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**PROTECTION OF ANIMALS IN THE CONVENTION ON
INTERNATIONAL TRADE IN ENDANGERED SPECIES OF
WILD FAUNA AND FLORA (CITES)**

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TABLE OF ABBREVIATIONS

AAF	Animals Asia Foundation
AIHTS	Agreement on International Humane Trapping Standards
ALDF	Animal Legal Defense Fund
APAEC	Asociación protectora de animales exóticos Catalunya
BLG	Biodiversity Liaison Group
CACH	Campaing Against Canned Hunting
CAPS	Captive Animals Protection Society
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoP	Conference of the Parties
CVMA	Canadian Veterinary Medical Association
CWI	Care for the Wild International
CJEU	Court of Justice of the European Union
EAZA	European Association of Zoos and Aquaria
ECtHR	European Court of Human Rights
EFSA	European Food Safety Authority
EIA	Environmental Investigation Agency
EMG	Environment Management Group
ESA	U.S. Endangered Species Act
ETIS	Elephant Trade Information System
EU	European Union
FAWC	Farm Animal Welfare Committee (current Farm Animal Welfare Council)
FFW	Fondation Franz Weber
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GMOs	Genetically modified organisms
GRASP-UNEP	Great Apes Survival Partnership
HIS	Human Society International
HSUS	Humane Society of the United States
IATA	International Air Transport Association
Interpol	The International Criminal Police Organization
IPS	International Primatological Society
ITC	International Trade Centre
IUCN	International Union for Conservation of Nature
IWC	International Whaling Commission
ICCWC	International Consortium on Combating Wildlife Crime
IFAW	International Fund for Animal Welfare
ISO	International Organization for Standardization
MIKE	Monitoring the Illegal Killing of Elephants

NGO	Non-governmental organization
OIE	World Organisation for Animal Health
PETA	People for the Ethical Treatment of Animals
RESP	Responsible Ecosystems Sourcing Platform
Resolution Conf.	Resolution of the Conference of the Parties
SPCA	American Society for the Prevention of Cruelty to Animals
SPS	Agreement on the Application of Sanitary and phytosanitary measures
RSPCA	Royal Society for the Prevention of Cruelty to Animals
SSN	Species Survival Network
TBT	Agreement on Technical Barriers to Trade
TFUE	Treaty on the Functioning of the European Union
TRAFFIC	The wildlife trade monitoring network
UN	United Nations
UNEP	United Nations Environment Programme
UNEP-WCMC	United Nations Environment Programme-World Conservation Monitoring Centre
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
WAZA	World Association of Zoos and Aquariums
WCO	World Customs Organization
WTO	World Trade Organization
WSPA	World Animal Protection International
WWF	World Wide Fund for Nature

SUMMARY

Following the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), commerce of species, subspecies, or populations must not be detrimental to their survival; but it does not mention the potential damage that trade might cause to each individual of the species or populations concerning animal welfare. Besides preventing trade from jeopardizing or being inconsistent with the conservation of biological diversity, this work analyzes to which extent CITES takes into account the protection of animals individually considered as sentient beings and if it would be necessary to propose new instruments that might improve outcomes concerning this issue, either by adding new requirements and/or reinforcing the existing ones. With this purpose, the precedents contained in agreements, conventions, and international standards and their correlations and synergies with CITES have been examined, as well as the appearance in the international scene of the “compassionate conservation” movement, the current references to the protection of animals in CITES and their implementation, the presence of NGOs and of their influential power, and the unacceptable and conflictive situations; and consultations have taken place with the World Customs Organization, the International Consortium on Combating Wildlife Crime and UNEP’s World Conservation Monitoring Centre.

It follows from all of this, and in particular from the analysis of the existing texts of the CITES “universe” (Convention, Strategic Vision, Memoranda of Understanding, Resolutions, Decisions, and Notifications to Parties), and of the CITES bodies (Conference of the Parties, Animals Committee, Standing Committee and Secretariat and the cooperation instruments with other international regimes), as well as from the European Union regulations, that, being true that a variety of aspects related to animal welfare and protection exists, gaps have been detected in the scope of the mentioned protection, besides a generalized lack of attention to the implementation of those requirements. For this reason, this work recommends the improvement of the current standards and practices concerning animal protection, the strengthening of its implementation and compliance, the taking into consideration of the impacts of illegal trade in the protection of individual animals, an increase in the cooperation with other international institutions, and the incorporation of new elements and tools that may help prevent weak animal welfare, such as training and education, or to reach a total level of protection through the search of alternatives to the trade of animals and their parts.

1. OBJECTIVES

This work has a double objective:

- 1.- To evaluate if CITES, which dates back to 1973, is adapted to the growing social trends that claim a broader protection of animals due, basically, to the influence of a variety of scientific and ethical factors, that already have their own reflection in legislation, policy guidelines, and resolutions approved in different areas with both a national and an international scope.
- 2.- To draw up the pertinent proposals for future work within CITES in accordance with the results obtained.

2. INTRODUCTION

The attention that society and law offer to animals, as sentient beings who have basic needs and interests that deserve consideration and protection, has a worldwide reach out and it has turned into a social and legal issue as an aspiration of a society whose purpose is to ban cruelty and to prevent or minimize suffering.

Thus, during the last decades, a growing importance is being given to the protection of animals as a value for society, progressively leading to legal developments and public policy measures of animal protection adopted in different areas. Consequently, it seems reasonable and logic that CITES does not remain excluded of these trends, and that international trade of specimens be carried out in a context of protection of individual animals, and not only of species and populations.

The line of departure is that, in addition to species conservation, whose protection is focused on preventing their extinction, the protection of animals as physical individual and sentient beings, whose protection will keep them from suffering, must be also considered.

Given this, the idea that international trade, for the benefit of the sustainable use of species, should also keep individual animals from abusive exploitation and mistreatment regardless the commercial purposes, is expanding and consolidating. This new approach should include the protection of animals to prevent or to minimize the damage caused to them during their capture in the wild, their captive breeding and raising, transport operations in the broad sense, and slaughter (sacrifice).

3. MATERIALS AND METHODOLOGY

First, an exhaustive bibliography and literatures review was done on the advancement and progress of science concerning the capacities of animals as sentient beings as well as of the consequences that stem thereof from the ethical, moral, social, and legal points of view.

Second, a search on the presence of terms linked to the notions of protection of animals and animal welfare was undertaken in the instruments that constitute the broad frameworks in the context of international law and policy, and to some extent in some national ones.

