

Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment

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In June 1997, the Conference of the Parties to the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹ will hold its tenth regular meeting in Harare, Zimbabwe. After twenty-two years in force, the treaty stands at a crossroads – and in the focus of global debate on the future relationship between trade and environment. The present analysis will attempt to review the past performance of the CITES regime, assess its innovative contributions to international law in the field of sustainable development, and consider its prospects for growth.

I. The Problem of Wildlife Trade: Commodity or Taboo?

The worldwide commercial exchange of wildlife (live animals and plants) and wildlife products (hides and furskins, ivory, timberwood and other derivatives) is big business – valued at between US\$5-50 billion annually.² The predominant direction

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- 1 Signed on 3 March 1973, entry into force on 1 July 1975, amendment of 22 June 1979 (article XI) in force since 13 April 1987; multilingual (unamended) text and Final Act in 1993 *United Nations Treaty Series* (1976), 243-438. Appendices I-III are periodically updated; the current version of Appendices I-II became effective on 16 February 1995, Appendix III on 16 November 1995. The pronunciation of 'CITES' rhymes with 'nighties'.
- 2 G. Hemley (ed.), *International Wildlife Trade: A CITES Sourcebook* (1994); and M.C. Trexler, 'The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Political or Conservation Success?', Ph.D. thesis on file at the University of California, Berkeley, 1990), 9. These estimates do *not* include the world timber trade (about \$40 billion) and international fisheries (about \$12 billion). Nor do they take account of the 'street value' of clandestine wildlife traffic (about \$5 billion according to a 1994 Interpol estimate), where a single hyacinth macaw fetches \$10,000; Grove, 'Wild Cargo: The Business of Smuggling Animals', 159 *National Geographic Magazine* (1981) 287, at 290.

of the trade is South-to-North, mainly driven by consumer demand from affluent developed countries and their profitable fashion and food industries as well as by users of rare animals and plants for medical/pharmaceutical research, exhibition or collection purposes.³ A characteristic feature of the trade is its luxury orientation, in response to consumption patterns often ranging from the non-essential to the perverse.⁴

While exports of wildlife and wildlife products are thus a significant source of foreign currency revenue for a number of countries, especially in the Third World, unsustainable rates of harvesting have led to serious depletion and, in a growing number of cases, exhaustion of the particular resource. Wildlife species are indeed renewable natural resources but, like many 'flow resources', they have a critical level below which a decrease in reproduction capacity becomes virtually irreversible⁵ – even though artificial conservation measures (such as captive breeding in zoological gardens or propagation in botanical centres) may still postpone the moment of biological extinction.⁶ The need to prevent extinction can be justified scientifically as well as economically, but ultimately depends on ethical (anthropocentric or biocentric) value judgements.⁷

Man-made risks to the survival of wild fauna and flora are well documented and monitored, especially in the *Red Data Books* compiled since 1966 by the Species Survival Commission of the World Conservation Union (IUCN).⁸ Commercial exploitation for trade is not, of course, the only cause of wildlife depletion. Destruction of natural habitats is generally recognized as the single most important threat,⁹ followed by the introduction of alien species. Other contributing factors include inad-

- 3 Even within the category of scientific research, the majority of animal and plant imports is for lucrative commercial purposes, such as pre-market testing of drugs, cosmetic products, and so forth; see T. Inskipp and S. Wells, *International Trade in Wildlife* (1979) 32.
- 4 Sand, 'Luxury at Any Cost', 34/35 *Naturopa* (1980) 59.
- 5 S. von Ciriacy-Wantrup, *Resource Conservation: Economics and Policies* (3rd ed., 1968) 39, 256; P.R. Ehrlich and A.H. Ehrlich, *Extinction: The Causes and Consequences of Disappearance of Species* (1981); and Myers, 'The Biodiversity Crisis and the Future of Evolution', 16 *Environmentalist* (1996) 37.
- 6 C. Tudge, *Last Animals at the Zoo: How Mass Extinction Can Be Stopped* (1992).
- 7 N. Myers, *The Sinking Ark: A New Look at the Problem of Disappearing Species* (1979) 18-20; Altner, 'Ethische Begründung des Artenschutzes', 46 *Schriftenreihe des Deutschen Landesrates für Landespflege* (1985) 566; Johnson, 'Toward the Moral Considerability of Species and Ecosystems', 14 *Environmental Ethics* (1992) 145; and B. Dixel, *Internationaler Artenschutz: Neuere Entwicklungen* (1995) 77-79.
- 8 SSC, the former 'Survival Service Commission' (established in 1949) of the International Union for Conservation of Nature and Natural Resources, cooperates with other expert groups, including the International Council for Bird Preservation (ICBP, founded in 1922, now BirdLife International) and the World Conservation Monitoring Centre in Cambridge (WCMC, co-sponsored by UNEP, IUCN and the World Wide Fund for Nature), which operates a specialized Wildlife Trade Monitoring Unit (WTMU) under contract with CITES; see Caldwell, 'WCMC: The CITES Database', 1 *CITES/C&M International Magazine*, 2 (1994) 76-78; World Conservation Monitoring Centre, *Global Biodiversity Status of the Earth's Living Resources* (1992); and the updated tables in World Resources Institute, *World Resources 1996-97* (1996).
- 9 Uetz and Johnson, 'Breaking the Web', 16 *Environment*, 10 (1974) 35 (figure 2); G. Nilsson, *The Endangered Species Handbook* (1983) 20; and World Resources Institute, *World Resources 1994-95* (1994) 320-321 (table 20.3: habitat extent and loss in the 1980s).

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quate methods of harvesting or processing that may render utilization unsustainable.¹⁰ Hence, there is no simple mono-causal link between trade and the conservation status of a species according to its IUCN Red List category ('vulnerable', 'endangered', 'critically endangered').¹¹

By the same token, international approaches to species conservation address a wide range of issues and primarily focus on habitat protection,¹² in spite of the constraints which the 'territorial imperative' (of national sovereignty over most of the world's biological resources)¹³ traditionally imposes on a regulatory regime. Yet trade was readily identified as an issue for which precautionary transnational action is both feasible and necessary – not only to avoid aggravating a multiple-cause ecological problem, but also to prevent a 'free rider' dilemma lest unilateral bans penalize individual importing 'or exporting countries *vis-à-vis* their less scrupulous competitors. Thus, economic concerns for the 'level playing field' in a sizeable world market also played a role in the diplomatic negotiations on a global regime for trade in endangered species.

II. International Response to the Problem

CITES was preceded by two unsuccessful international attempts to regulate wildlife management among colonial powers: the 1900 London Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa which are

- 10 It has been estimated that close to 50% of the 2 million crocodile hides taken from the wild annually are spoiled before they can be converted into luxury leather abroad: King, 'The Wildlife Trade', in US Council on Environmental Quality, *Wildlife and America: Contributions to an Understanding of American Wildlife and its Conservation* (1978). Similarly, as a result of international trade in wild-caught birds (approximately 800,000 imported per year in the United States alone), from 5 to 10 birds die for every one that reaches a pet store alive: van Note, 'Statement on U.S. Enforcement of the Convention on International Trade in Endangered Species', U.S. Congress, House of Representatives, Committee on Merchant Marine and Fisheries (Subcommittee on Oversight and Investigations) 100:2, 14 July 1988, 7.
- 11 Revised IUCN/SSC Red List Categories were adopted by the IUCN Council at its 40th meeting on 30 November 1994; for background see R.S.R. Fitter and M. Fitter (eds.), *The Road to Extinction* (1987).
- 12 Sand, 'Wildlife Protection', in R. Bernhardt (ed.), *Encyclopedia of Public International Law* 9 (1986) 409; A. Schmidt-Räntsch and J. Schmidt-Räntsch, *Leitfaden zum Artenschutzrecht* (1990); M.C. Maffei, *La Protezione Internazionale delle Specie Animali Minacciate* (1992); Liu, 'Contemporary International Law for the Protection of Wild Animals and Plants' (in Chinese), *Chinese Yearbook of International Law* (1992) 380; de Klemm and Shine, 'Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems', *IUCN Environmental Policy and Law Paper*, 29 (1993); T.M. Swanson, *The International Regulation of Extinction* (1994); and P. van Heijnsbergen, *International Legal Protection of Wild Fauna and Flora* (1997).
- 13 See Scelle, 'Obsession du territoire', in F.M. van Asbeck *et al.* (eds.), *Symbolae Verzijl* (1958) 347-361; R. Ardrey, *The Territorial Imperative: A Personal Inquiry into the Animal Origins of Property and Nations* (1966); and N. Schrijver, *Sovereignty Over Natural Resources: Balancing Rights and Duties* (1996).

Useful to Man or Inoffensive,¹⁴ and the 1933 London Convention Relative to the Preservation of Fauna and Flora in their Natural State.¹⁵

Both treaties contained basic elements of a system to deal with the problem of unsustainable exploitation of wildlife, by means of hunting restrictions for threatened species listed in annexes, confiscation of ivory taken illegally, and export licensing for specified wildlife products. Exceptions were provided for scientific collection and for specimens acquired prior to the entry into force of the treaty.¹⁶ Under the 1933 Convention, any imports of listed species required export certificates from a competent authority in the territory of origin.¹⁷ Although still focused on harmonization of local wildlife management rules – motivated by traditional concern for the preservation of colonial big-game hunting grounds and revenues – the regime thus extended its controls to wildlife-importing countries, and already envisaged wildlife identification manuals for customs officers (article 9/5).

While the 1900 Convention never entered into force (for lack of ratification by all signatories, as required under article VIII)¹⁸ and hence did not survive World War I, the 1933 London Convention became applicable to most of Africa. Its import restrictions were subsequently extended by Britain to Aden and India, and by the Netherlands to Indonesia.¹⁹ Yet the treaty failed to provide for decision-making institutions and secretariat services. Consequently, proposals for implementation and adjustment formulated during two technical follow-up meetings (held in London in 1938 and at Bukavu in 1953)²⁰ were unsuccessful and were eventually overtaken by the political events of decolonization. The 1933 Convention's provisions on export/import controls became the model for similar provisions in two regional treaties – the 1940 Washington Convention on Nature Protection and Wild Life Preservation

14 Signed on 19 May 1900 on behalf of Great Britain, Germany, Spain, Belgian Congo, France, Italy and Portugal; French text in B. Rüster and B. Simma (eds.), 4, *International Protection of the Environment: Treaties and Related Documents*, (1975) 1605-1614, and in C. Parry (ed.), 188 *Consolidated Treaty Series* (1979) 418-425. The London Conference had been convened at the initiative of the British and German governments; see I. Parker and M. Amin, *Ivory Crisis* (1983) 123-124; and Maffei, 'Evolving Trends in the International Protection of Species', 36 *German Yearbook of International Law* (1993) 131.

15 Signed on 8 November 1933 on behalf of South Africa, Belgium, Great Britain, Egypt, Spain, France, Italy, Portugal and the Anglo-Egyptian Sudan; entry into force on 14 January 1936; text in 172 *League of Nations Treaty Series* (1936) 241-272.

16 Articles II(11) and III of the 1900 Convention.

17 Article 9, which provided for special identification marks in the case of ivory and rhino horn, but generally applied to all 'trophies', broadly defined as any animal, dead or alive, and anything part of or produced from any such animal. The need for instruction of Customs officers was specifically mentioned.

18 Hayden, 'The International Protection of Wild Life: An Examination of Treaties and Other Agreements for the Preservation of Birds and Mammals', *Columbia University Studies in History, Economics and Public Law*, 491 (1942) 37.

19 Under article 13(2); Hayden *supra* note 18, at 59.

20 de Klemm, 'Conservation et Aménagement du Milieu: Aspects Juridiques et Institutionnels Internationaux', *IUCN Publications New Series: Supplemental Paper*, 19 (1969) 28-29. The two meetings were held pursuant to a protocol to the 1933 Convention, which however made no provision for bringing amendments into force; text in 172 *League of Nations Treaty Series* (1936) 270.

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in the Western Hemisphere²¹ and the 1968 Algiers African Convention on the Conservation of Nature and Natural Resources.²² However, these were never given any practical effect by the two regional organizations concerned, the Organization of American States (OAS) and the Organization of African Unity (OAU).

Meanwhile, however, the issue had been taken up by national legislators. In the United States, the Lacey Act of 25 May 1900, which prohibited interstate commerce in illegally taken wildlife, was extended in 1935 to wildlife imported from abroad.²³ Pursuant to the 1930 Tariff Act, imports of birds, mammals and their derivative parts or products into the United States required a certificate of legal acquisition from the US consulate in the country of export.²⁴ After a number of further amendments, the Endangered Species Conservation Act of 5 December 1969 authorized the US Department of the Interior to promulgate a list of wildlife 'threatened with worldwide extinction', imports of which were prohibited except for scientific or breeding purposes.²⁵ At the same time, in response to public lamentations about competitive disadvantages by the American fur and leather industries and the pet trade,²⁶ the US government was directed to encourage the enactment of similar laws by other countries and to 'seek the convening of an international ministerial meeting' to conclude 'a binding international convention on the conservation of endangered species'.²⁷

The initiative coincided with preparations for the UN Conference on the Human Environment²⁸ and with ongoing work in the IUCN, whose 1963 General Assembly in Nairobi had called for an 'international convention on regulation of export, transit and import of rare or threatened wildlife species or their skins and tro-

21 Signed on 12 October 1940, entry into force on 1 May 1942; text in 161 *United Nations Treaty Series* (1953) 193-216; see article IX.

