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CITES and the EU: The New Regime

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1. INTRODUCTION

The regulation of trade in wildlife and their derivatives and the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) within the European Union (EU) is an atypical case. The EU is a unique political and economic structure to which the 15 Member States have delegated a part of their sovereignty and in particular, their power to regulate trade and commerce. The primary objective of the EU is to foster the advancement of the European economy through the creation of an economically and politically integrated community. In achieving this task, the national barriers to trade are removed or at least significantly reduced and the free movement of goods, persons, services, and capital are allowed and encouraged between the Member States. As CITES regulates the trade in endangered and threatened species, the implementation of CITES in the Member States falls squarely within the competence of the EU.¹ This is evidenced by the Council of Ministers' adoption of Council Regulation (EC) No 338/97² and previously Council Regulation (EEC) No 3626/82³

2. EUROPEAN UNION AND INSTITUTIONS

The European Union is primarily a trade union of 15 States (Austria; Belgium; Denmark; Finland; France; Germany; Greece; Ireland; Italy; Luxembourg; the Netherlands; Portugal; Spain; Sweden; United Kingdom) although it does have a social context. Its primary establishing instrument is the Treaty of Rome⁴ (as amended). The core institutions of the European Union are the European Commission, the European Parliament, and the Council of Ministers. The Commission is composed of 20 Commissioners with each being allocated specific areas of competence such as the environment, for example. The Commission also has 24 Directorates-Generals that are the equivalent of Ministries. In essence, the Commission is the civil-service of the European Union. The European Parliament is the elected body of the European Union but its powers are essentially limited to a supervisory and advisory level. The Council of Ministers is composed of the Ministers from Member State Governments and is essentially the legislative decision-maker in the Europe Union. After consultation with the Commission and the Parliament, the Council of Ministers adopts legislation primarily in the form of regulations and directives. Regulations have general application and are binding in the entirety on Member States. Directives are also binding in their entirety but only in regards to the results to be achieved and the method of implementation is left to the Member States. The implementation of CITES is by regulation within the EU and therefore is binding in its entirety.

3. A BRIEF HISTORY OF THE IMPLEMENTATION OF CITES WITHIN EU⁵

3.1 Council Regulation (EEC) No 3626/82

CITES has been fully implemented in the European Community (as it was then known) since 1 January 1984 via Council Regulation (EEC) No 3626/82⁶ and Commission Regulation (EEC) No 3418/83⁷. There was a need at that time for a European regulation for the following reasons:

- ◆ External trade rules were within the exclusive competence of the European Community and only by virtue of Article 36 of the Treaty of Rome were Member States permitted to adopt quantitative trade restrictions between them.
- ◆ Implementation of CITES by Member States which were parties in 1982 was adversely affected by the absence of systematic border controls within the European Community.
- ◆ The adoption of environmental action plans for the European Community and legislation regulating the European Community's indigenous species shifted competence over wildlife trade regulations from Member States to the Community.

3.2 Removal of Internal Trade Controls in 1992

In 1992, it was thought by the now European Union that a new regulation was needed due primarily to the increased competence of the EU instituted by the Treaty of Maastricht.⁸ This made the 1982 regulation ineffective for the following reasons:

- ◆ The virtually complete disappearance of internal trade controls made it necessary to increase the effectiveness of external border controls.
- ◆ The disparate implementation of CITES Conference of the Parties (CoP) Recommendations by Member States caused a lack of harmonisation and much confusion.
- ◆ There was also a need to adapt to the evolution of wildlife trade control techniques and policies.

3.3 Council Regulation (EC) No 338/97

On 9 December 1996, the Council of the European Union adopted Council Regulation (EC) No 338/97 and Commission Regulation 939/97¹⁰ providing detailed implementation provisions including the use of permits and certificates. The new regulation made a number of improvements over the previous regulation:

- ◆ Import documentation must be checked at the first point of entry (article 4).
- ◆ Applicants can no longer request EU CITES documentation from other Member States if refused such documentation in another member state (article 6).
- ◆ Live specimens of CITES-listed species without valid documentation must be seized and may be confiscated (article 7(2)); and live species face greater restrictions on their movements (article 9).
- ◆ Member States control over internal trade in species is extended to “purchase, offer to purchase, acquisition for commercial purposes and use for commercial gain” (article 8(1)).

- ◆ Member States may also prohibit the possession of certain species (article 8(2)).
- ◆ It clarified procedures to be followed by personnel involved in its application (articles 10, 11, 13 and 19).
- ◆ It provided for stricter and stronger controls at external borders including the provision of sufficient and adequately trained staff (articles 12).
- ◆ An EU enforcement working group was established to exchange information on wildlife trade enforcement issues (article 14(3)).
- ◆ Member States have a duty to educate the public and Management Authorities of the requirements of the new regulation. The European Commission, TRAFFIC Europe and the WWF jointly launched in May 1997
- ◆ A pan-European information campaign targeting travellers, professional wildlife traders and enforcement authorities (article 15).
- ◆ Member States must now set penalties for specific infractions (article 16).
- ◆ Greater flexibility in removing or adding species to the EU Appendices in response to conservation concerns is inherent in the regulation (articles 18 and 19).

4. EFFECTIVENESS OF COUNCIL REGULATION (EC) No 338/97

The new regulation implements CITES and most of the currently applicable CoP recommendations on interpretation and implementation. As well as making improvements on the old regulation, It also goes beyond what is required by CITES in many places:

- ◆ Non-CITES species that meet certain criteria have been listed in the EU Appendices A, B, C, and D. Some CITES Appendix II and III species have received enhanced protection (article 3).
- ◆ Annex D contains species for which import levels are monitored (articles 3 and 4).
- ◆ Stricter import conditions apply for species, such as the requirement that the importation would not have a harmful effect on the conservation status of the species, listed in EU Annexes A and B (article 4 (1) and (2)).
- ◆ Import of species from all three CITES Appendices require an import permit or notification and not just those from Appendix I species as required by CITES (article 4).
- ◆ More comprehensive restrictions are applicable for internal trade in Annex A species (article 8).
- ◆ There is a requirement that housing conditions are specified for live specimens in Annex A and B (article 9 (14)).
- ◆ Transit conditions apply for all live specimens (article 9(5)).

The effect of the new regulation is thought to be very positive in general as it significantly improved enforcement and provided more stringent criteria for the importation of specimens. Its effectiveness will be better understood once the European Commission issues its report on the effect of the implementation of the new regulation that is expected this year. TRAFFIC-Europe is also expected to issue a comprehensive report on the new regulation this year.

5. IMPLEMENTATION OF REGULATION

5.1 General overview

Although Council Regulation (EC) No 338/97 is one of the most effective “national” pieces of legislation of its kind, a number of problems exist. The first one being a lack of resources dedicated to enforcement in a number of states and the next being a need for better training of customs officials on CITES and EU Regulations on wildlife trade. These are slowly being addressed by the EU. The major problems experienced by the EU surround the implementation of CITES in two Member States: Greece and Ireland.

5.2 Greece

Greece has been a particular problem for a number of years and its lack of enforcement of international wildlife trade regulations has been continually raised at both the CITES and EU level by TRAFFIC and other NGOs.¹¹ Greece had insufficient domestic legislation to implement CITES and the EU regulation domestically and had been continually reprimanded by CITES and the European Commission since 1994. On 6 August 1998, the CITES Secretariat issued an official notification informing parties that the Standing Committee had recommended suspension of trade in all CITES-listed species and their derivatives, with Greece beginning 1 September 1988 until further notice. The withdrawal of the notice was contingent on the following:

- ◆ the designation of the CITES Scientific Authority of Greece;
- ◆ the adoption by the Government of Greece of an amended law for the implementation of CITES and the EU regulation;
- ◆ the reduction of the number of ports of entry for CITES specimens in Greece;
- ◆ the use of CITES permits and certificates in one of the working languages of the Convention;

The issue of Greece was again discussed at the 41st meeting of the Standing Committee meeting in early February this year in Geneva and it was confirmed by the European Commission that Greece had made substantial progress in fulfilling its obligations. It was agreed that the notification would be withdrawn on receipt of the relevant Greek legislation in a working language of CITES. This requirement has now been met and the notification was withdrawn on 14 March 1999.

The effect of non-enforcement and implementation of international, European and domestic wildlife trade controls by Greece had resulted in a number of problems:

- ◆ There was no method of distinguishing furs that are legally acquired from those acquired illegally, as no steps have been taken to inventory legal stocks.
- ◆ All products traded by Greece were done in contravention of the EU regulation as no certificates stating that the specimens had been legally acquired were issued by the Greek Management Authority.
- ◆ As there are minimal internal border controls within the EU, Greek exporters could have potentially traded goods outside the EU by shipping them to another EU Member State first and then having

- them certificated in that Member State for export.
- ◆ Greek traders could have also potentially imported goods in contravention of CITES and the EU regulation and traded them throughout the EU Member States as there are minimal internal border controls.

It remains to be seen whether Greece has done enough to ensure effective compliance with CITES and the EU regulation.

5.3 Ireland

Ireland is not a party to CITES. It is bound by the Council Regulation (EC) No 338/97 as any other Member State and is required to implement the regulation fully. The fact that Ireland is not a party to CITES is not highly problematic for two reasons: (1) The EU regulation is more comprehensive than CITES and Ireland must implement that regulation; and (2) CITES does require documentation from non-Parties that substantially conforms to the requirements for CITES permits and certificates. If EU joined CITES as a party, than it would have the power to monitor CITES implementation by Member States and more political leverage to require Ireland to become a party to CITES.

6. PROPOSALS FOR REFORM

The main problems that remain in Europe are related primarily to resources, enforcement, and implementation of the regulation in the EU. The regulation itself is a comprehensive and effective piece of regulation given the disparate nature of the EU:

- ◆ The European Commission should increase political pressure on Member States to provide adequate resources and staffing for their Management Authorities in order to ensure proper compliance with CITES and the EU regulation.
- ◆ The European Commission should encourage Management Authorities to be diligent in their prosecutions of traders who breach the EU regulation and support the introduction of national legislation that encourages prosecution.
- ◆ The European Commission should encourage Management Authorities within the Member States to distribute widely educational materials to traders, customs officials, and the general public.
- ◆ The European Commission (EC) should discontinue the case against Greece at the European Court of Justice (ECJ) pursuant to Article 169 of the Treaty of Rome. If Greece fails to properly enact domestic legislation and implement the EU regulation, the EC should again consider bringing the matter before the ECJ.¹²
- ◆ The European Commission and European Parliament should place political pressure on Ireland to become a party to CITES.

NOTES

¹ It should be noted that the EU is not a party to CITES. The 1983 “Gabarone” amendment of CITES allows EU accession but the required number of ratifications to bring the amendment into force have yet to be lodged with the Secretariat. It requires 45 ratifications (2/3 of the 78 parties at the time) and only around 34 have been submitted to date.

² OJ L L 61 of 3/3/97

³ OJ L 384 of 31.12.82

⁴ Treaty on the Establishment of a European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3.

⁵ For a more complete history of the implementation of CITES within the EU, see Fleming, E., *The Implementation and Enforcement of CITES in the European Union* (1994), A TRAFFIC Europe Discussion Paper; Wijnstekers, W., *Trade in Wildlife and European Community Law* (1993), Paper presented at the Conference on Community Law, Trade and Environmental Protection, University of Liege Law School, 18-19 June 1993; Thomsen, J., and Brautigam, A., *CITES in the European Economic Community: Who Benefits?*, in 5 BOSTON U. INT’L L. J. (1987), at 269; and Favre, D., *International Trade in Endangered Species: A Guide to CITES* (1989), Martinus Nijhoss, Dordrecht.

⁶ OJ L 384 of 31.12.82

⁷ OJ L 344 of 7.12.83

⁸ Treaty of the European Union, Feb. 7, 1992, Maastricht, Netherlands. It came into force on 1 November 1993.

⁹ OJ L L 61 of 3/3/97

¹⁰ OJ L 140 of 30/05/97

¹¹ For example, see *The Control of Wildlife Trade in Greece - an Update*, TRAFFIC Network Briefing, August 1988, prepared by Elizabeth Fleming, Programme Officer, TRAFFIC Europe; see also *The Control of Wildlife in Greece*, TRAFFIC Species in Danger Report, July 1992.

¹² For a fuller discussion of Member State compliance with European regulations in the CITES context, see Kramer, L., *Focus on European Environmental Law* (1992), Sweet and Maxwell Ltd., London; see also Hession, M., *The Role of the EC in Implementing International Environmental Law*, in Vol 2, Issue 4, *Review of European Community and International Environmental Law* (1993), FIELD, London.

CITES In the Developing Nation Context: Madagascar Case Profile

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1. INTRODUCTION

[Title Slide, 1]

1.1 Madagascar as a Case Study

1.1.1 Attention to Madagascar - Song of the Dodo

1.2 Malagasy Periwinkle

1.3 How Effective is CITES in the Developing Nation Context

1.4 Overview of Talk

2. GEOGRAPHY OF MADAGASCAR

2.1 Map of Madagascar

[Slide, Island Map]

3. FAUNA BIODIVERSITY OF MADAGASCAR

3.1 Level of Endemism - Animals [90%]

[Slide, Endemism]

3.1.1 Primates

[Slides of variation]

- a. 13% of all Primate Species, 23 % of all primate genera, and 36% of families
- b. Third highest on the world list of primate species diversity in spite of being less than 7% of the size of Brazil, the world's leader, and roughly one-quarter the size of Indonesia or Zaire, second and fourth, respectively. Its 32-25 species of lemurs are 100% endemic.
- c. 15 species of lemurs have already gone extinct

d. As recently as 1986, two new species of lemurs have been discovered.

