

Effectiveness of Conservation Treaties in Environmental Conservation: An Evaluation of the KAZA Transfrontier Conservation Area Treaty

Ricky Mulwanda Simfukwe

Shanghai University of Political Science and Law, Faculty of Law, Shanghai, Peoples Republic of China

Email: [simfukwerm\[at\]outlook.com](mailto:simfukwerm[at]outlook.com)

Abstract: *The conversation and protection of environmental resources is a duty of all humanity. In spite of geographical borders, agreements can be reached to for the protection of environmental resources as some resources are shared by multiple countries. This study, by analysis and evaluation of the KAZA Transfrontier Conservation Area Treaty and subsequent reports from the Secretariat, academic papers and other published literature evaluated the effectiveness of the KAZA Transfrontier Conservation Area Treaty. This was to analyse whether conservation treaties can still be relied on as a tool for the conservation and protection of environmental resources. The study established that the KAZA Transfrontier Conservation Area Treaty has barely been effective in achieving the set goals of conserving and protecting the Kavango Zambezi Transfrontier Conservation Area. However, the study shows that the treaty may achieve goals and objective though at a slower pace. This showing that environmental conservation treaties are still an integral and effective component for the conversation and protection of the environmental especially with good implementation. They are not only important and effective for the protection of environmental resources but also provide as a source for international environmental law.*

Keywords: Environmental Conservation, Treaties, Tourism, Wildlife and Water Management

1. Introduction

Environmental conservancy is a growing need in the modern world. Environmental resources are dwindling by the day with some of the resources going into extinction. With the human population growing exponentially by the years, there is a growing need for resources and thus not giving nature enough time to replenish. Human settlements in what once used to be water recharge areas and havens for wildlife are sprawling leading to water scarcity and human-animal conflicts. Climate change has become a centre stage topic with need to cartel and manage its effects. It is these environmental problems and issues that have led to calls for tools either legal, social or political to be put in place to help conserve, protect and restore the environment.

Treaties since time immemorial have been used in either political, trade or environmental governance. In the governance of the environment, treaties have been used to protect, conserve and prevent environmental pollution. A treaty can be defined simply as a formal written agreement between states¹. In Legal terms, a treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation². Treaties can unilateral, that is, an agreement imposed on others states. The benefit of which are only enjoyed that that particular

state the treaty; bilateral, that is between strictly between two states and multilateral, that is three or more states enter into the agreement.

This study therefore is necessary to help many nations use this tool to solve environmental problems that go beyond borders. International environmental agreements or treaties should not be neglected as an important tool as they are still effective in solving environmental problems.

2. Methodology

This study is a systematic review study. It evaluates the KAZA Transfrontier Conservation Area Treaty (KAZA TFCA Treaty), summarising the results by providing evidence through qualitative and quantitative data collected through primary and secondary sources obtained from available sources. The primary data includes the KAZA Transfrontier Conservation Area Treaty and reports on the treaty. Secondary sources include other books, other published and unpublished academic papers. The study evaluated the KAZA TCFA Treaty to prove if it contains the elements and steps necessary to make the treaty successful as discussed above. Further the study evaluated the treaty's goals and to what extent it has been effective in achieving the set goals. The effectiveness will be measured using the three components mentioned above.

3. Results and Discussion

The Kavango Zambezi Transfrontier Conservation Area is a vast geographical area and of great importance to the five member states. It covers a total area of 520,000 square kilometres extending into territories of each of the partner countries. According to Nyambe (2019), the treaty was established to coordinate "trans-boundary management, enhance community stewardship, improve management

¹ Stanford Law School (2016). Introduction to the Laws of Kurdistan, Iraq Working Paper Series Public International Law: Treaties and International Organizations. The American University of Iraq. Retrieved 17th May, 22, from <https://law.stanford.edu/wp-content/uploads/2018/04/ILEI-Treaties-and-Intl-Orgs-2016.pdf>

² Vienna Convention on the Law of Treaties, May 23, 1969. ed May 16th, 2022 from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1_969.pdf

effectiveness, ensure a sustainable & resilient landscape, establish connectivity and habitat protection and range expansion, enhance land use planning and co-existence as affects nature. Further, it aimed to development inclusive and sustainable pathways, natural resources based economy, tourism development, private sector participation and growth and regional economic integration. The treaty further seeks to establish peace and stability through collaboration, understanding and cooperation.” It is therefore important to evaluate the agreement that birthed it and establish whether it possesses the qualities of a good agreement beginning with the elements of a good international environmental agreement, steps to being part of a treaty and then investigate whether or not the treaty has since achieved its goals and objectives.