The following were analyzed, among them:

Multilateral Environmental Agreements: Convention on the Conservation of Migratory Species of Wild Animals, or Bonn Convention; Convention on Wetlands of International Importance, or Ramsar Convention; International Convention for the Regulation of Whaling; Protocol on Environmental Protection to the Antarctic Treaty; Convention for the Conservation of Antarctic Seals; Agreements on international humane trapping standards (Agreements on international humane trapping standards (between the European Community and Canada and the Russian Federation and between the European Community and the United States); Vienna Convention on the Law of Treaties; European Union Treaty, and some of the EU regulations such as the one that prohibits the import of seal products or the one that prohibits the use of leghold traps.

Specific Conventions of the Council of Europe: Convention on the Conservation of European Wildlife and Natural Habitats, or Bern Convention; European Convention for the Protection of Animals during International Transport; European Convention for the protection of animals kept for farming purposes; European Convention for the Protection of Animals for Slaughter; European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes; European Convention for the protection of pet animals.

International Organizations: World Organisation for Animal Health (OIE); United Nations (UN), with its World Charter for Nature; United Nations Organization for Education, Science and Culture (UNESCO); World Trade Organization (WTO); International Union for Conservation of Nature (IUCN); World Customs Organization (WCO); International Air Transport Association (IATA); ABTA The Travel Association (although a United Kingdom Association it has international projection).

Legislation, civil and criminal codes of several countries in which mistreatment of animals or animal welfare have relevance have also been examined. Also, several Constitutions in which animal protection is included as part of State powers; as well as Questions addressed by MPs to Spanish, United Kingdom or European Parliaments.

Third, a complete review of bibliography and literature on “Compassionate Conservation” was also undertaken. Since this idea is quite recent, there is almost no “classic” paper literature about it although there is a book published in 2013. The rest of the information is in the web in digital version. The search has mainly focused on the *Centre for Compassionate Conservation* of the University of Technology, Sydney, Australia, the leader in the development of this new concept as an attitude towards animals.

Concerning CITES, the analysis of the issues on protection of animals and animal welfare has reached the following documentation: the text of the Convention, the Strategic Vision 2008-2020, Resolutions and Decisions adopted by the Conference of the Parties, Notifications to the Parties by the Secretariat, meetings of the Standing Committee, of the Animals Committee and of the Conference of the Parties, as well as the different agreements on cooperation of the CITES Secretariat with other organizations, such as those signed with the World Association of Zoos and Aquariums (WAZA), or the World Customs Organization (WCO).

Within the same framework of CITES, the scope of the analysis was extended to the acts of the European Union (EU), studies and reports of the European Commission and other relevant instruments such as the Reference Guide to the European Union Wildlife Trade Regulations.

The approach taken was intended to acquire the adequate knowledge on the degree of relevance that CITES grants to the protection and the welfare of animals, evaluate the implementation in the real life of the legal provisions and other instruments concerning both animal protection and welfare as reflected in the analyzed materials, and determine the obligations stemming thereof as well as the level of compliance and implementation by the States Parties.

For all the mentioned sources (although its presence was minor) information on other related issues was also collected, such as the influence and relationship between species conservation and welfare of each one of the individual living specimens, or the weakening of animal welfare that international trade causes as well as conflictive or ethically unacceptable situations generated by such trade, whether legal or illegal.

An additional concept, also explored, was the relationship between mean of subsistence and animal welfare, for which the research was mainly focused on the documents and outcomes of Rio+20 – United Nations Conference on Sustainable Development, CITES Working Groups, the International Trade Centre (ITC), the IUCN, TRAFFIC and the United Nations Conference on Trade and Development (UNCTAD).

Finally, and in particular about CITES and about the international trade in wild fauna, direct consultations were made with the World Customs Organization, the United Nations Environment Programme's World Conservation Monitoring Centre (UNEP-WCMC) and the International Consortium on Combating Wildlife Crime (ICWC).

The information obtained from these searches, once filtered, analyzed, and structured, is evaluated as a whole in the section dedicated to Results; afterwards these results are summarized as a preamble for its Discussion, and finally the section on Conclusions and Recommendations closes this work.

4. OUTCOMES

4.1 Framework premises and background of this work

4.1.1 Animals as sentient beings

Animals are sentient beings. They can feel pain –physical pain and emotional pain perceived when there is an unpleasant emotional state- , which leads to suffering and a response to the pain stimuli. The capacity to feel pain has been proven to exist in vertebrates (mammals, birds, amphibians, reptiles and fish) and in some invertebrates, such as squid, octopus and possibly some crustaceans (Mellor *et al.* 2009).

Donald R Griffin (1915-2003), the US professor of zoology, considered to be the founding father of the modern studies on animal behavior, reasoning and consciousness, created cognitive ecology as area of knowledge and defended in his published works that animals had the capacity to think and to reason (Griffin 1985, 1992) as well as consciousness, as the subjective state of feeling and thinking about objects or events (Griffin 2003).

Based on studies that examine factors social learning, self-awareness, numerical abilities, use of tools, expression of emotions, language comprehension, cooperative behavior and altruism, have been used to evaluate which are the more intelligent animals among which the main listed ones are dolphins, chimpanzees, orangutans, elephants, African grey parrots and dogs (Boysen & Custance 2012).

In July 7th 2012, prominent neuroscientists met in Cambridge University to celebrate the Francis Clark Conference on Consciousness in Human and Non-Human Animals. By the end of this event the Cambridge Declaration on Consciousness was signed (Cambridge Declaration 2012) which summarized the most important outcomes of current research and discoveries about the experience of consciousness and behaviors related to it both of human and non-human animals. The Cambridge Declaration on Consciousness was written by Philip Low, edited by Jaak Panksepp, Diana Reiss, David Edelman, Bruno Van Swinderen, Philip Low and Christof Koch, and signed by all the participants in the Conference before Stephen Hawking. The Declaration acknowledges the existence of consciousness mainly in mammals and birds and established that the following observations can be stated unequivocally:

- Studies of non-human animals have shown that homologous brain circuits correlated with conscious experience and perception can be selectively facilitated and disrupted to assess whether they are in fact necessary for those experiences.
- Deep brain stimulation of these systems can generate similar affective states in humans and non-humans.
- Neural circuits supporting behavioral/electrophysiological states of attentiveness, sleep and decision making appear to have arisen in evolution as early as the invertebrate radiation, being evident in insects and cephalopod mollusks (e.g., octopus).
- Birds appear to offer, in their behavior, neurophysiology, and neuroanatomy a striking case of parallel evolution of consciousness. Evidence of near human-like levels of consciousness has been most dramatically observed in African grey parrots.