3.1.2 Butterflies

- a. Comet Moth
- b. Arthropod. Net

3.1.3 Reptiles and Amphibians are 98% endemic

- a. Chameleons [55 Species]
 - 1. Brookesia - Dwarf Chameleons 0.05
 - 2. Chamaeleo - Contains the World's Largest Chameleons
- b. Frogs [148/150 endemic]

3.1.4 Fish

- a. 92% only found on Madagascar
- b. Coelacanth - Latimeria chalumnae
- c. 350 million year old fish

3.2 Extinctions

- a. Gorilla Sized Lemurs
- b. Elephant Birds - Aepyornis
- c. Anthropogenically induced size-biased extinctions

4. FLORA BIODIVERSITY OF MADAGASCAR

4.1 Levels of Endemism - Plants

[Slide, Endemism]

4.1.1 Orchids, 1000 species, most not named

- a. Majority endemic
- b. More species than African Mainland

4.1.2 Baobob

- a. 6 species in Madagascar
- b. 1 in the whole of Africa

4.1.3 Palms

- a. 170 species
- b. 97 endemic to Madagascar

4.1.4 Pachypodium - Elephant's Foot

5. CONSERVATION STATUS & THREATS TO BIODIVERSITY

5.1 Burning

5.1.1 Deforestation History: It is estimated that that as much as 80% of Madagascar's original forest cover has already been cleared.

a. Eastern Rain Forests: 1950-1985

[Slide, Green & Sussman 1990]

(1) Madagascar lost 50 percent of the eastern rain forest in 35 years

(2) Reduced to only 34% of their original extent

(3) If cutting of forests continues at the same pace, only forests on the steepest slopes will survive in the next 35 years.

b. Western Madagascar 1950-1990

(1) Primary forest cover decline from 12.5 percent in 1950 to 2.8 percent in 1990

c. Central Plateau

[Slide Central Plateau; Lavaka [Slide 27]

5.1.2 Burning Forests & Tavy

[Slide, Burn]

a. Tavy: Shifting slash-and-burn agriculture. The normal tavy process used in dry rice cultivation (Cultivation is the livelihood of 70% of the countries population, and Malagasy have among the greatest per capita rice consumption of any country on Earth), a plot of forest is cleared of its natural vegetation and that vegetation is then burned. The resultant ash produces enough nutrients to the otherwise poor soil to allow for a season or two of crop production. When the nutrients are exhausted, the farmer moves to another plot.

5.2. Hunting

5.3 Trade in Endangered Species

5.3.1 Undocumented

6. POPULATION PRESSURES

6.1 Population

6.1.1 Population Size: 14,500,000

- 6.1.2 Nearly 50% of the Population is under the age of 14
[Slide, Children]
- 6.1.3 Population Growth Rate 3%

6.2 Pressures on Remaining Vegetation

- 6.2.1 Centered on Remaining Vegetation, Population Pressures
[Slide, Remaining Vegetation]
[Slide, Population Pressures on Eastern Seaboard Forests]
- 6.2.2 Critical Need for Conservation Work in Madagascar
- 6.2.3 Importance of Treaties as CITES
 - a. Metapopulation Dynamics - Fragmentation Biology
 - b. Pressure Increases

7. ECONOMIC PRESSURES

7.1 Economy

- 7.1.1 Foreign Trade
 - a. Exports: 493 million
 - b. Imports: 612 million
- 7.1.2 Budget
 - a. Revenues: 477 million
 - b. Expenditures: 706 million
 - c. External Debt of 4.4 billion
- 7.1.3 Economic Aid = 454 million (1992-1996)
- 7.1.4 Telephones: 96,000 or nearly 1 telephone per 140.5 people
- 7.1.5 Roads: Of 49,837 km of roads, 5,781 km are paved.
[Slide of Road]
- 7.1.6 Per capita income of \$1200

8. MALAGASY LEGAL SYSTEM

8.1 Russian Story: the Role of the Rule of Law

8.2 Legal System

- 8.2.1 French Civil Law System - Napoleonic Code

- 8.2.2 Tribal Chiefdoms
 - (a) Ancestors using resources for years - ownership
 - (b) Unwritten Tanala Social Codes
 - (1) Serve as internal regulation for communities
- 8.2.3 Non-Registry of Land - Communal Property
- 8.2.4 Influence of Soviet Sponsorship [1975-1993]
 - a. Totalitarian, Nominally Marxist Government
 - b. Soviet Aid

8.3 Administrative System

- 8.3.1 DEF
- 8.3.2 ANGAP
- 8.3.3 ONE
- 8.3.4 NGO's

9. MALAGASY LEGAL SYSTEM

9.1 Provisions in the Law:

- 9.1.1 Constitution
 - a. Preamble provides: La gestation rationnelle et equitable des ressources naturelle pour la besoins de developpement de l'etre humain.
- 9.1.2 Charter on the Environment
- 9.1.3 Member of CITES
 - a. Ratified on 20 August 1975
- 9.1.4 The National Environmental Action Plan of 1987 enacted to implement the Malagasy Strategy for Conservation and Sustainable Development of 1984.
 - a. Biodiversity Conservation
 - b. Sustainable Development
- 9.1.5 Provisions with Respect to Export of Medicinal Plants and Other Natural Resources
 - a. Series of laws and decrees preceeding CITES, and those which ratify the treaty
- 9.1.6 Scale and Export of Butterfly Collection
 - a. 5 year permits of butterfly exportation.

10. PROBLEMS WITH CITES IMPLEMENTATION

10.1 Introduction to CITES

10.1.1 CITES entered into force 1 July 1975

10.1.2 Regulates international trade in wild animals and plants which are listed in the 3 appendices to the Convention

10.1.3 Appendices

- a. Appendix I. Protectionist Nature of Treaty. Prohibits commercial trade in species that are affected by extinction
- b. Appendix II. Controlled International Trade. Applies where a species whose survival is not threatened but may become so.
- c. Appendix III. Provides a mechanism whereby a party which has domestic legislation regulating the export of a species not in Appendix I or II may seek to regulate its trade.

11. PROBLEMS WITH CITES IMPLEMENTATION

11.1 CITES Relies on Countries for Enforcement

11.1.1 Economic Questions

- a. Lack of Resources
- b. Questions of Corruption
- c. Failures of the Lusaka Agreement: The Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora was a new approach by the countries of Eastern and Southern Africa to address problems of enforcement and compliance with multinational agreements concerning the illegal trade in wildlife.
 - (1) Developed as a countermeasure to combat CITES compliance problems
 - (2) Failed in its Second Year for Financial Reasons.
- d. Failures Common to International Wildlife Law Treaties and Agreements
 - (1) Lack of a dedicated and well-resourced financial mechanism
 - (2) Relies heavily on the enforcement capacity and management practices national government to be effective.
- e. Financially, Madagascar hasn't gained much from its environment
 - (1) Malagasy Periwinkle = No Funds
 - (2) Current System Intellectual Property Not Rewarding Community Knowledge
 - (3) Ecotourism - Isn't As Successful
 - (4) NGO's are in a business.

12. PROBLEMS WITH CITES IMPLEMENTATION

12.1 CITES Relies on Countries for Enforcement

12.1.1 Questions of Legal System Access

- a. Ruling Elite
- b. 30 per year? Communally owned property
- c. 18 Tribes, and the Ruling Merina

Case Example: Permit for Mining Company in Forest

- a. Dependent on ONE for enforcement
- b. No private standing
- c. ONE told private tourism company to approach Dept. of Tourism to contact ONE

13. PROBLEMS WITH CITES IMPLEMENTATION

13.1 CITES Relies on Countries for Enforcement

13.1.1 Overlapping Enforcement

- a. ONE, ANGAP, DEF
 - (1) DEF = Fish & Wildlife, National Park Service, & USDA Forestry.
 - (2) ANGAP = USAID group for 3 Parks. Private NGO.
 - (3) ONE = EPA: Coordinator of the National Environmental Plan.
- b. Conflicting Powers - DEF/ANGAP
- c. Non-Hierarchical Control, but within-Ministry Hierarchies.
DEF should have oversight of CITES and DEF enacts all forestry and wildlife protection, but this power has been delegated to ANGAP, which has the authority to implement forestry laws.
- d. DEF should have oversight over ANGAP in how ANGAP is applying its mandate

13.2 Deference because of the transfer of power & Individuals

- (a) Relationships Matter
- (b) Asian Society in that Deference Matters

13.3 Changing the Status Quo

- (a) Code de Gestion des Areas Proteges [COGAP] Law regulating national parks and protected areas.

(b) ANGAP would like to have independent controls over the protected areas, and COGAP (in draft) may allow this, thereby eliminating DEF oversight for the drafting of the laws, or their implementation.

(c) Under COGAP, ANGAP becomes an establishment public: An institution with autonomy whose role is to provide public services.

13.4 Inconsistent Interpretation of laws?

(a) Dependent on Agencies to bring laws.

14. PROBLEMS WITH CITES IMPLEMENTATION

14.1 CITES Relies on Countries for Enforcement

14.2 Overlapping Enforcement

a. More administrative bodies

(1) Fish and Crayfish = Fish Department

(2) Ministry of the Oceans

(3) All Ministers can give the power of exportation; and Ministers routinely step on the authorization of each other.

b. Endangered Species Act

(1) Split among different agencies

(2) Doesn't have completeness as does the CITES appendices.

(3) Who initiates future CITES additions?

(4) Dependent on our Species definitions.

c. ONE

(1) Lines of Authority are unclear

(2) Mandates overlap

(3) Enforcement = Lax

(4) Little coordination between agencies with environmental responsibility

14.3 CITES Appendices Provide Insufficient Coverage

14.3.1 Invertebrates are not covered (exception black corals)

a. Tremendous trade in butterflies

14.3.2 Insufficient research in what Madagascar has

a. No estimates of danger because of deforestation occurring too fast.

b. For estimates, need to understand biology of organism, e.g., metapopulations

14.3.3 Biological definitions of species are very suspect

15. PROBLEMS WITH CITES IMPLEMENTATION

15.1 Customs Officials

- 15.1.1 Insufficient Knowledge
 - a. No identification manual for flora, only fauna
- 15.1.2 No Financial Incentives for officials
- 15.1.3 WWF: No reporting of trade statistics.

15.2 Scientific Research

- 15.2.1 Paid Pillage
- 15.2.2 Undocumented Collection

16. RECOMMENDATIONS

16.1 Increased Scientific and Interpol Training - Revive Lusaka

16.2 Appropriate Administrative Structure

- 16.2.1 Clarify Lines of Authority
- 16.2.2 Define Individual Responsibility
- 16.2.3 Implement Rule of Law

The Implementation of the Convention on International Trade in Endangered Species in Singapore

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Twenty six years ago, on 3 March 1973, in this same city of Washington, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (commonly referred to as “CITES”) was opened for signature. It came into force on 1 July 1975, 90 days after the deposit of the tenth instrument of ratification. As of 13 March 1999, there are now 146 parties to this Convention, including Singapore, which acceded to the Convention on 30 November 1986.

Sited at the crossroads of South-east Asia, one of the richest areas of biological diversity in the world, with well-developed transportation and communication networks, it is not surprising that Singapore has been accused of facilitating trade in wildlife. A large volume of wildlife trade would pass through Singapore’s doors, on transit to other regions. But it should be noted that CITES does not regulate transshipments. Additionally, much of this trade comprises non-CITES species. Is this, therefore, a fair accusation?

This paper examines the implementation of CITES in Singapore. It first examines the provisions of the implementing legislation, the Endangered Species (Import and Export) Act (hereinafter referred to as “ESA”); it then examines implementation from practical perspectives, as gleaned from interviews with the Primary Production Department, which is the designated Managing and Scientific Authority in Singapore. Several case studies are highlighted. The paper then discusses the inadequacies in the laws as well as in enforcement, and concludes with recommendations for improvement.

1. ACCESSION TO CITES

Member States that accede to the Convention are given 90 days to implement its provisions. Singapore started its implementation as from 9 February, 1987, 77 days after its accession. As from that date, all commercial imports and exports of wild flora and fauna and their derivatives, had to go through the Primary Production Department (PPD), the designated authority for implementation of CITES, for approval. Traders were made aware of these changes through seminars organized by the Trade Development Board and the PPD. The Endangered Species (Import and Export) Act, was passed to implement CITES, to take effect as from 17 March 1989. The Act requires a permit from the PPD for the import, export, re-export or introduction from the sea of all endangered species. It provides powers of search, entry, and seizure to facilitate investigation and enforcement. It was amended in 1992 to provide for stricter control on domestic trade in endangered species.

Ten years have passed since the enactment of the ESA. Initially, Singapore had entered reservations on one species of alligator (*caiman crocodilus crocodilus*), and two species of crocodiles (*crocodilus porosus* and *crocodilus*

novaeguineae novaeguineae). These reservations were necessary to allow local traders to adjust to the system, and have since been withdrawn, (on 31 August 1990, for the crocodiles, and on 15 February 1992, for the

Caiman alligator), as traders became familiar with the system. Since then, Singapore has not entered any reservations under CITES.

The Primary Production Department is both the Management and the Scientific Authority in charge of enforcing CITES. It has a special CITES Unit, manned by six staff members.

2. THE ENDANGERED SPECIES (IMPORT AND EXPORT) ACT – AN OVERVIEW

2.1 Protected species

The Endangered Species (Import and Export) Act (hereafter “the ESA”) comprises 22 sections and three schedules, which list animals, animal parts and their derivatives, and plants respectively.

The term “animal” is defined to mean any animal, whether dead or alive, including the egg, young or immature form. “Plant” is defined to mean a live or dead plant and any readily recognizable part or derivative of a plant”. The Act prohibits international as well as domestic trade in “scheduled species” – defined to mean a scheduled animal, a scheduled animal part or a scheduled plant.

While CITES contains three Appendices, the ESA does not make any reference to these three Appendices. The ESA’s First Schedule lists all animals in CITES Appendices I and II. The Second Schedule lists their parts and derivatives. It begins with a wide provision for the derivatives of all scheduled animals listed in the First Schedule, covering “substantially complete parts of dead specimens (either in natural form, stuffed, chilled, preserved, dried or otherwise treated). Meat.” The derivatives of particular animals are then set forth e.g. elephants - “Tusk, and any part of any such tusk, whether simply prepared or worked”; sea turtles - “The shell and scales, if unworked or simply prepared, the waste of the shell and scales, the flippers and limbs. The cartilage and eggs. The whole or any part of any raw hide or skin, whether or not split, and the leather. The Third Schedule lists protected plants contained in CITES Appendices I and II.

Species listed in CITES Appendix III do not appear in ESA’s Schedules because the PPD takes the view that Appendix III is not subject to sufficient scrutiny. As it stands, it is being abused by some countries that do not properly enforce CITES themselves, but simply list all their species, so that others are obliged to control them from other shores. The PPD, however, selectively controls the importation of Appendix III species, via the licensing provisions of the Animals and Birds Act. This Act requires a certificate of origin for all live animals and birds imported into Singapore.

The three Schedules are updated promptly after each Conference of the Parties (COP). In 1997, a complete set of Schedules was published, incorporating changes from the last COP. This facilitates easy reference.