22 Signed on 15 September 1968, entry into force on 16 June 1969; text in 1001 *United Nations Treaty Series* (1976) 3-28; see article IX.

23 31 *U.S. Statutes* 187, as amended on 15 June 1935; M.J. Bean, *The Evolution of National Wildlife Law* (2nd ed., 1983) 111-115.

24 Section 527, 19 *U.S. Code* 1527(a); Bean, *supra* note 23, at 115-118.

25 Public Law No. 91-135, 83 *U.S. Statutes* 275, entry into force on 3 June 1970; superseded by a comprehensive new Endangered Species Act (ESA, Public Law No. 93-205, 87 *U.S. Statutes* 884) after the adoption of CITES in 1973. See Smith, Moote and Schwalbe, 'The Endangered Species Act at Twenty: An Analytical Survey of Federal Endangered Species Protection', 33 *Natural Resources Journal* (1993) 1027; and Balistrieri, 'CITES, the ESA and International Trade', 8 *Natural Resources and Environment* (1993) 33-35. A similar list, though for live animals only, had already been introduced in the United Kingdom by the Animals (Restriction of Importation) Act of 17 July 1964.

26 'Hearings on Endangered Species', U.S. Congress, House of Representatives Committee on Merchant Marine and Fisheries (Subcommittee on Fisheries and Wildlife Conservation), 19-20 February 1969, *Serial 91-2*, 117, 166, 188; and Senate Committee on Commerce (Subcommittee on Energy, Natural Resources and the Environment), 14-15 May 1969, *Serial 91-10*, 181.

27 Public Law No. 91-135 (1969), section 5(a) and (b).

28 As CITES negotiations were not completed in time for the Stockholm Conference in June 1972 (mainly because of diplomatic problems relating to the representation of China), Recommendation 99 of the Stockholm Action Plan called for 'a plenipotentiary conference to be convened as soon as possible, under appropriate governmental or intergovernmental auspices, to prepare and adopt a convention on export, import and transit of certain species of wild animals and wild plants'.

phies'.²⁹ Successive drafts prepared and circulated by the IUCN Environmental Law Centre in Bonn³⁰ were revised in 1969 and 1971 in light of comments received from thirty-nine governments and eighteen non-governmental organizations.³¹ The IUCN drafts started from the premise that wildlife trade was to be controlled or banned on the basis of global lists of threatened species. These would be drawn up and updated (along *Red Data Book* lines) upon advice by an international expert committee. Opposition to this approach came from developing countries, led by Kenya, which insisted on the right of each range state to determine its own list of tradeable species.³² This view found support in the United States (which was also a commercial exporter for products such as bobcat furs and alligator hides, and which found the Kenyan approach compatible with its Lacey Act). Ultimately, both approaches were consolidated in a 1972 US draft that served as the working document for the conference of eighty plenipotentiaries, held at the Pentagon from 12 February to 3 March 1973.³³ By coincidence, one of the largest cases of illegal wildlife imports in New York – with ramifications to major European fur traders and multiple suppliers in Asia, Africa and Latin America³⁴ – was discovered and prosecuted immediately prior to the conference, thereby adding a large measure of publicity and urgency.

The outcome of the Washington Conference was CITES, a Convention with 25 articles and four appendices. Hailed by conservationists as the 'Magna Charta for Wildlife',³⁵ CITES was both a 'conservation *and* trade instrument'³⁶ to protect wild fauna and flora both for humankind ('present and future generations') *and* as national heritage (of 'peoples and States'). It institutionalized the core idea of the 1933 London Convention, by subjecting all wildlife imports – including trade with third

29 IUCN, *Proceedings of the 8th Session of the General Assembly* (1963) 130; earlier resolutions had since 1951 already aimed at prohibiting the importation of endangered species, see International Union for the Protection of Nature (IUPN), *Proceedings of the 3rd Session of the General Assembly* (1952) 24.

30 Directed by W. E. Burhenne, who was also the author of the 1963 Nairobi resolution. See Kiss, 'Wolfgang Burhenne at 70: A Tribute', in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in Honour of Wolfgang E. Buchenne* (1994) 1–4.

31 R. Boardman, *International Organization and the Conservation of Nature* (1981) 89; Kowalski, 'Commentary Upon the IUCN Draft Convention on the Export, Import and Transit of Certain Species of Wild Animals and Plants', 21 *Catholic University Law Review* (1972) 665.

32 The counter-proposal, prepared in response to the 1971 IUCN draft by Perez Olindo, Director of Kenya's National Parks, parallels the *national* listing of protected areas under the 1971 Ramsar Convention on Wetlands of International Importance, 996 *United Nations Treaty Series* (1976) 245–268.

33 For historical analysis of the conference and its *travaux préparatoires*, see A. Flachsmann, *Völkerrechtlicher Schutz gefährdeter Tiere und Pflanzen vor übermässiger Ausbeutung durch den internationalen Handel: Washingtoner Artenschutz-Abkommen von 1973* (1977) 83–138.

34 *Ibid.*, at 77 (the *Vesely-Forte* case, resulting in a \$500,000 fine); see Sitwell, 'Stopping the Trade in Endangered Species', *World Wildlife News* (Summer 1973) 3.

35 Layne, 'Eighty Nations Write Magna Charta for Wildlife', 75 *Audubon Magazine*, 3 (1973) 99; and King, 'International Trade and Endangered Species', 14 *International Zoo Yearbook* (1974) 2.

36 Hill, 'The Convention on International Trade in Endangered Species: Fifteen Years Later', 13 *Loyola of Los Angeles International and Comparative Law Journal* (1990) 231, at 245. Hence the treaty is more than a 'protectionist instrument'; A.O. Adede, *International Environmental Law Digest: Instruments for International Responses to Problems of Environment and Development 1972–1992* (1993) 42.

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parties (article X) – to mandatory licensing (article II/4), with permits (a kind of ‘passport’³⁷) to be issued by the exporting countries. Permits are granted in accordance with the common criteria of Appendix IV³⁸ and on the basis of an agreed ‘black list’ (of prohibited species in Appendix I, subject to certain exceptions) and ‘grey list’ (of controlled species in Appendix II). Furthermore, each country of origin may unilaterally add to the lists by entering species in Appendix III, or may notify other countries (through the secretariat) of further national restrictions. All member countries have a duty to enact and enforce the terms of the treaty by national laws, and to provide periodic trade data and reports on enforcement measures (article VIII). As to governance, CITES learned from the negative lessons of the 1933 Convention, and established the biennial Conference of the Parties as an autonomous body for decision-making and periodic treaty adjustment (articles XI and XV). Secretariat functions were entrusted to UNEP, with a formal mandate for assistance by ‘qualified’ non-governmental organizations (article XII).³⁹

III. Evolution of the Regime

A. Institutions

Most of the institutional structure of CITES emerged only after the treaty's entry into force, under the residual decision-making powers of the Conference of the Parties. A total of 190 recommendations adopted in the course of nine ordinary and two extraordinary meetings held since 1976 laid down an entirely new body of rules, which has been streamlined since 1994 in the form of ‘resolutions’, ‘revised resolutions’ and ‘decisions’.⁴⁰ Even though Conference recommendations interpreting and elaborating the text of the Convention are not considered legally binding,⁴¹ they have shaped the CITES regime in a manner barely foreseeable at the time of its creation.

37 Grove, *supra* note 2, at 294.

38 Superseded by the current form annexed to CITES Conference Resolution 9.3 (1994); see W. Wijnstekers, *The Evolution of CITES: A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (4th ed., 1995) 91-104.

39 Text of Washington Conference Resolution in 993 *United Nations Treaty Series* (1976) at 312. The UNEP Executive Director, who attended the conference as observer, provisionally accepted the designation, later confirmed by UNEP Governing Council decision 1/I/VIII of 22 June 1973. UNEP then contracted IUCN to provide secretariat services and facilities (with UNEP funding) until October 1984, when the staff was transferred to UNEP and later relocated to Geneva; Wijnstekers, *supra* note 38, at 222-225.

40 Of the 190 total, 112 were later ‘repealed’, leaving 78 (as revised) applicable today; CITES Secretariat, *Notification to the Parties* No. 872 of 31 August 1995. Until 1985, most of them were adopted by a simple majority of parties present and voting at the meeting, with the exception of financial ones (three-fourths) and amendments of Appendices I or II (two-thirds). Under revised Rules of Procedure adopted at the 1987 Ottawa meeting, only procedural votes are now taken by simple majority, whereas all other non-financial ones require two-thirds; text of the new rules in Wijnstekers, *supra* note 38, at 367-381.

41 G. Bendomir-Kahlo, *CITES: Washingtoner Artenschutz-Uebereinkommen* (1989) 135-158; and generally Werksman, ‘The Conferences of Parties to Environmental Treaties’, in J. Werksman

The first major institutional change was triggered by a financial crisis. In 1978, the UNEP Governing Council decided to phase out its funding for CITES over a four-year 'sunset' period during which the Contracting Parties were expected to take over as direct contributors for all secretariat and conference costs.⁴² In order to meet the legal concerns raised by some countries, a formal amendment of article XI first had to confer financial powers on the Conference of the Parties. A special CITES trust fund was then established under UNEP auspices, with an agreed scale of contributions based on the UN scale.⁴³ As a result, the regime became financially self-supporting (with a current annual budget of about \$5 million),⁴⁴ 'weaning' it from UNEP fund grants and, in the process, empowering it also to seek greater administrative independence. The relationship with UNEP has not been without turbulence. When the UNEP Executive Director replaced the head of the CITES secretariat in 1990, in the wake of the ivory trade crisis,⁴⁵ he ran into open conflict with the Contracting Parties. Although ostensibly settled in 1992 by a special agreement defining UNEP's duties of prior consultation in staff and financial matters, negotiations continue.⁴⁶

The next institutional innovation was the establishment of subsidiary bodies, which operate between meetings of the Conference. The executive Standing Committee was set up in 1979, and four functional committees were given permanent

(ed.), *Greening International Institutions* (1996) 55-68. The French government, in its defence in the *Bolivian Furskins Case* (see *infra* note 162), argued on 3 December 1986 that CITES Conference Resolution 5.2 (1985, see *infra* note 134) 'was only a recommendation without any legal effect'; [1990] ECR I, 4344. In a letter circulated to the 1987 CITES Conference in Ottawa, the Austrian government - in response to the secretariat's Infraction Report (CITES Doc. 6.19, case No. A.1) - stated that Conference resolutions had no legal standing and that interpretation of the Convention was a matter for Austria's internal legislation; on that case see Karno, 'Protection of Endangered Gorillas and Chimpanzees in International Trade: Can CITES Help?', 14 *Hastings International and Comparative Law Review* (1991) 989, at 1006-1009.

42 UNEP Governing Council Decision 6/5/D of 24 May 1978.

43 CITES Conference Resolution 2.1 (1979) adopted at San José, Costa Rica on 30 March 1979, and amendment adopted by a further plenipotentiary meeting in Bonn on 22 June 1979, entry into force on 13 April 1987; Sand, 'Trusts for the Earth: New International Financial Mechanisms for Sustainable Development', in W. Lang (ed.), *Sustainable Development and International Law* (1995) 167, at 173.

44 CITES Conference Resolution 9.2 (1994). In addition, extra-budgetary funding for specific projects is available from voluntary contributions by governments, foundations (such as the US-based *Conservation Treaty Support Fund*) and industry sources, totalling about \$3 million during the 1993-94 biennium (CITES Doc. 9.12); on approval procedures for externally-funded projects see Wijnstekers, *supra* note 38, at 232-236.

45 Following a petition by 28 NGOs (with massive US support) questioning his impartiality in the dispute, the UNEP employment contract of the Secretary-General of CITES was not renewed, and a former Bulgarian ambassador to Nairobi was appointed to replace him; see Favre, 'Trade in Endangered Species', 1 *Yearbook of International Environmental Law* (1990) 195-196, and *Idem*, 'Trade in Endangered Species', 2 *Yearbook of International Environmental Law* (1991) 206. The incumbent (a Canadian lawyer) appealed to the UN administration in New York, and in 1993 obtained damages amounting to one year of salaries, which the UN Appeals Board recommended to be debited to the UNEP Executive Director's own salary account.

46 Text of the agreement (as approved by the 1992 CITES Conference at Kyoto) in Wijnstekers, *supra* note 38, at 226-227. The relationship with UNEP is currently reviewed by a special working group established by the CITES Standing Committee at its 36th meeting (Geneva, 30 January-2 February 1996); terms of reference in CITES Doc. SC.36.6.1/Rev.