- Mammalian and avian emotional networks and cognitive microcircuitries appear to be far more homologous than previously thought.
- Certain species of birds have been found to exhibit neural sleep patterns similar to those of mammals, including REM sleep.
- Neurophysiological patterns, previously thought to require a mammalian neocortex, also exist in birds such as zebra finches.
- Magpies in particular have been shown to exhibit striking similarities to humans, great apes, dolphins, and elephants in studies of mirror self-recognition.
- Emotional feelings of human and non-human animal arise from homologous subcortical brain networks.

Finally the signatories declare that: Consequently, the weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Nonhuman animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates.

Based on his approach on direct observations, British naturalist Charles Darwin was one of the first scientists who wrote about the nature of emotions in animals acknowledging that senses, emotions and faculties, such as love, memory, attention, curiosity, imitation or reason are present in animals (Darwin 1871).

In the last recent years, his hypothesis have been reaffirmed based on a more consistent scientific approach, so that a great part of the scientific community backs the idea of the existence of a great variety of complex emotions in animals such as fear, anxiety, boredom, frustration, affliction, empathy, altruism, desire or happiness, among others (See e.g. Iain Douglas-Hamilton *et al.* 2006; Langford *et al.* 2006; Orlaith & Bugnyar 2010; Parr 2001; Frans de Waal *et al.* 2011; Rosati & Hare 2013). Furthermore, it has been argued that, at least in mammals, there are 'basic' discrete emotional systems (e.g. fear, rage, panic, play) rooted in the neural circuitry of particular brain areas, serving specific adaptive functions, and representing the fundamental building blocks of all emotional reactions (Ekman 1992; Panksepp 1998) and that the existence of diverse emotional-affective networks in animal brains is empirically definitive (Panksepp 2010).

Thus, scientific research on evolutionary biology, cognitive ethology and social neurology support the idea that animals have rich and profound emotional lives. One of the thinkers who has contributed more to the consolidate these statements is Marc Bekoff, a world class expert on animal behavior and conduct, PhD in Ethology and Full Professor of biology at the University of Colorado, who has been studying for more than 40 years the social behavior of animals. His conclusions about the emotional lives of animals, a result of observations and research has been widely published in books, articles and essays (see *inter alia* Bekoff 2007).

As a conclusion of the abovementioned statements, it can be asserted that the scientific community offers enough data to back as evidence that animals have physical and psychological sensibilities, i.e. complex physical and psychic sensations, and can perceive and transmit emotions and moods. Animals do not only experience pain, anxiety, fear, boredom, happiness or desires and even, some of them, have cognitive capacities and self-awareness of their own existence.

Therefore, amount and level of knowledge reached nowadays on these issues have allowed –and continue to allow- to provide data that lead to the advancement of legislation and public policies on animal protection.

4.1.2 Animal protection

4.1.2.1 Animal welfare and animal rights

There are two different ideological approaches to the praxis of animal protection decision-making although there are also middle ground positions between them (see, in the same sense, Recarte 2002).

1) Animal welfare

2) Animal Rights

The term “animal rights” can be subdivided in two different categories: “animal rights” and “animal liberation”.

Defenders of “animal rights” assert that animals are entitled to equal protection as humans who cannot act on their own behalf, such as babies or severe mentally handicapped. Defenders of “animal liberation” assert that the exploitation of any kind of animals is “speciesist”, i.e., it discriminates animals based on their species (Harrop 2011).

Both positions acknowledge that animals are sentient beings with capacity to experience pain and pleasure. But while welfarists assert that unnecessary suffering of animals is to be prevented, animal rightist assert that any type of suffering has to be prevented via the abolition of any sort of animal exploitation. The qualification of suffering as necessary or unnecessary is subject both to the advancement of science and knowledge, e.g., as soon as alternatives to uses of animals become available, as well as to changes on moral opinions (Harrop 2011). But in any case, human beings have to respect animals and to attribute to the intrinsic value as much as they should establish a moral code the guide the ways by which they relate to them (Harrop 2013).

Nevertheless, as Favre (2012) recognizes, the notion of “animal rights” has already been interiorized by the legal establishment but only in a few countries, while the notion of “animal welfare” is more accepted and used by most of them.

This capacity to experience pleasure and pain leads to the acknowledgement that they have interests that consist in their well-being, the prevention of pain and the enjoyment of life in accordance with their ethological requirements and biological features. The requirement of their equal protection is based on their capacity to feel and not on their capacity to reason or to speak. This idea was developed in the 18th century by the English philosopher Jeremy Bentham (1748-1832), in his *Introduction to the Principles of Morals and Legislation*, where he expressed this principle when comparing animal suffering to human slavery:

“The day has been, I am sad to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing, as, in England for example, the inferior races of animals are still. The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason a human being should be abandoned without redress to the

caprice of a tormentor. It may one day come to be recognised that the number of the legs, the visllosity of the skin, or the termination of the os sacrum are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer?"

This idea was later farther developed by other thinkers using different approaches but always with the intention of awarding legal protection and moral consideration to animals. Peter Singer (Singer 1975) considers that the circle of morals has to be expanded to encompass animals based on the principle of equal value of their and our interests in avoiding suffering; Martha Nussbaum (2006) proposes a global or interspecies notion of justice. It is widely accepted (see Recarte 2002) that, with the works of Tom Regan (1983), the modern movement of animal rights began, founding its premises on the argument that all individuals who have intrinsic value have a right not to be treated as means to obtain something by others (about the notion of intrinsic value see also Recarte 2002). With a mire abolitionist perspective Gary Francione (1995) bases his arguments on the need to suppress the principle that animals are property. From a more strict legal perspective, Steven Wise (2000) argued that some basic legal rights should be expanded and attributed to some animals. His position is centered around the idea that some animals, in particular chimps, bonobos, elephants, parrots, dolphins orangutans and gorillas, have the minimum requirements embedded in the notion of legal personhood which entitles them, as legal persons, to a right to the physical integrity and corporal freedom, i.e., a consequence of their capacity to wish for things, to act intentionally to obtain them and of their consciousness of their own existence.

