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KEEPING THE RHINO (DEBATE) ALIVE:
SWAZILAND'S PROPOSAL AT CITES COP17 IN 2016

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Abstract

Rhinoceros poaching is currently at crisis levels, particularly in South Africa – the country having lost more than 6,500 animals in the last decade from a population of approximately 25,000. One of the most successful conservation programmes of all time, the recovery of the rhinoceros, is now seriously threatened. No single measure at present seems capable of preventing poaching, given the strength of the criminal networks driving the illegal trade and the capacity of the market which the illegal trade is supplying. At the 17th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in 2016, Swaziland put forward a proposal to open a legal market for rhino horn – a proposal which Swaziland must have known was doomed to fail, given the current strength of international concern over the poaching crisis. That Swaziland still thought it worth putting the proposal forward probably indicates that the country wished to keep its sustainable use philosophy ‘on the agenda’. If a legal trade is to provide part of the eventual solution, then it is unlikely that it will ever do so on its own, however – what is therefore needed is for the proponents of a legal market to demonstrate how exactly it would complement, supplement and support other efforts. South Africa, following a Committee of Enquiry’s recommendation that such an integrated approach be adopted, did not put forward a proposal at CITES CoP 16 and is now moving toward greater integration of strategies. Ultimately, it may be that a legal trade will be an element in a successful suite of management options; and for that reason Swaziland's proposal, insofar as it kept this option in the public eye and reminded Parties of the an interest that needs to be accommodated, is worth considering and locating within the complicated overall context.

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1 Introduction

If asked what the most expensive renewable commodities on earth currently are, most people would probably not include keratin, yet it may be one of them. The current price of rhinoceros horn on the illegal black market seems to be somewhere between US\$30-75,000 per kilogramme.¹ Rhino horn may now therefore be more valuable than gold, cocaine, platinum or heroin on the black markets of South-East Asia² despite its being essentially comprised of a keratin-like substance - a substance similar to human hair and fingernails.³ TRAFFIC

¹ For the higher figures, see Damien Mander 'Damned if you do and damned if you don't - legalising the rhino horn trade' (10 June 2012) <https://iapf.org/wp-content/uploads/2017/03/vietnam.pdf> cited in Julie Ayling 'What sustains wildlife crime? Rhino horn trading and the resilience of criminal networks' (2013) 16 *Journal of International Wildlife Law and Policy* 57, 64; and Patterson Clark and Darryl Fears 'The horn and ivory trade' (10 August 2014) *Washington Post* <https://www.washingtonpost.com/apps/g/page/national/the-horn-and-ivory-trade/1163/>. For more recent somewhat lower figures, see Damien Carrington 'High price of rhino horn leaves bloody trail across the globe' (11 March 2017) *The Guardian* <https://www.theguardian.com/environment/2017/mar/10/high-price-of-rhino-horn-leaves-bloody-trail-across-the-globe>; and Kevin Leo-Smith 'Live white rhino horn trade scenario - why prices would rise 900%' (3 October 2016) *Fin24* <https://www.fin24.com/BizNews/live-white-rhino-horn-trade-scenario-why-prices-would-rise-900-20161003>.

² Julian Rademeyer *Killing for Profit Exposing the Illegal Rhino Horn Trade* (2012) ix [3]. A valuable consideration of the drivers of the price for rhino horn can be found in Timothy Haas & Sam Ferreira 'Combating Rhino Horn Trafficking: The Need to Disrupt Criminal Networks' (2016) 11(11) *PLoS ONE* 1-26 at 6-12. The authors indicate that the price per kilogramme probably rose from US\$5,000 in 2009 to US\$97,000 in 2014 (*ibid.* at 10).

³ There appears to be scientific consensus on this point, although there *have* been efforts made over the years to prove that rhinoceros horn does indeed have medicinal qualities. Arguing for fever-reducing qualities, But, Lung & Tam wrote in 1990, for instance, that:

[t]he aqueous extract of rhinoceros horn consistently demonstrated a significant antipyretic effect ... after which rectal temperature of [the subject] rats gradually returned to hyperthermic conditions as in the control group given only saline.

Paul Pui-Hay But, Lai-Ching Lung & Yan-Kit Tam 'Ethnopharmacology of Rhinoceros Horn I: Antipyretic Effects of Rhinoceros Horn and other Animal Horns' (1990) 30 *Journal of Ethnopharmacology* 157-168 at 161.

In 2016 the Kingdom of Swaziland argued that '[w]ho are we to tell those who believe in traditional Eastern medicine that it doesn't work? For those who use it and believe in it, it *does* work!' This argument was then, however, somewhat undermined by the next claim, that '[i]t is common cause that, what works in the mind also works in body and soul - religion is a good example of this'. Ted Reilly 'Rationale for the Kingdom of Swaziland's Position on its Proposal to CITES to Legalise its Rhino Horn Trade' Kingdom of Swaziland, Big Game Parks (13 June 2016) at 1, http://www.rhinoalive.com/wp-content/uploads/2016/08/RATIONALE-SWAZILAND-PROPOSAL-TO-CITES-COP17_Aletta-subbed.pdf.

A report prepared by TRAFFIC for the CITES Secretariat in 2012 found that:

reports that, in 2011, the annual illegal wildlife trade, even excluding both the illegal timber trade and illegal, unregulated and unreported fisheries, could be valued at between US\$7.8-10 billion.⁴ Since the first listing of the white rhinoceros (*Ceratotherium simum*) on Appendix I in 1975/77,⁵ at the first Conference of the Parties (CoP) of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁶ the apparent levels of success of the consequent prohibition on commercial trade has fluctuated wildly. Until approximately 2007 it appeared as though the listing had been relatively successful, based on comparatively few rhinos being poached until then.

The present position is that all species of rhinoceros are listed under CITES, with an Appendix I listing applying to all five species except for the populations of the southern white rhinoceros (*Ceratotherium simum simum*) from both South Africa and Swaziland which have been listed on Appendix II since 1994 and 2004 respectively.⁷

A wide-ranging review found that most researchers in the field support application of the modern standards of evidence-based medicine to determine efficacy of traditional medical treatments. These standards have not been applied to rhino horn; without such scientific validation, any future legal use of rhino horn as a medicine to treat illness, and especially life-threatening ones, should be contemplated with caution.

Kristin Nowell/TRAFFIC 'Species trade and conservation: Rhinoceroses: Assessment of Rhino Horn as a Traditional Medicine' (April 2012) SC62 Doc. 47.2 Annex (Rev. 2)
<https://cites.org/eng/com/sc/62/E62-47-02-A.pdf>.

⁴ TRAFFIC.org 'Wildlife Trade: What is it?' <http://www.traffic.org/trade/>. It has been suggested that collective environmental crime, including resource exploitation, in 2016 can be estimated as being worth approximately US\$91-258 billion per annum. Christian Nellemann et al (eds) 2016. *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security* UNEP-INTERPOL Rapid Response Assessment <<http://www.unep.org/environmentalgovernance/erl/resources/publications/rise-environmental-crime>> at 7.

⁵ One sub-species was listed (on Appendix I) when the CITES entered into force in 1975, and the others were listed in 1977. See <https://cites.org/sites/default/files/eng/news/world/30special.pdf>, for instance. (The listings are a little confusing because the first CoP was in 1976. We have therefore in this article chosen to refer to 'the 1975/77 listing'.) See the weblink https://www.cites.org/eng/cop/09/prop/E09-Prop-17_Ceratotherium.PDF for a record, dated 1994, of the early listing of the rhinoceros.

⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), opened for signature 3 March 1973, 993 UNTS 243 (entered into force on 1 July 1975).

⁷ See <<http://www.environment.gov.au/biodiversity/wildlife-trade/cites/stricter-measures/rhino>>. The populations of the white rhinoceros in South Africa and Swaziland are listed on Appendix II, but for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies. See, for instance, https://cites.org/eng/gallery/species/mammal/white_rhino.html. From 2000 to 2016 South Africa held a quote of five adult, male black rhinoceroses which could be exported per year as hunting trophies. CITES.org 'National Export Quotas' https://cites.org/eng/resources/quotas/export_quotas?field_export_quotas_year_value%5Bvalue

Since 2005, however, the rate of poaching of rhinos has escalated alarmingly, and at time of writing shows no signs of abating with 1,342 animals poached (worldwide) in the year 2015 alone.⁸

In recent years poaching in South Africa, regardless of any other countries, has escalated to such an extent that the numbers are almost beyond belief. From a population of approximately 20,000 white and 5,000 black rhinos, recent figures show:

13 animals poached in 2007; 83 in 2008; 122 in 2009; 333 in 2010; 448 in 2011; 668 in 2012; 1,004 in 2013; 1,215 in 2014; 1,175 in 2015; 1,054 in 2016, for a total of 6,115 in under ten years.⁹ Added to this, for 2017 it appears that in the first half of the year at least 529 rhinos were poached.¹⁰

The early figures are somewhat misleading in that it is unlikely that only 13 rhinos were killed in 2007. More probably escaped notice; and some were taken legally in this and previous years as 'non-genuine' sport trophies – more than 200 such 'trophies' were exported to Vietnam alone in the years in the years 2006 and 2007, but these do not figure as 'poached'.¹¹ Something of the desperate state of rhinos at present can be seen in the Minister's thinking it worth pointing out that 13 less rhinos were poached in the first half of 2017, compared to the first half of 2016 as though this minor improvement were something to celebrate.¹²

According to the IUCN Red List of Threatened Species, in 2011, '[w]hile still less than the net growth in numbers due to breeding the continued escalation in

%5D%5Byear%5D=2017&field_full_name_tid=&field_party_quotas_tid=&items_per_page=50&page=19.