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status in 1987 (Animals, Plants, Identification Manuals, and Nomenclature).⁴⁷ A 'Technical Expert Committee' (TEC), which from 1979 onwards had tried to harmonize national implementation, was abolished in 1987,⁴⁸ and later attempts to revive it for enforcement purposes proved unsuccessful. The four functional committees work in cooperation with external scientific bodies – including the IUCN/SSC specialist groups and other NGOs – to provide advisory services to the Conference (especially for the periodic adjustment and long-term review of CITES Appendices I and II by the Animal and Plant Committees, and for the global harmonization of zoological and botanical taxonomies by the Nomenclature Committee).⁴⁹ They also provide guidance for national implementation, including, for instance, the editing of multilingual reference texts, visual aids and training materials for customs officers by the Identification Manual Committee.⁵⁰

Unlike other organizations, such as the International Whaling Commission (IWC), CITES has no central 'Scientific Committee' serving as a formal linkage – or cleavage, as the case may be – between scientific and political decision-making. Attempts to establish such a body subsequently, as part of an ambitious reorganization plan at the 1987 Ottawa Conference, were unsuccessful.⁵¹ As a result perhaps, there have been no manifest internal conflicts along the science/politics divide à la IWC.⁵² The Conference plenary (with its two sessional 'committees of the whole', one for appendix amendments and one for all other matters) has remained the uncontested forum for regime policy, as may be seen, for instance, in the 'precautionary principle vs. sustainable use' debate over criteria for listing and de-

47 Consolidated by CITES Conference Resolution 9.1 (1994), and CITES Secretariat, *Notification to the Parties* No. 853 of 18 April 1995; on the history and current status of committees see Wijnstekers, *supra* note 38, at 345-365.

48 D.S. Favre, *International Trade in Endangered Species: A Guide to CITES* (1989) 276; see also Maruhn, 'Towards a Procedural Law of Compliance Control in International Environmental Relations', 56 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1996) 696, at 714.

49 Nomenclature work programme in Conference Resolution 9.26 (1994). As usual in biological taxonomy, species names in the authentic text of the CITES appendices are given in *Latin* only, which has led at least one commentator to question the appropriateness of enacting them in that language even in the European Union: L. Krämer, *European Environmental Law Casebook* (1993) 215. In cooperation with the World Conservation Monitoring Centre, the CITES Secretariat regularly publishes an 'official' (albeit incomplete) checklist of common species names in English, French and Spanish; see CITES Secretariat, *Notification to the Parties* No. 921 of 20 June 1996.

50 With voluntary funding from governments and external sources, a total of 8 volumes of the manual (approximately 1,500 pages) have been issued since 1980 in English, partly translated into French, Spanish, Russian and German, and adapted to local needs; see Favre, *supra* note 48, at 26-27. E.g., a CITES identification manual for West and Central Africa is being prepared as part of a training project in Gabon funded by the Global Environment Facility (GEF), implemented by UNDP in cooperation with WWF ('Conservation of Biodiversity through Effective Management of Wildlife Trade', GAB/92/G31).

51 Favre, *supra* note 48, at 276-280.

52 See Andresen, 'Science and Politics in the International Management of Whales', 13 *Marine Policy* (1989) 99-117; Birnie, 'International Legal Issues in the Management and Protection of the Whale: A Review of Four Decades of Experience', 29 *Natural Resources Journal* (1989) 903, at 921; and Peterson, 'Whalers, Cetologists, Environmentalists and the International Management of Whaling', 46 *International Organization* (1992) 148, at 165.

listing of species in the CITES appendices.⁵³ One possible reason for the absence of institutional in-fighting at that level may also be found in the decentralization and delegation of day-to-day scientific decisions to national authorities. Pursuant to articles III and IV of the Convention, questions relating to the survival status of any species affected by the licensing process are determined by the national scientific bodies designated by each country under article IX, although the progressive codification of common scientific criteria by the CITES Conference tends to narrow down their margin of discretion.⁵⁴ A significant recent development is the emergence of new regional institutions for implementing the Convention within the European Union. The 'CITES Committee', established by EEC Council Regulation No. 3626/82 of 3 December 1982, has begun to take over from the Union's Member States some of the functions previously exercised by national authorities.⁵⁵ It has been assisted since 1986 by an advisory scientific review group and since 1995 by an enforcement working group.

B. Sanctions

The Standing Committee of the CITES Conference soon became the principal instrument for new methods of collective action against non-compliance, both within and outside the regime. As article XIV(1) allows parties to take stricter domestic measures than those provided by the treaty (including complete prohibitions of trade), the Committee has in a number of cases recommended all parties to apply that article collectively – albeit temporarily – against individual countries found to be in persistent non-compliance. This procedure was used, for instance, in relation to the United Arab Emirates (UAE) in 1985-90; Thailand in 1991-92;⁵⁶ and Italy in 1992-93.⁵⁷ In the case of the UAE, the country withdrew from the Convention in

53 See Kimball, 'Treaty Implementation: Scientific Advice Enters a New Stage', 28 *Studies in Transnational Legal Policy* (1996) 237, at 239; and *infra* notes 95-99 on the saga of the 'Bern criteria'.

54 For a critique of the current decentralized licensing process see de Klemm, 'La Convention de Washington sur le commerce international des espèces sauvages menacées d'extinction', in A.C. Kiss (ed.), *Vers l'application renforcée du droit international de l'environnement* (1997, forthcoming), who advocates establishment of a 'high-level Scientific Committee' for more centralized decision-making by the Conference of the Parties.

55 OJ 1982 L 384/1; see Thomsen and Bräutigam, 'CITES in the European Community: Who Benefits?', 5 *Boston University International Law Journal* (1987) 269; European Commission, *Convention on International Trade in Endangered Species of Wild Fauna and Flora: EC Annual Report 1993* (1996); and *infra* notes 65, 104, 131 and 159-166.

56 CITES Secretariat, *Notifications to the Parties* No. 636 of 22 April 1991 (ban recommended), and No. 673 of 2 April 1992 (ban lifted, following the report of a field inquiry by the secretariat pursuant to article XIII/2 in March 1992). The United States had implemented the recommendation by a unilateral ban on wildlife imports from Thailand on 1 July 1991, 56 *U.S. Federal Register* 32206.

57 CITES Secretariat, *Notifications to the Parties* No. 675 of 30 June 1992 (ban recommended), No. 722 of 19 February 1993 (ban suspended), and No. 842 of 18 April 1995 (ban lifted). Austria, Switzerland and the United States did not implement this recommendation. On the role of the CITES secretariat in the case of the sanctions against Thailand and Italy see Sandford, 'International Environmental Treaty Secretariats: A Case of Neglected Potential?', 16 *Environmental Impact Assessment Review* (1996) 3, at 8. See also the 1985-87 sanctions against Bolivia (*infra* notes 134-135).

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1987, after being targeted by the trade ban. When it re-adhered in 1990, the ban was lifted.⁵⁸ Collective trade embargoes have also been used against states not party to the Convention, after persistent refusal to provide 'comparable documents' pursuant to article X. In the case of El Salvador (1986-87) and Equatorial Guinea (1988-92), the ban was lifted after the countries targeted became parties, thus turning from free riders to 'forced riders'.⁵⁹

In other cases, the same result is reported to have been achieved – partly at least – by unilateral rather than collective action. Soon after the United States under its Lacey Act banned wildlife imports from Singapore on 25 September 1986, citing the country's inability to provide the 'comparable documentation' required under article X of the Convention, Singapore became a party to CITES on 30 November 1986.⁶⁰ After the CITES Standing Committee on 9 September 1993 recommended stricter domestic measures ('up to and including prohibitions of trade now') against China and Taiwan, the United States imposed unilateral trade sanctions against Taiwan under the Pelly Amendment,⁶¹ with effect from 19 August 1994.⁶² Taiwan – which cannot legally accede to CITES in view of China's membership – amended its Wildlife Conservation Act on 27 October 1994 along CITES lines, and the US embargo was lifted on 30 June 1995.⁶³ Japan's withdrawal of its CITES reservations concerning marine turtles in August 1994 has also been credited to the threat of American trade sanctions. What is certain is that 'pressures from abroad' – known as *gaiatsu* in Japanese – played a decisive role in that case.⁶⁴ Similarly, Indonesia's

58 However, TRAFFIC reported continuing illegal trade in defiance of the country's new legislation; see Kumar, 'Wildlife Trade in the UAE - April 1991', 12 *TRAFFIC Bulletin* (1991) 78.

59 Charnovitz, 'Encouraging Environmental Cooperation through the Pelly Amendment', 3 *Journal of Environment and Development* (1994) 3, at 4 (using a term coined by Charles Pearson). On current practice pursuant to article X (trade with states not party to the Convention) see CITES Conference Resolution 9.3 (1994).

60 The US embargo was lifted on 30 December 1986. According to the *Straits Times* of 1 January 1987, the ban had already been partially suspended (for aquarium fish) on 9 October 1986, after Singapore threatened to raise the dispute in GATT. Singapore enacted a new Endangered Species (Import and Export) Act implementing CITES on 17 March 1989.

61 1971 Pelly Amendment to the 1967 Fishermen's Protective Act, Public Law No. 92-219; see Charnovitz, *supra* note 59, at 9; and Upton, 'The Big Green Stick: Reducing International Environmental Degradation through U.S. Trade Sanctions', 22 *Boston College Environmental Affairs Law Review* (1995) 671.

62 59 *U.S. Federal Register*, 22043 (9 August 1994); see Patel, 'The Convention on International Trade in Endangered Species: Enforcement and the Last Unicorn', 18 *Houston Journal of International Law* (1995) 157, at 197-199.

63 On 29 June 1995, the US Department of the Interior announced that the certification under the Pelly Amendment will be reassessed in 1996, while training will be provided to Taiwan in law enforcement and CITES implementation practice; see 15 *TRAFFIC Bulletin* (1995) 101. For trade controls in China (which was *not* 'pellied' - to use a verb coined by Steve Charnovitz), see Wang Xinxia, 'The Implementation of CITES in China', in J. Cameron, J. Werksman and P. Roderick (eds.), *Improving Compliance with International Environmental Law* (1996) 204, at 209.

64 Mofson, 'Protecting Wildlife from Trade: Japan's Involvement in the Convention on International Trade in Endangered Species', 3 *Journal of Environment and Development* (1994) 91, at 100; and C.D. Stone, *The Gnat is Older than Man: Global Environment and Human Agenda* (1993) 45; see CITES Secretariat, *Notification to the Parties* No. 823 of 25 August 1994. On the reasons for the reservations (importance of hawksbill tortoiseshell for the local economy of Nagasaki), see McFadden, 'Asian Compliance with CITES: Problems and Prospects', 5 *Boston University Inter-*

announcement of 'voluntary' export quotas for several endangered species in 1994 may be attributed at least in part to a European ban on wildlife imports from Indonesia. The embargo had been imposed by the EU CITES Committee in 1991 (under article XIV/1) and was subsequently lifted in 1995 (based on the findings of a field inquiry pursuant to article XIII/2, carried out by an IUCN/SSC expert commissioned by the EU).⁶⁵

C. Deviation Tolerance

Unlike its fatally immutable 1933 forerunner, CITES was deliberately designed as a flexible instrument that would adapt itself to changing circumstances (through its accelerated amendment procedure for species listed in Appendices I-III, a technique borrowed from other treaties)⁶⁶ and to a certain tolerable amount of deviation from full compliance. This latter is ensured through (a) a system of reservations which allows dissenting countries to 'opt out' of collective decisions on species listing, thereby retaining with regard to that species the same status as non-parties; and (b) a number of loopholes intentionally built into article VII to deal with exceptional situations, such as specimens acquired prior to the Convention's entry into force (the 'grandfather clause' already found in the 1900 London Convention).⁶⁷

The opt-out system, which was more or less modelled after the 1946 International Convention for the Regulation of Whaling,⁶⁸ initially turned out to be more of a problem than the drafters had anticipated.⁶⁹ A few countries took out massive reservations to preserve their 'free rider' status in international trade with regard to economically important species. The whalers were the first to do so (Japan, Norway, Peru, and St. Vincent and the Grenadines are the only countries to maintain CITES

national Law Journal (1987) 311, at 315; TRAFFIC Japan, *The Japanese Sea Turtle Trade 1970-1986* (1987); and Dupree, 'Passing through Enemy Waters: Marine Turtles in Japan', 14 *University of California at Los Angeles Pacific Basin Law Journal* (1995) 75.

65 See Krämer, 'Environmental Protection and Trade: The Contribution of the European Union', in R. Wolfrum (ed.), *Enforcing Environmental Standards: Economic Mechanisms as Viable Means?* (1996) 413, at 437.

66 For precedents see Contini and Sand, 'Methods to Expedite Environment Protection: International Ecostandards', 66 *American Journal of International Law* (1972) 37; on current CITES procedure see A. Bräutigam, *CITES: A Conservation Tool: A Guide to Amending the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora* (5th ed., 1995).