Elements and Characteristics of the KAZA TFCA Treaty

In order for a treaty to be successful, there are certain elements that it should possess. It must be, an international agreement, signed between states, formally written, governed by international law and must have a legal instruments. Further, there are steps to be taken by participating states to make the treaty successful. According to the United Nations Treaty Handbook, the following are some of the steps to be taken.

Signature

The first used step to become a partner or party in a treaty is signing that treaty. A signatory does not participate in a treaty through signing alone. Some multilateral treaties offer signature provisions indicating the place where signing took place, the date, period of signature. The KAZA TCFA Treaty followed this step. The participating members which includes Zambia, Angola, Botswana, Zimbabwe and Namibia became parties to the treaty upon signing to it on the 18th of August, 2011.

Full Powers

It is incumbent upon the Head of State, Head of Government or Minister for Foreign Affairs to sign a treaty on behalf of the State. They are the only office holders that can sign a treaty without an instrument of full powers. A besides the Head of State, Head of Government or Minister for Foreign Affairs, any other person may sign a treaty only if that person is in possession of a valid instrument of full powers. The instrument of full powers gives authority to the specified individual to sign a given treaty. This is considered a legal requirement as provided in article 7 of the Vienna Convention 1969. It is aimed at protecting the interests of all States that can become parties to a treaty. It also seeks to protect the integrity of the depositary.

The treaty should provide space for signature showing the full name, title of the representative, the date, place of signature and the official seal. The KAZA TFCA Treaty required for full powers, which were met. It is the Heads of State of the participating members that signed as having full powers. It was signed Luanda, the Angolan Capital City, also indicating the titles and date of signature.

Consent to be bound

In addition to the two steps mentioned above, states need to take another step in order to become a party to a multilateral treaty. A State needs to exhibit, through a solid act, that is willing to abide by the legal rights and obligations provided for in the treaty. States must express their consent to be bound by the treaty. The consent to be bound can be expressed in a number of ways by a state, but must be in accordance with the clauses of the treaty. There are some common ways through which it can be expressed and these include definitive signature, ratification, acceptance and approval and accession.

According to the KAZA TFCA Treaty Article 27, the treaty was to be ratified by the Partner States in accordance with their domestic laws.³ The treaty was ratified by all partners.

Reservations

Peculiar cases or treaties allow states make statements upon becoming parties to a treaty through signature, ratification, acceptance, approval of or accession. These statements entitled as reservation, interpretative statement, declaration, interpretative declaration or understanding. Whatever title a state may choose to use, for as long as the statement seeks to excuse the state declaring or adjust the legal effect, such a statement is considered a reservation. A reservation may permit a State to take part in a multilateral treaty in which the State would not have participate wilfully. Due to the nature of the KAZA TFCA Treaty, members are not allowed to make any reservations making the provisions of the treaty to have full legal effect on all participants. The absence of the step for reservation is typical of environmental agreements as they require the full cooperation by all partners.

Declarations

A state may declare what their understanding they have on a certain matter in the treaty or what they have interpreted a certain provision as. This simply seeks to make clear the position of the treaty and does not in any way affect the legal effects of that particular treaty.

Notifications

Notifications usually give information as the treaty is require. They generally share in the designation of authorities or designation of languages, or the establishment of jurisdiction as the provisions of a treaty require.

Depending on the requirements of the treaty. Some notifications can be made available to the treaty secretariat once the treaty has been signed, ratified or acceded to or at any time soon after.

Partners of the KAZA TCFA Treaty deposited all notifications as required by the treaty, these include the number and size of the areas that would be joined together to form the Kavango Zambezi Transfrontier Conversation Area. The deposition of notifications is important as this information is needed in the formation of strategies for the

³ KAZA TFCA Treaty. Retrieved May 16th, 2022 from https://tfcportal.org/system/files/resources/KAZA%20TFCA%20Treaty_SIGNED.pdf

achievement of the goal and objectives of the treaty. Further information on the wildlife species and challenges faced were deposited.

The KAZA TFCA as seen from the discussion above has the necessary elements that are characteristics of a good treaty. It is a formally written document, signed by international partners and is under the Southern African Development Community accord. Partners followed the steps outlined as required for a partner to join in the treaty. It therefore possesses the potential of being an effective legal tool for the conversation of the KAZA TFCA.