⁸ Richard Emslie et al 'African and Asian Rhinoceroses – Status, Conservation and Trade' (2016) *IUCN SSC African and Asian Rhino Specialist Groups and Traffic* to the CITES Secretariat pursuant to Resolution Conf.9.14 (Rev.CoP15), CoP17 Doc 68 Annex 5, Table 2. This number being the highest accepted number of rhinoceros poached in a single year in the 21st Century.

⁹ 'Minister Molewa highlights progress on Integrated Strategic Management of Rhinoceros' 27 February 2017

https://www.environment.gov.za/mediarelease/molewa_progressonintegrated_strategicmanagement_ofrhinoceros.

¹⁰ DEA Press Release 'Minister Molewa highlights progress on Integrated Strategic Management of Rhinoceros' (24 July 2017)

https://www.environment.gov.za/mediarelease/molewa_proresson_integratedstrategic_managementofrhinoceros_rhinopoaching.

¹¹ Annette Hübschle *A Game of Horns: Transnational Flows of Rhino Horn* International Max Planck Research School (2006) Studies on the Social and Political Constitution of the Economy <https://imprs.mpifg.de>, 'Dissertation series', at 272. Available also at: http://www.stoprhinopoaching.com/UploadedFiles/Knowledge/2016_IMPRSDiss_Huebschle.pdf.

¹² DEA Press Release 'Minister Molewa highlights progress on Integrated Strategic Management of Rhinoceros' (24 July 2017)

https://www.environment.gov.za/mediarelease/molewa_proresson_integratedstrategic_managementofrhinoceros_rhinopoaching.

poaching threatens to soon reverse the gains achieved if it cannot be stalled or reversed. If current trends continue numbers in South Africa could start to decline by 2016'.¹³ This position has changed and the alarming rhino poaching rate is possibly now exceeding the rate of breeding with it being obvious that rhino populations will not be able to sustain further increases on current levels without damage.¹⁴ Obviously, rhino populations have fluctuated considerably – in the late 1800s there may have been less than 100 white rhinos alive in South Africa.¹⁵ Per the IUCN Red List, 'the Southern White Rhino was on the brink of extinction by the end of the 19th century having been reduced to just one small population of approximately 20-50 animals in [the then province of] Natal, South Africa'¹⁶ – that this population has recovered to number more than 20,000 is surely one of the world's great conservation success stories. The status of the sub-species, again per the IUCN Red List, is however: 'near endangered'.¹⁷

The black rhinoceros (*Diceros bicornis*) is classified by the IUCN as 'critically endangered'. As at 1995 the species had reached its low point, at approximately 2,400, and it has since recovered to number approximately 5,000 – but this still represents a drop to '90% lower than three generations ago'.¹⁸

It is unlikely that the white rhinoceros which once numbered less than 100 individual animals, and today numbers approximately 20,000, is in danger of going extinct – the black rhinoceros is more vulnerable due to these lower population numbers, but is likewise unlikely to be driven into complete extinction since there will always be some populations given such stringent protection that they are safe. Claims that the species faces extermination are therefore arguably overblown. However, taking any risks with such vulnerable creatures is simply

¹³ '*Ceratotherium simum*' <http://dx.doi.org/10.2305/IUCN.UK.2012.RLTS.T4185A16980466.en>;
<http://www.iucnredlist.org/details/4185/0>.

¹⁴ Minister of Environmental Affairs, Minister Molewa, was quoted in 2013 as having said 'in the past' that 'the death rate could exceed the birth rate by 2026'. Siphso Kings 'Rhino deaths reach tipping point' (27 September 2013) *Mail & Guardian* <https://mg.co.za/article/2013-09-27-00-rhino-deaths-reach-tipping-point>.

¹⁵ San Diego Zoo Global Library 'White Rhinoceros (*Ceratotherium simum*) Fact Sheet: Population & Conservation Status' (14 July 2017)
<http://ielc.libguides.com/c.php?g=692890&p=4909836>.

¹⁶ IUCN Red List of Threatened Species '*Ceratotherium simum*'
<http://dx.doi.org/10.2305/IUCN.UK.2012.RLTS.T4185A16980466.en>
<http://www.iucnredlist.org/details/4185/0>.

¹⁷ *Ibid.*

¹⁸ IUCN Red List of Threatened Species '*Diceros bicornis*'
<http://dx.doi.org/10.2305/IUCN.UK.2012.RLTS.T6557A16980917.en>
<http://www.iucnredlist.org/details/6557/0>.

pointless – and, even if the species could handle another significant contraction in its numbers, the loss of genetic variety through another contraction would be appalling. The potential impacts on the creatures' environments, already badly disrupted by humankind's activities, should be considered also – many other species are affected by the presence (or absence) of rhinos within their ecosystems, rhinos arguably being keystone species given their capacity to influence grass cover and heterogeneity and species diversity.¹⁹

Rhino horn has been a revered element in Asian traditional medicines for centuries to alleviate fever and other ailments and in recent decades has increasingly become associated as a wealth and status symbol in growing middle-class Asian societies – particularly in China and Vietnam.²⁰ In some ways, it is Vietnam that drove the current crisis. It seems that in and around the period 2005-2007 the confluence of a strong economy with a new middle/upper class seeking ostentatious symbols of wealth, coupled with the rise of internet literacy, saw a rumour take off that a Vietnamese politician had successfully used rhino horn as an oncological treatment – the identity of the politician, and the exact circumstances, seem uncertain.²¹

At the same time, weak controls over the issuance of sport trophy hunting permits for export of rhino horns in South Africa created the perfect environment

¹⁹ See, for instance, Joris Cromsigt & Mariska te Beest 'Restoration of a megaherbivore: landscape-level impacts of white rhinoceros in Kruger National Park, South Africa' *Journal of Ecology* 102 (2014) 566-575. Rhinos serve as keystone species also in another sense, which is that they 'act as "flagship species" because they require large areas and significant protection measures that help to conserve a wide range of biodiversity, particularly where wildlife-based land-use systems have been established'. Michael Knight, Richard Emslie, R Smart & Dave Balfour 'Biodiversity Management Plan for the White Rhinoceros in South Africa 2015-2010' in terms of the National Environmental Management: Biodiversity Act 10 of 2004, Department of Environmental Affairs, *Government Gazette* No. 39469, 2 December 2015, https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba10of2004_biodiversity_managementplan_whiterhinos39469_gen1191.pdf.

²⁰ Tom Milliken, Richard Emslie, Bibhab Talukdar *African and Asian Rhinoceroses – Status, Conservation and Trade* (2009) A report from the IUCN Species Survival Commission (IUCN/SSC) African and Asian Rhino Specialist Groups and TRAFFIC to the CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP14) and Decision 14.89, 18. See <https://www.cites.org/common/cop/15/doc/E15-45-01A.pdf>.

²¹ See, for instance, media accounts at TRAFFIC.org 'Lid lifted on Vietnamese rhino horn trade' (24 May 2011) <http://www.traffic.org/home/2011/5/24/lid-lifted-on-vietnamese-rhino-horn-trade.html>; Jonathan Watts "'Cure for cancer" rumour killed off Vietnam's rhinos' *The Guardian* (25 November 2011) <https://www.theguardian.com/environment/2011/nov/25/cure-cancer-rhino-horn-vietnam>; and Justin Caba 'Vietnamese Millionaires Using Rhino Horns For Hangover Cure' *Medical Daily* (15 May 2013) <http://www.medicaldaily.com/vietnamese-millionaires-using-rhino-horns-hangover-cure-245924>. According to Hübschle, it may have been former President Nguyen Minh Triet who used horn in addition to modern ocological treatment and whose prostate cancer may have gone into remission. Hübschle (n11) 165-167.

for Vietnamese 'sport hunters' to shoot rhinos in South Africa and to export the horns legally. Hübschle has demonstrated the wide discrepancies between the figures recorded as exported from South Africa as opposed to those reported as received in Vietnam – in 2006 approximately 100 to 10; in 2007, 140 to 25; in 2008, 90 to 60; in 2009, 130 to 20; and, in 2010, 120 to 25.²² It is staggering that this legal trade was allowed to persist for as long as it did – despite Vietnam having no significant home-grown tradition of sport trophy hunting.²³

In more recent times, much of the demand seems to have come from China rather than from Vietnam. China has done more than any other country in recent decades to lift millions of people from poverty; and has, since approximately 2005, expanded commercial, investment and resource extraction operations significantly in Africa generally. The increase in poaching of elephants for ivory has dovetailed too neatly with this expansion to be coincidental; and the exponential increase in the poaching of rhinos is following the same pattern.

As is increasingly recognized to be the case for much of the illegal international wildlife trade, the main driving force is extensive networks of sophisticated, well-resourced, and well-organised transboundary criminals.²⁴ Lured by financial incentives to support their families, poverty-stricken communities – especially in Mozambique, South Africa and Zimbabwe – are preyed upon by criminal networks looking for supplies of poachers willing to risk their own freedoms, or even lives, at the base level of the trade. As demand for rhino horn has grown, lucrative financial incentives have infiltrated into all levels of society and have, it seems, led to corruption of government, military officials and members of society (police, game rangers²⁵) charged with the animal's protection – and even of several veterinarians. What has resulted is an unprecedented, costly, armed protection operation for these animals both in the wild and in private ownership. A 'war' to protect these animals against some of

²² Hübschle (n11). Figures are approximate, as they are drawn from a table in Hübschle, at 272.

²³ Internet searches reveal a virtually complete absence of accounts of traditional sport trophy hunting in Vietnam.

²⁴ See, for instance, Rob White *Transnational Environmental Crime: Toward an Eco-Global Criminology* (Routledge, 2011); and John Scanlon 'CITES at Its Best: CoP16 as a "Watershed Moment" for the World's Wildlife' *RECIEL* 22(3) 2013 222-227.

²⁵ There have been a number of arrests of staff, especially in the Kruger National Park, for poaching. Interestingly, this was correctly predicted in 2005 by a retired Kruger National Park game warden – see Bruce Bryden *A Game Ranger Remembers* (2005) 133-134.

the strongest organised criminal syndicates in the world is being fought by some of the world's poorest developing countries.