67 On the exemptions see Melick, 'Regulation of International Trade in Endangered Wildlife', 1 *Boston University International Law Journal* (1982) 249; Welsch, 'CITES: Trade in Appendix I Species', 13 *Environmental Policy and Law* (1984) 100; and S. Lyster, *International Wildlife Law: An Analysis of International Treaties Concerned with the Conservation of Wildlife* (1985) 256-264.

68 Article V/3 ('objections'); text in 161 *United Nations Treaty Series* (1953) 78.

69 Comment, 'Legislative Developments: Convention on International Trade in Endangered Species of Wild Fauna and Flora', 6 *Law and Policy in International Business* (1974) 1211 (predicting that reservations would rarely be used); and Steward, 'Enforcement Problems in the Endangered Species Convention: Reservations Regarding the Reservations Clauses', 14 *Cornell International Law Journal* (1981) 424 (examples of early problem cases).

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reservations on whales today),⁷⁰ but they were soon joined by other industrial consumers eager to protect their supplies. For instance, when the saltwater crocodile (*Crocodylus porosus*) was listed in Appendix I in 1979, the five countries controlling 80 per cent of the world's luxury leather market (France, Germany, Italy, Japan and Switzerland) all entered reservations in order not to be outdone by their competitors. However, many of those early reservations have since been withdrawn, partly as a result of *gaiatsu*-type external pressures (including the European Community's Regulation 3626/82/EEC requiring all its Member States to withdraw their CITES reservations by December 1983). Other reservations, which some countries routinely entered for bureaucratic reasons – to gain time for future administrative amendments (Austria) or to avoid overburdening their customs officers (Switzerland) – are insignificant in practice. Threats to the effect that powerful members might reserve each time they were outvoted on a species did not materialize.⁷¹

With regard to the designer loopholes of article VII, there have been a series of successive 'interpretations' and elaborations by the Conference of the Parties. These sometimes narrowed down the exceptions, as in the case of transit shipments or personal hunting trophies.⁷² Rather more frequently, though, they accommodated special interests, especially of wildlife-exporting countries, often as a trade-off for accepting stricter global listing of a species in return. New definitions of indeterminate terms such as 'captive breeding' and 'artificial propagation',⁷³ and the introduction of new exemptions such as 'ranching',⁷⁴ enabled countries meeting the

70 The first reservations on whales were entered (though later withdrawn) by Canada, 993 *United Nations Treaty Series* (1976) 391. All large cetaceans are now in CITES Appendix I, with the exception of the West Greenland population of minke whales, which is in Appendix II. A Norwegian proposal also to 'downlist' to Appendix II the minke whale stocks of the northeastern and central North Atlantic was rejected at the 1994 Fort Lauderdale Conference by a vote of 48:16; see Eldridge, 'Whale for Sale?: New Developments in the Convention on International Trade in Endangered Species of Wild Fauna and Flora', 24 *Georgia Journal of International and Comparative Law* (1995) 549. On current coordination of appendix listings with the International Whaling Commission (e.g., indigenous whaling exceptions of St. Vincent and the Grenadines) see CITES Secretariat, *Notification to the Parties* No. 920 of 20 June 1996, and *infra* note 172.

71 See Kosloff and Trexler, 'CITES: Enforcement Theory and Practice in the United States', 5 *Boston University International Law Journal* (1987) 327, at 358. For example, the United States in 1992 voted against inclusion of the American black bear (*Ursus americanus*) in Appendix II, but did not enter a reservation after the decision; see Rose, 'American Bear Trade on the Rise: Regional Cooperation Needed', 14 *TRAFFIC USA Newsletter* (1995) 1; and Muffett, 'Regulating the Trade in Bear Parts for Use in Asian Traditional Medicine', 80 *Minnesota Law Review* (1996) 1283. On Chinese and Japanese reactions to the 1989 ivory vote, see *infra* notes 92 and 123.

72 In light of widespread abuse by traders and tourists, see CITES Conference Resolutions 9.7 (1994) and 2.11 (1979, rev. 1994); Wijnstekers, *supra* note 38, at 119-120 and 304-309.

73 CITES Conference Resolutions 2.12 (1979, rev. 1992 and 1994) and 9.18 (1994). Exports from internationally registered 'captive breeding' operations or 'artificial propagation' nurseries may be authorized for commercial purposes under article VII/4, as redefined in CITES Conference Resolutions 8.15 (1992) and 9.19 (1994); see Wijnstekers, *supra* note 38, at 135-156. For conflicting earlier interpretations, especially with regard to 'captive-bred' birds of prey, see Emonds, 'CITES-Bescheinigungen und Greifvogelhandel', 8 *Natur und Recht* (1986) 141; *contra* Welsch, 9 *Natur und Recht* (1987) 68.

74 As distinct from captive breeding, 'ranching' is a new exception (not mentioned in the Convention, but successively defined in 1981, 1985, 1987, 1989, 1992 and 1994 by CITES Conference Resolutions 3.15, 5.16, 8.22 and 9.6) whereby the Conference of the Parties may authorize com-

criteria so established to make legitimate use (including transnational shipments) of Appendix I species at agreed sustainable rates. In the process, the CITES Conference and its secretariat had to make use of innovative technical devices to ensure proper verification of origin and legal acquisition (e.g., special marking and tagging of wildlife products such as reptile hides and furskins, and of live animals by microchips).⁷⁵ Most importantly, the international allocation of export quota to selected wildlife-producing countries has become a regular item on the agenda of CITES Conference meetings.⁷⁶ These quotas were initially introduced as an exceptional measure for African ivory and leopard skins, but were later required as a condition for 'downlisting' other animal species from Appendix I to II. Together with voluntary quota for species in Appendices II and III,⁷⁷ their use is now standard practice and is actually beginning to replace the original treaty requirement of a case-by-case 'no-detriment finding' in the granting of permits, even though there is no reference to a quota system anywhere in the Convention. Nonetheless, these exceptions were subsequently agreed and accepted by the parties with a view to introducing a higher degree of flexibility, within a tolerable margin of deviance from strict treaty norms.⁷⁸

D. Drawing the Line

So in a matter of two decades, the CITES regime retrofitted itself with new institutions, incentives and disincentives ('carrots' and 'sticks'), none of which were articulated in the original treaty text.⁷⁹ Did the development and use of these innovative instruments of governance contribute to making the regime effective; i.e., did they contribute to the actual achievement of its objectives? Three prominent case histories may serve to illustrate the process of problem-solving or 'fixing' that has emerged.

I. Vicuña

The first symptomatic policy dispute arose over CITES listing of the vicuña, the rarest species in the Andean lama family. Once sacred to the Incas, this animal was hunted relentlessly and almost to extinction in later centuries because of its precious

mercial exports for specified populations of Appendix I species such as crocodiles; Wijnstekers, *supra* note 38, at 283-301.

75 E.g., see CITES Conference Resolution 9.22 (1994) on tagging of crocodylian skins, and CITES Secretariat, *Notification to the Parties* No. 875 of 31 August 1995; Wijnstekers, *supra* note 38, at 105-117.

76 CITES Conference Resolutions 8.10 (1992, rev.1994) and 9.21 (1994); and see Wilder, 'Quota Systems in International Wildlife and Fisheries Regimes', 4 *Journal of Environment and Development*, (1995) 55, at 60-69.

77 Export quota for 1996 (37 countries, including 4 voluntary zero-quota) in CITES Secretariat, *Notification to the Parties* No. 916 of 20 June 1996.

78 On tolerance of deviant conduct and the determination of acceptable compliance levels see Chayes and Chayes, 'On Compliance', 47 *International Organization* (1993) 175, at 200-203.

79 Deploing their apparent absence: Kosloff and Trexler, 'The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?', 17 *Environmental Law Reporter* (1987) 10222; but see Sand, 'International Economic Instruments for Sustainable Development: Sticks, Carrots and Games', 36 *Indian Journal of International Law* (1996) 1, at 10.

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fine-wool furskin. By the 1960s, the number of animals had declined to about 6,000, most of them in Peru. In 1968 a German-funded wildlife management project was established in Peru's Pampa Galeras reserve. This initiative was followed in 1969 by a regional protection agreement with Argentina, Bolivia and Chile at La Paz⁸⁰ and by the listing of the species in CITES Appendix I in 1973. As a result, vicuña numbers began to increase again, and by 1979 had reached about 35,000 on the reserve. However, a Peruvian government proposal to downlist the Pampa Galeras 'herd' to CITES Appendix II, in order to export some of the animals and their products (to be 'harvested' by controlled culling) for the benefit of the local population,⁸¹ was met with strong opposition from non-governmental organizations at the 1979 CITES Conference in San José, Costa Rica. Led by a prominent Peruvian environmentalist, the NGO lobbying campaign succeeded in securing the one-third blocking minority of votes required to defeat the proposal. A compromise was reached at the 1987 CITES Conference – confirmed in 1992 and 1994 – by downlisting geographically specified vicuña herds in Chile and Peru for the exclusive purpose of trading in wool sheared from live animals and identified by special cloth labels.⁸²

2. Ivory

The second dramatic policy conflict concerned the African elephant (*Loxodonta africana*), the very species symbolized in the CITES logo. While the Asian elephant (*Elephas maximus*) had been protected in CITES Appendix I from the outset, the African species was initially listed in Appendix II, at a time when at least 1.3 million elephants were estimated to survive in the wild.⁸³ The theory was that well-established national programmes of wildlife management would ensure sustainability of the species as a source of tourism revenue. These programmes would become self-supporting through income from controlled hunting and from sales of legally taken ivory, which was in high demand in countries with traditional ivory-carving industries (including China, Japan, France and Germany).⁸⁴ CITES therefore con-

80 Superseded by the 1979 Lima Convention for the Conservation and Management of the Vicuña; text in I. Rummel-Bulska and S. Osafo (eds.), *Selected Multilateral Treaties in the Field of the Environment* (1991) 2, 74-75; Lyster, *supra* note 67, at 88-94.

81 Proposal by the Republic of Peru, CITES Doc. 2.26 Annex 3, *Proceedings of the 2nd Meeting of the Conference of the Parties* (1980) 2, 632-634. See Grove, *supra* note 2, at 307; Eltringham and Jordan, 'The Vicuña of the Pampa Galeras National Reserve: The Conservation Issue', in P.A. Jewell and S. Holt (eds.), *Problems in Management of Locally Abundant Wild Animals* (1981) 277-281.

82 CITES Conference Resolution 8.11 (1992), and annotation 504 to Appendix I/II as amended in 1994. See CITES Secretariat, *Notification to the Parties* No. 865 of 12 July 1995; Wijnstekers, *supra* note 38, at 391-392; Ascencio Herrera and Pevato, 'Legal Framework for Environmental Co-operation in Latin America: An Overview', 5 *Review of European Community and International Environmental Law* (1996) 1, at 5-6.

83 Results of a 1976 survey by Iain Douglas-Hamilton, summarized in UNEP, *The African Elephant* (1989) 18-32. Before its Appendix II listing (effective 4 February 1977), the African elephant had already been listed in Appendix III by Ghana, on 12 February 1976.