2.2 Permits

The import, export, re-export or introduction from the sea of any scheduled species requires a permit from the Director of PPD. The Director may issue a permit, licence, certificate or written permission, either conditionally or unconditionally, or refuse to do so (s.5). A permit may be cancelled at any time if any condition of the permit has been contravened or the permit is later discovered to have been issued as a result of a misleading statement or a misrepresentation of a material fact (s.6). Failure to return a cancelled permit is an offence (fine \$2,000).

Although the three Schedules do not indicate whether the animals or plants listed are Appendix I or II species, in practice, permits are granted or refused according to the provisions contained in the Convention. Thus, a permit for a specimen falling within Appendix I would be granted only in accordance with the terms of CITES Article III.

2.3 Offences under ESA

There are three main offences under the ESA.

First, the Act prohibits the import, export, re-export or introduction from the sea of “any scheduled species” without a permit from the Director of Primary Production (s.4(1)).

Second, it is an offence for anyone to “have in his possession, under his control, sell, offer or expose for sale or display to the public, any scheduled species which has been imported or introduced from the sea without a permit.” (S.4(2)).

The penalty in both cases is a fine of up to S\$5,000/- or imprisonment up to one year, or both. In the case of a second or subsequent conviction, the fine is doubled to S\$10,000/- with a maximum of a year’s imprisonment or both fine and imprisonment.

Third, it is an offence to “sell, offer or expose for sale, or display to the public such scheduled species as the Minister may, by notification in the Gazette, specify.” (s.4A(1)). The penalty is a fine of up to S\$2,000/-, or imprisonment of up to three months, or both. (s. 4A(2)).

The third offence was only inserted in 1992, to deal with domestic sales of endangered species. To date, two species have been gazetted: rhinoceros horns, derivatives and products - prohibited as from 20 November 1992; and tiger parts and products (including medicines containing tiger parts, such as tiger bone wine, plasters, pills etc) - prohibited as from 4 November 1994. Breaches of these laws fall within s. 4A, and entail a fine of up to \$2,000 or a jail term of up to three months or both.

2.4 Abetment

It is an offence to abet the commission of any offence under the Act. (s.7). However, the penalty for abetment is not spelt out. It would thus appear to fall within s. 12, which applies to all offences for which a specific penalty has not been specified. The penalty is a fine of up to \$2,000 or imprisonment up to 6 months,

or both. It should be noted that under s. 109, Penal Code, the penalty for abetment where no penalty is specified, is similar to that for the main offence. It is proposed that, in order to serve as sufficient deterrence, the punishment for abetment of an offence to be the same as that for the offence itself, as in s.109 of the Penal Code.

2.5 Corporations

Where a corporation commits an offence with the consent or connivance of any director, manager, secretary or other officer, the officer as well as the body corporate will be guilty of an offence and liable to prosecution (s. 12).

2.6 Enforcement

Officers authorized under the Act have very wide powers, including the power, without warrant, to enter and search any place or premises, or stop and board any conveyance which they reasonably suspect to contain any scheduled species, and power to seize, detain or remove any species and all other relevant items. These powers extend to the breaking of any door, window, lock, fastener, compartment, box, container or any other thing. Officers may also search any person found in such premises or conveyance, and may arrest without warrant, any person who has committed or whom they reasonably suspect to have committed an offence under the Act or its rules. (s.9)

It is an offence to obstruct any authorized officer in the execution of his duty, or to fail, without reasonable excuse, to furnish information or render all necessary assistance as may be required or directed by an authorized officer. (s.10)

It is also an offence to make any false statement, declaration, representation or information or produce a license that one knows or has reason to believe is false or has been tampered with. (s. 11).

These offences carry a fine of up to \$2,000 and/or imprisonment up to 6 months.(s.12)

The Director who suspects that any scheduled species found may have been imported, may require the person who has its custody to furnish such information as he may require. (s.15)

The Director and his officers are empowered to investigate any matter under the Act, and may require the production of any books, documents, paper or information. Failure to comply is an offence (s. 16).

2.7 Exemption

The Director may exempt any person, scheduled species or group or description or persons or species from all or any of the provisions of the Act (s.18).

2.8 Compounding of offences

Offences may be compounded for a sum not exceeding \$1,000, but the species and any other thing seized shall be forfeited.

The PPD has developed a system for the compounding of offences, where the less serious cases are let off with a composition fine that usually ranges from \$200 to \$500. Much depends on whether the accused is a trader, the nature of the species (whether Appendix I or II), whether it is a first offense, etc. Statistics are not available, but many offences are compounded, and only the more severe cases are prosecuted.

2.9 Forfeiture

Where a person has been convicted under s. 4 or s. 4A, forfeiture of the scheduled species is effected immediately without the need for a further order. Where the person charged for an offence under s. 4 or s. 4A is acquitted or given a discharge, the court may order that the species be returned to him or be forfeited (s.13).

Forfeiture can also be effected where the importer or exporter cannot be ascertained or is outside jurisdiction. However, the Director of PPD must first give the person from whom the species was seized, 7 days notice of intention to forfeit. No notice is required if the species are live animals.

The Director has full discretion to dispose of species that have been forfeited. All expenses incurred are recoverable from the owner, importer, exporter or re-exporter, as a debt in any court of competent jurisdiction.

In practice, live specimens are sent to the Singapore Zoological Gardens, the Jurong Birdpark, or, in the case of specimens from the sea, to the Underwater World at Sentosa Island. Non-live specimens are given to the National University of Singapore's Raffles Collection. Products and derivatives from scheduled species are either destroyed or kept by the PPD.

2.10 Marking of species

The ESA provides that the PPD may require the marking of certain species (s.14) eg. birds must be ringed and reptile skins tagged; arowanas are marked by a special chip inserted in their bodies.

3. IMPLEMENTATION AND ENFORCEMENT

3.1 The CITES Unit at PPD

The six staff members in the CITES Unit of PPD are kept very busy, attending to the following matters :

1. Documentation - the issuance of permits, keeping of records of species traded;
2. Enforcement - attending to complaints, conducting raids; checking of stocks of traders;
3. Inspections - at the airports, Woodlands checkpoint (for incoming road and rail traffic from Malaysia), and the port;
4. Correspondence - with the CITES Secretariat and other Managing Authorities;
5. Strategic planning - charting the future directions of CITES and its enforcement in the years ahead

It is clear that the Unit is understaffed and more manpower is needed. Due to manpower constraints, inspections of bird shops and other establishments are not as frequent as they should be. There is no manpower to conduct public awareness education., and stock-takings are very difficult as there is no time to count each and every item. The number of staff has not been increased since the Unit commenced its work in 1987. The Unit should comprise at least ten members.

3.2 The Customs Authorities

The role of the Customs Authority is to detect illegal shipments of endangered species and their derivatives. The CITES Unit conducts classes to Customs officers, to acquaint them with the workings of CITES and to train them to identify those species (95%) that are commonly traded. These classes used to be held once a month, but are now down to at least twice yearly. Where Customs officers are unsure of the species, they will be detained and PPD will be called upon for assistance in identification.

3.3 Trade in Endangered Species

In 1995, 12,873 CITES permits were issued for the import and export of wildlife and related products. These include reptile skins, reptilian leather manufactured products, live birds, zoo animals, arowanas and CITES plants such as orchids and American wild ginseng.

In 1996, some 10,996 CITES permits were issued for the import and export of reptile skins, reptilian leather manufactured products, live birds, zoo animals, arowanas and CITES plants, worth some S\$80 million.

In 1997, a total of 7,914 CITES permits were issued for the import and export of zoo animals, birds, reptile skins, reptilian leather manufactured products, dragon fish and CITES plants, such as orchids, agarwood and American wild ginseng. The majority of imports of CITES-listed species into Singapore in 1997 were specimens of live birds and reptile skins. Other imports included live mammals, stony corals, butterflies, Agarwood and American ginseng. Major re-exports on the CITES list in 1997 included live birds, reptile skins and manufactured reptile products.

It thus appears that in recent years, the number of CITES permits issued is declining.

3.4 Attendance at Conferences of the Parties (COPs)

Singapore attends all Conferences of the Parties. Amendments to the lists of species in Appendices I and II are implemented promptly by a revision of the laws.

3.5 Pre-CITES Species

The ESA does not provide for pre-Convention species. According to the PPD, upon Singapore's accession to CITES, letters were sent to all traders, informing them about CITES, and requiring them to declare their existing stocks. PPD would check these stocks to ensure they are accurately declared. There are no obligations on non-traders or householders.

6. Captive Breeding

Singapore has registered four Saltwater (*Crocodylus porosus*) and one Dragon fish (*Schleropages formosus*) captive breeding operations with the CITES Secretariat.

7. Infringements of the Law

Infringements come to the PPD's attention at the Customs checkpoints, through the alertness of Customs officers, or through public information e.g. tip-offs, complaints.

Each case is investigated, but sometimes, the investigations are not sufficiently expeditious. There are allegations that birdshops and aquariums in Singapore often contain live CITES species, even Appendix I species (e.g. arowana); that shop owners know the law well, and are very defensive when asked - they immediately say the species are not for sale and are only for "display". There is also considerable domestic trade in endangered species. These shops also contain species which are strictly protected in their home countries and are not allowed to be traded, the inference being that these must therefore be illegally obtained.

The writer does not have complete statistics of cases of infringements of the law, as many of these are compounded, and do not appear in the PPD's Annual Reports. However, seizures are reported in the annual yearbooks published by the Ministry of Information and the Arts, along with the number of CITES permits granted, and the cases that are prosecuted.

In 1995, the PPD confiscated a total of 16,209 turtle eggs, 31 birds and 20 boxes of Chinese pills containing powdered rhinoceros horn.

In 1996, there were seven cases of enforcement actions for illegal import, export or possession of endangered species. In all, 1,750 live pythons, macaws, cockatoos and tortoises were confiscated. Offenders paid between S\$200 and S\$2,000 in fines.

In 1997, there were 9 cases of enforcement action, mainly for possession of illegally imported endangered species, which resulted in fines of up to \$5,000 and confiscation of all illegal specimens seized.

In 1998, the number of enforcement cases rose to 41 (up from 9 in 1997). The Head of PPD's Regulatory Branch, Dr Leong Hon Keong has attributed this rise to a better informed public, which is more forthcoming in reporting cases of illegal trade or possession of animals. Although illegal trade is not widespread, and the PPD does not see any more cases of "crude smuggling", Dr Leong believed a few groups of traders were bringing the animals in for collectors. The traders would either offer the animals to their contacts or advertise them over the internet, using their pager numbers and false names.

There are also increasing cases of thefts of animals and birds. The most notable was the theft of two tamarins and two marmosets from the Singapore Zoo, which were stolen on 5 January 1999. The loss generated great publicity and the animals were found a few days later, abandoned in a cage. Petshop owners claim they have been approached by men who offer them wild animals or birds at very low prices. A spokesman for the Zoo said many of the animals which the authorities seize and hand over to the zoo come from illegal traders or from people who had bought them from illegal traders. A police spokesman, however, said it was still too

early to say if syndicates were involved in animal thefts here.

The following Tables indicate the total numbers of specimens confiscated by PPD in three years, from 1996 to 1998. Table I shows the number of confiscated specimens from 1996-1998; Table II the number of confiscated parts and derivatives, and Table III, the number of specimens confiscated in 1998 alone.

Table I: PPD confiscated specimens (illegal import/export and possession (1996 – 1998))

Specimens	Qty (heads)
Primates (siamangs, gibbons, monkeys, tarsiers, slow lorises)	35
Sugar gliders, squirrels	17
Leopard cats	4
Civet cat, hedgehog, ferret	13
Birds (Black Palm cockatoo, Barn owls, Bali mynahs, Hill mynah)	12
Snakes (pythons, cobras, kraits, etc)	~575
Lizards (iguanas, water dragons, skinks, geckos, etc)	35
Land tortoise (sat tortoises, etc)	2098
Crocodylians (crocodiles and alligators)	8
Arowanas	56
Total	2853

Source : Primary Production Department, Singapore

Table II: PPD confiscated parts and derivatives (1996 – 1998)

Specimens	Qty (pcs, kgs)
Marine turtle eggs	~20,000 pcs
Marine turtle shells	1750.9 kg
Reptile skins (pythons and lizards)	313 kg + 60 bags
Crocodile skins	2 pcs
Tiger skins	1 pc
Tiger bone	1 pc
Saiga horns	20.25 kg
Ivory carvings (not confirmed)	62.2 kg

Source : Primary Production Department, Singapore

Table III: Specimens confiscated by the Primary Production Department in 1998

Specimens	Total number*	Kept as pets
Primates (gibbons, tarsiers, slow lorises, etc)	19	9
Sugar gliders	7	2
Leopard cats	4	4
Civet cat, hedgehog, ferret	3	3
Black Palm Cockatoo	1	-
Snakes (pythons, cobras, kraits, etc)	530	15
Lizards (iguanas, water dragons, geckos, etc)	27	22
Land tortoises (star tortoises, etc)	7	3
Crocodylians (crocodiles and alligators)	5	3
Arowanas	27	-
Total	630	61

NOTE: *Includes those caught for smuggling

Source : The Straits Times, 15 January 1999

3.8 Selected Cases

There are no cases reported in the Law Reports, as the decisions emanate from the lower courts and do not warrant any written judgment. There have been no appeals from these decisions. The writer is thus compelled to rely on reports contained in the newspapers, as well as interviews with the PPD.

The following cases have been reported in the newspapers :

(a) Turtle eggs - a businessman attempted to smuggle over 16,000 eggs of the endangered Green Turtle. PPD officers were on a routine patrol of the Jurong Fishing Port when they spotted the man leaving the port in a green van. When he made a sudden detour back to the Fish Merchant's Complex, the officers became suspicious. They found 20 cartons in the van, each containing about 800 marine turtle eggs. The eggs were believed to be worth about S\$6,400 if sold to restaurants as fresh water turtle eggs. The perpetrator pleaded guilty and was only fined \$2,000! (The Straits Times, 17 January 1996 "PPD foiled bid to smuggle 16,000 turtle eggs").

(b) Birds - a bird trader who attempted to import non-CITES bird species from China was found to have 30 Fischer's Lovebirds which require CITES permits. The trader was only fined S\$200 for importing the birds without proper documentation. The birds were confiscated (this information is contained in The StraitsTimes report mentioned above).