2 CITES and its 1975/77 ban

CITES entered into force in 1975 to regulate trade in endangered, wild plants and animals in an effort to ensure their ongoing survival.²⁶ Currently ratified by 183 states Party (182 states and the European Union),²⁷ CITES is a convention that provides a system for parties to incorporate into their domestic legislation – meaning that parties should make provision for a scientific authority and a management authority, and for the issuing of permits corresponding to the CITES appendices. Through the use of a permitting system, the operative principle of CITES is to assign a level of international regulation to species listed on three appendices based on the level of protection they are perceived to require. Appendix I is the most protective listing, predominately covering species considered to be threatened with extinction – currently just less than 1,000 are listed.²⁸ Whilst Appendix II species are not considered to be currently threatened with extinction, their trade should be regulated to avoid detrimental impacts to the species' survival (the vast majority of listed species, more than 30,000, are on Appendix II). Finally, Appendix III relates to species that are protected in one party state, where such state has asked other CITES parties for assistance in regulating trade of that species (very few species are listed on Appendix III).²⁹

In 1975/77, CITES listed both species of African rhino (white and black) under Appendix I, but not for the southern white rhino population, thereby prohibiting all commercial international trade in rhino horn and rhino derivatives.³⁰

Since the introduction of the trade ban, numerous South-East Asian countries have also ratified CITES; notably Japan and China in 1980, and South Korea in

²⁶ CITES.org 'What is CITES?' <https://cites.org/eng/disc/what.php>.

²⁷ Ibid.

²⁸ The allegation is regularly made that certain species (such as elephants and whales) have been listed for political, rather than scientific, reasons. See, for a general discussion, Ed Couzens *Whales and Elephants in International Conservation Law and Politics: A comparative study* (2014).

²⁹ CITES.org (n26).

³⁰ See, for instance, Saveourrhino.net *Rhino Horn Trade: Rhino Poaching Timeline* (2015) <http://www.saveourrhino.net/rhino-poaching-timeline/>. The Appendix I listing was agreed to in 1975 when the Convention came into force, but the first meeting was held only in 1977 and it was from this latter date that the southern white rhino was listed.

1993.³¹ In 1994, at the ninth CoP, CITES down-listed the South African population of the Southern white rhino species from Appendix I to Appendix II, split-listings being permissible, allowing for limited commercial trade of live animals and as hunting trophies³² (but not allowing trade in their horns). This down-listing from Appendix I to Appendix II was also applied for and accepted in 2004 for the Kingdom of Swaziland (Swaziland) for its Southern white rhino population.³³ In 1997, during the tenth CITES CoP, held in Harare in Zimbabwe, South Africa proposed an amendment to the annotation to the Appendix II listing to allow it to trade in horns and other derivatives, albeit with a zero quota to begin with, but failed to secure the necessary two-thirds majority vote.³⁴ The vote was lost narrowly with 60 for and 32 against.

In this same year, ironically perhaps for the rhino, Vietnam ratified CITES. The next decade was a quiet one and it must have seemed to many that rhino poaching was under control. Over the decade after that, especially from about 2006/7, however, the numbers of rhinos poached escalated exponentially in South Africa.

Initially, in its efforts to contain this situation, South Africa seems to have done little more than rely on the typical 'command and control' approach of environmental regulation to this permitting issue – this being a simple approach of providing legal provisions, attempting to enforce them, and assuming that this will be sufficient. However, what has since followed is an ever-increasing black-market demand for rhino horn, with all profits held by the criminal networks and none by those breeding and protecting rhino.

3 CITES CoP17

In the months leading up to the conference of the parties,³⁵ a small number of African countries including Swaziland, Namibia and Zimbabwe were anticipating that South Africa would again submit a proposal to legalise the rhino horn trade

³¹ CITES.org (n26).

³² Saveourrhino.net (n30).

³³ Julie Ayling 'What sustains wildlife crime? Rhino horn trading and the resilience of criminal networks' (2013) 16 *Journal of International Wildlife Law and Policy* 57, 62 [2].

³⁴ See, for example, 'SA loses rhino horn vote' *Mail & Guardian* (18 June 1997)

<https://mg.co.za/article/1997-06-18-sa-loses-rhino-horn-vote>.

³⁵ Held in Johannesburg from 24 September to 5 October 2016.

and were preparing to support such a motion. However, it appears that in April 2016 Swaziland was informed that South Africa was not going to submit such a proposal. Near the deadline for doing so, on the 9th of September 2016³⁶ Swaziland submitted a proposal itself to CoP17 requesting that the CoP:

[a]fter the existing annotation on the Appendix II listing of Swaziland's southern white rhino, adopted at CoP13 in 2004, so as to permit a limited and regulated trade in white rhino horn. Proceeds from the sale of 330kg of horn stock will be placed in a conservation endowment fund to yield an estimated annual income of \$600,000, and in addition 20kg of horn from natural deaths and harvesting will generate another \$600,000 per annum, providing an estimated sustainable annual income of \$1.2 million. A trading partner will be sought if Swaziland's proposal is approved. All horn will carry a DNA signature and trade will be strictly controlled with only one supplier. Buyers will be limited to one or two licenced traders or consumers annually.³⁷

Swaziland's proposal again challenged the international ban on the commercial rhino horn trade which has been in place for four decades, under Appendix I and II listing on CITES. The proposal was rejected by vote in a secret ballot with 26 Parties in favour, 100 against and 17 abstentions.³⁸ Whilst the South African government did not specifically outline reasons for not submitting a proposal at CoP17, it did claim that it was continuing to follow its 'integrated strategic management approach'³⁹ and it would continue to 'maintain its existing policy of stockpiling the commodity'.⁴⁰ This position and subsequent media statement was openly applauded by some intergovernmental organisations (IGOs) and non-government organisations (NGOs).⁴¹

³⁶ CITES Management Authority, Kingdom of Swaziland *Rationale for Swaziland's Proposal to CITES to Legalize trade in its rhino horn*, CoP17 Inf.17 (9 September 2016) 28 https://biggameparks.org/img/cms/tabs/CITES%20CoP17%20INFO%20DOC%2028%20pg%20-%20SWAZILAND_3.pdf.

³⁷ *Ibid.* 3[1].

³⁸ CITES, Conference of Parties, *Final decisions made at CoP17 on the proposals to amend CITES Appendices* <https://cites.org/sites/default/files/eng/cop/17/Decisions-on-amendment-proposals.pdf>.

³⁹ ENCA.com *Cabinet refuses to legalise rhino horn trade* (21 April 2016) <http://www.enca.com/south-africa/cabinet-refuses-legalise-rhino-horn-trade>.

⁴⁰ *Ibid.*

⁴¹ See, for instance, the accounts at <http://www.reuters.com/article/us-safrica-rhinos-idUSKCN0XI16U>; https://www.savetherhino.org/latest_news/news/1476_south_africa_not_to_pursue_international_trade_in_rhino_horn; <https://annamiticus.com/2016/04/25/confirmed-no-rhino-horn-trade-proposal-south-africa/>; http://www.wwf.org.za/what_we_do/wwf_nedbank_green_trust/about_us/gt_news/?18981/CITES-COP17-decides-no-trade-in-rhino-horn.

The reasons for this (non-)action by the South African Government are not entirely clear. South Africa's commitment to trading in rhino horn is longstanding, appears genuinely held and is in line with the country's approach to sustainable use. Further, many countries hosting international conferences seem to view such hosting as an opportunity to drive their desired agenda.⁴²

On 8 May 2016, the South African Minister of Environmental Affairs announced the results of a report by the Department's Commission of Inquiry into the Feasibility of a Legal Trade in Rhino Horn.⁴³ According to the Minister, in April 2016 the Cabinet of the South African Government Cabinet 'approved the implementation of the minimum requirements' that it is anticipated will 'create an environment conducive for rhino conservation in South Africa and effectively address rhino poaching and the illegal trade in rhino horn'. The minimum requirements are:

- Security, including the adoption and implementation of the National Integrated Strategy to Combat Wildlife Trafficking;
- Community empowerment, including the development, adoption and implementation of a Community Empowerment Plan;
- Biological management, including the adoption of an African rhino range States African Rhino Conservation Action Plan;
- Responsive legislative provisions that are effectively implemented and enforced, including incentives to rhino owners to support continued investment in the conservation of rhino; and
- Demand management, including information gathering to enhance our knowledge about demand for rhino horn and identifying the most effective interventions to manage demand.⁴⁴

Cabinet, according to the Minister, 'noted that any potential mechanism to legalise international trade in rhino horn will have to ensure not only a reduction in poaching and the risk of extinction', but would need also to 'benefit the conservation of free-ranging rhino; secure financing for the expansion of rhino range; address threats in rhino range states and ensure the establishment of

⁴² Vide, for example, Zimbabwe's firm push to down-list elephants, so as to reopen a trade in ivory, while hosting CITES CoP10 in 1997.

⁴³ Department of Environmental Affairs, Media Release, 'Minister Edna Molewa on the Committee of Inquiry into the feasibility of a legal trade in rhino horn, or not' (8 May 2016) https://www.environment.gov.za/mediarelease/molewa_onlegaltradeofrhinohornornot. See also Department of Environmental Affairs, 'Statement of the Chair of the Committee of Inquiry, Ms Nana Magomola' (8 May 2016)

https://www.environment.gov.za/mediarelease/committeeofinquiry_statement.