84 E.B. Barbier, J.C. Burgess, T.M. Swanson and D.W. Pearce (eds.), *Elephants, Economics and Ivory* (1990); Barbier, 'The Role of Trade Interventions in the Sustainable Management of Key

centrated its efforts on data collection, the establishment of a quota system for ivory exports, and on standardization of registration and identification techniques needed to verify the legal origins of ivory.⁸⁵ By the late 1980s, however, the illegal ivory trade had spiralled out of control, partly as a result of civil war in several range states (where both sides used ivory poaching to buy weapons abroad) and the 'free-rider' behaviour of non-party states like Burundi and the United Arab Emirates (serving as entrepôts for huge stockpiles of smuggled ivory destined for the Far East).⁸⁶ At the 1989 CITES Conference in Lausanne, after heavy lobbying by non-governmental organizations and a sequence of unilateral import bans,⁸⁷ a two-thirds majority voted in favour of transferring the African elephant to Appendix I. China and nine of the range states opposed the vote.⁸⁸ The CITES secretariat, which had supported a moderated 'sustainable use' position, suffered a severe loss of face in the process.⁸⁹ Opinions on the effectiveness of the ban are divided, and the issue is far from closed.⁹⁰ Even though subsequent proposals for downlisting or exemptions were withdrawn,⁹¹ six Southern African range states have opted out of the trade ban

- Resources: The Cases of African Elephant Ivory and Tropical Timber', in J. Cameron, P. Demaret and D. Geradin (eds.), *Trade and the Environment: The Search for Balance* (1994) 1, 436-458.
- 85 CITES Conference Resolutions 5.12 (1985), 6.11-6.16 (1987), consolidated in 9.16 (1994), and the CITES *Ivory Trade Control Procedures Manual* (1985); R.B. Martin, J.R. Caldwell and J.G. Barzdo, *African Elephants, CITES and the Ivory Trade* (1986); Wijnstekers, *supra* note 38, at 312-325; and Dexel, *supra* note 7, at 60-61.
- 86 CITES Conference Resolution 6.11 (1987); Favre, *supra* note 48, at 120-137; Glennon, 'Has International Law Failed the Elephant?', 84 *American Journal of International Law* (1990) 1; Thornton and Reeve, 'The Spoils of War', 10 *BBC Wildlife*, 2 (1992) 24.
- 87 On the moratorium imposed on 5 June 1989 under the US African Elephant Conservation Act, Public Law No. 100-478 (1988), see DeSombre, 'Baptists and Bootleggers for the Environment: The Origins of United States Unilateral Sanctions', 4 *Journal of Environment and Development* (1995) 53, at 58. France, Germany and then the European Community joined the ban within a week.
- 88 The vote was 76 for, 11 against, and 4 (including Japan) abstaining; see D.J. Harland, *Killing Game: International Law and the African Elephant* (1994) 93-99; *Idem*, 'Jumping on the "Ban" Wagon: Efforts to Save the African Elephant', 14 *Fletcher Forum of World Affairs* (1990) 284; Landy, 'Banning the Ivory Trade: An Attempt to Save the African Elephant from Extinction', 5 *Florida International Law Journal* (1990) 111; Vail, 'Halting the Elephant Ivory Trade: A True Test for International Law', 9 *Wisconsin International Law Journal* (1990) 227; and Boddens Hongsang, 'Trade with Endangered Species', 1 *Green Globe Yearbook* (1992) 59.
- 89 Sands and Bedecarré, 'Convention on International Trade in Endangered Species: The Role of Public Interest Non-Governmental Organizations in Ensuring the Enforcement of the Ivory Trade Ban', 17 *Boston College Environmental Affairs Law Review* (1990) 799, at 809-816 (summary of legal opinion for WWF, refuting the secretariat's position paper); see also Arend Jr., 'Ivory, Elephants, or Both: Negotiating the Transfer of the African Elephant to Appendix I Within CITES', in L. Susskind, E. Siskind and J.W. Breslin (eds.), *Nine Case Studies in International Environmental Negotiation* (1990) 99.
- 90 See H.T. Dublin, T. Milliken and R.F.W. Barnes, *Four Years After the CITES Ban: Illegal Killing of Elephants, Ivory Trade and Stockpiles*, Report of the IUCN/SSC African Elephant Specialist Group (1995); Storey, 'Development vs. Conservation: The Future of the African Elephant', 18 *William and Mary Journal of Environmental Law* (1994) 375; Heimert, 'How the Elephant Lost His Tusks', 104 *Yale Law Journal* (1995) 1473; Padgett, 'The African Elephant, Africa, and CITES: The Next Step', 2 *Indiana Journal of Global Legal Studies* (1995) 529; and Barnes, 'Changes in the Economic Use Value of Elephant in Botswana: The Effect of International Trade Prohibition', 18 *Ecological Economics* (1996) 215.
- 91 On requests for transfer of specified elephant populations to Appendix II under the so-called 'Somali amendment', see Keller, 'Is the International Ban on the Importation of Ivory Saving the

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by entering and maintaining reservations;⁹² seven African states established annual trophy hunting quota in 1997 for a total of 731 elephants;⁹³ and a special expert panel continues to negotiate further country-specific arrangements to be submitted to the forthcoming 1997 Conference in Harare.⁹⁴

3. Bern Criteria

Both the vicuña and the ivory controversies raised a more fundamental question of governance – namely, the adequacy of criteria for listing and de-listing in Appendix I and II. Once again, these are not found in the text of the Convention, but were formulated in 1976 at the first CITES Conference in Bern.⁹⁵ The ‘Bern criteria’ underwent a number of modifications and exceptions in subsequent years.⁹⁶ They also prompted a series of surveys and reviews to ascertain the continued validity of the original listings in light of new biological data and trade statistics.⁹⁷ Proponents of the range states’ economic utilization of wildlife resources criticized the criteria for their rigidity, which (for declared precautionary reasons) made it difficult to delist or downlist a species once entered in an appendix. At the 1992 Kyoto meeting, a ‘consumptive use block’ of Southern African states, with scientific support from the IUCN/SSC Specialist Group on Sustainable Use of Wild Species, unsuccessfully

African Elephant?’, 3 *Colorado Journal of International Environmental Law and Policy* (1992) 381, at 396; Favre, ‘Trade in Endangered Species’, 3 *Yearbook of International Environmental Law* (1992) 317, at 318; and Wilder, *supra* note 76, at 64-68.

92 Botswana, Malawi, Namibia, South Africa, Zambia and Zimbabwe; see Glennon, ‘New Developments in International Law’, 85 *Proceedings of the American Society of International Law* (1991) 417. Other reservations initially entered by China and the United Kingdom (for Hong Kong) were withdrawn in 1990. The six ‘renegade’ countries established a *Southern African Centre for Ivory Marketing* (SACIM) but otherwise consider themselves to be bound by the earlier CITES rules (*supra* note 85).

93 Botswana, Cameroon, Ethiopia, Namibia, South Africa, Tanzania and Zimbabwe; CITES Secretariat, *Notification to the Parties* No. 957 of 6 February 1997.

94 CITES Conference Resolution 7.9 (1989) laid down terms of reference for the ‘Panel of Experts on the African Elephant and Criteria for the Transfer of Certain African Elephant Populations from Appendix I to Appendix II’; Wijnstekers, *supra* note 38, at 310-312. Suggestions to revise the terms of reference, and new proposals to deal with ivory stockpiles, were discussed at the 36th meeting of the Standing Committee (Geneva, 30 January-2 February 1996, and at a meeting of 31 African elephant range states in Dakar, Senegal in November 1996; see Milliken, ‘The Status of Ivory Stocks in Africa, 1990-1996’, 16 *TRAFFIC Bulletin* (1997) 93). On current negotiations behind the scene, see Holm, ‘Zurück zum Töten: die Elfenbein-Verschöpfung’, *Spiegel Special*, 1 (1997) 68 and Sharpe, ‘The African Elephant: Conservation and CITES’, 31 *Oryx* (1997) 111.

95 CITES Conference Resolutions 1.1-1.3 (1976); see Navid, ‘The Washington Convention: First Meeting of the Conference of the Parties’, 2 *Environmental Policy and Law* (1976) 167. For critical analysis see Favre, ‘Tension Points within the Language of the CITES Treaty’, 5 *Boston University International Law Journal* (1987) 247, at 249; Ditkof, ‘International Trade in Endangered Species under CITES: Direct Listing vs. Reverse Listing’, 15 *Cornell International Law Journal* (1982) 107; and Matthews, ‘Problems Related to the Convention on the International Trade in Endangered Species’, 45 *International and Comparative Law Quarterly* (1996) 421, at 422-427.

96 Favre, *supra* note 48, at 32-53; and Wijnstekers, *supra* note 38, at 23-28.

97 E.g., see the Report of the Animals Committee on Significant Trade in Appendix II Species, CITES Doc. 8.30 (1989); CITES Conference Resolution 8.9 (1992); and the 1996 Review of Significant Trade in Animal Species Included in CITES Appendix II: Final Report to the CITES Animals Committee (1996); CITES Secretariat, *Notification to the Parties* No. 917 of 20 June 1996. See also Wijnstekers, *supra* note 38, at 78-83; and Jenkins, ‘Significant Trade’, 2 *CITES/C&M International Magazine* (1995) 71.

proposed an alternative set of new 'beneficial use' categories.⁹⁸ Ultimately, the Bern catalogue was superseded by comprehensive new 'Everglades criteria' at Fort Lauderdale in 1994. While reiterating the precautionary principle, the new guidelines for listing and de-listing (which are to be reviewed again in five years' time) reaffirm the special role of the range states of particular species in the listing process. They are also more specific with regard to the biological and statistical information to be taken into account.⁹⁹

At the same meeting, the CITES Conference initiated an independent review of the overall effectiveness of the regime.¹⁰⁰ An external consultant team has been contracted to undertake the review. Issues under examination include an assessment of the Convention's objectives; the extent to which the conservation status of selected listed species has been affected in both party and non-party states; implementation and enforcement of the Convention at the national level; and the relationship of CITES to other conservation instruments. The findings and recommendations of the review, including the results of a survey of twelve selected species and of a detailed questionnaire circulated in June 1996 to all parties and international organizations associated with CITES,¹⁰¹ are to be submitted to the forthcoming 1997 Conference through the Standing Committee. The review will thus serve as a 'feedback loop' for further policy-making and adjustment.

IV. Implementation

A. Legislation and Administrative Regulation

By June 1997, 135 countries will be parties to CITES, including virtually all of the 'consumers' (about 40) and 'producers' of wildlife (some countries, such as the United States and Russia, belong to both groups). As most of the Convention text is not 'self-executing', implementation requires – in addition to the formal act of ratifi-

98 The proposed 'Kyoto criteria' (CITES Doc. 8.50) were eventually 'defanged' by Conference Resolutions 8.3 and 8.20 (1992); Favre, 'Debate Within the CITES Community: What Direction for the Future?', 33 *Natural Resources Journal* (1993) 875, at 899-907; *Idem*, *supra* note 91, at 317-322; Garrison, 'The Convention on International Trade in Endangered Species (CITES) and the Debate Over Sustainable Use', 12 *Pace Environmental Law Review* (1994) 301; Topkov, 'Sustainable Use is the Key', 1 *CITES/C&M International Magazine*, 2 (1994) 14; and Dixel, *supra* note 7, at 44-45.

99 CITES Conference Resolution 9.24 (1994) on 'Criteria for Amendment of Appendices I and II'; Wijnstekers, *supra* note 38, at 29-49; 'The New Rules of the Game', 2 *CITES/C&M International Magazine*, 3 (1995) 6; Kelso, 'Ninth Meeting of the Conference of the Parties to CITES', 15 *TRAFFIC Bulletin* (1995) 63, at 67; Sanchez de Lozada, 'CITES from the South', 26 *IUCN Bulletin* (1995) 2; Bräutigam, *supra* note 66; Patel, *supra* note 62, at 182; and Favre, 'Trade in Endangered Species', 5 *Yearbook of International Environmental Law* (1994) 258.

100 CITES Conference Decisions directed to the Standing Committee, No. 9.1 (1994): terms of reference for a study on how to improve the effectiveness of the Convention; see Birnie, 'The Case of the Convention on Trade in Endangered Species', in Wolfrum *supra* note 65, 233, at 249.

101 Final report by J. Horberry and D. Navid, *Study on How to Improve the Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* (1996); CITES Secretariat, *Notification to the Parties* No. 951 of 29 January 1997.

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ation and promulgation in the national language – a series of follow-up measures at the appropriate legislative and administrative level of each country (and at several levels in federal states). CITES implementation illustrates a legal phenomenon known as '*dédoulement fonctionnel*', in the terms coined by Georges Scelle.¹⁰² Rather than imposing a supranational regulatory mechanism of its own, the regime relies on reciprocal recognition of *national* regulatory decisions, provided that these are made in accordance with mutually agreed standards. It is then left up to designated national 'Management Authorities' (listed since 1980 in a global CITES Directory, together with their advisory scientific bodies) to operate the system on behalf of the international community.¹⁰³ In the case of the European Union, this somewhat schizophrenic role-splitting actually turns into '*détriplement fonctionnel*' for Management Authorities implementing a national law implementing the EU regulations implementing CITES.¹⁰⁴

The enactment of national laws for this purpose, and the empowerment of suitable national administrative agencies to enforce them is thus a crucial first step in 'making CITES work'.¹⁰⁵ Given the diversity of national legal systems and administrative traditions, there is no single uniform 'model law' suitable for CITES implementation in all countries. Instead, a set of 'guidelines for legislation', based on a comparison of state practice, has been issued as an implementation aid by the IUCN Environmental Law Centre since 1981.¹⁰⁶ In order to evaluate the adequacy of implementation by the parties, the CITES Conference in 1992 defined the necessary minimum of domestic measures as comprising 'the authority to (i) designate at least one Management Authority and one Scientific Authority; (ii) prohibit trade in specimens in violation of the Convention; (iii) penalize such trade; and (iv) confiscate specimens illegally traded or possessed'.¹⁰⁷

As it turned out, even that minimum was a tall order for most countries. A survey of eighty-one CITES parties, carried out by the IUCN Environmental Law Centre in 1993-94, indicated that only twelve of the countries surveyed had completed the full range of legislative and administrative measures needed to give effect to all aspects of the Convention and related resolutions and decisions of the Conference of the

102 Cassese, 'Remarks on Scelle's Theory of "Role Splitting" (*dédoulement fonctionnel*) in International Law', 1 *European Journal of International Law* (1990) 210.

103 P.H. Sand, *Lessons Learned in Global Environmental Governance* (1990) 22-23.

104 E.g., in Germany: Emonds, 'Gesetz zur Durchführung der EG-Verordnung zum Washingtoner Artenschutz-Uebereinkommen', 6 *Natur und Recht* (1984) 93. On the problems see *infra* notes 158-166.