(c) Star tortoises - in 1997, some 500 star tortoises were seized by the PPD from a small supermarket (called

a 'minimart'). The owner of the minimart was fined \$5,000. (The Straits Times, June 5, 1997)

(d) Pythons - An aquarium was fined \$2,000 for having nine young pythons on display in his shop (information contained in June 5 report above)

(e) Assorted - Another aquarium owner was fined S\$1,000 for having a variety of CITES listed species such as arrowanas, iguanas and spiders imported without PPD permits (see June 5 Report above)

(f) Birds - a company was caught attempting to re-export 36 birds without proper permits, of which 26 were endangered species. The birds were estimated to be worth some S\$38,000. The company and its manager were each fined \$5,000, the maximum under s. 4, ESA, for first offenders (The Straits Times, 4 November 1994).

4. INADEQUACIES

4.1 Low fines

It is clear from an examination of these cases that the fines imposed by the courts were far too low to serve as sufficient deterrence. Firstly, the maximum fine is only \$5,000 for international trading without a permit. The fine is even lower (\$2,000) in the case of domestic trade. Secondly, the fines are imposed on a per consignment species, not a per specimen species. It should be noted that while CITES requires a separate permit or certificate for each consignment of specimens (Art. VI(5)), its main provisions (Articles III, IV and V) apply to "any specimen of a species". Courts too, do not take a sufficiently firm stand, as the maximum penalties are seldom imposed.

The problem is compounded by the practice of bringing most cases before the Magistrates' courts, where the jurisdiction on fines is a limit of only \$2,000. Prosecutors from the PPD are not legally trained and prefer the less formal, more expeditious trial process of the magistrates courts. Thus, even though the maximum penalty prescribed may be \$5,000, this cannot be imposed if the case is heard in a Magistrates' court.

It is submitted that the law should be amended firstly, to raise the fines substantially. PPD agrees that it should be raised to at least \$50,000. Secondly, where the offense relates to a large consignment, the law should empower the imposition of the fine on a per specimen basis. Offences under Singapore's national law for the protection of wild animals and birds impose a fine of up to \$1,000 per animal or bird (s. 4 Wild Animals and Birds Act). Thus, in one case, a Malaysian who attempted to smuggle some 775 birds (non-CITES species) and 50 rabbits in 24 boxes across the Causeway into Singapore, in his car, was fined \$50 per bird. His total fines amounted to \$41,750 and he was also sentenced to 6 months imprisonment. As he could not raise the money, he had to serve another nine months in prison.

The court should also be empowered to authorise part of the fines to be paid to an informer, or to pay for the repatriation of the specimens (if live), back to the country of origin, or a country that would, in the opinion of the PPD as managing authority, be in the best interest of the specimens.

4.2 Jail sentences

Jail sentences are seldom imposed on the offenders. It is submitted that as the fines are grossly inadequate, offenders should be imprisoned, even if it is a first offense. There should be mandatory imprisonment for second or subsequent offenders. This is provided in Singapore's pollution laws for illegal dumping, or contamination of the water supply by discharge of any toxic substance, both of which carry, in addition to a fine, a mandatory jail sentence of one to twelve months' imprisonment for repeat offenders. The principle should be extended to illegal trade in wildlife.

4.3 Onus of Proof

The law should make it easier to prove guilt, by reversing the onus of proof. As it stands, the offence under s.4(2) requires the prosecution to prove that the animal being offered for sale was imported without a permit. There should be a presumption that mere possession of a scheduled animal or its derivative, is an offence, unless a permit is produced, the onus falling on the accused to prove otherwise.

4.4 Enforcement

The law should provide for stronger powers of enforcement, which should include the power to examine persons; take down written statements which should be admissible in court; demand the names and addresses of persons involved; and require the attendance of witnesses in court.

4.5 Regulations

Legal experts have recommended that as much as possible of the detailed rules on the implementation of the Convention should be embodied in regulations, and the Act itself should be limited to laying down general rules, prohibitions, the designation of enforcement agents, penalties and the granting of powers necessary for the government to make further regulations that are necessary for implementation.

However, unlike the more comprehensive laws of some countries such as the USA, Canada, Australia or Hong Kong, Singapore's ESA does not lay down any detailed rules, except for rules relating to the payment of fees for permits. The ESA and its rules are not sufficiently comprehensive. Many areas have not been specifically covered either under the ESA or its regulations (eg. the status of pre-Convention species; the types of permits required, the form they should take, their period of validity; issues relating to captive breeding). It is also unclear if any resolutions passed at conferences of the parties have been adopted. They do not appear in any legislation or regulations (apart from amendments to the Schedules). While some decisions may have been adopted as part of the PPD's administrative practice, this is not apparent to members of the public.

4.6 Domestic Trade - Licensing of Wild Birds

There should be licenses for the keeping of certain species of wild birds in Singapore, particularly those that are under CITES Appendices I and II. The Wild Animals and Birds Act prohibits the keeping of any wild animal or bird without a licence, but while it has provided for the licensing of wild animals, there are no provisions for the licensing of birds. On a strict construction of the Act, it is illegal to keep any wild bird. However, this prohibition is not observed, as keeping birds is a popular hobby in Singapore. There have

been many calls for the licensing of endangered wild birds, and it is hoped that these calls will soon be answered.

4.7 Transhipments

As Singapore is often the transit point for trade in wildlife, it is important that specimens in transit be subject to the provisions of the Convention. However, Article VII of CITES states that it does not apply to the “transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control.” Resolution Conf.7.4 recommended that parties “inspect transit shipments, check the presence of valid export documentation as required under the Convention or satisfactory proof of its existence” and “adopt legislation allowing them to seize and confiscate transit shipments without such documentation or proof thereof.” Resolution 8.8 went further, recommending that documentation comparable to that which is required between Parties be required for transit shipments passing through, even if the shipment is in transit between two non-party states.

A few countries have adopted laws that apply CITES controls to transits and transshipments, eg Germany and Switzerland allow transit only upon presentation of valid export permits issued by the country of export. A few countries have even extended protection to specimens brought in which do not fall within Customs control, such as cases where goods are carried in a carrier that only makes a stop in the country, and the goods remain on board, or arrive in one conveyance and are then loaded and transferred to another conveyance – e.g. Hong Kong requires the presentation of valid export documentation even if the specimens remain at all times in the vessel or aircraft in which they were brought in; the USA uses a very broad definition of “import” so as to even catch specimens that are on a plane that makes an unscheduled landing in an US airport.

In Singapore, scheduled species in transit in Singapore do not fall within the meaning of “import” or “export as defined in s. 2(2) ESA and are thus not subject to the requirement of a permit. Section 2(2) states that a scheduled species shall be deemed to be in transit if it is brought into Singapore solely for the purpose of taking it out of Singapore and :

- (a) remain at all times in or on the conveyance in or on which it is brought into Singapore;
- (b) is removed from the conveyance in or on which it was brought into Singapore and either returned to the same conveyance or transferred directly to another conveyance before being despatched to a place outside Singapore; and is kept under the control of the Director or an authorised officer while being so removed, returned or transferred; or
- (c) is removed from the conveyance in or on which it was brought into Singapore and kept under the control of the Director or an authorised officer for a period not exceeding 14 days or such longer period as the Director may permit pending despatch to a place outside Singapore.

In practice, Singapore does control the transshipments of live animals and birds via the Animals and Birds Act, which requires a transshipment licence if the specimens are alive. This necessitates an import as well as an export permit. Thus, CITES is enforced indirectly. Regulations prescribed by IATA (International Air Travel Association) must also be complied with, otherwise no transshipment license will be granted. PPD claims that cases are checked if there is a change to another carrier, or if they leave the airplane and proceed over land, to Malaysia. However, it is not possible to check those cases that remain on the same plane.

The present practice of inspecting transshipments only if they contain live specimens is to be encouraged, but it should be provided under the ESA, and not under the Animals and Birds Act. The latter legislation serves a different purpose altogether, being intended for domestic animals, or animals imported into Singapore as food, and its extension to wild animals and birds may be challenged.

4.8 Separate Agency

A separate agency should be established to administer CITES. The Primary Production Department's priorities are the ensuring of safe and wholesome food, animal and plant health, and agrotechnology. With the growing importance of CITES in the years to come, it is only fitting that Singapore should devote more resources towards better and more comprehensive monitoring and implementation of wildlife trade. The agency should have more manpower and resources, to enable it to undertake more comprehensive prevention and enforcement measures as well as public education. Given the present constraints, it is difficult for preventive measures to be undertaken, the Unit being compelled to reactive enforcement, and not pro-active enforcement.

The police should also be called upon to assist, and a special unit should be set up to investigate the smuggling of wildlife.

5. CONCLUSION

It can be said that as an overall assessment, Singapore has carried out its obligations under the Convention faithfully; but it does not go beyond what CITES prescribes. Its enforcement officers are free of corruption, cases of alleged infringements are always investigated, records are dutifully and carefully kept and submitted to the Secretariat, offenders are prosecuted and punished. However, there are inadequacies, in the law as well as in its enforcement, due to the shortage of manpower and resources. These have already been noted. It is hoped they will soon be addressed, and that Singapore can be viewed (as it rightly should be) as a partner in the worldwide effort to eradicate illegal trade in wildlife.

Looking beyond trade in endangered species, to the broader issues of the conservation of biological diversity and habitat protection, many species in the region are protected by national laws, but do not fall within CITES. These species should be listed under Appendix III, but have not been so listed. Ideally, countries in the region should enlist the help of Singapore to ensure that such trade is controlled. This can be realised if there is a common conservation strategy in the region. This is precisely one of the aims of the ASEAN Agreement on the Conservation of Nature and Natural Resources, signed in 1985 by the then six ASEAN states, namely Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand.

Drafted with the assistance of the World Conservation Union (IUCN), the Agreement was considered to be the most progressive instrument of its time, viewing the region as one eco-system, and requiring parties to "develop national conservation strategies" and "coordinate these strategies within the framework of a conservation strategy for the region".

Under the terms of the Agreement, it can only come into force if ratified by all signatory countries. To date, only Indonesia, Philippines and Thailand have ratified the Agreement. It is thus, most regrettably, still not in force, as Brunei, Malaysia and Singapore have yet to ratify. There have been many calls for its ratification by these three parties, the latest being made at a recent Conference of the Judiciary in ASEAN, entitled “The Role of the Judiciary in Sustainable Development” held in Manila from 4-7 March 1999. A Resolution was passed requesting the ASEAN Secretariat to:

- (a) approach those States that have not yet ratified the ASEAN Agreement, to do so; and
- (b) to propose to those States that became members of ASEAN after 1985, to accede to the ASEAN Agreement once it enters into force.

It is hoped that Singapore, Malaysia and Brunei will ratify this Agreement and bring it into force very soon. Thereafter, we hope to see a new era in ASEAN cooperation on matters relating to nature and the conservation of natural resources. This should translate into better laws and administrative measures not only for the enforcement of CITES in the region, but for the better protection of all flora and fauna in the region, even they fall outside the ambit of CITES.

- The writer wishes to thank Dr Leong Hon Keong, Head, PPD Regulatory Unit; and Ms Lye Fong Keng, Head, CITES Unit, PPD, for their kind cooperation in agreeing to be interviewed for this article.

NOTES

1. *See All Creatures Priced to Sell*, Time, 19 July 1993. The Primary Production Department has disputed these allegations, taking the view that “considering that Singapore is in the middle of the richest wildlife region in the world and considering that Singapore is the centre for communication, the magnitude of illegal trade in wildlife is not a major problem.” (PPD’s letter to The Straits Times, 14 July 1993).
2. *See* Stephen V Nash, *Sold for a Song - The Trade in Southeast Asian Non-CITES Birds*, Traffic Network Special Report, 1993.
3. Act 4 of 1989, 1990 ed.
4. Act 30 of 1992.
5. The Reptile Association of Singapore had asked for a “grace period” to allow them to adjust to the new system.
6. S 41/1992; S 259/1992; S 49/1995; S 412/1997.
7. As of March 1999, the exchange rate is approximately US\$1.00 to S\$1.70. The figures hereafter are expressed in Singapore currency.
8. The Endangered Species (Import and Export) Amendment Act, No. 30 of 1992.
9. S. 465 of 1992.
10. S. 344 of 1994.
11. S. 109, Penal Code (Cap. 224), reads :

“Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
Explanation.: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”
12. See case (f) below, where a company and its manager were each fined \$5,000 for trading in endangered birds without permits.
13. S. 2 defines “authorized officer” to mean :

any Senior Primary Production Officer;
any police officer;
any officer of customs within the meaning of the Customs Act; or
any public officer or any officer of any statutory board or body authorized by the Director under s. 3.
14. In practice, raids are always conducted with the backing and support of the police force.
15. The Unit has, to its credit, recently produced a pamphlet on Sea Turtles. This is distributed at cruise embarkation points. It is now working with the Nature Society to mount an exhibition on CITES at Changi International Airport. More public awareness programmes are needed.

- ¹⁶ *Singapore 1996*, at 316.
- ¹⁷ *Singapore 1997*, at 313; THE STRAITS TIMES, June 5, 1997.
- ¹⁸ *Singapore 1998*, at 327.
- ¹⁹ See case on turtle eggs mentioned below.
- ²⁰ THE STRAITS TIMES, January 17, 1998.
- ²¹ *Singapore 1997*, p. 313; THE STRAITS TIMES, June 5, 1997
- ²² *Singapore 1998*, p.327.
- ²³ THE STRAITS TIMES, January 15, 1999
- ²⁴ Section 11(5), Criminal Procedure Code, 1985 Rev. Ed.
- ²⁵ This is allowed under the Wild Animals and Birds Act, s 12 “The court may direct any fine or any portion of any fine imposed or levied under this Act to be paid to the informer.”
- ²⁶ See s. 15 Water Pollution Control and Drainage Act (Act 29 of 1975), repealed by Sewerage and Drainage Act, (Act 10 of 1999); to be replaced by s.17 Environmental Pollution Control Act (passed by Parliament in February 1999, yet to be gazetted); s. 21 Environmental Public Health Act, Act 14 of 1987 (1988 ed.)
- ²⁷ Cyrille de Klemm, *Guidelines for Legislation to Implement CITES*, IUCN Environmental Policy and Law Paper No. 26, 1992
- ²⁸ Cap. 351, 1985 ed.
- ²⁹ The Wild Animals (Licensing) Order, S 55/75
- ³⁰ See de Klemm, *supra* note 27.
- ³¹ See Stephen Nash, *Sold for a Song*, *supra* note 2.
- ³² See *The ASEAN Agreement on the Conservation of Nature and Natural Resources - Its Implementation in the Regulation of Wildlife Trade in the Region*, paper presented by the writer at an international conference Environmental Treaties - The Asia-Pacific Dimension, Darwin, 21-22 July 1995 (unpublished)

A Substantive Theory of the Relative Efficiency of Environmental Treaty Compliance Strategies: The Case of CITES

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Good morning, or, as we say at Texas A&M, “howdy.” In the next 20 minutes, I plan to give you a fairly quick synopsis of research I completed last year as part of my doctoral program. The title of my dissertation was “A Substantive Theory of the Relative Efficiency of Environmental Treaty Compliance Strategies: The Case of CITES.” I was told it was essential to choose a dissertation title which nobody could possibly understand. This morning I will give you an overview of what I did, and then move directly to the practical implications of my study.