⁴⁴ Ibid., Media Release.

governance structures that reduce corruption'.⁴⁵ The Minister indicated also that 'this mechanism would also have to ensure' that 'tangible and sustainable direct and indirect benefits that enhance interest in and protection of live rhino and conservation areas' would need to be received by 'marginalised communities neighbouring conservation areas'.⁴⁶

The Minister then indicated that the option which would be followed was that of 'application of current policy, with no immediate intention to trade in rhino horn', but coupled with 'maintaining the option to re-consider regulated legal international trade in rhino horn when the key requirements identified earlier are met'. South Africa, the Minister concluded, 'will therefore not be applying for the opening of a legal, international commercial trade in rhino horn at CITES COP17'.⁴⁷

Possibly, further, despite believing in the value of opening a legal market, it is possible to speculate that South Africa simply decided to put its energies into other 'battles' rather than fight one that had no real chance of succeeding. However, the simplest explanation is probably the 'process-driven' one – that South Africa did not proceed because of the lack of support from its own Committee of Inquiry. Whatever the reason, South Africa chose not to put forward a proposal. Instead, it was South Africa's small neighbour, Swaziland, which 'boldly' thrust the legalisation of rhino horn trade back into the international arena.

Swaziland maintained that the prime motive for its proposal was aimed: 'solely at finding a solution to the plight of rhinos'.⁴⁸ Initial criticism of the proposal at CoP17 focused on the detail that Swaziland did not specify a trading partner.⁴⁹ The fact that Swaziland essentially prepared its proposal at the '11th hour', upon learning that South Africa was not going to submit its proposal, did not enable them sufficient time to source any definitive trading partner. That being said, this could have been a deliberate action because Swaziland may have anticipated

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ CITES Management Authority, Kingdom of Swaziland, above (n36).

⁴⁹ See, for instance, the account by Melissa Reitz 'Swaziland accuses South Africa of backtracking on rhino horn trade proposal' *Africa Geographic* (3 May 2016) <https://africageographic.com/blog/swaziland-accuses-south-africa-of-backtracking-on-rhino-horn-trade-proposal/>.

that any entity/country that may have been interested in pursuing legal trade in rhino horn would be politically sensitive to being openly identified in such political forums such as CITES, without gauging the appetite of the international forum first. In any case, there really are only two countries which are presently, openly showing an appetite for rhino horn (China and Vietnam) and this is known by all the CITES Parties.

Another legal hurdle to implementation of the Swazi proposal, should it have been successful, was that even if CITES did vote in their favour as to selling of their stockpile of horn, it would be illegal for other countries to purchase rhino horn, and would require amendments to their domestic/national legislation.

Furthermore, on a practical level, implementing such a change and lifting the 'ban' on rhino horn, which has been in place for four decades, would also have impacts on various authorities of global scope such as Interpol, Europol, World Customs Organisations and the United Nations Office on Drugs and Crime, and changes to legislation and such changes to vast regulatory organisation networks would be intensively time-consuming.

The Swaziland CITES CoP17 proposal was, however, significant because it expectedly stirred controversial sentiment from both pro-trade and anti-trade groups. It served also to keep the rhino trade and rhino poaching issue at the forefront of international discussions. It highlighted the international politics within CITES and the influence of NGOs on conservation efforts across Africa. The Swaziland proposal can arguably be seen, on close assessment, as an incredibly politically charged statement aimed both at NGOs and at CITES Parties with views on sustainable use opposed to those of the Southern African countries.

The proposal contained emotive images of the carcasses of poached rhinos, enforcement efforts of armed rangers in military style uniforms and, very graphically, the crime scene photograph of a ranger who had been hacked to death with a machete during a confrontation in the bush with a poacher. The submission text contained repeated headings in bold and capitalised fonts attempting to emphasise to the reader the harsh reality of the frontline poaching situation in the bush.

4 The Swazi message to NGOs

The Swaziland proposal openly vented cynicism as to the effect that activists and non-government organisations are having on the wildlife of Africa, and accused activists of corrupting the meaning of the word 'conservation' which in Swaziland's proposal was defined as:

[t]he wise and sustainable use of self-renewing natural resources – both consumptive and non-consumptive. There is a growing Western stigma developing against consumptive utilization of wild natural resources, piloted by some activists. Over the years, the concept of conservation has replaced preservation (which now more appropriately belongs in museums) but world opinion, in response to extensive global propaganda by donor dependent activists, is now causing a reversal of its meaning back towards preservation.⁵⁰

As articulated by Swaziland in the above statement, anti-trade movements have largely been led by western NGOs. SA's late rhino expert, Dr Ian Player,⁵¹ acknowledged in 2014 that it was estimated that there were approximately 280 NGOs claiming to raise awareness and funds for rhino conservation, but questioned how much of that funding was actually reaching the animals and people on the ground. Swaziland's CoP17 proposal mirrored similar sentiments and pressed further, openly criticising NGOs and questioning the integrity of CITES in light of this criticism, stating that:

[t]his gives rise to a very serious question: is CITES still serving the best interest of species survival (and indeed Nature conservation generally) or is it being hijacked to serve the agendas and financial interests of certain powerful NGOs whose economies are best supported by perpetuating crises? These questions are being asked and discussed increasingly in conservation circles.⁵²

5 The Swazi message to CITES parties

Swaziland's proposal declared that 'African rhino assets belong to Africa' and criticised the state of equality within CITES, stating that:

⁵⁰ CITES Management Authority, Kingdom of Swaziland (n36) at 10[6]. The implication is that in Swaziland's view 'Western NGOs' are opposed to 'consumptive use' of wild animals, and that this is an unrealistic, 'Utopian' stance taken in ignorance of developing world realities. The idea is that 'preservation' means preserving the lives of wild animals wherever possible, and thereby forgoing opportunities to profit from these animals through international trade.

⁵¹ Helping Rhinos, 'Dr Ian Player at World Youth Rhino Summit 2014' (1 December 2014) <https://www.youtube.com/watch?v=h9O91pdfSh4>.

⁵² CITES Management Authority, Kingdom of Swaziland (n36) at 24[1].

[w]ith 171 member states who do not have rhinos, dictating the destiny of rhinos to those states which do have rhinos, and who pay the very substantial human and economic costs of protecting them. This is seen as interference in the management integrity of sovereign states over their own resources. How sovereign states manage their own rhinos should be their own sovereign prerogative.⁵³

Such politically charged statements would hardly have endeared the proposal to CITES delegates not in favour of Swaziland's proposal; however, no party publicly responded.

6 The politics of the economics

In order to ascertain the extent of the political message attempted to be delivered by the Swazi proposal, the role and influence of these pro-trade and anti-trade groups can be examined in the context of the economic situation driving the rhino poaching crisis and suggested responses thereto.

Pro-trade opinions for the legal trade of rhino horn suffer from the perception that motives are driven purely by the desire to profit in the short-term. However, many pragmatic, passionate conservationists believe that this message is clouding the practical benefits that legal trade of such a commodity could provide.

Swaziland's proposal considers the concept of conservation as allowing for the use of self-renewing consumptive and non-consumptive natural resources. The concept that wildlife and conservation may desirably be tied to economic value does not sit comfortably with many environmentalists who consider that wildlife, and the habitats that sustain wildlife, are invaluable on their own merits (i.e. have their own intrinsic value), and that they should not have economic value placed on them. However, this Utopian view was rejected as unrealistic long ago by international communities, which is exemplified by the establishment of CITES itself in part to help regulate the growing trade of flora and fauna resources in a sustainable use manner. Countries such as South Africa and Zimbabwe readily recognise the commercial value of wildlife; and a number of industries, predominately owned by the private sector, now use wildlife for commercial meat trade, trophy hunting and photography/tourism. Modern

⁵³ Ibid. at 22[6].

thinking in Southern Africa appears to be firmly that sustainable use includes the vast majority of commercial uses that wild animals can be put to – including multiple uses for the same individual animal.

Modern day conservationists supporting pro-legalisation of the rhino horn trade clearly see the functioning economic drivers fuelling rhino poaching, and consider that in order to counter a response to the poaching problem, an economic strategy needs to be facilitated. The pro-trade movement considers that there is nothing like ownership to provide an incentive for protection. It seems that, given the practical realities faced by those who are protecting rhino, the animals are sometimes no longer considered an asset but an expensive liability, due to the exorbitant costs of providing constant and effective security and the potential for violent conflict with would-be poachers.

Pro-trade proponents do appear to recognise that local communities are a vital link⁵⁴ in the rhino poaching 'war' and that they need to be treated as part of the solution. It has been suggested that during state-enforced protectionist regimes and establishment of protected areas and reserves, such as that which was undertaken in Kenya and Swaziland, numerous tribal and/or rural/indigenous communities were excluded from their traditional lands which broke the sustainable use of their past traditions as it took away their rights to live with wildlife as essential components of their livelihood;⁵⁵ following which affected communities became increasingly dissatisfied with the imposed regime, which in turn gave rise to poaching. The protectionist regime as a wildlife management mechanism was and has been extremely successful in Swaziland, but has arguably contributed to, or at least has failed to prevent, a reduction by 60-70% of wildlife in Kenya.⁵⁶

⁵⁴ This might be exemplified most clearly in the thinking of Dr Ian Player, (n51, and other works).

⁵⁵ The Conservation Imperative 'Rhino in Crisis: A Blueprint for Survival' on *Vimeo* (2015) http://theconservationimperative.com/?page_id=152.