4.1.2.1.a) Animal welfare

- Animal Welfare Science

The capacity of animals to feel, perceive and experience is the central to the debate on animal welfare, since it leads to the issue about whether animals experience suffering, a question the response to which, based on scientific research and empirical evidence, is affirmative beyond doubt (Broom 2014). This capacity (known as "sentiency") is the basis of the modern animal welfare science, the scientific study of the welfare of animals whose research has as main topic the capacities of animals to experience sensations and conscious emotions, this research is influencing the perceptions of society, which currently does not admit methods or systems that imply the lack of welfare, or simply poor welfare conditions, a science on which the most important public policy decisions rely (Broom 2011, Alonso & Recarte 2009).

Animal welfare science is an evolving and prosperous scientific area that has produced a large amount of scientific literature as shown by the study of Walker *et al* 2014 on the scientific public whose role is to enlighten public morals (Broom 2014). As the abovementioned study found during the last two decades the ratio of increase in number of publications is 10-15% annually and notwithstanding the fact that most of the studies are on farm animals and on research/laboratory animals, captive animals (in zoos), mammals in particular, have also been subject on increasing study and it is foreseen that it will continue to grow in the near future. It is also foreseen that research on wild animals will not be limited to captive animal, since the growth of the "compassionate conservation" movement will favor the study of many other problems that humans cause to wild animals.

– The concept and objectives of animal welfare

The point of departure for animal welfarists is that animals are sentient beings and that is the reason why they should not suffer unnecessarily. It is possible to respect the welfare of animals if they are guaranteed a life without hunger, thirst, discomfort, enduring or intense pain or disease and they are provided with enough space to behave naturally. Animals should also not be treated with cruelty neither abused, but it is legitimate to use them to achieve human goals as soon as neither pain nor suffering is inflicted upon them. In this way, animal welfare legislation has as main goal to prevent pain or unnecessary suffering and therefore, from this perspective, causing some degree of suffering is legitimate if it is necessary –or useful- and responds to a higher reason. These major reasons support a human end, such as for example, the breeding of companion animals for their sale, the production of food, drugs or clothes or recreation through animal shows or exhibits.

The concept of animal welfare and the treatment given to the animals is a difficult notion to address from a strict scientific point of view, since it is based on social ethics which are subject to change and evolution. So our understanding of animal welfare is based on both science and a complex value system (see e.g. Fraser 2008). Animal welfare is also a complex multifaceted issue encompassing public national and international policies, with scientific, ethics, economic religious and cultural variables as well with significant implications for trade, a definition that has been adopted by the OIE (Bayvel 2010 and 2012). This multidimensional or multidisciplinary approach nevertheless has not necessarily led to the revision of its main premise: that it is a science, although a science that is increasingly becoming a holistic science, in which flexible approaches through risk analysis and other social sciences methods are also used (on the historical evolution of the “schools” of applied animal welfare science: biology, functional (behavioralist), pragmatic, based on animal choices through secondary indicators, based on risk analysis, evolutionary biology, genetics, pre-moral and pre-language analysis, holistic..., see Ana Recarte & Enrique Alonso 2009).

- Origins of the law on animal welfare.

The first modern law on animal welfare originated in England when, under the auspices of the British MP from Scotland Richard Martin the bill which led to Cruel Treatment of Cattle Act of 1822 was promoted, which considered a crime the mistreatment of horses, sheep, cows and cattle in general. Two years later, in 1824, the Society for the Prevention of Cruelty to Animals was founded, becoming the Royal Society for the Prevention of Cruelty to Animals in 1840 when Queen Victoria granted it royal status enlarging its social legitimacy. In 1835 the Act was amended to include the protection of all companion animals, typically dogs and cats (Cruelty to Animals Act of 1835).

Animal welfare considerations increased their scope of action to vivisection and research animal and has reached later fur animals, captive animals in zoos and aquaria, circuses and public shows and entertainment, leading to legislation or guidelines on these all sectors of production or services.

Nowadays, in numerous legislative instruments, minimal rules for welfare that need to be complied with by any person possessing, breeding, managing for food production or other animal origin products, conducting research or using for any sort profitable business, any sort of animal.

Although the general objective and purpose of this legislation is to prevent animal pain or unnecessary suffering, so it is admitted and accepted that there is unavoidable pain in breeding, transport or slaughter of these animals, the standards of protection have considerably heightened their requirements.

Thus, in the last decades, there have been legislative initiatives and amendments in the laws worldwide all of them oriented toward the improvement of animal welfare standards and animal welfare science has certainly played a significant role in it all (Walker *et al.* 2014).

Let us focus on some of these changes:

-The Council of Europe, the intergovernmental organization whose main objective is the promotion and defense of democracy, the rule of law and human rights in Europe, has adopted five basic conventions on animal welfare, which has contributed to the creation of a common European legal space and the harmonization of the legislation of various countries in the following areas: companion animals, international transport, farms, research and slaughter (Council of Europe).

The conventions are the following:

- European Convention for the Protection of Animals during International Transport, opened or signature in Paris in March 13th 1968.
- European Convention for the protection of animals kept for farming purposes, opened or signature in Strasbourg in March 10th 1976.
- European Convention for the Protection of Animals for Slaughter, opened or signature in Strasbourg in May 10th 1979.
- European Convention for the protection of pet animals, opened or signature in Strasbourg in November 13th 1987.
- European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes, opened or signature in Strasbourg in March 18th, 1986.

-At the European Union level, the 1997 Treaty of Amsterdam considered animals as “sentient beings” (Protocol n° 33). Currently the Treaty on the Functioning of the European Union, one of the Constitutive Treaties (2009), acknowledges also in article 13 that animals are sentient beings which obliges the member States and the European Institutions to consider their welfare in multiple sectors of public policy, which implies the enactment of legislation specifically addressed to regulate animal welfare mainly of farm animals as well as research and zoo animals.

-In the last years, public policies on animal welfare in intensive farming have evolved after the acknowledgement of the physic and psychic sensitivity of animals, although current conditions of such farming still compromise their welfare. Some examples are the regulations of pregnant sows - formerly designed in a way that they could hardly move- in the European Union, Australia, Canada and the United States. And the cages have been substituted for other spaces which allow greater mobility or collective facilities for groups of animals. In Australia, the European Union and California new laws have entered into force making mandatory the use of enriched cages instead of battery cages for laying hens.

- The Five Freedoms of animal welfare.