105 Wassermann, 'Washington Wildlife Convention', 14 *Journal of World Trade* (1980) 362, 366; Heppes and McFadden, 'The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage', 5 *Boston University International Law Journal* (1987) 229, at 240; and S. Nash, *Making CITES Work: A WWF Report* (1994).

106 Emonds, 'Guidelines for National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora', *IUCN Environmental Policy and Law Paper*, 17 (1981); revised and updated version by de Klemm, 'Guidelines for Legislation to Implement CITES', *IUCN Environmental Policy and Law Paper*, 26 (1993).

107 CITES Conference Resolution 8.4 (1992); Wijnstekers, *supra* note 38, at 160-163.

Parties. Legislation in at least twenty-six countries was found not to meet the four minimum requirements set by the Conference. Moreover, legislation in forty-three other countries was considered incomplete or deficient in some specific aspects,¹⁰⁸ for instance, as regards regulation of trade in wild plants.¹⁰⁹ The twenty-six serious 'laggards' in the second category were notified that the next Conference would consider sanctions, including trade bans, against all parties that had not introduced (i.e., at least submitted to their legislature) the necessary regulatory measures by the time of the meeting in June 1997.¹¹⁰

B. Reporting and Monitoring

Information on the actual administrative performance of CITES member states in implementing the Convention is available from two main sources: (a) annual and biennial self-reporting by the parties on their national trade data and enforcement measures under article VIII(7); and (b) compliance monitoring by the secretariat under article XIII.

With regard to *national* reporting,¹¹¹ the record is mixed. At the 1994 Conference, over 30 per cent of the parties were identified as having failed to submit their annual reports in time.¹¹² Actually, the CITES reporting rate has improved over the years, and is currently better than that of several other global environmental treaties.¹¹³ Even the incomplete trade data received since 1975 enabled the secretariat to undertake export/import correlations which in a number of cases led to the discovery and closure of loopholes and illegal trade transactions.¹¹⁴ The amount of CITES data now processed by the Wildlife Trade Monitoring Unit in Cambridge has rapidly increased (since 1986, about 200,000 trade records annually), to the point where in 1993 they were transferred to an Internet-accessible computer data-

108 See the three categories of countries listed in CITES Document 9.24 (1994), and in CITES Secretariat, *Notification to the Parties* No. 845 of 18 April 1995. Legislation in another 44 countries is now being surveyed by TRAFFIC and the IUCN Environmental Law Centre; CITES Secretariat, *Notification to the Parties* No. 846 of 18 April 1995.

109 Examples in Burns, 'CITES and the Regulation of International Trade in Endangered Species of Flora: A Critical Appraisal', 8 *Dickinson Journal of International Law* (1990) 203; M. Jenkins and S. Oldfield, *Wild Plants in Trade* (1992).

110 CITES Conference Decisions directed to the Parties No. 9.7 (1994), regarding implementation of Conference Resolution 8.4 (1992); CITES Document Com. 9.15 (Rev.), as adopted at the 1994 Conference; and CITES Secretariat, *Notification to the Parties* No. 845 of 18 April 1995.

111 'Guidelines for the Preparation and Submission of CITES Annual Reports', in CITES Secretariat, *Notification to the Parties* No. 788 of 10 March 1994; comparative analysis of the parties' compliance with earlier reporting guidelines since 1981 in CITES Doc. 7.18 (1989).

112 Report of the Secretariat: Review of Alleged Infractions and Other Problems of Implementation of the Convention, CITES Doc. 9.22 (1994) 14-15; and Nash, *supra* note 105, at 5-6.

113 On the situation in 1990, see United States General Accounting Office, *International Environment: International Agreements Are Not Well Monitored*, GAO/RCED-92-43 (1992) 23-28; Ausubel and Victor, 'Verification of International Environmental Agreements', 17 *Annual Review of Energy and Environment* (1992) 1.

114 E.g., see 'Investigation of Illegal Trade from Paraguay', CITES Doc. 3.6 Annex 3 (1981), *Proceedings of the 3rd Meeting of the Conference of the Parties*, 1, 297.

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base.¹¹⁵ Nonetheless, the CITES Conference, in the course of streamlining its reporting procedures and deadlines in 1994, was sufficiently concerned over reporting gaps to decide that failure to report will in future be treated as a possible reason for trade sanctions to be initiated against the parties concerned.¹¹⁶

The only leverage for *external* compliance control is article XIII ('international measures'), which instructs the secretariat to draw instances of non-compliance to the attention of the Management Authorities concerned. Together with any comments received and follow-up information, these are then brought to the attention of the Conference of the Parties. This provision gradually developed into a monitoring and verification process with active NGO participation. From 1976 onwards, an IUCN/SSC specialist group for 'Trade Records Analysis of Flora and Fauna in Commerce' (TRAFFIC) started to collect information on alleged CITES infringements by wildlife traders and smugglers in different countries. This information was then transmitted to the CITES secretariat for action under article XIII, or directly to the national authorities concerned. With funding from IUCN, WWF and other sources, the group has since established offices in eighteen countries and now operates a worldwide network of 'CITES watchdogs'.¹¹⁷ Paradoxically, frequent news reports about CITES infringements (as well as the prosecutions, confiscations and fines ensuing) turned out to be the most effective way of raising public awareness and acceptance of the treaty, thus strengthening the legitimacy of the regime.¹¹⁸

The process was not without resistance, especially as the number of communications under article XIII increased to over 300 per year.¹¹⁹ When the secretariat submitted its first detailed reports on infractions to the 1979 and 1981 CITES meetings, a number of delegations objected. In at least one case, a government formally complained for being 'fingered' repeatedly.¹²⁰ The obvious cause of discontent was the negative publicity and politically harmful media coverage given to certified non-compliance. In view of the clear mandate of article VIII/8 for information disclo-

115 Under <<http://www.wcmc.org.uk/convent/cites>>: see Caldwell, *supra* note 8.

116 CITES Conference Resolution 9.4 (1994), referring to a 'solution in accordance with Conference Resolution 7.5': i.e., the usual procedure for recommending a trade ban.

117 The network is now a cooperative programme of IUCN and WWF (1984 articles of association revised in 1994). See 17 *TRAFFIC Bulletin* (1997) published by TRAFFIC International in Cambridge, and 16 *TRAFFIC USA Newsletter* (1997); and Kelso, 'TRAFFIC: On the Front Line', 2 *CITES/C&M International Magazine*, 3 (1995) 58.

118 Sand, 'Combating the Trade in Endangered Species through CITES', 31 *Unasylva*, 125 (1979) 32; *Idem*, 'Der internationale Handel und Schmuggel mit geschützten Arten', 27 *Nationalpark*, 2 (1980) 6; and generally Caron, 'Governance and Collective Legitimation in the New World Order', 6 *Hague Yearbook of International Law* (1993) 29.

119 CITES Doc. 8.6 (1992), Report from the Secretariat: Action in Cases of Infraction, 13.

120 Germany - through its IUCN Council member whose department was also in charge of CITES implementation in the country - sent a letter of protest against the 'disproportionate number' of secretariat communications drawing attention to CITES infringements in Germany. See the cases summarized in CITES Docs. 3.6, Annex 3 and 3.10.5 (1981), *Proceedings of the 3rd Meeting of the Conference of the Parties*, 1, 297-302, 411-414; and Burton, 'Comments on the Annual Report by the Federal Republic of Germany on its Implementation of CITES', 3 *TRAFFIC Bulletin* (1981) 36.

sure, however, and as a result of meticulous editing and corroboration, the secretariat's 'Infraction Reports' have come to be accepted as a reliable and impartial instrument for reinforcing national implementation and accountability.¹²¹ Governments also began to realize the potential of CITES as a source of positive media attention ('success stories' as legitimation for national efforts in support of the regime),¹²² especially for host countries of the biennial Conferences of the Parties. Indeed, governments have been known to make concessions on substantive treaty issues in order to secure the meeting venue.¹²³

Cooperation with the non-governmental TRAFFIC network has not only given CITES a high degree of transparency,¹²⁴ but has also facilitated what is probably one of the best operational information sources available to any environmental treaty. While part of this information is reflected in the secretariat's infraction reports, further independent case studies, as well as reports on seizures and prosecutions, are regularly publicized in the TRAFFIC Bulletins. A continuous information exchange on enforcement practice is thus promoted. In addition, there have been a number of ad hoc assessments of CITES enforcement in the three major 'wildlife consumer countries' (Germany,¹²⁵ Japan¹²⁶ and the United States¹²⁷) and in four

- 121 See the most recent summary of infractions, CITES Secretariat *Notification to the Parties* No. 950 of 17 January 1997; and the earlier 'Review of Alleged Infractions and Other Problems of Implementation of the Convention', Secretariat Report to the 9th Meeting of the Conference of the Parties, CITES Doc. 9.22 (1994); Birnie, *supra* note 100, at 250-251. Of the 59 case summaries contained in the Annex (23-101), 12 expressly acknowledge the involvement of TRAFFIC; see also Liwo, 'The Continuing Significance of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in the 1990s', 15 *Suffolk Transnational Law Journal* (1991) 122, at 134 note 55.
- 122 E.g., media coverage of the successful German proposal to list whales in Appendix I, which deflected attention from the country's less-than-brilliant compliance record in other sectors; Navid, 'CITES Conference in New Delhi', 7 *Environmental Policy and Law* (1981) 75-78.
- 123 On Japan's decision not to enter a reservation against the 1989 ivory trade ban in return for its designation as host of the 1992 CITES Conference, see Chayes and Chayes, *supra* note 78, at 200.
- 124 Sands and Bedecarré, *supra* note 89; Cameron and Ramsay, 'Participation by Non-Governmental Organizations in the World Trade Organization', *Global Environment and Trade Study*, 1 (1995) 21-23; and Lanchbery, 'Long Term Trends in the use of Implementation Review Mechanisms in International Agreements on Flora and Fauna', in D.G. Victor, K. Raustiala and E. B. Skolnikoff (eds.), *The Implementation and Effectiveness of International Environmental Commitments* (1997, forthcoming).
- 125 Burton, *supra* note 120; Bock and Ruster, 'Die illegale Einfuhr von der Ausrottung bedrohter Tier- und Pflanzenarten in die Bundesrepublik Deutschland unter Verstoß gegen das Washingtoner Artenschutz-Uebereinkommen', 99 *Deutsches Verwaltungsblatt* (1981) 965; Schmidt, 'Wirtschaftsrecht, Aussenhandel und Washingtoner Artenschutz-Uebereinkommen', 35 *Neue Juristische Wochenschrift* (1982) 473; *Deutscher Bundestag* (German Federal Parliament), summary of governmental response to parliamentary questions by the Green Party on CITES implementation in Germany, *Umwelt* 11 (1989), 524; Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, *15 Jahre Washingtoner Artenschutz-Uebereinkommen in der Bundesrepublik Deutschland* (1991); and Sand, 'Das Washingtoner Artenschutzabkommen (CITES) von 1973', in T. Gehring and S. Oberthür (eds.), *Internationale Umweltregime* (1997) 165.
- 126 Mofson, *supra* note 64; Ishibashi, 'The Effectiveness of Supervision or Compliance Control Mechanisms to Implement Multilateral Environmental Agreements: A Critical Analysis of CITES Implementation' (in Japanese), 15 *Kagawa Law Review* (1995) 291; M. Taguchi, 'International Regimes and Cooperation: An Analysis of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and Japan' (Honours thesis on file at the University of Oregon, Portland, 1996).