⁵⁶ Charles Kay 'Kenya's wildlife debacle: The true cost of banning hunting' (April 2009) 27 *Mule Deer Foundation Magazine* 22

<http://www.rexano.org/ConservationPages/MDF%20mag%2027%2022-27.pdf>. Research on the wildlife declines in Kenya published by Ogutu et al in 2016 highlighted that:

[t]he trends show, in particular, that the current model of wildlife conservation focused on state parks and reserves that jointly cover a mere 8% of the land area of Kenya yet having no adequately funded official institutions in charge of conserving and managing wildlife on the private and communal rangelands that span about 88% of Kenya and support 65–70% of Kenya's wildlife has clearly and understandably failed to protect Kenya's wildlife. Other key aspects to this Kenyan failure is that

Grassroots projects, for example the Community Rhino Farms proposed by Not-For-Profit Organisation *Resource Project Africa*,⁵⁷ aim to let local communities use land to rear, breed and protect rhino.⁵⁸ Estimated lifespans of rhino are approximately 40 years.⁵⁹ Once the animal has matured, horn can be removed approximately every three years⁶⁰ through a brief darting and tranquilising procedure to remove the length of grown horn above its growth plate. It is estimated that annual horn regrowth of the southern white rhino is 600g for females and 1kg for males.⁶¹ The intention would then be to trade the harvested horn through a controlled legal market. This could give communities part of what they need to encourage the all-important sense of ownership. The money generated by a breeding, self-sustaining rhino population could be filtered into impoverished local communities, rather than the current 'status quo' which arguably sees the bulk of profits from rhino horn funding the illegal criminal syndicates, with small amounts reaching the local community through the local criminal involvement.

't Sas-Rolfes suggests that the ban⁶² imposed by CITES, acting as a regulatory authority, has not automatically ended trade. The demand persists, particularly in Asian countries, and the ban has only raised the risk of procuring that desirable item and therefore the costs of trading that item.⁶³

hunting is permitted outside parks and reserves and there are very few rights, opportunities or responsibilities relating to wildlife for private landholders or communities. Clearly where there is less wildlife habitat that is protected and regulated versus that which is not, the results speak for themselves.

Joseph Ogutu, Hans-Peter Piepho, Mohamed Said, Gordon Ojwang, Lucy Njino, Shem Kifugo & Patrick Wargute 'Extreme Wildlife Declines and Concurrent Increase in Livestock Numbers in Kenya: What are the Causes?' *PLoS ONE* (27 September 2016)
<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0163249>.

⁵⁷ Julian Sturgeon 'Skukuza report on Rhino Farming' *Resource Africa* (14 March 2016)
<http://resourceafrica.org/?media=skukuza-report-on-rhino-farming>.

⁵⁸ Keith Madders, Rowan Martin & Julian Sturgeon (eds) 'Community Rhino Farms Report of a Joint Workshop between Resource Africa and South African National Parks held in Skukuza, Kruger National Park, 19-21 September 2013' *Resource Africa* (2014) 48
<https://www.dropbox.com/s/up5izb1b3ick8io/Skukuza%20Workshop%20Report%20Rev%202.pdf?dl=0>.

⁵⁹ Mander (n1).

⁶⁰ Ibid.

⁶¹ Anton Crone 'Will Clarity on rhinos help save other species?' *Africa Geographic* (10 July 2015)
<https://conservationaction.co.za/recent-news/will-clarity-on-rhinos-help-save-other-species/>.

⁶² ie: The Appendix I listing.

⁶³ Michael 't Sas-Rolfes 'CITES and the trade in rhino horn' *Wildlife Ranching* (2011) 4(2) at 17
http://www.rhinosourcecenter.com/pdf_files/133/1331369541.pdf.

Further observation by 't Sas-Rolfes is that the demand for rhino horn has been relatively 'insensitive' to changes in price. In economic terms the demand is 'price inelastic',⁶⁴ so that when supply is restricted, as it is under the CITES ban, the illegal trade becomes increasingly profitable, and the allure of such profits attracts organised crime syndicates. The ban also confounds issues because there are currently limited legal economical ventures that can be undertaken with live rhinos in the wild, and they do not generate more income than poaching, which essentially means that rhino are worth more dead for their horn than they are worth alive for tourism or any other purpose.⁶⁵

The recent surge in poaching is now indicating to economists that any surplus supply in the market that may have been available in the 1990s and the early part of the 21st Century has dissolved, and the increased demand (particular from new countries such as Vietnam) has increased prices of rhino horn on the black market considerably from prices in the 1990s.⁶⁶ What has been observed is that, because rhino horn is considered a prestige item, like cocaine, the market demand is high and incentives to provide the product are huge and one result is that enforcement actions by officials are being undermined by corruption.⁶⁷

Pro-trade activists and economists seem to be of the opinion that as long as you have trade, and information on that trade, you have an opportunity to manage it. It is only when a product becomes illegal and available only on the black market that there is no reliable data to inform decisions on management and control.⁶⁸ Pro-trade proponents suggest that if a legal rhino horn trading market were to be established, it would need to be done effectively, and not try to compete with the illegal industry by flooding the market. The legal trade would need to be undertaken slowly and methodically, by progressively adding what can sustainably be supplied from live and breeding rhinos and natural mortalities. Uncontrolled selling would drive the price of rhino horn down and it would be imperative to have a central selling organisation similar to that of the De Beers

⁶⁴ Ibid.

⁶⁵ It should be noted, however, that it is only in very recent years (i.e. since 2007) that the price has boomed the way that it has – due to a confluence of factors including new demand, ability to pay, and new access routes.

⁶⁶ 't Sas-Rolfes (n63).

⁶⁷ Ibid.

⁶⁸ Ibid.

company's approach to controlling the world diamond market.⁶⁹ A central selling organisation⁷⁰ controlling a central stockpile of horn could potentially also limit the impact that poachers have on the market. A balanced approach of developing sustainable rhino farming, for horn, by local communities could also bring back an element of community ownership and re-establish traditions of living with wildlife and a secure and stable trading process could provide multiple benefits.

However, thinking is divided amongst economists, with some advocating that the successes of demand reduction programmes are limited, and that these might even work against the economics of the market where there needs to be a secured supply to satisfy end users. As belief in the medicinal efficacy of rhino horn seems to be entrenched in Asian cultural traditions, and because it now seems also to be perceived as a prestige item, demand reduction through education programmes (which will take time to become effective) together with military protection and enforcement, as promoted by some western NGOs, might not suffice to change attitudes in time when set against the rate of intensified poaching.

Swaziland stated in its CITES CoP17 proposal:

[w]ho are we to tell those who believe in Eastern traditional medicine that it doesn't work? It is common cause that what works in the mind also works in the body and soul – religion is a good example of this. You will never persuade Africans who believe in traditional medicines that they do not work for them. Nor Asians that Eastern traditional medicines do not work for them. It is the height of arrogance to equate rhino horn to fingernails and despairingly label what Westerners do not understand, as fictitious.⁷¹

What appears to concern the anti-trade advocates is that legalising trade in rhino horn may further drive up demand. The fear of the unknown market is a valid argument, because as highlighted by the economists, the illegal trade is not allowing for provision of any reliable data. The potential market is not just unknown but completely unknowable – a country, China, with a population of

⁶⁹ The Conservation Imperative (n55). One should not push this analogy too far, however. The De Beers scenario is one where a commercial company has cornered the market in a product and become so powerful that it can control access to that market. By contrast, the rhino horn story is one of range states trying desperately to find ways to prevent their 'stock' being squandered by other actors. It is therefore a situation of vulnerability rather than one of strength.

⁷⁰ Michael Eustace 'Smart Trade' *South African Wildlife Rancher Rhino Supplement* 42 (August 2015) <http://www.rhinoalive.com/wp-content/uploads/2016/06/Michael-Eustace-Smart-Trade.pdf>.

⁷¹ CITES Management Authority, Kingdom of Swaziland (n37) at 12[3].

more than 1-billion, many of whom are becoming rapidly wealthier, and an apparently growing demand for this 'product'.

Second, there are concerns that legalising trade will undo years of effort to convince potential consumers that the product has no value through publicity education and awareness campaigns, often endorsed by celebrities, trying to persuade Asian populations that rhino horn is not of any value but to a rhino. The idea that NGOs are fighting not to save rhinos but to save their own sources of income was outlined by Swaziland in its CoP17 proposal as follows:

[i]s it really in the financial interests of certain donor dependant activists to find a solution to the plight of rhinos when finding one would remove some glamorous projects from their portfolios which create a very fertile and lucrative fund-raising platform that provides them with their comfortable lifestyles, worldwide travel and the high-profile kudos that goes with it?⁷²

The Swazi proposal also implied that the work of such activist organisations does not necessarily serve Africa's best financial interests, but instead increases their reliance on foreign aid. The proposal stated:

[s]ome of the funding provided by these wealthy activist organisations is conditionally available only to those recipients who agree to practice non-consumptive utilization of natural resources – the analogy being 'He who pays the piper calls the tune'. This amounts to infringement on the management integrity of sovereign states and even carries a connotation of corruption. BGP⁷³ has experienced such conditional offers of monetary assistance and fortunately has been able to afford to resist them because they are seen as an infringement on management integrity.⁷⁴

7 The reaction to Swaziland's CoP17 Proposal

The Swazi message to NGOs did not go unnoticed and it stirred a suspicious response from NGOs with a generally preservationist stance, with representatives such as Ian Michler⁷⁵ questioning Swazi's proposal, stating of it that '[i]t is also entirely out of step with world opinion, a situation a nation such as Swaziland can't afford to be in'.⁷⁶

⁷² Ibid. at 24[4].

⁷³ Swaziland's Big Game Parks.

⁷⁴ CITES Management Authority, Kingdom of Swaziland (n36) at 24[2].

⁷⁵ Reitz 'Swaziland accuses South Africa of backtracking on rhino horn trade proposal' (n49). Richler being a member of the International League of Conservation Writers, the Conservation Action Trust and Director of Eden to Addo.

⁷⁶ Ibid.

This seemingly threatening warning by an NGO to the small Kingdom of Swaziland arguably epitomises the essence of what Swaziland was trying to convey in their proposal. Swaziland does not share many of the potential conflicts of interest seen in other countries. For example, wildlife tourism as a means of generating income has been promoted and has become self-sustaining for Swaziland's Big Game Parks (BGP), which has not entertained the 'trophy game hunting' concept as a means of conservation funding, as occurs in Namibia, South Africa and Zimbabwe.