The elements of animal welfare, globally, are based on “the Five Freedoms” adopted by the World Organisation for Animal Health (OIE), the international organization established in 1924 by 28 countries by a multilateral treaty in order deal worldwide with animal health issues, in particular animals traded in international commerce where the risk of transmission of diseases among countries is greater. Today 178 countries are Parties to the Convention and since 2001 animal welfare issues have been identified as one of the priorities of its Strategic Plan (OIE 20914).

These 5 freedoms had been previously adopted by the UK Farm Animal Welfare Committee (FAWC 1979). Its origin relies in the publication of Animal Machines (Harrison 1964) that described the conditions of intensive breeding of farm animals and their suffering, which prompted the British Government to appoint a Committee to look into the welfare of farm animals. In 1965, the Committee, chaired by Professor Roger Brambell presented the 85 page “Report of the Technical Committee to Enquire into the Welfare of Animals Kept under Intensive Livestock Husbandry Systems” which became known as “The Brambell Report.” The report stated that animals should have the freedom “to stand up, lie down, turn around, groom themselves and stretch their limbs.” These freedoms became known as “Brambell’s Five Freedoms.” As a result of the report, the Farm Animal Welfare Advisory Committee was created in 1967 to monitor the livestock production sector. The first task of the Committee was to approve guidelines which ultimate led in 1979 to the formulation of the 5 Freedoms which will be analyzed more in depth in the next section.

The definition of animal welfare adopted by the OIE is in the Glossary of its Terrestrial Animal Health Code (2014):

“Animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and appropriate veterinary treatment, shelter, management and nutrition, humane handling and humane slaughter or killing. Animal welfare refers to the state of the animal; the treatment that an animal receives is covered by other terms such as animal care, animal husbandry, and humane treatment.”

These Five Freedoms, understood as factors that affect the welfare of animals, have a broad scientific recognition concerning animal welfare of animals under the care of human beings , while they are under their possession, during transport, trade and slaughter and have been incorporated into extensive set of rules on animal welfare enacted by different countries. Animal welfare was adopted as one of the priorities of the Strategic Plan of the OIE for the 2001-2005 period as since then it has approved recommendations and guidelines concerning transport, slaughter, production systems population control through culling and the use of animals in research and education (OIE 2014).

The Five Freedoms acquire all their relevance when animals are:

1. Free from hunger and thirst - by ready access to fresh water and a diet to maintain full health and vigor.
2. Free from discomfort - by providing an appropriate environment including shelter and a comfortable resting area.
3. Free from pain, injury or disease - by prevention or rapid diagnosis and treatment.

4. Free to express normal behavior - by providing sufficient space, proper facilities and company of the animal's own kind.

5. Freedom from fear and distress - by ensuring conditions and treatment which avoid mental suffering.

Concerning research with animals, animal welfare is formulated through the principle of the so-called “3Rs”, that appeared for the first time in the book “*The Principle of Humane Experimental Technique*” (Russell, W.M.S. & Burch, R.L. 1959) and is the foundation of legislation in this area. The three Rs stand for replacement, reduction and refinement. *Replacement* of the use of animals with alternative methods which avoid or replace living animals, *reduction* of the number of animals being used when the use is necessary, and *refinement* or minimization of pain, anxiety, distress, suffering or damage enduring from the time it is born until its death.

- The Five Freedoms and wildlife animals

These freedoms are applied to animals under the care of human beings. But, once the gap concerning wild animals was acknowledged, there have been proposals to specifically address their suffering, under the following approach (Paquet & Darimon 2010):

- 1.- Freedom from thirst, hunger, and malnutrition caused by humans;
- 2.- Freedom from discomfort due to environmental disruption caused by humans;
- 3.- Freedom from fear and distress caused by humans;
- 4.- Freedom from pain, injury, and disease caused by humans;
- 5.- Freedom to express normal behavior for the species.

Also stemming from the initial Five Freedoms a system to predict impacts on animal welfare was developed in order to be used for the evaluation of the level of suffering of research animals concerning nutrition, health, environment, mental state and behavior (Mellor & Reid 1994 y Mellor & Stafford 2001 cited in Baker *et al.* 2013).

But this new method to evaluate the welfare of research animals has also been used to assess the “humaneness” of the treatment of animals considered pests that each year are trapped, poisoned, shot or otherwise destroyed because of the harm they cause to the environment or to agriculture (Sharp & Saunders 2011) a theme that has also worried the OIE due to the fact that these animals, considered a pest, are vertebrates and can experience pain and suffering (OIE 2005).

More recently, the above mentioned model for assessing welfare impacts in wildlife management has also been proposed as a model to evaluate the impact assess the impact of trade in wild animals which the intention to forbid some commercial practices and improve welfare standards as well as to develop criteria that might also improve welfare policies through education (Baker *et al.* 2013).

4.1.2.1.b) Animal rights

The premise on which animal rights is based sustains that they are subjects of law entitled to rights and not only the subjects to which legal protection is addressed, attributing intrinsic value to animals themselves. Animals are not things, but living beings with rights, including the right to life,

liberty and not to be harmed, and also entitled to direct moral consideration. Being living things with intrinsic value and not with a value based on their potential to be used or their usefulness for the satisfaction of human needs, any sort of pain or death caused to them is considered unnecessary and unacceptable. The immediate consequence is the disappearance or abolition of any activity in which animals are exploited or even used.

4.1.2.2 Evolution of the law and social consensus concerning animal protection

The assumption that animals have consciousness and capacity to experience negative sensations and emotions is at the center of the major social concern about animal welfare (Mendl & Paul 2004). At least in the developed world, concern about the welfare of animals that are under human care is generalized and has informed legislation and policy (Walker *et al.* 2014). These are issues that transcend the merely theoretical level since the fact that animals experience fear and pain, or frustration, e.g. as a consequence of not being able of behaving naturally, have implications in the realms of ethics and of the law and can also have economic consequences (Dawkins 2000).

The more amount of information becomes available about animal capacities and necessities and notwithstanding that violence inflicted on animals is still widespread, raises the level of awareness and social sensibility and leads to significant amendment of rules favorable to them, since usually the rule follows the creations of the society which adopts it, mirroring the already consolidated social vision. Animal protection is a societal value. The evidence are the rules and policies themselves, adopted to protect animals.

The scientific ethical and cultural foundations have evolved towards conceiving animals as sentient beings, which has led amendments in different European countries and the Constitutive Treaties of the European Union, including the incorporation of mistreatment of animals as an offense in the text of the Criminal Code in many parts of the world. These events are backed by scientific developments that empirically demonstrate their nature as sentient beings and in general are also related to the revision of the status of human beings among all living creatures of the planet.