In brief, the problem I wanted to address is the fact that many countries sign international environmental agreements, but subsequently do not comply fully with them. Although there has been some discussion of treaty compliance issues in the past, no one has yet offered a theory to explain why compliance is incomplete and what strategies best address the specific reasons for poor compliance. My study was thus a new approach to evaluating treaty compliance issues, one which integrates a number of political and economic concepts and perspectives.

The primary objective of my study was to generate a theory of the relative efficiency of various environmental treaty compliance strategies using CITES as a case study. This primary objective was accomplished by pursuing a number of subobjectives. The first was to identify what obligations countries assume when they become parties to CITES. The second was to identify the initial and continuing costs which countries incur when they comply with these obligations.

The third subobjective was to develop categories of CITES parties to be used in a comparative analysis. The fourth was to identify strategies which may be used to encourage countries to comply more completely with their treaty obligations. The fifth was to identify the costs incurred by both the initiator of the strategy, and the target country, under each compliance strategy.

The final subobjective was to apply the general cost framework to each category of treaty party in order to determine whether the various strategies increased or decreased the initiator’s and the target country’s compliance costs. These analyses, then, would permit the generation of hypotheses about the most efficient compliance strategy for each category of treaty party.

In my study, I applied a theoretical approach which allows the generation of hypotheses based on actual data (grounded theory; Glaser & Strauss, 1967), and I developed categories of CITES parties for a comparative analysis of the effects of compliance strategies. I also used transaction cost analysis (Coase, 1937; Williamson, 1975) in this study. TCA basically refers to the costs associated with organizing and carrying out exchanges. The underlying premise of TCA is that firms or organizations will seek the most efficient way of carrying out exchanges depending on the costs involved.

Three sets of costs are applicable to trade treaties such as CITES. The first are administrative, or the time, money and effort required to implement the treaty. Second, economic costs are involved. By agreeing to restrict the export of certain native species, countries forego revenue, which may be both substantial and important in the case of developing countries. Trade restrictions may also cause economic harm to industries dependent on imports, such as the pet trade industry, some manufacturers, circuses and zoos, and so on. Finally are transaction costs, which are threefold. Search and information costs are those incurred in acquiring the information necessary to implement the treaty. Bargaining and decisional costs are incurred, for example, when governments negotiate proposed species listings with domestic constituencies and with other countries. Finally, policing or enforcing costs result from efforts to ensure that all other parties are complying with the treaty.

I also applied regime analysis in this study. Regimes are decentralized institutions which depend on their members, rather than any kind of supranational police force, to sanction violations of the regime's principles, norms, and rules. Regime analysis suggests that compliance costs are not limited to the treaty parties; they also involve other groups and individuals who are involved in the issue area, such as secretariats, international organizations, NGOs, and so on.

Let me move right on to the results of my study. First, a review of the CITES text revealed that the principal obligations of the treaty's parties are to approve domestic legislation implementing the provisions of the treaty, to set up a system of trade controls, and to provide annual and biennial reports.

Next, I identified four factors which are important to compliance and the costs of compliance. The first involves the level of trade; what are the parties' economic stakes in the treaty? Do they have a high or low level of wildlife imports, and do they have a high or low level of exports? Second, do the countries have the capacity to comply with the treaty, i.e., the financial and technical ability to administer laws and regulations associated with the treaty? Although a somewhat crude indicator, I used per capita GDP adjusted by consumer prices to divide CITES parties into high and low capacity. Third, do the parties have domestic constituencies involved in the issue area, such as environmental groups which must be consulted and involved in the process? If domestic advocacy groups exist, bargaining costs will presumably be high since the groups will lobby for improved compliance.

The fourth category involved an assessment of whether or not the parties have made a good faith effort to comply with the treaty. To operationalize this somewhat intangible concept, I developed a noncompliance score for each party. First, as many of you know, IUCN's Environmental Law Centre and TRAFFIC USA have been reviewing parties' legislation to determine if it implements CITES adequately. Category 1 legislation is considered adequate. Category 2 does not meet all requirements for implementation, and Category 3 does not meet requirements at all. All CITES parties with Category 2 or 3 legislation received a noncompliance point, although for those reviewed in Phase I of the project, the point was subtracted if they had taken action to improve their legislation. If they had not, another noncompliance point was assigned. Next, each party received a noncompliance point for every annual report which had not been submitted for the years 1991-1996. Next, I analyzed the infractions reports submitted for COPS 9 and 10. For each Secretariat inquiry to a party, I determined whether or not the party responded, and if so, whether or not the Secretariat deemed the response adequate. For parties who had a combined nonresponse and inadequate response rate of 50% or greater, another noncompliance point was assigned. Finally, acknowledging that some shortfalls in compliance can be expected and would not necessarily indicate a lack of good faith, a composite score of four or more was used to distinguish the good faith compliers from those who had not acted in good faith.

Thirty countries were found to be not good faith compliers, according to this criteria. With four separate factors to categorize CITES parties, I then developed three hierarchies. The thirteen major wildlife exporting countries were placed in a hierarchy depending on their characteristics with respect to good faith, capacity, and advocacy. The 19 major importing countries were placed in a similar hierarchy. The vast majority of CITES parties had only low levels of wildlife imports and/or exports, and were also placed in a hierarchy. Let me note that there were no CITES parties with high levels of both exports and imports.

Shifting to compliance strategies, two major categories were identified. First, strategies may be proactive; i.e., actions taken before any allegation of noncompliance is made. These include incentives such as financial and technical assistance, monitoring and verification, and audits. Second, strategies may be reactive, being applied after major noncompliance has been identified. Reactive strategies include publicly criticizing or shaming the party, implementing trade bans or other trade sanctions, or adopting other forms of retaliation, such as canceling official visits, reducing or cutting off development assistance, and so on.

I next identified the administrative, economic, and transactional cost effects of these strategies, effects on both the initiator of the strategy and the target. The strategies tend both to increase and to decrease costs, to varying degrees. For the initiators, I developed net scores of the costs and benefits resulting from each compliance strategy. Note that for transaction cost effects, I= Information costs, B= Bargaining costs, and P=Policing costs. For this first attempt to assess compliance strategy efficiency, equal weights were assumed for the costs and benefits.

While not professing to be a complete accounting of costs and benefits, in general we can see that audits tend to be the most efficient (with a net benefit score of +4), and trade sanctions tend to be the most inefficient (with a net cost score of -9), for those who are initiating a compliance strategy. Since I differentiated between the targets of the strategies, or the treaty parties themselves, the cost and benefit effects of the compliance strategies varied depending on the situational characteristics of the countries (i.e., economic stakes, capacity, advocacy, and good faith).

The effects of the various strategies illustrated in this slide are for the two countries which had high levels of imports, had made good faith efforts to comply with CITES, were of low capacity, and had environmental organizations. We can see that the strategies increase or decrease the countries' compliance costs or both, or in some cases have no effect. I conducted a similar analysis for each set of treaty parties. If we accept the premise that CITES parties do not comply fully with the treaty because the costs of full compliance are too high, the goal of a compliance strategy is to reduce the target's compliance costs to the greatest degree. The most efficient strategy will do this at the lowest cost to the initiator. From the comparative analyses I conducted of the various categories of CITES parties, three hypotheses about the relative efficiency of the compliance strategies emerged.

The first states that for low capacity countries which have made good faith efforts to comply, audits are the most efficient strategy, followed by external monitoring and verification and incentives. Second, for high capacity countries which have not made a good faith effort to comply, forms of retaliation other than trade sanctions are the most efficient. Third, for low capacity countries which have not made a good faith effort to comply, forms of retaliation other than trade sanctions are also the most efficient, but they may be coupled with incentives when the party demonstrates a willingness to improve its treaty behavior.

Four corollaries also emerged from the analysis of data in this study. First, among treaty parties with high levels of trade (imports or exports), compliance strategies should be focused on those parties with low capacity and those who have not made good faith efforts to comply. High trade countries with good faith records of compliance and high capacity should be considered low priority for the application of compliance strategies. Second, for treaty parties with insignificant levels of trade, compliance strategies should focus on those with low capacity, those who have not made good faith efforts to comply, and those without domestic environmental organizations.

Third, reactive compliance strategies are generally not appropriate for treaty parties who have been acting in good faith with respect to the treaty. Proactive strategies, designed to reduce the cost of compliance, are preferable to punitive strategies for good faith compliers. Fourth, proactive compliance strategies are generally not appropriate for treaty parties who have not been acting in good faith with respect to the agreement. Reactive, punitive strategies are more appropriate for parties with poor compliance records. Further, those strategies should be designed to increase the cost of noncompliance.

I will not recite the actual theory I developed, which incorporates these hypotheses and corollaries. Rather, I think it is important here to apply my conclusions and hypotheses to the recent history of CITES.

The first question is, have proactive strategies been applied principally to parties with high levels of wildlife trade, those with low capacity, those with no domestic advocacy groups, and those who have acted in good faith? Starting first with incentives, I obtained a list of financial and technical assistance provided to individual CITES parties between October 1994 and December 1996. Of those receiving assistance, all were found to have acted in good faith according to the criteria developed in this study. Most had insignificant levels of trade and had domestic environmental groups, and all but one were in the low capacity category. However, it is important to note that some forms of financial and technical assistance are available to all parties, and some are provided on a regional basis.

Since there is no formal system of CITES-related audits in place, this proactive compliance strategy could not be assessed, although note that the study found it to be the most efficient one. Concerning monitoring and verification, the location of TRAFFIC and WWF offices may be used as indicators, acknowledging that these and other organizations also investigate treaty compliance in countries where they do not have resident staff. Of the 43 offices identified in the study, most were located in countries with high levels of wildlife trade. Four of the countries were categorized as “not good faith” parties according to the criteria in the study. Of the 43 offices, all but 9 were located in high capacity countries, and all of the countries had domestic environmental organizations.

The next question is, have reactive compliance strategies focused on high trade parties, those with low capacity, those with no domestic advocacy groups, and those who have not acted in good faith? To my knowledge, there are no data available on the use of public criticism or shame in the CITES context, or on the use of nontrade sanctions.

Concerning trade sanctions, the CITES Standing Committee has recommended suspension of CITES-related trade with a number of parties and other states during the 1990s. Of those that were CITES parties, six had significant levels of wildlife trade and five did not. Notably, all were categorized as good faith compliers in my study. Eight were of low capacity; 3 of high capacity. All had domestic environmental organizations. You will recall that one of the corollaries developed in this study was that punitive measures are not generally

appropriate for parties who are, overall, making a good faith effort to comply with the treaty. However, trade sanctions have been recommended against CITES parties who were found to be good faith compliers according to the criteria in this study. In addition, at COP 10 in 1997, the parties decided to consider trade restrictions for those parties with significant levels of trade who do not improve their CITES-related legislation. The conclusions of my study, however, suggest that such a blanket application of a compliance strategy fails to differentiate between the wide range of parties who may be subject to the punishment, and it fails to recognize the unique situational factors which affect each party. Strategies to encourage more complete compliance should be tailored to the variations in parties.

Two areas for future research seem particularly relevant for the study of environmental treaty compliance. The first would link efficiency analyses with effectiveness assessments, in order to ensure that the compliance strategy chosen will be successful. Let me note here that there is considerable literature which suggests that trade sanctions, for example, are not only inefficient, they are not effective either.

Second, more research is needed to identify and document the use of nontrade sanctions and public criticism since my study indicated that both are relatively more efficient than trade sanctions in encouraging compliance by parties who have not acted in good faith.

Finally, let me note in conclusion that my study was not intended to be the definitive tome on CITES treaty compliance. If I succeeded in anything this morning, it was to make the point that CITES parties cannot be treated as if they are all the same. Unique factors influence why each party may not be complying completely with the treaty. Thus, efforts to encourage better compliance should be tailored to the specific party involved.

Why International Law has Failed to Protect the Wild Tiger and What Can Be Done

Corey Meacham, Environmental Journalist and author of *How The Tiger Lost Its Stripes*

Thank you, Bill, and thank you Wil – and everyone else involved in this conference – for inviting me. It is a pleasure and an honor to attend.

It may be true that Steve and Karen and I occasionally differ in focus, but I do consider it an honor to be on the same panel as the two of them. I'm a journalist. I'm not a biologist. I don't spend much time in the field. I'm kind of a wimp. I like to be home. And Steve and Karen are two people who really are out there, on the ground, finding out what's going on. Avail yourselves of every opportunity you have to learn about the work that they are doing.

Now, having said that, yes: We have different focuses. Some of the things they do and say sometimes make me squirm in my seat. And sometimes some of the things I do and say might make them squirm, too. But ultimately we agree. I think we all agree.

To check that, let me ask you, if you can, to answer to yourselves answer the question: What is the purpose of CITES? If you can't answer that in about five seconds and in about three or four words, something is wrong. And you might not be able to answer it that quickly or that precisely.

The purpose of CITES is to help the plants and animals. It is not to punish the bad guys. Now, yes – we might very well have to punish the bad guys in order to help the plants and animals. But we need to keep our ultimate goal clearly in focus as we enable it with lesser goals.