Measuring Effectiveness of Treaties

Set goals and subsequent objectives of any agreement especially a legal one, must be evaluated to measure the effectiveness of the agreement. From the moment it goes into force, results must be seen through some of the achievements of set goals and fulfilment of objectives. In environmental agreements there are a number of ways to measure the effectiveness. This study used three components to measure the effectiveness of the KAZA TFCA Treaty.

a) Behavioural Change

The first and largest component in defining effectiveness involves whether an International Environment Agreement can influence the actions of a state so that it differs from the estimated counterfactual, or the behaviour of the state without the International Environment Agreements.⁴ The study evaluated the change in behaviour of the covered communities and states.

b) Compliance

Compliance involves determining whether a state is following the rules of an International Environment Agreement and, if they are failing to comply with their commitments, examining the reasons for such failure.⁵ The study evaluated each partner's compliance to the provisions of the treaty.

c) Goal Achievement

The other major component that shapes effectiveness includes what goals an International Environmental Agreements seeks to achieve as well as how it focuses on addressing an environmental problem itself and the political and economic behaviours that have contributed to its creation.⁶ This was the major evaluation in the study. The

achievement of the set goals shows whether the treaty has been effective or not.

Achievements

The treaty has in it outlined the objectives that are to be achieved. The objectives can be used to evaluate the success of the treaty. An evaluation of each objective reveals the successes and failures after the treaty has been in force for over 10 years. In the quest to achieve the set goals, the KAZA TFCA secretariat was established and functioning⁷. This is an important step in achieving the goals of the treaty.

After being in existence for over ten years, the KAZA TFCA has barely achieved its goals. The only recorded goal achieved and published as a tangible and manifest achievement is the pilot project of the KAZA Visa. The KAZA visa is a single visa that tourist can use and it would give them the freedom to move between partner states. Although not fully launched to allow movement in all partner countries, the KAZA Visa can be used at present to access two partner countries, Zambia and Zimbabwe. This is a pilot project launched on 28th November 2014 which is to be later expanded to all partner countries. The rolling out of the KAZA Visa was to be done within the first six months of the pilot project working. However, over seven years later, the full roll out has not been achieved. This makes the KAZA Visa a partial failure. The initiative to have the KAZA Visa was to allow tourists avoid the need to apply and acquire multiple visas in order to fully explore the Kavango Zambezi Transfrontier Conservation Area going into all five partner countries. This would promote tourism in Conservation area.

The KAZA Visa costs US\$50 and is effective for 30 days as long as one remains within Zambia and Zimbabwe.⁸ The KAZA Visa is available upon arrival at major airports and designated land borders for tourist from 45 countries.

Besides the partial achievement of the KAZA Visa, there are other achievements according to KAZA TFCA⁹ include:

- Formulation of development plans and strategies
- Expansion of communications networks
- Supply of park management equipment and infrastructure
- Construction of park housing and administration facilities (Sioma-Ngwezi National Park, Zambia, and Pandamatenga, Botswana)
- Supporting environmental monitoring programmes

⁴ Mitchell, R. B. (2009). Evaluating the Effectiveness of International Environmental Institutions. In *International Politics and the Environment* (pp. 147-180). New York, NY: Sage Publications Ltd.

Young, O. R. (2011). Effectiveness of international environmental regimes: Existing knowledge, cutting-edge themes, and research strategies. *Proceedings of the National Academy of Sciences*, 108 (50), 19853–19860. Retrieved December 13th, 2020, from <https://www.pnas.org/content/108/50/19853>.

⁵ Adamczyk, B (2020). Effectiveness of International Environmental Agreements: A Review of International Environmental Governance Theory. University of Oregon. Retrieved May 17th, 2022, from <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/25925>

⁶ Helm, C., & Sprinz, D. (2000). Measuring the Effectiveness of International Environmental Regimes. *The Journal of Conflict*

Resolution, 44 (5), 630-652. Retrieved February 14, 2020, from www.jstor.org/stable/174647 and Houghton, K. A., & Naughton, H. T. (2014). International Environmental Agreement Effectiveness: A Review of Empirical Studies. In *Comparative Law and Economics*, eds. T. Eisenberg and G. B. Ramello (pp. 442-55). Oxford: Oxford University Press.

⁷ Mtsambiwa, M. Z, Kavango Zambezi Trans-frontier Conservation Area (KAZA TFCA). Retrieved May 20th, 2022 from https://naturalresourcespolicy.org/docs/Hands%20Across%20Borders/TBC%20Profiles/TBC%20Profile%20Template_KAZA_Mtsambiwa.pdf

⁸ KAZA PRESS KIT (2015), Achievements. Retrieved May 19th, 2022 from http://www.caprivibushlodges.com/dbupload/_p7_4_achievements_of_kaza_tfca.pdf

⁹ Ibid.