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key regions (Asia,¹²⁸ Latin America,¹²⁹ Southern Africa¹³⁰ and Western Europe¹³¹), as well as in-depth investigations of the legal and illegal trade in particular threatened species.¹³²

C. Compliance Assistance

It has long been recognized that most implementation gaps of environmental regimes are not the result of any premeditated violation of treaty obligations, but rather of institutional and financial constraints, especially in the Third World.¹³³ A specific example was the case of Bolivia, where persistent non-compliance with CITES permit requirements led to the adoption of a Conference Resolution at the Buenos Aires meeting on 30 April 1985. The resolution recommended that all parties refuse to accept shipments of CITES specimens accompanied by Bolivian documents, or of specimens declared as originating from Bolivia, 'if within 90 days the government of Bolivia had not demonstrated to the Standing Committee that it had adopted all necessary measures to adequately implement the Convention'.¹³⁴ After the government responded that it simply lacked the technical expertise to ensure proper export licensing, a group of CITES importing countries and the European Community offered to provide assistance for a training programme, and in November 1985 the Standing Committee recommended suspending the embargo.¹³⁵ 'Capacity-building' training seminars for officials from CITES Management Authorities and enforcement services in developing countries have since been organized on an ongoing basis, with funding from the regular CITES budget and from

- 127 Kosloff and Trexler, *supra* note 71; Van Note, *supra* note 10; Trexler, *supra* note 2, at 64-89; and Alagappan, 'The United States' Enforcement of the Convention on International Trade in Endangered Species', 10 *Northwestern Journal of International Law and Business* (1990) 541.
- 128 McFadden, *supra* note 64; Cheung, 'Implementation and Enforcement of CITES: An Assessment of Tiger and Rhinoceros Conservation Policy in Asia', 5 *Pacific Rim Law and Policy Journal* (1995) 125; and Lee, 'Poachers, Tigers and Bears ... Oh My! Asia's Illegal Wildlife Trade', 16 *Northwestern Journal of International Law and Business* (1996) 441.
- 129 Fuller, Hemley and Fitzgerald, 'Wildlife Trade Law Implementation in Developing Countries: The Experience in Latin America', 5 *Boston University International Law Journal* (1987) 289.
- 130 A. Bodasing and T.A. Mulliken, *South Africa's Wildlife Trade at the Crossroads* (1996).
- 131 B. Mitchell (ed.), *The Application of the Washington Convention in the European Community* (1980); Thomsen and Brütigam, *supra* note 55; and E.H. Fleming, *The Implementation and Enforcement of CITES in the European Union* (1994).
- 132 E.g., see E. B. Martin, *The International Trade in Rhinoceros Products* (1980); A.L. Gaski and K.A. Johnson, *Prescription for Extinction: Endangered Species and Patented Oriental Medicines in Trade* (1994); and 20 other *Species in Danger Reports* published since 1991 by TRAFFIC International Cambridge.
- 133 Chayes, Chayes and Mitchell, 'Active Compliance Management in Environmental Treaties', in W. Lang (ed.), *Sustainable Development and International Law* (1995) 75, at 80; and Sand, 'Institution-Building to Assist Compliance with International Environmental Law: Perspectives', 56 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (1996) 774.
- 134 CITES Conference Resolution 5.2 (1985), repealed by Resolution 6.4 (1987, rev. 1994); see Wijnstekers, *supra* note 38, at 251, and the 'Bolivian Furskins' decision of the European Court of Justice (*infra* note 162).
- 135 CITES Secretariat, *Notification to the Parties* of 17 December 1985; and see Fouéré, 'Emerging Trends in International Environmental Agreements', in J.E. Carroll (ed.), *International Environmental Diplomacy* (1988) 29, at 38.

extra-budgetary contributions.¹³⁶ Liaison has also been established with the World Customs Organization to harmonize procedures and training materials regarding trade in wildlife and wildlife products, and with the INTERPOL Working Party on Environmental Crime (Sub-Group on Wildlife Crime) in order to coordinate training for police officers in charge of combatting illegal trade.¹³⁷

However, compliance also requires behavioural changes in wildlife consuming countries. Programmes of public education and persuasion are of vital importance, in particular for tourists (as potential buyers of wildlife souvenirs)¹³⁸ and traders.¹³⁹ For as long as bribes paid to foreign officials remain fully tax-deductible in Belgium, Germany, Greece and Luxembourg,¹⁴⁰ it seems unrealistic to expect that wildlife traders will not flout CITES restrictions in other countries when the opportunity arises.

D. Environmental Impact

After two decades, the jury is still out on CITES, and the ongoing effectiveness survey will give the parties an opportunity to articulate their verdict at the 1997 Conference. The views of commentators vary, although most are favourable.¹⁴¹

136 41 CITES training seminars for a total of 2,218 participants were held from 1989 to 1995; see Le Duc, 'Training: An Investment in the Future', 2 *CITES/C&M International Magazine*, 4 (1996) 39. See also the ongoing GEF-funded UNDP/WWF training programme for West and Central Africa (*supra* note 50).

137 CITES Conference Resolution 9.8 (1994); and CITES Secretariat, *Notifications to the Parties* No. 851 of 18 April 1995, and No. 901 of 28 February 1996. On CITES enforcement by criminal law see Schmidt, 'Strafrecht und Washingtoner Artenschutz-Uebereinkommen', 5 *Natur und Recht* (1983) 140.

138 CITES Conference Resolution 4.12 (1983, rev. 1994); Sand, 'Exotic Memories', 39 *Naturupa* (1981) 13; Schmidt, 'Beschlagnahme von Reisesouvenirs nach dem Washingtoner Artenschutz-Uebereinkommen', 35 *Monatsschrift für Deutsches Recht* (1981) 894; and Umweltsiftung WWF, *Handel bis zur Ausrottung* (1992) 14-18.

139 While early voluntary arrangements between IUCN/WWF and the International Fur Trade Federation to prevent trade in endangered species (1971-73) were cancelled as a result of alleged non-compliance, several trade groups (furs, leathers, pets, ivory) subsequently participated in CITES implementation efforts; see S. Fitzgerald, *International Wildlife Trade: Whose Business Is It?* (1989) 333.

140 Eigen and van Ham, 'Inseln der Integrität: der Anti-Bestechungs-Pakt, ein Vorschlag von "Transparency International"', 43 *Vereinte Nationen* (1995) 151, at note 7; see also the OECD Council Recommendation on Bribery in International Business Transactions, C(94)75 of 25 May 1994; and Ibanda-Nahamya, 'Combating Corruption: A Measure for Shaping Decision Making in Order to Achieve Sustainable Development', in K. Ginther, E.M.G. Denters and P.J.L.M. de Waart (eds.), *Sustainable Development and Good Governance* (1995) 402. On current German criminal law and tax law exonerations for bribing of foreign officials, see Litwin, 'Massnahmen zur Bekämpfung der nationalen und internationalen Korruption', 29 *Zeitschrift für Rechtspolitik* (1996) 308, at 310.

141 E.g., see Schonfeld, 'International Trade in Wildlife: How Effective is the Endangered Species Treaty?', 15 *California Western International Law Review* (1985) 111, at 127 ('highly practical'); van Hoogstraten, 'The Effectiveness of International Law with regard to Endangered Species', 54/56 *Hague Yearbook of International Law* (1986) 157, at 167 ('on the whole successful'); Williamson Jr., 'Building the International Environmental Regime: A Status Report', 21 *Inter-American Law Review* (1990) 679, at 715 ('invaluable'); 'Developments in the Law: International Environmental Law', 104 *Harvard Law Review* (1991) 1484, at 1557 ('successful'); A. Kiss and

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Some consider the Convention 'perhaps the most successful of all international treaties concerned with the conservation of wildlife'.¹⁴² Others rate its success as 'symbolic rather than substantial', while conceding its usefulness as an international forum for wildlife issues.¹⁴³ Rhetorical questions whether the Convention has 'answered the call of the wild' or the call for 'freedom from extinction' certainly miss the point. CITES is not a general wildlife management treaty¹⁴⁴ (whether it ought to be is another matter). As it stands, it is but one component of the existing patchwork of global and regional wildlife regimes, narrowly focused on the transnational trade issue which is only one of the multiple threats to wildlife.¹⁴⁵ Hence, it should be judged by its contribution to mitigating that particular threat. Unlike 'unit management regimes', such as the International Whaling Commission,¹⁴⁶ it does not even control the actual taking of wildlife – whether by moratoria, catch quotas,¹⁴⁷ or prescribed methods of capture. A proposal at the 1983 Conference to ban trade in furskins taken by use of steel-jaw leghold traps (considered cruel to animals) was thus rejected as being beyond the jurisdiction of the treaty.¹⁴⁸ Similarly, the 1994 Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora,¹⁴⁹ which provides for supplementary regional anti-poaching and anti-smuggling measures, has been criticized as encroaching on the

D. Shelton, *International Environmental Law* (1991) 262 ('as a whole functions well'); Karno, *supra* note 41, at 1014 ('somewhat effective'); S. Bilderbeek (ed.), *Biodiversity and International Law: The Effectiveness of International Environmental Law* (1992) 101 ('rather effective'); French, 'After the Earth Summit: The Future of Environmental Governance', *Worldwatch Paper*, 107 (1992) 32 ('widely-acknowledged effectiveness'); P.W. Birnie and A.E. Boyle, *International Law and the Environment* (1992) 475 ('unique and remarkable'); P. Sands, *Principles of International Environmental Law* (1995) 452 ('reasonably effective'); Lanchbery, 'The Development of the Convention on International Trade in Endangered Species of Wild Fauna and Flora', in J.B. Poore and R. Guthrie (eds.), *Verification* (1996) 383, at 396 ('at least partly effective'); and van Heijnsbergen, *supra* note 12, at 27 ('very positive effect on actual fauna and flora protection').

142 Lyster, *supra* note 67, at 240.

143 Trexler, *supra* note 2, at 99-133.

144 Peters, 'The Convention on International Trade in Endangered Species: An Answer to the Call of the Wild?', 10 *Connecticut Journal of International Law* (1994) 169; see also Meyers and Bennett, 'Answering "the Call of the Wild": An Examination of U.S. Participation in International Wildlife Law', 7 *Pace Environmental Law Review* (1989) 75; and Wheatley, 'Freedom from Extinction: Conservation and Development under International Law', 17 *Liverpool Law Review* (1995) 215.

145 Van Hoogstraten, 'The Future of Endangered Species', in R-J. Dupuy (ed.), *The Future of the International Law of the Environment* (1985) 109, at 110; Batchelor, 'The Preservation of Wildlife Habitat in Ecosystems: Towards a New Direction under International Law to Prevent Species' Extinction', 3 *Florida International Law Journal* (1988) 307, at 309; and Hemley, 'CITES: How Useful a Tool for Wildlife Conservation?', 23 *Wildlife Society Bulletin* (1995) 635.

146 See de Klermm and Shine, *supra* note 12, at 136.

147 The CITES quota for leopards, crocodiles or African elephants are not limitations on taking but on transnational marketing; see Wikler, *supra* note 76, at 60.

148 CITES Doc. 4.32 (1983), proposed by Gambia with the support of 14 NGOs, defeated by a vote of 30:6; see Favre, *supra* note 48, at 74; and Bowman, 'The Protection of Animals under International Law', 4 *Connecticut Journal of International Law* (1989) 487, at 491.

149 Signed at Lusaka, Zambia on 9 September 1994, text in 5 *Yearbook of International Environmental Law* (1994) doc.12; see Yamin and Gualdoni, 'A Case Study of a Regional Approach to Compliance with CITES in Southern Africa', in Cameron, Werksman and Roderick, *supra* note 63, at 187-203.

sovereign regulation of hunting.¹⁵⁰ Actually, the only formal mandate for CITES to regulate the physical treatment of wildlife are provisions on transport (articles III/2/c, IV/2/c and V/2/b).¹⁵¹

It seems somewhat hazardous, therefore, to correlate the effectiveness of the Convention directly with the actual (positive or negative) conservation status of a species in its natural habitat¹⁵² or even with the overall volume of trade¹⁵³ – considering the multitude of cause-effect relationships, most of which are outside the control of CITES, and recognizing that the Convention is not a priori anti-trade. Attempts at ‘measuring’ conservation success by the number of species transferred from Appendix I to II (on the assumption that de-listing or downlisting would indicate recovery or an ‘out-of-danger’ finding)¹⁵⁴ are equally inconclusive, since many transfer decisions by the Conference were made for different administrative reasons.¹⁵⁵

There are, however, a number of substitution effects on the consumption side of the wildlife market, which may be legitimately – at least partly – attributed to CITES:

(a) in the food and fashion industries, the disappearance of luxury products from species listed in Appendix I, such as turtle soup, or the replacement of leopard fur-coats by synthetic fabrics;

(b) in medical/pharmaceutical research, and to some extent in the pet trade, substitution of captive-bred for wild-caught animals in Appendix I (for example, primates); in the leather industry, the rapidly growing supply of reptile hides from CITES-controlled crocodile ranching operations;¹⁵⁶ in the decorative plant trade, substitution of artificially propagated plants (such as orchids and cacti from CITES-registered nurseries) for nature-collected specimens; and

(c) in many wildlife-consuming economies, a shift from CITES-controlled species to other species not yet listed in the Appendices. As to the latter, concern has already

150 See Favre, *supra* note 99, at 259-260.

151 CITES Secretariat, *Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants* (1980), implemented in cooperation with the International Air Transport Association (IATA); see CITES Conference Resolution 9.23 (1994), and the *IATA Live Animals Transport Regulations* 110.00 (21st ed.).

152 L.D. Guruswamy, G.W.R. Palmer and B.H. Weston, *International Environmental Law and World Order* (1994) 811.

153 Trexler, *supra* note 2, at 90-96; and Burgess, ‘The Environmental Effects of Trade in Endangered Species’, in Organisation for Economic Cooperation and Development, *The Environmental Effects of Trade* (1994) 132-133.

154 Forster and Osterwoldt, ‘Nature Conservation and Terrestrial Living Resources’, in P.H. Sand (ed.), *The Effectiveness of International Environmental Agreements: A Survey of Existing Legal Instruments* (1992) 59, at 80.

155 E.g., 29 species were deleted in 1987 (pursuant to CITES Conference Resolution 2.23 of 1979) as having been inappropriately listed in the first place; see Favre, *supra* note 48, at 50.