I'm an outsider. I kind of see this as an insider's conference. I typically speak at what I would call outsider conferences. I speak at museums and natural history societies, et cetera. I speak to people who know little or nothing about tigers or tiger conservation. The chapter of my book that they all despise is the chapter on international politics and international law, particularly CITES. That's the one everyone flips past. They can't wait to get back to white tigers and tiger cubs and poaching and smuggling. So it's a treat for me today to talk to you, people who will appreciate a section of my book that does not appeal to the public at large. But the irony is that now I am no longer, as I speak to you, the subject-matter expert. You are the subject matter-experts today. You're either attorney's or Ph.D.s or both, or people who work on international wildlife law. But maybe as the outsider at an insider's conference, I can offer some insights that you have not considered. I can come in from the outside as a journalist, as a non-biologist, a non-scientist, a non-politico freelancer and maybe offer a gateway back out into the general public.

When I speak about tigers – actually, when I started my research on my book – one of the first things people would do is congratulate me on the opportunity I would undoubtedly have to go to Africa to research tigers. [Laughter.] Now, you're laughing, but you're not all laughing, and the reason that you're not all laughing is

that some of you were unaware that there are no tigers in Africa. Tigers are strictly an Asian animal. Now, that may seem absurdly pedestrian to have to point out. But, trust me, as an environmental journalist, we live in a sea of presumptions, misinformation, and disinformation – outright lies – about tigers and tiger conservation. I see one of my goals as bringing some of those, what may seem to you, common realizations into the psyche of the general public.

How many of you know that the tiger is in no danger of extinction? The tiger is in no danger of extinction. Now, there's a catch to that, and I'm sure you all know the catch: In captivity. But some of you didn't even know that. The tigers are in no danger of extinction. Tigers are euthanized all over the world frequently. They're killed, legally. Contraceptives are installed in tigers so that they don't breed as readily as cats will. There are too many captive tigers for the resources at hand to manage them in both the best interest of the animals and the people who are managing them. The tiger is in no danger of extinction in captivity. Okay, so everybody says, 'Yeah, right. We knew that. Let's move on.' But let me caution you not to move on too quickly when you talk to people who are less familiar with the situation than you are – than we are, if I'm allowed to include myself in this group – because there are a lot of people whose motivations are altered significantly when they find out simple little facts like tigers breed readily in captivity.

In the airplane on the way here, I read in the United Airlines in-flight magazine that the National Zoo, right down the street – and we have, truly, a couple of wonderful representatives from the National Zoo here today; John Seidensticker, Curator of Mammals; I encourage you to avail yourselves of his presence; he'll have to flee the room now; find him, shake his hand, recognize who he is; he is, if not *the* world player in tiger conservation, about to become one – the National Zoo down the street hosts the 'rare' white tiger. Unfortunately, the white tiger is not rare. If the white tiger were that rare, are we really going to leave them in the hands of a couple of Las Vegas magicians? Is that who we're going to trust with the fate of that many white tigers? The fact of the matter is that in many zoos there are management programs to breed white tigers into extinction, for reasons I will not bore you with today, but they have to do with genetics – interbreeding and inbreeding.

These are astounding revelations to many people. Again, while these folks [Steve and Karen] are focusing on very specific, incredibly important stuff because of its specificity, I think that my ability is that sometimes I can focus on things that are so global we miss them. We fail to pay attention to them.

There are fourteen range countries for wild tigers. How many representatives do we have in attendance here today from any of the fourteen range countries? Show of hands? Quick, now. Everybody? Wow. Not a single representative in this room, at an international wildlife law conference, with a panel on the endangerment of the tiger, and we don't have a single representative in this room from a country with wild tigers. Let's pause for consideration. That's extraordinary, and ugly, and painful.

The title of my presentation here – and, yes, I admit that it was aggressively put, by me; I'm frequently, if not always, guilty of that – is 'Why has international wildlife law failed to save the tiger.' I should avoid that word, 'save,' because the fact is that international wildlife law is an integral part of helping plants and animals. But the reason that CITES has not saved, and never is going to save, the wild tiger from extinction is the same reason that a speed limit does not keep everyone from speeding. You cannot simply put a law in place and then claim, 'There, you can't do that anymore. There are no transgressions of CITES in country X, Y, or Z because it's illegal.' Baloney. Putting something on the books is just that and only that. Enforcement is key,

and ultimate enforcement is impossible. If we had policemen following each of us around on the streets as we drive, we *might* cure speeding with a speed law. Maybe. But consider how ridiculous that is. Laws don't save things. They don't cure problems. And to the degree that we are going to rely on international law to do the work that really needs to be done, the plants and animals are doomed. We need to be sure to keep everything in its proper prospective.

Are there any representatives from Greece here? That's what I'm dying to know, after this morning's presentation. No Greek representatives? Italy? No? Okay, great. So what we do here today is we get together – and I'm as guilty or more guilty than anybody – and we tell people in other countries what we think they should be doing with their natural resources. How receptive are we to that? Are there conferences happening in Swaziland today where they are going to be lobbying for international laws on what we can do with ore that we pull out of the ground in this country? If there were such a conference, would we live by the rules that were established there? Absurd. Ridiculous. At the very least we'd want to be represented. And so I think it's important that we always keep that perspective in mind. Who are we to tell other countries what they can and cannot do with their natural resources? Who are they not to raise their middle fingers promptly at us and tell us to get the hell out of their lives. If they want to eat their tigers, they'll do it.

Which brings me to yet another controversial point that I love to bring up: Eating tigers. Tiger farming. How many of you know the term? If tigers breed so readily in captivity, then why don't we just farm them? One thing I will confess that makes me squirm a little bit in my seat is when I see slides of slaughtered tigers. I squirm for two reasons. One, because I hate seeing it. I just don't like it, all that corporeal reality is too much for me. The other reason I hate seeing it is that I think it makes people believe that it's only ugly when you slaughter a tiger. Do we squirm as much if we see a slaughtered cow up there? Some of us would, some of us wouldn't. We need to ask ourselves, if we are squirming just as much, why? And if we're not squirming just as much, why not? Because we can raise tigers as readily as we can raise cows, and we can slaughter them, and we can sell their derivatives into the markets that seek them. So why don't we? I wrote a book on that subject, and I didn't even get close to answering that question. But tiger farming is an issue which, again, at a comprehensive level, I'm certainly not at closure on that issue, and I don't plan to get there any time soon. I mean, I'm generally kind of an animal guy. I like animals. I'm even kind of an animal welfare kind of a guy, which is a scary thing to confess in environments like this. But it doesn't bother me to see a picture of a slaughtered chicken as it does to see a picture of a slaughtered tiger. Why not? Should the tiger get special treatment just because it's sexy? If so, do we base our conservation ethics on lookism? How come we're not out there promoting the salvation of the red rump tarantula? Very endangered. Or the cape stag beetle. Equally endangered. Because the damn things are ugly and small. Nobody can raise money off them. Tigers are a flagship species. That's both one of their saving graces and their detriments. You can use a tiger to raise awareness, and that's good. I would hope that we don't abuse tigers in raising awareness.

I prefer to speak short rather than long. I like to hear questions, and especially questions that we will all be able to hear answered by my co-panelists. So, in closing, let me say that I often tell my audiences when I speak that they should keep a little tape loop running in the back of their minds that says, 'Who the hell are you, Mr. Meacham?' I encourage you to do that too. Really. 'Who the hell are you, Mr. Meacham, to say these things?' If any of you are so kind as to read my book or anything else I should write in the future, I encourage you to keep that tape loop running in the back of your mind. 'Who the hell are you, Mr. Meacham?' That's only fair, and it's only wise. It's also required if we're going to achieve any type of meaningful understanding when it comes to tiger conservation. The one thing I would ask is that you keep that tape loop running for

everybody, including yourselves. I always do. I'm checking, checking, checking, checking to make sure I haven't made an assumption that is going to hamstring efforts I frankly, really, honestly want to enable and support when it comes to the preservation and or the conservation of the wild tiger.

Thank you all very much.

Question from an audience member:

"Anyone who is cynical of international law is displaying a lot of common sense. I appreciate your remarks. I do want to ask you, though, every once in a while I get to go to Montana and I drive from Bozeman down to Yellowstone National Park, which is about the same distance between here and Philadelphia. And I can do it in about half an hour because there is no speed limit in Montana. Going off of your analogy to speed limits, when I'm back home in Massachusetts and I'm on the turnpike, I don't go 65 miles per hour, but I certainly never go above 75 miles per hour and really neither does anyone else, and the people who do are sitting on the side having a cop talk to them. So I was wondering if you think that that analogy could go over to international law and you could say international law certainly can't stop things like tiger poaching but could it at least ameliorate the situation?"

Meacham's response:

Certainly. Yes. And I appreciate that, and let me clarify to a degree that I probably did not, or did not sufficiently. I know I heard myself say it, whether or not I actually did say it is a different thing. International wildlife law is an integral part of wildlife conservation. There is absolutely no question about that. I would counter your counter-analogy, if you'll all forgive me, by saying that the people who are breaking the law back here, speeding, they are not all on the side of the street. Some of them are. Yes, I'm the same way. I consider myself law-abiding, and there's a value [to be taken advantage of] in that. There's a psychological value in the installation of a law in that you will, in that net, sweep up a lot of so-called law-abiding people. But it is a net, which means it has holes in it, and some people get through, and you cannot infinitely tighten that down. Nevertheless, let me re-state: My cynicism should not extend to the point in believing that there is no place for what is being done with CITES and what is taking place here today. Tremendous value, so long as we all remember that indeed it has a place, and it is one of many tools in the tool box.

Question from an audience member:

Singapore's last tiger was shot in 1933 by an Englishman, and since then of course the only stories we hear about tigers comes from our neighbors in Malaysia. Malaysia still has quite a number of tigers. But what is sad about these stories is that they only surface when the tiger kills somebody. It usually does that because either it is old, it's injured, or its habitat has been destroyed. Then it's inevitably compounded because once the authorities hear that the tiger has killed somebody they go out to hunt it down and kill it. I'm just wondering how can international authorities at least save this one particular tiger that's been very unfairly labeled a man-eating tiger? Does it help to kill that one animal?

Meacham's response:

I would take issue with your term 'unfair.' It is a fair term. That animal is a man-eater. And if it were my mother, brother, sister, or child who had been eaten, or if I were in a community that were to continue to live under the threat of a tiger that had eaten a mother, brother, sister, or child in my community, I know where my priorities would lie, and I can't find fault with people whose priorities are similar to mine in similar situations. Statistics vary, but there are three-hundred-some-odd people killed every year by marauding wild tigers. The lives that are shattered by those incidents are not going to be rational audiences for the arguments that are being presented here today. But they're no less justified. I do agree very much with you, however, regarding the unfortunate negative focusing of energies and media and psychologies around an episode like that. Tigers are dangerous animals. Always have been dangerous animals. That's part of the wildness that makes the animal unique and special, and they shouldn't be persecuted specifically because of that. I often say that it's not an either-or choice, I don't think, with tigers and people I think it's a both-neither choice. I think we need to consider how we, to the most comfortable degree possible for all species concerned, can live together with the tigers. I would agree that it is unfortunate that so much news regarding the citing of a wild tiger is negative news.

Comments from Steve Galster:

I have to say that this discussion, given the parameters for this conference, and for this particular two hour session, is getting off course. So I'd like to put us back on course.

I'd like to respond to some things that Mr. Meacham said that I found absurd. First of all, the purpose of CITES is not to help plants and animals. The purpose of CITES is to make sure that different species of plants and animals around the world do not go extinct or even get close to extinction. There are a lot of groups out there, and I've certainly worked with them that wished the purpose of CITES were to help plants and animals and who participate in the kinds of activities that the gentleman who just got up and talked about Krugar park said, which is not to cull elephants here or there. CITES is about trade – the convention on international trade in endangered species of flora and fauna, and to find out if there are mechanisms that one can use to trade, like [unclear] wool, elephant ivory, rhino horn, this kind of timber, that kind of timber, use the resources to plow back into conservation, or if not, then how to preserve those species. What this argument boils down to, from a legal perspective, and I'm not a lawyer, is Article 4, where you're talking about implementation.

As an environmentalist who has worked on this all over the world, I think it's silly to say that sitting here in this room today in Washington, or any other room, that we can't talk about what's happening in other places or appeal for action in another country. If there's human rights abuses going on in China, I'm all for talking about it here where everyone can. I think environmental issues transcend international boundaries just as human rights issues do. And there are plenty of people that I've worked with across the world involved in wildlife trade issues, from Africa to Asia to North America to Russia and Europe, who don't get to come to conferences like this, but who, I would add, are having conferences like this. You might not be hearing about it. I just came from Asia a week and a half ago. They are constantly meeting, in Burma, in Thailand, in Laos, in the Russian Far East, in Europe, about these things. We're not the only ones. I think that, to some extent, given the kind of money and technical expertise and legal expertise this country has, we're behind. There's a lot of catching up to do to get more involved and have the US contribution to international wildlife be com-

mensurate with our abilities. We're just not using our expertise and our money to the extent that we can. There are countries waiting for that and asking for it, as I've mentioned before.

There's a hundred and what, twenty-eight countries that have signed on to CITES. A hundred and thirty, maybe. Most of the countries in the world are a party of CITES now. That's not because we threatened to cut off foreign aid or because the UN threatened them in some way. They are signing on to CITES because they want to be part of it.

Just getting to the global situation, we talked today about the Russian Far East. We're involved in a bunch of programs in other places, so I can say that the situation with respect to tigers is bad all over the place. Burma, Thailand, India, some of the other countries that still have a few spotty populations. The situation in the Russian Far East is comparatively good. That's why we talked about it today. We've shown what can happen once you take your money and expertise and focus it and work cooperatively with local government agencies and do the kinds of things that CITES has asked for, with the support of all its members.

In 1994, Conference resolution 9.4 was passed, which called on governments and NGOs and anybody else to get together to try to reduce poaching in range state countries and to reduce consumption. That's what John Sellers probably would have talked about today, had he come, because he's been leading a mission to go around and see how well everybody has been doing in response to that. I was at the conference. The Indians and other range state countries put that resolution together. It wasn't the United States. It wasn't Europe. It wasn't these other places. We all supported it and we're happy to see them do that. NGOs subsequently have gotten more involved, and money from the Rhino Tiger Fund and other sources like the National Fish & Wildlife Foundation have flowed into those cooperative efforts, some of which are working better than others.