Swaziland has also apparently maintained a relatively successful stance against poaching in Africa in recent years, and has only lost three rhinos to poaching since 1992 – albeit from a population of less than 100.⁷⁷ Prior to this, the country fought its own 'rhino war' between 1988 and 1992 and lost notable numbers of animals to poaching. The 'war' ended in 1992 and the country's continued conservation success is arguably due to strong preventative legislation passed by Parliament under its *Game Amendment Act*, 1990.⁷⁸ This legislation was drafted by Ted Reilly, Head of Swaziland's BGP, and key features include: a minimum of 5 and up to 15 years imprisonment; no option of paying a fine; and that the value of the rhino killed must be paid back to the owner – failing which an additional two years of imprisonment can be added to the sentence. This Act has also included provisions for rewards for information leading to convictions of poachers, and also immunity from prosecution for game rangers protecting rhino, in 'Shoot to Kill' life-threatening situations. This latter provision is a notable feature missing from domestic legislation in other African countries, which frustrates rangers and their families who are daily faced with potentially deadly situations.⁷⁹

⁷⁷ CITES Management Authority, Kingdom of Swaziland (n36) at 9[3].

⁷⁸ *Game Amendment Act*, 1990 (Swaziland) (in force 1991).

⁷⁹ While this may be one of the reasons for Swaziland's success in preventing rhino poaching, the present authors should not be understood as advocating the approach! 'Shoot to kill' actions have resulted in human rights controversies including civil lawsuits against the BGP as a number of civilian deaths have occurred at the hands of rangers shooting individuals from poverty stricken communities on the edge of reserves where these persons were probably only searching for firewood or thatch, or hunting small game. See, for instance, Donna Bryson 'Swazi activist mediates poaching war' *NBCNews.com* (19 April 2010) http://www.nbcnews.com/id/36644125/ns/world_news-world_environment/t/swazi-activist-mediates-poaching-war/#.WeMUfmiCyUk.

While Swaziland's situation is not identical to that of any other country, and perhaps not too much should be read into the experience of a country with so few rhinos, studying its apparent success might be useful.

Swaziland's CITES proposal did result in an alarmed,⁸⁰ and somewhat confused, set of reactions in the local and international media. Controversial headlines claimed, *inter alia*, that Swaziland was acting as a 'puppet' of South Africa's, with the claim being attributed to well-known conservationist Richard Leakey;⁸¹ or, on the flip side, that Swaziland had 'accuse[d South Africa] of backtracking on rhino horn trade'.⁸² In response to this, in June 2016, to 'correct the record', Swaziland's Big Game Parks published a 'Rationale' for its 'position on its proposal to CITES to legalise its rhino horn trade'.⁸³ The statement declared, *inter alia*, that:

1. Swaziland did not accuse South Africa of reneging on a proposal to CITES to legalise the horn trade;
2. Swaziland is not a puppet of the Rhino Owners Association of South Africa;
3. Swaziland is not being used as a front by South Africa.⁸⁴

The rationale reiterated the arguments in the CITES proposal and did not shy away from the fact that a component of the justification was financially driven. Swaziland advocated this 'sustainable use' proposal in order to generate an income stream to help continue to protect its rhinos in an increasingly dangerous and expensive environment, whilst maintaining financial independence from the western NGO's (and their politics) and to uphold its position of not engaging in big game trophy hunting.⁸⁵

Swaziland suggested also that rhinos 'may well be far closer to the threshold of extinction than we think' with the 'official statistics on surviving rhinos' possibly being 'way understated, particularly considering the predicted high losses of

⁸⁰ See, for example, the article by Bryan Christy 'A Bombshell in the World of Rhinos: Swaziland shocks the global conservation community with a bid to sell rhino horn to Asia' *National Geographic* (29 April 2016) <http://news.nationalgeographic.com/2016/04/160429-rhinos-horn-trade-swaziland-south-africa-cites/>.

⁸¹ Adam Vaughan 'Swaziland acting as "puppet" to South Africa in bid to legalise rhino horn trade' *The Guardian* (27 May 2016) <https://www.theguardian.com/environment/2016/may/27/swaziland-acting-as-puppet-to-south-africa-in-bid-to-legalise-rhino-horn-trade>.

⁸² Melissa Reitz 'Swaziland accuses SA of backtracking on rhino horn trade' (n49).

⁸³ Reilly 'Rationale' (n3) at 4.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

white rhino from the current ongoing drought'.⁸⁶ Rhino loss statistics further, according to Swaziland, 'reflect minimum numbers' and do not 'include undiscovered carcasses or the carcasses of young rhinos, which are completely devoured in areas supporting large predators'.⁸⁷

Swaziland stated that it was 'for these and other valid reasons' that it had 'lodged its proposal to CITES one hour before office closing time on the last day for proposal acceptance' – and that it had done so in order to:

keep options open for a debate at COP17 and to enable the conservation message to reach the world as opposed to the preservation message, the latter having been so successfully and misleadingly marketed by some animal rights activists ("bunny huggers").⁸⁸

Swaziland stated further that it was 'concerned by the growing corruption of the meaning of the word "conservation"' and claimed that:

the creeping tendency back towards 'preservation' (which belongs in museums) is seen as a threat to Africa's wildlife. If we allow this tendency to take hold, Swaziland believes Africa's wildlife is doomed.

8 Reactions to the proposal

In the lead-up to CoP17, three sets of recommendations were usefully put forward by three different organizations and these provide a useful 'snapshot' of different attitudes toward the proposal. The first set was put forward by the CITES Secretariat itself.⁸⁹ The Secretariat is administered by the United Nations Environmental Programme (UNEP).⁹⁰ It plays a role fundamental to the Convention and its functions⁹¹ include:

playing a coordinating, advisory and servicing role in the working of the Convention; assisting with communication and monitoring the implementation of the Convention to ensure that its provisions are respected; providing assistance in the fields of legislation, enforcement, science and training; undertaking, under agreed programmes, occasional scientific and technical

⁸⁶ Ibid. at 2.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ CITES.org 'Official List and Recommendations by the CITES Secretariat for CoP17' (2016) https://www.cites.org/sites/default/files/eng/cop/17/Proposals_for_amendment_of_Appendices_I_II.pdf.

⁹⁰ Now called UN Environment.

⁹¹ As laid down in Article XII of the text of the Convention.

studies into issues affecting the implementation of the Convention; making recommendations regarding the implementation of the Convention; acting as the repository for the reports, sample permits and other information submitted by the Parties; distributing information relevant to several or all Parties, for example, proposals to amend the Appendices, sample permits, information about enforcement problems, national legislation, reference material or news of a new Party.⁹²

The Secretariat's view on the Swazi proposal was that the proposed amendment did not meet the required precautionary measures.⁹³ While the Secretariat has from time to time been accused of favouring the sustainable use camp (ie: being 'too pro-trade')⁹⁴ it probably provides the best 'middle of the road' viewpoint, ostensibly making its recommendations based solely on criteria laid down in the Convention and as agreed by the Parties.

The second set of recommendations was made by an NGO, Safari Club International, which describes itself as 'the leader in protecting the freedom to hunt and promoting wildlife conservation worldwide', having 'since 2000 ... spent \$140 million on protecting the freedom to hunt through policy advocacy, litigation, and education for federal and state legislators to ensure hunting is protected for future generations'.⁹⁵ SCI describes its 'two areas of focus' as being 'protecting hunters' rights and promoting wildlife conservation'; with its claim being that it 'encourage[s] an appreciation for nature and wildlife so that conservation efforts remain strong, while also fighting to protect our rich hunting heritage'. Further, SCI claims that its aims include to 'ensure that the best available science is used in wildlife policy and management'; and to 'demonstrate the constructive role that hunting and hunters play in the conservation of biodiversity around the world'. SCI claims, finally, that it 'actively works in the international arena to protect the

⁹² CITES.org 'The CITES Secretariat' <https://www.cites.org/eng/disc/sec/index.php>.

⁹³ These being the measures set out in Annex4 of Res.Con.9.24.

⁹⁴ Especially in the late-1980s when, under the then Secretary General Eugène Lapointe, the Secretariat resisted (in favour of the failing quota system then in place) the Appendix I listing for the African elephant while (legally) accepting donations from ivory traders. For Lapointe's own views on this, and on the role of NGOs in conservation generally, see Eugène Lapointe *Embracing the Earth's Wild Resources: A Global Conservation Vision* (2003). Reeve has suggested that the CITES Secretariat has sometimes gone so far as to provide its views, and even give its personal opinions, on controversial proposals; on which see Rosalind Reeve *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (2002) at 267-268.

⁹⁵ See <https://www.safariclub.org>.

freedom to hunt worldwide' and that it 'is working to increase hunting access and reduce burdens for international hunters'.⁹⁶

In respect of the Swazi proposal, SCI's view was that the proposal should be 'supported in principle'. SCI's reasoning was that the proposal, if accepted, 'would have no direct effect on rhino populations as traded horns would come from natural mortality, 'horns seized from poachers', and horns taken by non-lethal means'; 'proceeds would be used for conservation'; and 'sales would be controlled'.⁹⁷ According to SCI, 'poaching is increasing despite all other initiatives, and this proposal seeks funding for enforcement and protection'. SCI then acknowledged that the Secretariat had recommended rejection; but argued that 'the sustainable use of rhino horn deserves consideration – although conceding that 'a more comprehensive consultation with range states would be helpful'.⁹⁸

The third organization to put forward a set of recommendations was another NGO, the Species Survival Network (SSN), which describes itself as 'an international coalition of over eighty non-governmental organizations (NGOs) committed to the promotion, enhancement, and strict enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)'.⁹⁹ The SSN, 'through scientific and legal research, education and advocacy', works 'to prevent over-exploitation of animals and plants due to international trade'. The SSN, further, 'coordinates the activities of conservation, environmental and animal protection organizations around the world to secure CITES protection for plants and animals affected by international trade'.¹⁰⁰

The SSN, as was to be expected, recommended rejection of the Swazi proposal. The reasons it gave were that 'the proposal risked encouraging consumption; and risked providing a laundering route'. Further, that the proposal 'gave no evidence of any positive impact on rhino conservation, apart from earning revenue; and provided no detail on how a legal trade would operate, who the trade partners would be, or how laundering would be prevented'. Finally, that

⁹⁶ Ibid.