These trends towards the increase of animal protection, that obey to the intention of warranting the necessary protection of animals according to their biological and ethological needs and to their characteristics both as individuals and as species, do no longer allow the assimilation of animals to things or objects (and then the rules applicable to things or objects would be applied to animals only to the extent that they do not run counter to their nature).

This is the reason why some legal systems have passed legislative initiatives that got rid of the notion of animals as things. This is the case of the Civil Codes of Austria (1988), Germany (1990), Switzerland (2000) and Catalonia (2006), Check Republic (2012) and France (2014), which have already excluded animals from the concept or list of things, a debate that currently has also flourished in Argentina, Peru, Portugal or Colombia, where decisions of the higher Courts have acknowledged that animals should be treated as being included within the realm of “things” for legal purposes. In the European Union the Constitutive Treaties assert as part of their mandates that animals are sentient beings so it is perfectly justified to say that there has been a change in the legal status of animals from “things or commodities” to “sentient beings” worthy of social and legal protection in accordance to such acknowledgement.

The incorporation of mistreatment of animals in the list of criminal offenses or misdemeanors is a reality in many countries. The first country to which did it was England and just recently Portugal was added to a list which includes, also in recent years, countries such as Brazil, Uruguay and Mexico.

The right to the environment has reached constitutional status in the past decades, but it is still a right constituted from the perspective of human survival, i.e., from an anthropocentric perspective. In Latin America a more recent debate has raised the issue of whether the Earth itself (mother Earth – Pachamama) is entitled to become subject of fundamental rights, as legal and living entity, such as it is the case in Ecuador (2008) and Bolivia (2009), which may benefit animals as individuals and sentient beings. In some countries the acknowledgement of the importance of animals has taken place even in the highest legal instrument: the Constitution of Sri Lanka mandated giving value to all life forms, the Indian Constitution imposes on all citizens the duty to have compassion to all living things and the Brazilian Constitution provides that the government must protect flora and fauna from all practices that subject animals to cruelty prohibited by law. Similar relevant amendments to European Constitutions have taken place in Switzerland (1992), Austria (2004), Germany (2002) or Luxemburg (2007). In which animal protection is considered a duty for all state public powers so, in this context have to balance this constitutional principle with other constitutional values such as freedom of scientific enquiry or of research, artistic freedom of expression religious freedom or the right to exercise a profession or the right to free enterprise.

Developed countries which may not have yet allocated constitutional level to the protection of animals have enacted, all or most of them, statutes or regulations providing for such protection, and some are engaged in such a debate in their respective Parliaments. The scope and quality of such legislation varies depending on the level of development of the different countries with differences between highly developed countries where usually the implementation of the laws implies in general no major difficulties compared with the situation of countries where such laws do not exist or lack a minimum degree of implementation (OIE 2002b).

Currently animal welfare or anti-cruelty statutes are ubiquitous in the world community (some examples are the U.S.A., Australia, New Zealand, EU member States, Switzerland, Israel, India, Brazil, South Africa, Korea, The Philippines, Taiwan, United Arab Emirates or Thailand). China is one of the most relevant exceptions since any sort of legal text protecting animals is lacking, notwithstanding its serious situation concerning cruelty against animals and of animal mistreatment (Arrigo & Bersot 2014).

Animal welfarism can lead the debate towards the necessity to prevent unnecessary pain in animals without needing to focus on their capacity to feel but rather by focusing on the issues around the futility or necessity of inflicting pain per se and the motives that could justify it. Once social consensus around preventing their suffering.

Examples of such prohibitions and bans of the use of animals based on this sort of ethics, that prevails over individual interests or economic profits, include, for example, the banning of bullfighting and cockfights, greyhound racing, sport hunting, mink fur farms, cosmetic production based on animal testing, shark finning, dolphinarium, or the use of animals in circuses.

Corollary: It can be asserted that currently and since some years ago, there is evidence of increasing awareness of society about the need to respect animals. It can also be stated that the treatment of animals has been the subject of increasing social and legal preoccupation from the

two different perspectives previously described: animal welfarism and animal rights. The passing of legislation and adoption of policies, guidelines, codes of good practice or harmonized standards on how to treat animals adequately, as well as of legislation abolishing certain activities and practices that imply the use of animals, has increased in the last decades.

Thus, nowadays, due to a better scientific knowledge of the physiological and ethological needs of animals and acquired experience there is a larger social consensus backing the protection of animals from unnecessary or any type of suffering, whether through laws that regulate animal welfare or through the prohibition of activities that use animals, respectively.

Protection of animals is a complex and multifaceted general interest issue with relevant scientific, ethics, economic, religious and cultural dimensions, affecting public national and international policy, as well as trade policy (OIE 2002 a), Bayvel 2010 and 2012). And although in the past decades progress has been made through specific legislative instruments, there are areas and countries in which rule making and its implementation is still insufficient.

4.1.3 Protection of animals: international instruments

4.1.3.1 The big gap: there is no legally binding instrument protecting animals at the global level

There are international treaties protecting wildlife at the global level, but no equivalent instrument devised to protect animals or to promote animal welfare. In general animal welfare issues have been addressed at the national (or regional, in the case of the EU) level. But, although there are no international legally binding treaties protecting animals at the global level Currie & Provost (2011) emphasize the increasing relevance of the existence of animal welfare rules as part of the objectives of international law on wildlife. Favre (2012) believes that an International Convention for the Protection of Animals (ICPA) would imply a big step towards the political and legal protection of animals. Local animal protection groups could then focus their efforts in to the promotion and implementation of the standards set at the international level of the said Convention instead of dedicating their resources and efforts to the enactment of local rules.

At the international level, the preamble of the Universal Declaration on Bioethics and Human Rights, done by the United Nations Organization for Education, Science and Culture (UNESCO) General Assembly in October 19th 1995 (although a Declaration certainly is not a Treaty), with a programmatic and declarative character, the acknowledges the essential role of human beings in the protection of animals (Declaration 2005): “*Aware* that human beings are an integral part of the biosphere, with an important role in protecting one another and other forms of life, in particular animals, ...”. This document is not related with the preservation of biodiversity and the protection of the environment; it deals with issues of ethics concerning medicine, life sciences and the technologies to them related when applied to human beings. It still underlines, though, the importance of biodiversity and its conservation as a common concern of Humankind (article 2.h) and that “due regard is to be given (...) to the interconnection between human beings and other forms of life, to the role of human beings in the protection of the environment, the biosphere and biodiversity” (article 17).