And I would also say, just to remind you, tiger conservation benefits wildlife conservation in general. We don't have tigers in the United States, but it benefits us and the countries we're working with and bio-diversity globally to talk about tigers and put together plans that protect tigers. They are a flagship species. It's hard to go in and put together a plan that focuses on everything. Practically speaking, if you go in and you know you've got habitat in which there are tigers, and you focus your activities around that, and make use of the fact that people seem to love tigers, and generate income for that program, it's going to benefit that habitat, the bears, the bore, plants that are growing in that area as well. But it also gives us an opportunity in the United States, Japan, Russia, China, this upcoming conference with respect to rhinos in Africa, the countries that have been involved there, to figure out how do we cut down on illegal cross-boarder trade. We start by focusing on tiger bone because we've got data. But those guys who are trading tiger bone, as I mentioned at the beginning, they are trading musk gland, bear gall-bladder, they're also probably linked with guys who are trading Korean [unclear], which is an appendix 1 species, off to Korea from the Russian Far East. So it's useful, it's very important to be talking about tigers. I'm glad that you've made it part of your agenda today, because it's something you can wrap your hands and minds around, and you can feed off of.

A couple of other things, and then I'll turn it back. Globally, again, there is a lot of consumption reduction work going on. Karen alluded to something we're working on, something called the Global Conservation Awareness program. There's other government agencies. Singapore and Malaysia are definitely involved in this - leaders in the region, actually - in working with corporations and NGOs. We're coordinating the global efforts right now in which we're taking professional advertising firms - J. Walter Thompson, Hill &

Nolton, you might have heard of some of these that have offices regionally – and we’ve created focus groups aimed at people who eat tiger bone and buy tiger skins, who eat bear gall bladder, turtle shell, elephant ivory. Why do they buy do it? What might turn them off? Or, at the very least, what might turn off potential consumers from following that same pattern? And who are they listening to? What are the right buttons to push, etc. We’ve put all that together and we’ve figured out that you’ve got to have people like Jackie Chan in Asia, like Michelle Yow in certain other countries, popular in Singapore. Or local celebrities who we’ve never heard of. We’re running local language, local TV public service announcement spots, newspaper ads, all sorts of activities. Getting government agencies involved. The Singapore government signed on. The Malaysian government has signed on. The Russian government, I think, is going to get involved pretty soon. We’re working on the Chinese currently.

I think there’s a real chance for tigers. I don’t think they are on the edge of extinction, I would agree with Cory on that. But, geeze, if the appendix 1 balloon goes up, you’re in trouble. And it’s also an indicator that the ecosystem surrounding that animal is in trouble as well. We’re late. We can’t sit here and talk about speed limits in Montana. We’ve got to talk about how to utilize the legal expertise and financial resources in this country to catch up with these realities.

Meacham’s response:

Keeping in mind once again that the level of my respect is high enough that I would encourage you to listen to everything Steve has to say, I do want to cover a couple of points of fact in response and hope that I would be able at least to climb out of the pit of being referred to as absurd. So these are my replies, for what they are worth. And please keep in mind, ‘Who the hell are you, Mr. Meacham?’ And, ‘Who the hell are you Mr. Galster,’ by the way. It’s only fair.

To the degree that we can talk about human rights overseas versus tiger rights, that’s because we’re humans and they’re humans. So I agree with you that anywhere there is a human rights violation we have a simpatico with that that does not translate to being a range for tigers and not being a range country for tigers.

Then, it’s unfortunate that you missed this morning’s presentation, Steve, because you’ve kind of stuck your foot in it, here. There was a beautiful discussion about how Singapore became a signatory of CITES because America forced it to, through threats. So I disagree. Not everybody joins CITES because they have a warm and fuzzy feeling about the philosophy behind it. There are myriad reasons. Many do, but not all do.

CITES is not about trade, and to the degree that we remain focused on CITES being about trade, the animals are doomed. The reason CITES was put in place, and the history of CITES, speaks to the concern for, yes, the convention on international trade in endangered species of flora and fauna. It’s not trade period. It’s trade in endangered species. Those, I would put forth, are the effective words.

When we talk about tigers as a flagship species, yes, they are a flagship species, and Steve mentioned how when you benefit the tiger you benefit the boar, the pig, etc., etc. Well, what about the humans? There are a lot of humans who want tigers to go extinct in their neighborhood. They want them out so they can graze their cattle in there, so they can plunder their forest – forest that is theirs. It’s not ours, it’s theirs. So, are tigers a flagship for humans too? An argument could be made that they are, and frankly I agree with that. Yes. I like the analogy of the balloon. As I said, it’s not an either-or argument, it’s a both-neither argument. But it

is a both argument.

Finally, the people who are eating tiger bone. The words were said, ‘How can we target them? How can we change their minds?’ Why should we change their minds? What right do we have to change their minds? Now, we might have a valid reason to change their minds, but not just because we want to, and not just because we can. We have to figure out what the greatest good for the greatest number will be, and what does that number comprise? Humans only? I don’t think so. Tigers only? I don’t think so. Everybody.

Question from an audience member:

Steve and Karen, if you could respond to Cory’s analysis that tiger farming would alleviate all the ills that you’re talking about. Secondly, there seems to be some controversy whether those who trade in endangered species are also involved in things such as guns and drugs, and the implications that would have for law enforcement strategies, and whether or not that was your experience in Russia.

Mr. Galster’s response:

Okay, tiger farming first. It’s been tried and it’s failed. I can talk about that a little bit, but I don’t see why we should try something again that has failed. There have been tiger farms in Thailand and China particularly, and they have been proven, documented by CITES infractions reports, by NGOs investigators, that they were used to launder tigers from the wild, processed and sold into the illegal market. The whole question is this: If you were to have tiger farming, and to sell tiger bone products, and possibly use the money for tiger conservation, if that’s even part of the equation, how do you know that the tiger bone came from the farm, or if it came from the farm that the tiger wasn’t taken from the wild, or from a zoo, etc. This is something that CITES unanimously condemned. It isn’t just us talking here. There wasn’t even a question. The only area in which CITES was discussing this type of wildlife trade utilization right now is elephant ivory. There’s been some discussion about rhino horn, but that has been put off because they felt the numbers were too low and therefore too risky a venture. Tiger numbers were arguably lower. Actually rhinos and tigers are both equally at risk right now, given their low populations. A very risky venture. I can get into that if you’ve got follow-up questions. But it’s been tried and it has failed.

Meacham’s response:

I do not believe that tiger farming would, as I think I heard you say, fix all of the problems, by any means. Tiger farming is a Penelope’s web that unravels as fast at the bottom as it is woven at the top. Yes, CITES has condemned tiger farming, but let’s get a little more altitude. CITES is not the end-all be-all. There are people in China who are eager, willing, ready, waiting, with statistics and cash in hand, to open and start tiger farms. Now, I don’t think it’s a good idea, based on specifically the individuals I’ve talked about. Their motivations, goals, and processes are not sound, and their philosophies are bad too. The difference, I think, between Steve and I on tiger farming, I believe, if I might speak for him or interpret what he’s just said, Steve’s convinced that tiger farming does not work and does not have value in conservation. I simply remain unconvinced of that, but I might eventually be.

The Pan-European Example: The Convention on the Conservation of European Wildlife and Natural Habitats

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1. WHAT IS THE BERN CONVENTION?

1.1 Objectives and obligations

1.2 Institutional Framework and individual actors involved

- a) The Standing Committee and its Bureau
- b) Groups of experts
- c) The Secretariat
- d) Non-governmental organisations

2. ASSESSING THE EFFECTIVENESS OF THE BERN CONVENTION

2.1 “*In abstracto*”: the reporting system

- a) General reports
- b) Special reports

2.2 “*In concreto*”

- a) The case file procedure
- b) On the spot appraisals

3. LOOKING TO THE FUTURE

3.1 An evolving international context

3.2 From international co-operation to local implementation

3.3 Integration into other policies

The Bern Convention originated from a 1973 Recommendation of the Consultative Assembly of the Council of Europe recommending that the Committee of Ministers “define a coherent policy for the protection of wildlife, with a view to establishing European regulations –if possible by means of convention- and involving severe restrictions on hunting, shooting, capture of animals needing protection, fishing and egg-collection, and the prohibition of bird netting”.

After negotiations, the Convention on the Conservation of European Wildlife and Natural Habitats was opened for signature at the 3rd European Ministerial Conference on the Environment, in Bern (Switzerland) on 19 September 1979.

The Convention came into force on 1st June 1982. At the first meeting of the Standing Committee, in 1982, only nine states and the European Community were contracting Parties to the Convention. Now the Convention covers almost the whole European continent with forty contracting parties¹ including thirty five Member States of the Council of Europe, the European Community, Monaco, and three African States (Burkina Faso, Senegal, and Tunisia).

1. WHAT IS THE BERN CONVENTION?

1.1 Objectives and obligations

The aims of the Convention are to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation between several States, and to promote co-operation to that effect. The Convention places a particular emphasis on endangered and vulnerable species, including endangered and vulnerable migratory species, and habitats protection.

In its introduction the Convention recognises that wild flora and fauna constitute a natural heritage of aesthetic, cultural, recreational, economic and intrinsic value, which need to be preserved and handed on to future generations. However, numerous species of wild flora and fauna are being seriously depleted and some of them are threatened with extinction.

In a first Chapter, the Convention provides for a series of general obligations binding Contracting Parties to remedy this situation or to reverse the trends leading to the reduction of biodiversity. In Chapters II, III, and IV, the Convention specifies the legislative and administrative measures that contracting Parties must take to ensure the conservation of habitats and species. Chapter V concerns a number of supplementary obligations for the Contracting Parties with regard to inter-state co-operation, research and reintroduction of species. Chapter VI, VII, VIII and IX contain operational provisions.

Species are listed in three appendices: Strictly protected flora species (Appendix I); Strictly protected fauna species (Appendix II); Protected fauna species (Appendix III). A fourth appendix lists the prohibited means and methods of killing, capture and other forms of exploitation.

The different types of obligations can be classified according to the type of the provisions, with some essentially general or political in nature, and others more specific.

Some articles of the Convention contain more general provisions, setting some goals and leaving it up to the Contracting parties to take the appropriate measures to reach these objectives. Most of the obligations under Articles 1, 2, 3 10 and 11 of the Convention are binding upon the Contracting Parties as to the results to be attained while allowing them a choice of the means to be used for that purpose.

Some other articles such as articles 4, 5, 6, 7 and 8 are more specific, requiring that the Contracting parties take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild flora and fauna species specified in the appendices and the conservation of their habitats.

The provisions of these articles are “non self-executing” and the Contracting parties have to integrate them in the provisions of the national legislation or in the administrative acts. For these articles, national legislation is necessarily required to implement the convention obligations.

Thus, assessing the effectiveness of these articles will consist first of checking that the Contracting party has adopted relevant legislation, covering all the provisions of these articles. This first step of the assessment could be called control “*in abstracto*”. The second step, which is more ambitious will consist of the evaluation of the implementation and respect of these provisions in relation to specific cases. It could be qualified of control “*in concreto*”.

1.2 The institutional framework and the individual actors involved

The institutional framework of the Bern Convention is composed of the Standing Committee and its Bureau, the Groups of Experts and the Secretariat. In addition, non-governmental organisations (“NGOs”) play a key role in the follow up of the application of the Convention.

a) The Standing Committee and its Bureau (Articles 14-15)

The Standing Committee meets once a year and brings together representatives of the Contracting Parties and the observers. National and international non-governmental organisations and agencies can also be represented at the Standing Committee under conditions dealt with under article 13. The Standing Committee is responsible for following the application of the Convention.

Since its inception seventeen years ago, the institutional framework of the Bern Convention has been progressively strengthened. At its 10th meeting, in 1992, the Standing Committee decided to create a Bureau responsible for taking administrative and organisational decisions between meetings of the Standing Committee. Its members are the Chairman, the vice-Chairman and the previous Chairman. The Bureau meets usually twice a year.

The Standing Committee has a general responsibility in following the application of the Convention, and to this aim, it can make recommendations to the Contracting parties concerning measures to be taken for the purposes of the Convention and put forward proposal to improve the effectiveness of the Convention.

Applying these competencies, the Standing Committee adopts recommendations and resolutions. In nineteen meetings, the Standing Committee adopted seventy-one recommendations and six resolutions. Most recommendations are adopted in accordance with the current work programme, e.g. as an outcome of ex-

perts groups meetings or seminars (general recommendations), or subsequent to the examination of the case files placed on the agenda of the Standing Committee meetings (specific recommendations). For instance, at its last meeting, in December 1998, the Standing Committee adopted recommendations on the conservation of *Maculinea* butterflies, on the conservation status of some nesting beaches for marine turtles in Turkey, on the conservation of heathlands in Dorset (United Kingdom), on the protection of the common hamster (*Cricetus cricetus*) in Alsace (France), on the protection of the Badger (*Meles meles*) in the United Kingdom and two Resolutions concerning the setting of the Emerald Network of areas of special conservation interest.

Recommendations are transmitted to the Contracting States for further action and are of public nature. The recommendations constitute essential means of giving substance to the provisions of the Convention and may even constitute, in time, international customary law. In any case, their definite political impact and high ethical value make them crucially important. They also provide the NGOs with a basis for further initiatives and actions.

The Bern Convention, as a regional treaty, benefits from the fact that Member States form a relatively homogeneous group. This facilitates the reaching of consensus when taking decisions, adopting recommendations, and monitoring the application of the Convention by the different Parties in a constructive way. In this way, the Bern Convention provides a dynamic framework for international co-operation for the conservation of wildlife and natural habitats throughout Europe.

b) Groups of experts

Article 14 provides that “in order to discharge its functions, the Standing Committee may, on its own initiative, arrange for meetings of group of experts”.

The composition of a group of experts will depend on the subject of discussion. Meetings are called on a regular or *ad hoc* basis, as appears necessary. Subjects of past and future meetings include the conservation of plants, the protection of invertebrates, the marine turtles, the protection of amphibians and reptiles, the conservation of birds, the legal aspects of introduction and re-introduction of wild species, the large carnivores. With regard to habitat protection, a group of experts for the Emerald Network of areas of special conservation interest has been set up in 1996.

c) The Secretariat

The Secretariat for the Convention is provided by the Council of Europe. The Convention does not make any specific reference to its task but its role is essential for the follow up of the Convention. The Secretariat monitors the implementation of the Convention in accordance with the programme of activities drawn up by the Standing Committee. It is also instrumental in the conduct of all activities implemented under the Convention, in particular following up “complaints” addressed to it by voluntary organisation or citizens.

d) Non-governmental organisations

Non-governmental organisations attend meetings of the Standing Committee of the Bern Convention in an observer capacity, under Article 13 of the convention.

