and exploitation. Unlike CITES, the Convention Concerning the Protection of the World Cultural and Natural Heritage does not protect particular plant or animal species. The Convention provides a set of guidelines to encourage Parties to protect their cultural and natural heritage.

Discussion between bilateral agreements and domestic law

In order to be able to implement effectively, states, through their authorized bodies, conclude a number of discussions on bilateral agreements – such as agreements on mutual administrative or judicial assistance and memoranda of understanding (MOUs) – for general law enforcement issues that can also be applied to combat transnational wildlife and forest disturbances. The first of these types of bilateral agreements was a memorandum of understanding between Indonesia and the United Kingdom of Great Britain and Northern Ireland in 2002, which obliges both countries to work jointly to reduce and possibly eliminate illegal logging and international trade in illegally logged timber and wood products. Since then, Indonesia has concluded similar agreements with China, Japan, Norway and the Republic of Korea. In July 2010, the European Parliament approved the European Union’s Timber Regulation (previously Mandatory Verification Regulation). This regulation not only requires timber traders to exercise “due diligence” in the sale of timber on the European Union market, but also prohibits the sale of illegally harvested timber in the European Union.

A number of other consumer countries have similar discussions on the legislation or are in the process of developing their legislation against trade in illegally harvested timber. The United States was the first to take such measures

by amending the Lacey Act in 2008 to illegally import, trade or transport illegally harvested timber and timber products. Australia is in the process of developing legislation against trade in illegally harvested timber, while Switzerland introduces an import declaration. More and more countries are developing public procurement policies that aim to avoid use illegal logging in public projects.

An important feature of all aspects of international environmental law is the emerging discussion of a concept of sustainable development, which is increasingly recognized in many international and regional treaties agreements. Sustainable development can be defined as “the integration of environmental considerations into the development planning process so as to ensure long-term economic development. While the quality of life of present and future generations is preserved and improved” (Mushkat, 1989, pp. 21-29). The discussion on sustainable development methods recognizes the need for environmental and economic protection development and seeks to strike a balance between conservation and protection needs, on the one hand, and economic and requirements for the development on the other. It should be noted, however, that international legislation remains fragmented and inconsistent as regards specific measures to prevent wildlife and forest violations. To date, there are no specific agreed agreements comprehensively defining violations of wildlife and forests.

The lack of comprehensive international legal norms dealing with wildlife and forest offences means that domestic law is primarily responsible for determining the nature, scope and consequences of wildlife and forest offences. In turn, without comprehensive wildlife and forest laws at the national level, including criminal offences, it is difficult to combat wildlife and forest offences at the international level (Zimmerman, 2003, pp. 1657-1675). In many countries, the discussion of reform of legal and regulatory systems is a prerequisite for addressing wildlife and forest offences. One of the many challenges in developing and enhancing these systems is the fact that wildlife and forest offences relate to a diverse range of government sectors.

The positive and negative obligations identify through the relevant statutes pertaining to wildlife, forests, species protection and administrative law. In some countries, laws related to wildlife and forests are poorly developed or suffer from significant gaps. Elsewhere, legal frameworks may be so extensive that government agencies, including law enforcement agencies, do not have the resources to monitor compliance adequately. Domestic laws, however, do not exist in a vacuum and are generally influenced by discussion of government policy. Wildlife and forestry policy development is an essential precursor to developing and maintaining adequate legislation. Wildlife and forestry policy choices are, of course, the prerogative of individual countries.

In most countries, the ownership of, management of, and offences relating to, the wildlife sector are usually set out in a wildlife and forest statute or similar law. Many aspects of domestic wildlife and forest laws are focus predominantly on administrative matters. For the most part, wildlife law is intended to address issues arising from claims concerning conflicts over wild animals living on or transiting through public habitats, or private lands or waterways. Historically, illegal wildlife hunting has been a major source against the development of wildlife legislation.

Conclusions

Wildlife and forest legislation often tends to restrict its rights people's livelihood depending on natural resources for their livelihood (Colchester et al., 2006). By not taking this into account and focusing only on law enforcement, communities can be harmed. The connections between disturbances against wildlife and forests and problems outside the wildlife and forestry sectors, such as rural development and public awareness, are often overlooked. The situation is further complicated by the fact that the international community lacks common ground understanding and common definition of a violation of wildlife and forests. To date, there is no one-size-fits-all strategy acceptable to all nations to prevent wildlife and forest disturbances. Despite the large production of bibliographic materials, there is not enough expertise available on this topic and studies based on systematic empirical analysis are still scarce. Therefore, the positive and negative obligations of states are directly and indirectly related to the need to increase knowledge in the field of wildlife conservation and education to society about flora and fauna as an integral part of human existence.

The need to improve the universal legal system in the field of biodiversity stems from the role of the state and its administrative bodies in the protection of the natural habitats of animal and plant species. Not only the involvement of public authorities at all levels and all sectors of government is essential, but also the responsibility of civil society in the approach to the conservation of flora and fauna. The achievement of this goal could be achieved entirely through the introduction of compulsory curricula in national education systems to increase knowledge of the impact of the individual on wildlife and forests.

As a result, a special legal mechanism for drawing up a national program for environmental protection should be discussed. The design of this protection requires that a system for targeting and supporting already extinct and highly endangered species should be established, with special care for their conservation and reintegration into their natural habitats, in close cooperation with NGOs and experts in the field. In order to achieve the set goal, it is necessary to provide legal mechanisms for control over the liability of already identified violators. In

order to achieve the goals set in the national program for wildlife protection, the preventive nature must be provided by the control and regulatory bodies, as well as by all citizens, as a necessary but especially vital synthesis.

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