- Securing wildlife dispersal corridors
- Marketing KAZA TFCA as a tourism destination
- Creating awareness about the benefits derived from wildlife dispersal corridors
- Supporting community development projects
- Supporting human wildlife conflict mitigation measures

The other achievements mentioned above are however hard to determine to what extent they have been achieved as the KAZA TFCA has not given any quantified data. Most of the achievements are administrative and strategies on how to achieve the actual goal. For achievements requiring quantifiable data, the secretariat provides none. For example under achievements, it is claimed that it managed to secure wildlife dispersal corridors. However, not data is given on what species and how many corridors have been secured. It gives not data on how many animal species and general biodiversity that has been preserved.

4. Conclusion

The KAZA TFCA is the biggest Terrestrial Transfrontier conservation area in the world. With an area covering 520,000 square kilometres, it remains one of the hard tasks to manage. The choice to have it under a treaty with legal instruments makes it achievable. The treaty was formed with right elements and right steps were taken. The achieving of goals has however been a slow paced journey with very little to point to. It is important to note that the tool used to have these achievements arrived at is still the best tool. The treaty has the potential to get all the set goals achieved only all partners decide to put in their best effort. However long the KAZA TFCA may take to have all its objectives achieved, it still retains the potential of being effective and achieving all the set objectives.

5. Future Scope

This study may be considered a baseline study in that it only focused on evaluating the effectiveness of the KAZA Transfrontier Conservation Area Treaty. The results or finding of the research can further be used to explore the factors that led to the effectiveness or ineffectiveness of the treaty, the challenges faced. This future study can then be used to structure and implement better conservation treaties as they are an important legal tool for the benefit of the environment.

References

- [1] Adamczyk, B (2020). Effectiveness of International Environmental Agreements: A Review of International Environmental Governance Theory. University of Oregon. Retrieved May 17th, 2022, from <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/25925>
- [2] Helm, C., & Sprinz, D. (2000). Measuring the Effectiveness of International Environmental Regimes. *The Journal of Conflict Resolution*, 44 (5), 630-652. Retrieved May 18, 2022, from www.jstor.org/stable/174647
- [3] Houghton, K. A., & Naughton, H. T. (2014). International Environmental Agreement Effectiveness: A Review of Empirical Studies. In *Comparative Law and Economics*, eds. T. Eisenberg and G. B. Ramello (pp. 442-55). Oxford: Oxford University Press.
- [4] Mitchell, R. B. (2009). Evaluating the Effectiveness of International Environmental Institutions. In *International Politics and the Environment* (pp. 147-180). New York, NY: Sage Publications Ltd.
- [5] Young, O. R. (2011). Effectiveness of international environmental regimes: Existing knowledge, cutting-edge themes, and research strategies. *Proceedings of the National Academy of Sciences*, 108 (50), 19853-19860. Retrieved May 18th, 2022, from <https://www.pnas.org/content/108/50/19853>
- [6] Introduction to the Laws of Kurdistan, Iraq Working Paper Series Public International Law: Treaties and International Organizations
- [7] Vienna Convention on the Law of Treaties, May 23, 1969. Retrieved May 16th, 2022 from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
- [8] KAZA TFCA Treaty. Retrieved May 16th, 2022 from https://tfcaportal.org/system/files/resources/KAZA%20TFCA%20Treaty_SIGNED.pdf
- [9] KAZA PRESS KIT (2015), Achievements. Retrieved May 19th, 2022 from http://www.caprivibushlodges.com/dbupload/_p7_4_achievements_of_kaza_tfca.pdf
- [10] Mtsambwi, M. Z, Kavango Zambezi Trans-frontier Conservation Area (KAZA TFCA). Retrieved May 20th, 2022 from https://naturalresourcespolicy.org/docs/Hands%20Across%20Borders/TBC%20Profiles/TBC%20Profile%20emplate_KAZA_Mtsambwi.pdf
- [11] Nyambe N (2019). Kavango Zambezi (KAZA) Transfrontier Conservation Area: An Overview of Opportunities and Challenges. Retrieved May, 20th, 2022 from <https://thedocs.worldbank.org/en/doc/e01cf44109313c92310bb94474ba43d-0320072019/original/NNyambe-Kavanzo-Zambezi-Transfrontier-Conservation-Area-02-06-19.pdf>

Author Profile



Ricky Mulwanda Simfukwe

Occupation: LLM Student

Major: Environmental and Resources Protection Law

Institution: Shanghai University of Political Science and Law

Education: Bachelor of Education in Environmental Education

Institution: The University of Zambia