⁹⁷ Safariclub.org 'CoP17 Voting Guide' (2016)

<https://safariclub.org/what-we-do/freedom-to-hunt/international-affairs/cop17-voting-guide>.

⁹⁸ Ibid.

⁹⁹ Species Survival Network, <https://www.ssn.org> and http://www.ssn.org/aboutus_EN.htm.

¹⁰⁰ Ibid.

'Swaziland is in category 3 of the CITES National Legislation Project and may not have adequate legislation to manage the proposed trade'.¹⁰¹

Going into CITES CoP17, therefore, the SSN and the Secretariat recommended that the Swazi proposal be rejected; and the SCI, which might have been expected to support the proposal wholeheartedly, supported it only 'in principle' while expressing reservations. It could hardly therefore have been anticipated by even the most optimistic of sustainable use advocates, or the most pessimistic of preservationists, that the proposal would be successful.

9 Implications

The future management of rhinos and a possible controlled, legalised trade of rhino horn raise some interesting legal challenges. The frustrated sentiment shared by Southern African countries not being able to raise enough votes to achieve the two-thirds majority in voting in CITES to open such a market has seen journalists such as Ivo Vegter openly encourage African countries who are responsible for funding and managing rhinos to withdraw from CITES.¹⁰² Vegter argued in late 2016 that if Swaziland and other African countries were to withdraw from CITES, it would carry substantial international reputational implications and potentially disrupt the entire international legal framework around illegal wildlife trade and trafficking.

According to Vegter, 'it is time for African countries to ask the question: what good has CITES ever done for us? The answer, in terms of both conservation and sustainable development, is very little indeed'.¹⁰³ Further, he argues that:

[i]f one African country goes against CITES, there will be repercussions. Rich countries are economically and politically powerful. However, African countries would send a strong message about their own conservation and socio-economic development interests by withdrawing from CITES en bloc. There is rich irony in the idea that African countries can be outvoted in their wildlife

¹⁰¹ Ibid.

¹⁰² Ivo Vegter 'African nations should withdraw from CITES' *Daily Maverick* (23 August 2016) <http://firstthing.dailymaverick.co.za/article?id=80132#.WTJ0lmiGOUk>.

¹⁰³ Of course, many involved in the legal hunting industry who have profited over the decades from the export of sport trophies might disagree; as also might those conservationists who believe in control and regulation and risk management, rather than either a *laissez-faire* or a relatively open market-based approach. While what might have happened if the past had not been the past is impossible to know, there is a strong case to be made that CITES has in fact been remarkably successful within its parameters.

management practices by rich countries which don't have to manage the animals in question.¹⁰⁴

Vegter was worth quoting at length because his view, while naïve, is a fairly commonly held one and some of its sentiments were reflected in the Swazi proposal.¹⁰⁵ What needs to be realised, however, is that if a country wishing to trade in rhino horn withdrew from CITES for this reason, it would not immediately be able to trade freely as its potential trading partners (China and Vietnam, for instance) would remain CITES Parties and be subject to extremely stringent trade control requirements (and to trade sanctions if they did not abide by these requirements).¹⁰⁶ Both trading countries would need to be 'free' (ie: to be non-Parties) for trade directly between them to be free.

The real disruption would therefore be to the withdrawing country itself – and not on a comparatively significant scale to the international legal network.

CITES does now have real 'teeth' by way of a sanctions regime,¹⁰⁷ and is tightening up significantly the requirements for trading with non-Parties.¹⁰⁸ As Sand points out, '[e]mbargoes [have been] not only imposed on parties to the Convention, but also on non-party [s]tates failing to comply with "comparable" documentation standards'.¹⁰⁹ As an example, Sands gives the case of

¹⁰⁴ Vegter (n102).

¹⁰⁵ Swaziland, of course, did not in its proposal to CITES in 2016 threaten to withdraw from CITES if it did not get its way. The similarity lies in the resentment expressed toward 'Western NGOs'.

¹⁰⁶ It can be noted also that if withdrawal were to occur simply because of the rhino issue, it would be difficult to persuade other African states, which do not have viable numbers of rhinos to trade with, to follow suit.

¹⁰⁷ As Sand argues, the 'extraordinary effectiveness of the scheme is demonstrated by the fact that in more than 80% of the cases, trade suspensions could be lifted within less than a year, on the basis of evidence that the targeted country had returned to compliance'. Peter H Sand 'Enforcing CITES: The Rise and Fall of Trade Sanctions' *RECIEL* 22(3) (2013) 251-263 at 255.

¹⁰⁸ See, for instance, the resolution on 'Trade with States not party to the Convention' (Res. Conf. 9.5 (Rev. CoP16)), <https://cites.org/eng/res/09/09-05R16.php> from CoP16. The resolution, in its Preamble, describes the Parties as being '[c]onvinced of the need to counteract illegal trade by tightening the conditions applying to trade with [s]tates not party to the Convention'. While such trade is not, cannot be, banned, the recommendation of the Parties in Res. Conf. 9.5 (Rev. CoP16) is that it be subject to conditions that essentially mirror those of CITES itself – including that:

permits and certificates issued by [s]tates not party to the Convention not be accepted by Parties unless they contain' (1(a)) significant information such as, for example, confirmation that a 'competent scientific institution has advised that the export will not be detrimental to the survival of the species ... and that the specimens were not obtained in contravention of the laws of the [s]tate of export (1(a)(iv)).

¹⁰⁹ Sand (n107) at 254.

Singapore which acceded to CITES two months after the imposition of an embargo by the United States of all wildlife imports from Singapore.¹¹⁰

Further, while Parties who withdrew for this reason might conceivably gain in the (very) short term from trading in rhino horn,¹¹¹ they would immediately stifle their (potentially extremely lucrative) trade in other species. In South Africa's case, this trade is in many hundreds of species and thousands of animals annually.

It has been reported that between the years 2005-2014 approximately 18,000 individual CITES-listed wild animals were exported directly from Southern Africa, mostly as hunting trophies, with the trade being worth approximately US\$340-million annually – US\$3.4-billion over the decade.¹¹² Swaziland had low levels of exports – its CITES exports from 2005-2014 being worth only US\$504,000, of which rhino horns comprised US\$434,400¹¹³ – but the value to Swaziland's neighbours of the legal trade makes it extremely unlikely that they would be willing to forgo this merely to assist Swaziland.

To be blunt, therefore, Vegter's suggestion is unrealistic and it is not going to happen. It is just not in the nature of international law and politics for states to take so sudden and dramatic a stance. Neither, frankly, was Swaziland's proposal ever going to be successful at CITES CoP17 – in the face of the current poaching onslaught, there was no chance of enough states (particularly from the European Union bloc) 'switching stance'. Further obstacles to success included the Secretariat's recommendation that the proposal not be accepted; and the lukewarm support from Safari Club International, which might have been expected to be Swaziland's most stalwart supporter.

10 Conclusions

¹¹⁰ Sand (n107) at fn 26.

¹¹¹ In Swaziland's case, while selling its current stockpile of rhino horn (according to Swaziland's 2016 proposal to CITES, this is an amount of 330kg) would provide a lucrative once-off sum, there would be only a relatively minor advantage to be gained on an ongoing basis from its less than 100 rhinos (currently Swaziland has approximately 73 rhinos). Swaziland's figures suggest that this ongoing sale would be in the amount of 20kg a year, from shavings taken off live rhinos.

¹¹² Pablo Sinovas, Becky Price, Emily King, Frances Davis, Amy Hinsley & Alyson Pavitt *Southern Africa's wildlife trade: an analysis of CITES trade in SADC countries* (2016) Technical report prepared for the South African National Biodiversity Institute (SANBI), UNEP-WCMC, Cambridge, UK, at ii-iii.

¹¹³ *Ibid.* at 33.

If Swaziland's proposal had been successful, the future management implications for rhino would have presented some unknown risks, and several foreseeable ones too. The reasons for the current rhino poaching crisis are complex, and will not be controlled by any single action.¹¹⁴ It will need a multi-faceted adaptive conservation approach¹¹⁵ which is motivated by pragmatic deliverables and economics, not preservation politics. What is apparent is that the CITES Appendix I listing has not been successful in preventing a surge in demand for the substance. In this context, Swaziland's efforts to be a test case to

¹¹⁴ Different authors, putting forward different models, reach different conclusions on the possible efficacy of a legal market. Too many are available to be canvassed in this article, but consider for example the different conclusions reached by Biggs, Courchamp, Martin and Possingham (who argue that 'a trade ban limits supply, therefore raising prices and driving black market poaching') and Crookes and Blignaut (who argue that 'less conventional demand management strategies' are likely to be more effective). According to Biggs et al:

[a]ttempts to suppress the supply of horns through the CITES trade ban are failing in Africa. A legal trade in rhino horn was first proposed two decades ago but rejected at COP-8 as premature on the grounds that the problem lay with insatiable demand from importing countries. Yet, education, enforcement, protection, and awareness efforts aimed at reducing the use of horn have all demonstrably failed to turn the tide of this rising demand. Legitimizing the market for horn may be morally repugnant to some, but it is probably the only way to prevent extinction of Africa's remaining rhino, as demonstrated by the successful legal trade in crocodile skin.

Duane Biggs, Franck Courchamp, Rowan Martin & Hugh P Possingham 'Legal trade of Africa's rhino horns' (2013) Vol. 339 *Science* 1038-1039 at 1039.