156 By 1989, international trade in ranched crocodilian products had reached a volume of 150,000 hides valued at \$5 million: 10 *TRAFFIC USA Newsletter*, 2 (1990). For current figures for just one species, see Africa Resources Trust, *Conservation of the Nile Crocodile: Has CITES Helped or Hindered?* (1995).

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been expressed over a potential 'domino effect', and TRAFFIC has begun to monitor international trade developments also with regard to previously unaffected species (such as a growing trade in hippopotamus ivory as a substitute for elephant ivory).¹⁵⁷

V. Future Perspectives

There are signs that CITES may indeed have reached its outer limits. Considering the treaty's focus on transnational trade, the advent of large free-trade areas – aimed at the abolition of internal trade boundaries – is bound to diminish the future relevance of CITES-type border controls unless new methods of regulation can be developed to cope with geopolitical changes of that order.¹⁵⁸

The first test in this regard was the European Union's move towards a boundary-free 'internal market' in 1984.¹⁵⁹ Even though formal CITES membership of the European Community – under the 1983 Gaborone amendment to the treaty¹⁶⁰ – has still not entered into force for lack of the required minimum number of ratifications, the Community enacted its own binding regulations to implement CITES from 1982 onwards.¹⁶¹ These were tightened by successive amendments and enforced by a landmark judgment of the European Court of Justice in 1990 (holding an unsubstantiated French CITES import permit to be in infringement of Community law).¹⁶² Nevertheless, critics have pointed to serious shortcomings of those regulations.

157 Weiler, de Meulenaer and van den Bloock, 'Recent Trends in International Trade of Hippopotamus Ivory', 15 *TRAFFIC Bulletin* (1994) 47.

158 Article XIV(3) exempts regional free trade arrangements; article 104 of the 1993 North American Free Trade Agreement (NAFTA, 32 *International Legal Materials*, 605) expressly gives priority to CITES (including subsequent amendments if so agreed by the parties) in case of inconsistency between treaty obligations, but then clouds the issue by requiring choice of the 'least inconsistent' alternative for compliance.

159 See Emonds, 'Gemeinsame Durchführung des WA in der EG', 5 *Natur und Recht* (1983) 18; Thomsen and Bräutigam, *supra* note 55; Vandeputte, 'Why the European Community Should Become a Member of the Convention on International Trade in Endangered Species of Fauna and Flora', 3 *Georgetown International Environmental Law Review* (1990) 245; and Fleming, *supra* note 131, at 18-27.

160 Amendment of article XXI (permitting accession to the Convention by regional economic integration organizations), adopted at the second extraordinary meeting of the Conference on 30 April 1983, requires 54 'acceptances' (of which 33 have been deposited to date); see Wijnstekers, *supra* note 38, at 273, 276.

161 Council Regulation (EEC) No.3626/82 of 3 December 1982, OJ 1982 L 384/1; the most recent update (implementing the amendments made at the 9th CITES Conference) is Commission Regulation EEC/558/95 of 10 March 1995, OJ 1995 L 57/1-50, with a correction of 30 May 1995 in OJ 1995 L 119/39; further amended by Commission Regulation EEC/2727/95 of 27 November 1995, OJ 1995 L 284/3.

162 'Bolivian Furskins Case' (*Commission of the European Communities v. French Republic*), judgment No. C-182/89 of 29 November 1990, ECR [1990] I, 4337. See Krämer, *supra* note 49, at 207-215; for background, see *supra* notes 134-135. In 1991, the Commission opened similar infringement proceedings against Spain, OJ 1991 C 281/17; see Demaret, 'Trade-Related Environmental Measures (TREM) in the External Relations of the European Community', in Cameron, Demaret and Geradin, *supra* note 84, at 277-332, 314 note 28.

These include the loss of important statistical data on trade flows,¹⁶³ the automatic mutual recognition given to permits from other EU countries (making enforcement dependent on the weakest link),¹⁶⁴ and the lack of EU-wide wildlife control and inspection services to replace the former national border controls.¹⁶⁵ A comprehensive revision of the 1982 regulations is scheduled to enter into force on 1 June 1997. While undoubtedly an improvement, this revision, which took the EU five years to prepare,¹⁶⁶ still fails to come to grips with these problems.

A second major challenge is the role of CITES in limiting unsustainable exploitation of species that remain outside its ambit because they fall within the regulatory competence of some other resource management regime or under the dogma of permanent national sovereignty over natural resources.¹⁶⁷ The issue came to the forefront with Dutch and German proposals at the 1992 and 1994 CITES Conferences to list commercially used tropical timber species such as ramin (*Gonystylus bancanus*) and mahogany in Appendix II, against predictable resistance from some range states (especially Malaysia, Brazil, Cameroon and Congo, which insisted on prior approval by the International Tropical Timber Organization).¹⁶⁸ Still, a total of fifteen timber or 'woody' species have been placed in the appendices to date.¹⁶⁹ For instance, big-leafed mahogany (*Swietenia macrophylla*), which in 1994 missed the required two-thirds majority for Appendix II by six votes in a secret ballot, was eventually listed in Appendix III by Costa Rica.¹⁷⁰ A temporary Timber Working Group, established by the Conference, will submit proposed new procedures for the

163 Favre, *supra* note 48, at 226; for examples, see Schmidt-Räntsch, 'Besitz und Vermarktung von geschützten Tieren und Pflanzen nach der Vollendung des EG-Binnenmarktes', 14 *Natur und Recht* (1992) 49. Criticism by other parties was articulated in CITES Conference Resolutions 6.5 (1987, rev. 1994) and 8.2 (1992, rev. 1994) on implementation of the Convention in the European Economic Community.

164 For recognition even of manifestly incorrect CITES documents from other EU countries, see Wirth, 'Ausweis- und Meldepflichten im gesetzlichen Artenschutz', 42 *Neue Juristische Wochenschrift* (1989) 1582; *contra* Batefeld and Weitzel, 43 *Neue Juristische Wochenschrift* (1990) 171.

165 In the United States, where federal powers to control wildlife trade are well established, the Fish and Wildlife Service is considered understaffed with 74 wildlife inspectors; see U.S. General Accounting Office, *Wildlife Protection: Fish and Wildlife Service's Inspection Program Needs Strengthening* (December 1994) 2. The EU Environment Directorate has two administrators working full time on CITES matters, and no inspectors at all; Fleming, *supra* note 131, at 17; see also Doyle, 'The European Community and Wildlife Supervision: The Sovereign Right to Protect National Resources', 9 *New York International Law Review* (1996) 49.

166 First proposal by the European Commission, OJ 1991 C 26/1; second proposal (as amended by the European Parliament), OJ 1994 C 131/1; revised as 'common position', OJ 1996 C 196/58, and (after further amendments by Parliament) adopted by the Council of Ministers on 9 December 1996. See the comments by Mosedale, 'EU Draft Regulation on CITES', 5 *Review of European Community and International Environmental Law* (1996) 345; and by Fleming and Flanders, 'New Wildlife Trade Legislation in the European Union', 16 *TRAFFIC Bulletin* (1997) 81.

167 See Schrijver, *supra* note 13.

168 Kelso, *supra* note 99, at 71. While Brazil had supported the proposal in 1992, and several Latin American countries (e.g., Colombia and Venezuela) supported it in 1994, Bolivia and Brazil now opposed it.

169 R.G. Tarasofsky, *The International Forests Regime: Legal and Policy Issues* (1995) 13.

170 CITES Secretariat, *Notification to Contracting or Signatory States* of 18 August 1995, and *Notification to the Parties* No. 903 of 28 February 1996. As from 16 November 1995, CITES permits are thus required for exports of saw-logs, sawn wood and veneers.

Whither CITES? The Evolution of a Treaty Regime

listing of timber species to the 1997 meeting, including on consultation with other international bodies in this sector.¹⁷¹

The other explosive issue to resurface in 1997 may be ocean fisheries. While CITES amendments concerning marine species require consultations with 'intergovernmental bodies having a function in relation to those species' (article XV/2/b), relations with the International Whaling Commission, for one, have not always been easy.¹⁷² After an only half-facetious suggestion by African countries during the 1989 Conference to list the North Atlantic herring in retaliation for elephant up-listing proposals, and after the last-minute withdrawal of a Swedish proposal for the listing of Atlantic bluefin tuna in 1992,¹⁷³ the 1994 Conference for the first time discussed shark fisheries and trade in shark fins – despite objections by Japan and other countries, which would have preferred to leave unlisted marine species to regulation by international fisheries agreements.¹⁷⁴

The issue is indeed reminiscent of negotiations for the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals. There, the inclusion of marine living resources was vehemently opposed by an 'alliance of Pacific powers',¹⁷⁵ from whose subsequent boycott that Convention never quite recovered. With the current price of Atlantic bluefin on the *sashimi* market well above \$50 per kilogram,¹⁷⁶ the CITES listing of endangered fish species is bound to be politically controversial. At any rate, the future development of CITES will be determined not only by reference to the ongoing 'trade vs. environment' debate in the World Trade Organization (WTO),¹⁷⁷ but also by growing regulatory competition from

- 171 First report of the group in CITES Secretariat, *Notification to the Parties* No. 909 of 28 March 1996. See also D.J. Callister, *Illegal Tropical Timber Trade: Asia-Pacific* (1992); N.T. Marshall and M. Jenkins, *Hard Times for Hardwood: Indigenous Timber and the Timber Trade in Kenya* (1994); and König, 'New Approaches to Achieve Sustainable Management of Tropical Timber', in Wolfrum, *supra* note 65, at 346-347.
- 172 See CITES Conference Resolutions 2.7 (1979, rev. 1994) and 9.12 (1994), and *supra* note 70; R.U. Osterwoldt, 'International Law and Politics of Conservation, the Case of the Whales: The Endangered Species Convention (CITES), the International Whaling Commission (IWC) and Whale Conservation', M.Phil. thesis, Oxford, 1982; and Birnie, *supra* note 100), 254 note 51.
- 173 Hemley, 'CITES 1992: Endangered Treaty? Kyoto Decisions Political, Not Practical', 11 *TRAFFIC USA Newsletter*, 3 (1992) 2; and Chandler, 'Recent Developments in the Use of International Trade Restrictions as a Conservation Measure for Marine Resources', in J.M. Van Dyke, D. Zaelke and G. Hewison (eds.), *Freedom for the Seas in the 21st Century: Ocean Governance and Environmental Harmony* (1993) 327, 334. See also Wells and Barzdo, 'International Trade in Marine Species: Is CITES a Useful Control Mechanism?', 19 *Coastal Management* (1991) 135.
- 174 CITES Conference Resolution 9.17 (1994), and CITES Secretariat, *Notification to the Parties* No. 884 of 6 November 1995 (further data collection on shark species for discussion in 1997).
- 175 Australia, Canada, Japan, New Zealand, Russia and the United States; see Lyster, *supra* note 67, at 282 note 10; *Idem*, 'The Convention on the Conservation of Migratory Species of Wild Animals (the "Bonn Convention")', 29 *Natural Resources Journal* (1989) 979. Text of the Convention (signed on 23 June 1979, entry into force on 1 November 1983) in 19 *International Legal Materials* (1980), at 15.
- 176 See A.L. Gaski, *Bluefin Tuna: An Examination of the International Trade with an Emphasis on the Japanese Market* (1993).
- 177 The relationship of GATT with multilateral environmental agreements (MEAs), including CITES in particular, is on the agenda of the WTO Committee on Trade and Environment. See Cameron and Robinson, 'The Use of Trade Provisions in International Environmental Agreements and Their Compatibility with the GATT', 2 *Yearbook of International Environmental Law* (1991) 3; Swan-

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powerful sectoral regimes for management of the Earth's dwindling biological resources.

son, 'The Evolving Trade Mechanism in CITES', 1 *Review of European Community and International Environmental Law* (1992) 57; Housman, Goldberg, van Dyke and Zaelke, 'The Use of Trade Measures in Select Multilateral Environmental Agreements', *UNEP Trade and Environment Series*, 10 (1995); Lang, 'Is the Protection of the Environment a Challenge to the International Trading System?', 7 *Georgetown International Environmental Law Review* (1995) 463; Crawford, 'An Examination of Conflicts Between the Convention on International Trade in Endangered Species and the GATT in Light of Actions To Halt the Rhinoceros and Tiger Trade', 7 *Georgetown International Environmental Law Review* (1995) 555; Fletcher, 'Greening World Trade: Reconciling GATT and Multilateral Environmental Agreements within the Existing World Trade Regime', 5 *Journal of Transnational Law and Policy* (1996) 341; Wold, 'Multilateral Environmental Agreements and the GATT: Conflict and Resolution?', 26 *Environmental Law* (1996) 841; Petersmann, 'Trade and the Protection of the Environment after the Uruguay Round', in Wolfrum, *supra* note 65, at 165-197; and Charnovitz, 'Multilateral Environmental Agreements and Trade Rules', 26 *Environmental Policy and Law* (1996) 163.