4.1.3.2 International Treaties on Conservation

In international law the protection of wildlife focusing on animals as individuals is very rarely addressed in the conservation treaties and, when it is, the wild animals are under human control and captive. There are many treaties on the conservation of biodiversity and nature, as well as on the protection of wildlife, whose main objective and purpose is the preservation of endangered species but animal welfare is never expressly mentioned as general principles informing their provisions (Harrop 2011).

4.1.3.2.a) The World Charter for Nature

The World Charter for Nature, proclaimed by the United Nations General Assembly in Resolution 37/7, October 28th 1982, could help as the foundation for these principles (Harrop 2013). Its Preamble states that “every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action”. Although the objective of the Charter is the protection and respect of nature from the perspective of the conservation of the populations of species and of the habitats necessary for them, it is a reality that its preamble adopts a language that favors animal rights, attributing to them intrinsic, and not merely instrumental, value.

This is why Harrop´s proposal is that the Charter should be the document that could be the foundation on top of which the creation of an international regime should be built for the international regulation of animal welfare of wild animals, the building blocks being the idea of intrinsic value, the need to respect animals and the existence of a moral code.

4.1.3.2.b) Convention on Biological Diversity

The idea of intrinsic value of species is also mentioned in the Preamble of the UN Convention on Biological Diversity (CBD), opened for signature in Rio 1992, although using a more abstract language: “*Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,...*”. This statement has allowed for animal welfare to be sometimes addressed in the implementation of the Convention (Harrop 2013).

On the other side, CITES does include provisions on animal welfare and both Conventions, as well as other multilateral environmental agreements, and in particular those on the conservation of biodiversity, have been called to cooperate and jointly coordinate the implementation of their provisions [Conf.10.4 (Rev. CoP14), on Cooperation and synergy with the Convention on Biological Diversity].

The Sustainable use of biodiversity: Addis Ababa Principles and Guidelines (2004) should also be remembered. They were approved by the seventh meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP7, Kuala Lumpur 2004, Decision VII.12) with the purpose to attach more significance to the above mentioned reference of the text of the preamble of the CBD. The operational guideline linked to Practical Principle 11, the following factors are mentioned as those to be taken into account when addressing the sustainable conservation of biodiversity: “Promote more efficient, ethical and humane use of components of biodiversity”. These concepts can be very well coupled to the requirements that individual animals submitted to biodiversity conservation rules should be treated ethically and humanely, a notion that is also applicable to international trade, especially after CITES Resolution Conf. 13.2 (Rev COP14) (on

Sustainable use of biodiversity) has also urged the Parties to make use of the “*Principles and Guidelines for the Sustainable Use of Biodiversity*” when implementing its own provisions.

The references to the topic included in the preambles of the World Charter for Nature and Convention on Biological Diversity are relevant because the preambles of treaties can be used for the purpose of their interpretation (Article 31 “General rule of interpretation” of the Vienna Convention on the Law of Treaties, signed in May 25th 1969, states the following: 1.- A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2.- The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:...”), so they are very useful for the defense or advancement of ideas and concepts that could be considered perhaps controversial to be assumed as legally binding rules for the signatory states (Harrop 3013).

4.1.3.2.c) Bonn and Bern Conventions

Two other multilateral environmental agreements focus on animal species conservation and their habitats. They are the Convention on the Conservation of European Wildlife and Natural Habitats, done in Bern in September 19th 1979 (Bern Convention) and the Convention on Migratory Species, opened for signature in Bonn in June 23^d 1979 (Bonn Convention). Both Conventions offer an approach to the protection of biodiversity and wildlife making the ecological protection of wild species prevail over the economic values of their capture or trade, but there no reference to animal protection nor to animal welfare.

Concerning the Bern Convention, though, it should be noticed that there is some influence of animal welfare on the articulation of rules adopted to the protection of biodiversity (Harrop 2013) since its annex IV –as it relates to article 8- there are provisions on hunting methods and other forms of exploitation of animals which are forbidden because they are not selective and, although these provisions aim to prevent the use of all indiscriminate means of capture and killing including traps, if the latter are applied for large-scale or non-selective capture or killing, they have led to the consideration of animal welfare to prevent animal suffering in the decision-making process of the implementation of the Convention. Following Harrop (2011), although many of the prohibited methods are cruel and tend to cause great suffering to animals these provisions were not adopted with the intention to protect them from such suffering but to implement a conservation agenda focused on the protection of populations of endangered species due to the impact in them of methods that did not discriminate between endangered species when applied in general to capture individuals of populations from both endangered and non-endangered species. Anyhow, independently of its origin, article 8 of the Bern Convention is also a useful tool to promote a general international approach that will eventually prescribe wildlife management methods that minimize animal suffering and it has inspired European Union rules (see e.g. Regulation (EEC) n° 3254/1991, of the European Council, 4 November 1991) which has a broader geographical impact [(see Agreements on international humane trapping standards (AIHTS)].

On the Bonn Convention, it is very significant, as it concerns animal welfare, the Resolution adopted in the 11th CoP (Quito, 2014), on live captures of cetaceans from the wild for commercial purposes (Resolution of the Bonn Convention 2014), which will be revisited in the section dedicated to “preparation and Shipping of Animals”.

4.1.3.2.d) Protocol on Environmental Protection to the Antarctic Treaty and the Convention for the Conservation of Antarctic Seals

Two international agreements linked to the Antarctic Treaty opened for signature in Washington D.C. in 1959 have focused in particular on the treatment by the Parties¹ of animals living in this continent.

On the one side, the Convention for the Conservation of Antarctic Seals, opened for signature in London in 1972 mandates that research shall include studies as to the effectiveness of methods of sealing from the viewpoint of the management and humane and rational utilization of the Antarctic seal resources for conservation purposes [point 7(b) of the Annex]; and to ensure that the killing or capturing of seals is quick, painless and efficient [point 7(b) of the Annex].

On the other side, Annex II of the Protocol on Environmental Protection to the Antarctic Treaty, opened for signature in Madrid in 1991, requires that all taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable (article 3.6).