Crookes and Blignaut, on the other hand write that:

[c]onventional wisdom holds that demand reduction strategies would be effective in reducing supply, where demand is downward sloping. Our study shows that, even if the demand curve is negative and inelastic as hypothesised by Biggs et al. (2013), conventional demand reduction strategies that influence the price of rhino horn to the market may not be successful in curbing supply. ... less conventional demand management strategies (such as consumer education, behaviour modification), appear to be more effective strategies in managing rhino horn demand than legalising the trade in rhino horns.

Douglas J Crookes & James N Blignaut 'Debunking the myth that a legal trade will solve the rhino horn crisis: A system dynamics model for market demand' (2015) 28 *Journal for Nature Conservation* 11-18 at 16.

¹¹⁵ Direct efforts aimed at preventing poaching rhinos now include such measures as the building up of DNA analysis databases; the building up of a ballistic fingerprint database; canine patrols; closed circuit camera technology; communication efforts involving cellular telephones, global positioning system tracking, and photographic efforts; cooperation between law enforcement bodies, both nationally and internationally; dehorning; drone camera technology; dye implants into horns (pink!); fixed camera technology; GIS time-lapse sensors; ground-based radar systems; gunshot detection awareness and preparedness efforts; heat and infrared sensor technology; helicopter and fixed wing aircraft patrols; intelligence operations involving worldwide media databases; microchips implanted in horns; military patrols; polygraph testing, especially where conservation staff are suspected of involvement; training in respect of bush crime scene management; and others.

trial legalised trade in a sustained and controlled environment, should be taken seriously as an option.

It is not likely that Swaziland put the proposal forward with any expectation of success, but the value the country probably saw lay in keeping its pro-sustainable use view/philosophy on the table.

Establishing a new legal niche market to replace that which is currently fuelled by the black market would come with substantial risks. Can the new legal supply meet the demand? The answer is unknown and unknowable; however, trading valuable commodities is not new, and the world has seen successful models of how markets can be created and controlled.

Establishing such a market would not be easy. It would take years to set up and would need to be hedged with extreme caution. Operating under CITES, the most likely scenario would be an initial, controlled 'once-off' auction sale to approved traders in an approved market, and who these traders would be and how their 'credentials' would be verified is hard to envisage – the experience of similar sales to Japan of African ivory would be invaluable, albeit that this concerned a different product for a different market.

Rhino horn would indeed be a curious product to sell. After years of promoting campaigns aimed at persuading potential Asian consumers that the product is useless for its intended purpose, to turn around and ask for permission to sell the product must surely represent one of the most mixed of marketing messages of all time. It would carry also the grave risk that once the genie was out of the bottle it would be difficult to persuade it to return – if the market, encouraged by the promotion of the product, proved too large to satisfy and in fact grew, and poaching burgeoned, it would be very difficult to return to the previous message.

A legal trade would be sure to upset the illegal criminal syndicates operating in this black market, who would not welcome a disruption to their lucrative income stream. Their reactions would be difficult, if not impossible, to predict.¹¹⁶ The

¹¹⁶ In respect of rhino poaching there have been many alarming suggestions made over the years, such as that poachers would willingly shoot dehorned rhinos in order to obtain a small scraping of horn, avoid wasteful effort tracking the same animal again, and – relevant here – increase the value of their already stockpiled horns. It is a serious problem that the reactions of those involved in the trade either as procurors, vendors or consumers are largely impossible to know. (In October 2017, five rhinos were killed by poachers on a game reserve in the Eastern Cape – despite four of the five having already had their horns removed. Caroline Mortimer 'Herd of rhinos shot and killed by poachers despite majority already lacking horns' (25 October 2017)

most obvious risk is that a newly created legal market would encourage the black market, that both a legal and black market would continue to operate simultaneously, and that the legal market would be infiltrated on an ongoing basis with illegal, poached horn.

For these reasons, should a legalised trade eventually be established, a multifaceted approach should be part of the solution – countries should continue with their enforcement of measures against illegal poaching and illegal trade of horn, continue to provide protection to the animals in the wild, allow the animals to be domesticated/farmed by private game owners and local communities. Income generated from the sale of legally harvested horn should go back to the private owners and communities that have invested in the cost of rearing and protecting the animals for the sustainable resource they provide. Continuing the current protection and enforcement of rhinos both in the wild and in private ownership is key to this, because this will put more pressure on poachers, knowing that it will still be just as difficult and dangerous to obtain horn but that the amount they get paid for it would be reduced because it will be available from legal sources as well. That being said, crime syndicates will always attract desperate people in poverty willing to generate an income to provide the basics for their survival. Continuing legal deterrents, as demonstrated by Swaziland's success and the increasingly firm approach taken by prosecutors and courts in South Africa, should continue to be adopted.

Information about, and education on, rhino poaching provided by NGOs, and the international awareness raised by these organisations, is undeniably valuable. Unfortunately, however, the current approach taken by Western NGOs through the message that, under Western medicine, there is no scientific basis to support medicinal properties of rhino horn is not apparently and currently reducing demand for the product. Further unfortunately, the message lends itself easily to the reaction that Western NGOs are seeking to impose a Western ideology on African and Asian range states and market states. The approach currently taken does not appear to be the best one for the relevant audiences. NGOs should perhaps therefore refocus their tactics to influence and educate the younger generations in both African and Asian countries of the impacts that

using this product has on rhinos and on their habitats, and use this to dissuade the cultural allure to the item.

What is of essence to undertaking such efforts is that rhinos do not have time on their side. If it is to be argued that the legal market approach may have a role to play – and in the present authors' view this would be as a supplementary means of support, never as a complete solution¹¹⁷ – then its operation needs to be foolproof. In the interim between the CoPs, Parties who would be interested in trading with Swaziland or others, need to work towards getting agreements in place and sorting out the finer intricate details and policies of how such an arrangement (which would probably be in the nature of an approved auction between two countries, as was done for elephant ivory, rather than the creation of a central selling mechanism) would be undertaken. The remaining populations of rhino do not have time to wait for human politics.

11 Toward an answer

Fortunately, South Africa does appear to be seeking such a nuanced solution – considering efforts to improve law enforcement and intelligence capabilities; considering ways to increase availability of the data needed to inform policy; considering ways to manage rhinoceros populations to 'optimise birth rates'; considering ways to empower communities through increased economic participation; considering ways to tailor legislation so that it enables better responses; and considering plans to improve stockpile management and provide better incentives for stakeholders.¹¹⁸

As much as countries may desire to make their own decisions regarding the management, including trade, of wild animals within their borders, something that

¹¹⁷ It would in fact be dangerous, for reasons outlined in the current part (Part 9) of this article, even to allow a legal market to be seen as the 'primary' mechanism for conserving rhinos.

¹¹⁸ Department of Environmental Affairs 'Minister Molewa highlights progress on Integrated Strategic Management of Rhinoceros' *DEA Press Release* (24 July 2017) https://www.environment.gov.za/mediarelease/molewa_proresson_integratedstrategic_managementofrhinoceros_rhinopoaching. See also the Biodiversity Management Plan for White Rhinoceros, n19. There also is the 'Biodiversity Management Plan for the Black Rhinoceros in South Africa 2011-2020', in terms of the National Environmental Management: Biodiversity Act 10 of 2004, Department of Environmental Affairs, *Government Gazette* No. 36096, 25 January 2013, https://www.environment.gov.za/sites/default/files/gazetted_notices/nemba10of2004_biodiversity_managementplan_whiterhinos39469_gen1191.pdf. The Plan was developed by Michael Knight, Dave Balfour and Richard Emslie.

the rhinoceros poaching crisis makes crystal clear is that we live in a globalised world and it is not possible to be 'isolationist'. Countries such as South Africa and Swaziland have too little control over the international drivers of the crisis for it to be realistic to seek a home-grown solution. On the other hand, any ultimate solution will not be found in international law on its own either. International law will need to play a part if a solution is ever to be found; but, as Bodansky has explained:

[i]nternational environmental law aims to find, not the optimal outcome, but rather the skillful compromise that bridges the gap between competing positions and advances the ball, even if only a little. This view ... accepts that international environmental law, like politics, is the art of the possible ... Above all, it sees the discipline of international environmental law not as a panacea, but rather as an art and a craft.¹¹⁹

In the face of a complicated and urgent crisis, patience – paradoxically – is needed. Too much is at stake for quick solutions – such as the hasty throwing open of a legal market – to be risked.

The ultimate value of Swaziland's proposal in 2016 probably did not lie in its somewhat heavy-handed claims that:

[t]here is a growing Western tendency against consumptive sustainable use, championed by some very clever NGOs who have influenced donors and the Western world and whose marketing skills have totally outsmarted the sustainable use protagonists. Swaziland also poses the question – is it honestly in the financial interests of *certain* donor dependent activists who run NGOs to find a solution to the plight of rhinos when finding a solution would remove a very fertile and lucrative fundraising platform that provides them with their comfortable lifestyles and the kudos that go with it? If we can't successfully address this problem we will be smothered by *preservation*, which isn't able to meet the costs of wildlife management by itself.

Rather, the value probably lay – quite simply – in keeping, first, the 'extreme' sustainable use agenda and, second, the urgency of the rhino's situation, on the table and in view. The majority of views will eventually need to be considered if a solution is to be found. In that sense, Swaziland's proposal may be said to have 'advanced the ball' a little.

¹¹⁹ Daniel Bodansky *The Art and Craft of International Environmental Law* (2010) 271.

It may eventually be that a strictly controlled legal market¹²⁰ will come to operate as a support mechanism for the methods which South Africa is trying, but in the face of the multiple forces currently arrayed against the rhino it will need to be handled with a sensitivity that has arguably not yet been shown in any wildlife trade-related forum.

¹²⁰ Whether conducted through approved auction sales or through the creation of a central selling mechanism.