The NGOs have proved to be a valuable source of information for the Bern Convention secretariat and they often act as prime movers in specific protection or monitoring operations. They may also be invited to participate in groups of experts, where they contribute with their own particular brand of expertise.

This permanent institutional structure facilitates the establishment of strong relations between the different bodies of the Convention and the NGOs, and allow a real continuity following-up of the application of the Convention.

2. ASSESSING THE EFFECTIVENESS OF THE BERN CONVENTION

Seventeen years after the Convention entered into force, an assessment of its achievements is a valuable exercise, providing us with useful lessons. The Bern Convention is well equipped with the necessary tools for effectively monitoring its application. These constitute either explicit stipulations of the Convention or later developments meeting a given need. They can be presented under two aspects, whether the control consist of reporting system, which could be qualified as control “*in abstracto*”; or whether it allows deeper and more concrete monitoring related to a specific case which could be qualified of control “*in concreto*”. The degree of possible control will also vary depending on the provisions at stake.

2.1 “*In abstracto*”: the reporting system

The Convention provides only for specific reports on those exceptions made under Article 9. However the actual reporting system is more comprehensive with general reports made on a voluntary basis, and with specific reports to follow-up the application of the recommendations or for the work of the groups of experts.

a) General reports

On the basis of its competency to make any proposal for improving the effectiveness of the Convention, the Standing Committee introduced a general reporting system for the Bern Convention in 1992.

There are two types of general reports: “introductory” reports by the new Contracting Parties and four-yearly reports on the application of the Convention by the Contracting Parties in their own territories.

b) Special reports

Article 9 requires contracting Parties to report every two years to the Standing Committee on the exceptions made in respect of provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8.

These reports contain precise information on the population subject to the exceptions made according to Article 9, the conditions and circumstances, the responsible authorities and the control applied.

An important aspect of the reporting system is the access it provides to the reports, in particular for the NGO's and local people concerned with nature conservation. The World Wide Web now provides us with an easy tool to do this and we have to take advantage of it.

2.2 “*In concreto*”: “case-files” and on-the-spot appraisals

The Standing Committee reviews the practical implementation of the Convention by examining case files and by organising “on-the-spot” appraisals.

a) Case files

The Bern Convention has given rise to a special kind of supervisory practice and procedure based on the examination of “case-files”. The Standing Committee approved the principle of this method in 1984. The proposal to define this practice having been agreed, a procedure was decided upon then adopted provisionally at the 13th meeting of the Standing Committee in 1993.

The Standing Committee, its Chairman or the Secretariat occasionally receive letters of complaint which are sent in by individuals or non-governmental organisation stating grievances and detailing the failure of one or more Contracting Parties to comply with one or more provisions of the Convention.

Taking all available facts into consideration, the Secretariat refers the complaint to the Contracting Party for information and possibly for further details. Contracting Parties are invited to answer to the Secretariat within a period of three months to allow the requisite investigations. In the light of the information thereby obtained, the Secretariat decides, subject to the approval of the Bureau, whether the case should be placed on the agenda of the Standing Committee's next meeting.

The “complainant” Contracting Party or observer on the Standing Committee, or the Secretariat, then puts the case to the Standing Committee and presents a draft recommendation if appropriate. A draft recommendation submitted by an observer must have the support of at least one delegation in order to be accepted for discussion. The standing Committee discusses the matter and can decide whether or not there are grounds for opening a case-file. It may decide to adopt a recommendation. The Standing Committee has unfettered discretion regarding the procedure to be followed in cases where a file is opened, and may decide to close a case-file. However, the principle of voting by majority is not normally applied as decisions are taken by consensus. This unity of opinion is of special significance, in that it reflects the process through which problems arising in connection with the Bern Convention are frequently solved.

In 1998, 22 cases were submitted to the Standing Committee, among which 9 were for information, 9 were possible new files, and 4 were case files followed up since the previous years. Among the current case files are for example the conservation of Laganas Bay in Greece which is the most important Mediterranean breeding area for the threatened species of sea turtle *Caretta caretta*, the conservation of the White-headed duck (*Oxyura leucocephala*) a European endemic threatened by the non-native Ruddy-duck with which it hybridises, or the conservation of the European hamster in Alsace (France).

b) On the spot appraisal

The Rules of procedure of the Standing Committee provide that “if during discussions on one or more proposals, any doubts and/or difficulties arise regarding the measure to be taken for the implementation of the Convention with regard to a natural habitat essential to the conservation of species, and if it is necessary to obtain appropriate information, the Committee may, if the gravity of the situation so demands, decide that the natural habitat in question should be inspected by an expert instructed to make an on-the-spot appraisal and report back to the Standing Committee”. This decision is subject to the agreement of the Party where the appraisal is to take place.

On the spot appraisals have been carried out to date inter alia at Laganas Bay (Greece) to assess the threat to this important Mediterranean nesting beach of the marine turtle (*Carreta carreta*), in the Grünwald Forest (Luxembourg) to assess the impact of the construction of a road; in Dorset (UK) to draw up measures for the conservation of heathland areas.

This scheme provides the Standing Committee with a relatively comprehensive set of tools to be informed on the application of the Convention, and adopt the relevant decisions to try to reinforce its effectiveness.

However, in practice, it is difficult to assess the exact degree of influence of the Convention in the modification of a project or the adoption of new regulations since in many cases, it will be the convergent action of NGOs, international pressure and/or a deep felt sense of duty to comply with international law that will influence the national authorities to introduce the measures requested.

3. LOOKING TO THE FUTURE

3.1 An evolving international context

The Bern Convention proved to be an important tool for the conservation of European Wildlife, providing a dynamic framework for international co-operation, with the necessary flexibility to improve and adapt to new or progressing standards and concepts for wildlife protection. However, the Convention increasingly needs to be viewed within an evolving international context. As one of the pioneer treaties for wildlife protection, it now has to act as a regional treaty capable of co-ordinating the implementation in Europe of many of the provisions contained in the Rio Convention. The methods of carrying out this new task will determine the extent of possible co-operation and synergies between the different international instruments.

3.2 From international co-operation to local implementation

International co-operation in the protection of wildlife has proved invaluable, in particular for migratory species and for the management of transfrontier populations or areas such as marine habitats or mountainous regions. However, international provisions and standards need to be reflected and implemented at a national level.

As part of the process of decentralisation and regionalisation, local and regional authorities have gained important mandates in the field of environmental protection. The discrepancy between the national authorities, who represent the state under the Convention, and the regional authorities who often have to take the effective steps to implement recommendations of the Standing Committee, gives rise to an “implementation gap”. In assessing the effectiveness of international wildlife treaties, the evolution of the repartition of responsibilities has to be taken into account². International co-operation and activities accompanying the Convention should also cover the role of the legal system, of parliaments, local and executive authorities.

NGO’s, especially those with a strong local or regional presence, should be better informed on the legislative and procedural means at their disposal for taking action. In this way the NGO’s can help to overcome this “implementation gap” which exists between international standards and local situations. The case-file procedure is an example of the possible effective application of the Convention even at a national or local level.

3.3 Integration into other policies

Article 3 paragraph 2 of the Convention provides that “each Contracting Party undertakes, in its planning and development policies and in its measures against pollution, to have regard to the conservation of wild flora and fauna”. This provision refers to the concept of integration of nature protection concerns into different policies. To this aim, it is essential to stress the importance of developing plurydisciplinary teams, taking into account the requirements for nature protection but also the socio-economic constraints.

In the framework of the Bern Convention, it would be interesting to think further on the concept of potentially damaging process. This concept appears under Articles 7 c and 8, paragraph 1 of the Convention on Biological Diversity. The Contracting Parties are required as far as possible and as appropriate to identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, to monitor their effects and to regulate or manage such processes³

The opinions expressed in this article are those of the author and do not necessarily reflect the views of the Council of Europe.

NOTES

1 Albania, Austria, Belgium, Bulgaria, Burkina Faso, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Senegal, Slovakia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Tunisia, Turkey, Ukraine, United Kingdom, European Community. <<http://www.coe.fr/tablconv/104t.htm>>

2 See E. Brown-Weiss, *The changing Structure of International Law* (Mélanges Alexandre Kiss, ed Frison-Roche, 1998), p 4.

3 See Cyrille de Klemm, *The application of the Bern Convention and its monitoring, and the need to take account of the processes which undermine biological diversity*, in Symposium on the United Nations Conference on Environment and Development, the Convention on Biological Diversity and the Bern Convention: the next steps, Monaco, 26-28 September 1994, Environmental Encounters, No22, Council of Europe 1996.

Bern Convention on the Web

<http://www.coe.fr/eng/act-e/eenviro.htm>

<http://www.nature.coe.int>

Regional NGO Diplomacy In Biodiversity Conservation

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1. International Regimes:

- Early definition: A set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments accepted by a group of states (Ruggie 1975). Note focus on “states.”
- Current commonly accepted definition: A set of implicit or explicit principles, norms, rules, and decision-making procedures around which actor’s expectations converge in a given area of international relations (Krasner 1983). Allows for NGOs, but still state-centered.

2. What is the role of NGOs in state-centered regimes? Example: NGOs as integral to CITES:

- IUCN was integral in formulating and advocating governments through conferences (1961 Arusha and 1963 Nairobi conferences) and several drafts of the convention (from 1964-71). IUCN was designated as CITES Secretariat.
- WWF and many other NGOs have been important advocates throughout the history of CITES.
- TRAFFIC (IUCN & WWF) has been important in implementation of CITES.

3. Can regimes be NGO-centered/Civil Society based? Partly a semantic question. Two examples of “NGO-centered” transboundary “regimes”:

- International Sonoran Desert Alliance
- Yellowstone to Yukon Conservation Initiative

4. ISDA

- What is biological significance/biodiversity value of desert?
 - Traditional view: wasteland. Evolution of thought: society has slowly come to realize the value of deserts. John C. Van Dyke as the “John Muir” of deserts.
 - Gary Paul Nabhan (1989): “The dry tropics, not the rainforests or the dune-covered true deserts, are thus the most probable wellspring of seed agriculture in the Americas. That is why the draining of plant gene pools in drought-deciduous tropical forest and thornscrub is so tragic....While [conservationists] may be correct in calling the tropical rainforest *the* primary source of medicines on the earth, it can be argued that the floras of drier areas have just as generously served as the founding gene pools of most food crops.”
- The Sonoran Desert is known as the largest primarily intact arid ecosystem in the world. However,

land ownership and management is complex; lands in the Sonoran Desert include:

- Yuma Proving Grounds
 - Kofa National Wildlife Refuge (NWR)
 - Barry M. Goldwater Air Force Range
 - Cabeza Prieta NWR
 - Organ Pipe Cactus National Monument (ORPI)
 - Over 1 million acres of designated wilderness in CPNWR & ORPI
 - Tohono O’odham Indian Reservation
 - Pinacate & Colorado Delta Biosphere Reserve (formally designated in 1993)
-
- *Origins of ISDA*: Group of local people had been considering a tri-national (United States, Mexico, and the Native American Tohono O’odham Nation) program since 1988. A conference on land use in the Western Sonoran Desert took place in town of Ajo in 1992. Participants included NGOs, county officials, chamber of commerce representatives, and Native Americans organizations. Concerns included NAFTA (which had just been signed), the concept of an “International Park” and its effect on Tohono O’odham, and concerns over biodiversity conservation (such as the endangered Sonoran Pronghorn). These and other concerns led, through several permutations, to the formation of ISDA.
 - *Central question for ISDA*: How can people protect and conserve resources as well as allow communities in the area prosper? Particularly hard question in trinational context.
 - *ISDA Premise*: Natural resources problems in the area are best addressed regionally.
 - *ISDA Mission*: To encourage a positive relationship between the Sonoran Desert and its inhabitants, and to coordinate with all regional stakeholders to protect the area’s natural, cultural, and biological resources.
 - *ISDA Role*: A model for cooperation between governmental agencies, NGOs, business people, regional experts and residents.
 - *ISDA Legal status*: US non-profit incorporation 1993, Mexico 1995
 - *ISDA Focal Areas*:
 - Community development
 - Economic Development projects
 - Community health projects
 - Conservation
 - International Sonoran Desert Biosphere Cooperative Program
 - Biological & Cultural Resources and Monitoring & Inventory
 - Education
 - Juntos Program (hands on curriculum based on cultural and natural history of Sonoran Desert)
 - Roots-Raices-Ta:tk Youth Group (community cultural and environmental projects)
 - Communications/Information
 - Transboundary dialogue through conferences and meetings
 - International Center on the Border
 - Researchers Network
 - Regional Resource Center (Ajo)

- Regional Communications network
- Regional Profile
- Vista newsletter

5. Yellowstone to Yukon Conservation Initiative (Y2Y)

- Y2Y ecosystem: extends roughly 2000 miles from the Wind River Range in west-central Wyoming to the Peel River at latitude 66 degrees north in the Yukon Territory south of the Arctic Circle
- Important protected areas:
 - Yellowstone in the United States
 - Banff in Canada
 - Prominent peace park: Glacier-Waterton
 - Bob Marshall Wilderness: one of the first wilderness protected areas ever created
- Y2Y is a transnational, cooperative network of nearly 200 organizations, inspired by movements of wildlife, especially large carnivores such as the Grizzly Bear and the Gray Wolf.
- Y2Y *Mission*: to establish an interconnected system of core protected areas and wildlife movement corridors that extends from the Greater Yellowstone Ecosystem to the Yukon's Mackenzie Mountains
- Importance of listserv in addressing problems such as deforestation, mining, oil and gas development, transportation corridors (roads and railroads), tourism/recreation development .
- Problems come down to viewing the landscape in fragments, and thus treating it as fragments.

6. Conclusion

A. Do these networks count as “regimes”?

- A matter of semantics? Fits with Ruggie's definition well - if “states” is replaced with “NGOs.” Also fits with Krasner, depending on how “international” is defined.
- Real question underlying talk of “regimes”; what difference do NGOs make in international diplomacy? No doubt, NGOs have moved beyond the tried and true instruments of state-focused influence and advocacy to direct initiative and independent action. Though results aren't in - these NGO regimes are new - they are poised to be the next breakthrough in cross-border efforts to protect wildlife and conserve natural resources.

B. Communications is the key function in these “network regimes”

- These “network regimes” Allows those work in any particular area fits into - and is crucial to - the broader ecoregional context.
- ISDA: Communications means understanding, primarily cross cultural understanding
- Y2Y: Communications means direct advocacy