4.1.3.2.e) International Convention for the Regulation of Whaling

The International Convention for the Regulation of Whaling, opened for signature in Washington D.C., in December 2nd 1946, is an example of international agreement where animal welfare has indeed developed as a significant topic. The Treaty was adopted as a reaction against the unsustainable and irrational exploitation to which whales were submitted as a resource. Although its objective is the conservation of whale species, the debates within the International Whaling Commission (IWC), the organization created by the said Convention having as mandate to regulate whaling and conserve whales, have included issues of animal welfare in particular when the whaling methods of capture and secondary killing methods (to be used where the harpoon does not kill the whale outright) have been discussed (Harrop 2011 and 2013), which has even led to the establishment of a Working Group on animal welfare².

The IWC has increasingly leaned toward the reduction of cruelty, starting in the 1970s which the banning of some particular designs of the harpoons that increased the time during which the animals suffered its agony (Bowman *et al.* 2010; Sykes 2014). The description used by the IWC in order to guarantee a “humane sacrifice” consists in that the death must be caused without causing pain, stress, or perceptible anxiety” to the animal. Nevertheless, even using the current whaling methods, it has been impossible to significantly reduce the period of time of their agonizing until their loss of consciousness or death.

Although a moratorium adopted by the IWC in 1982 is still in place, there are exceptions admitted by its text that still make whaling legal. Nevertheless, the decision to ban commercial whaling (and its exceptions) obeyed also both to the conservation of whale species and to cruelty and morals since the moratorium includes whale species that are not endangered (Sykes 2014, D’Amato & Chopra 1991).

Concerning this issue a historical decision of the International Court of Justice, the main conflict settlement body of the United Nations, taken in March 31st 2014, ordered Japan to stop whaling in the Antarctic Ocean (undertaken in accordance with the JARPA II program, which allowed

¹ Currently there are 50 Parties to the Antarctic Treaty

² See <https://archive.iwc.int/pages/search.php?search=%21collection99&k=>

research on the Antarctic ecosystem and whale populations) and to revoke the licenses and permits granted to its fleet to kill, capture and trade whale and whale parts since evidence showed that this whaling was not really based on scientific research (which is the only exception allowed) but, instead, on commercial grounds (International Court of Justice 2014)

4.1.3.3 Decisions of the World Trade Organization (WTO)

4.1.3.3.a) The WTO rules

The WTO rules allow its members to adopt measures for the protection of the environment, the protection of animals and the protection of non-renewable resources (see the WTO agreements: General Agreement on Tariffs and Trade (GATT), Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Agreement on Technical Barriers to Trade (TBT), or General Agreement on Trade in Services (GATS)].

Thus, these rule try to balance the rights of the member states to establish measures, although they can affect, restrict or even block commerce, that pursue legitimate state interests (such as those measures necessary to protect human, animal or plant life or health, or relating to the conservation of exhaustible natural resources) and the basic rules on trade rights of the rest of the member States.

4.1.3.3.b) The WTO rules and the protection of animals

The abovementioned legal texts of the WTO contain references to the life and health of animals although it seems that their intention has nothing to do with providing protection to animals as individuals to prevent their suffering or death, but a different one: to maintain both humans and other animals far away from diseases that can be transmitted by other animals (quarantined animals) by the implementation of restrictions in the trade of animals with zoonoses (infectious diseases of animals -usually vertebrates-, that can naturally be transmitted to humans) or with epizootic diseases (diseases of animals that could potentially be transmitted by other animals) (Alonso 2011, Harrop 2013), so the motivation is entirely focused on the need to prevent the spread of diseases to humans or to other production animals. The general approach to the protection of animals can be seen in the WTO web pages³, although they are somehow confusing. Thus, the SPS Agreement states clearly that the protection of animal health or life is intended “to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests” (Annex A.(c) of the SPS) and the animals when mentioned in the SPS include only fish and wild fauna). The text of the GATT Agreement, in article XX which has no later restrictions on the definitions of animals is more encompassing.

Article XX of GATT lists these exceptions that can be invoked by the members from applying GATT rules on trade. Two of them are of relevance: its paragraphs b) and g).

As previously said, in accordance with the said paragraphs the members can adopt measures incompatible with all GATT rules as soon as they are necessary to protect human, animal or plant life or health [paragraph b)], or relating to the conservation of exhaustible natural resources [paragraph g)].

³ https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm

In order for the measure to be admitted it must also be taken by the member invoking the exception “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade”.⁴

Article XI of GATT considers illegal prohibitions or restrictions (other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses or other measures) on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

In theory, it is then possible that some restriction by a WTO member, or any sort of prohibition of imports or exports based on the protection of an endangered species, as foreseen in CITES, might imply a violation of article XI of GATT. The legality of the measure, in this case, only if it may be grounded in any of the exceptions listed in article XX (Elizalde 2007, Alonso 2011).

Nevertheless, CITES by itself, since it is an international treaty as valid as GATT and the proof is that it was adopted without any problem after the GATT treaty, *lex posterior derogat anterior* and the principle that where there is a particular law it always prevails over a general one, *lex specialis derogat legi generali*, are basic principles of law international law (article 30.1 of the Vienna Convention on the Law of Treaties) and, as such, it does not need to be based in any sort of exception. Therefore, for CITES, its Convention always prevails and not the treaties of the WTO, independently of what article XX might or not say (Alonso 2011).

On the other side, from the point of view of the WTO, but not from the point of view of the multilateral environmental agreements (MEAs), including CITES, in some conflicts between environmental measures adopted by some member State based on their own policies or on treaties that were not ratified by other WTO member states, these last ones have been backed by WTO bodies which have affirmed that the former can only base its environmental rules on article XX of GATT, typically on paragraphs b) and g), such as the policies adopted to protect dolphins in tuna fisheries, turtles in shrimp fisheries, or biodiversity in general through restrictions to imports of genetically modified organisms (GMOs), an approach that has changed only very recently on animal welfare grounds, as a consequence of the admission by the WTO that the cruel treatment and the suffering of animals can be perceived as a moral issue in some countries.

4.1.3.3.c) Controversies concerning animal protection solved within the WTO

Notwithstanding WTO’s official statements the international trade system is subject to ongoing legal conflicts in which whether environmental rules or trade rules do prevail in specific cases usually solved under different interpretations of GATT article XX (Brufau 2014). Animal protection is nevertheless also oar of the arguments of these cases notwithstanding the general environmental-prone approach presented by Brufau.

The first leading case solved by a GATT panel was the tuna-dolphin case (Mexico *et al* v. the U.S.). The panel reported to GATT members in September 1991,1) that the U.S. could not embargo imports of tuna products from Mexico simply because Mexican regulations on the way tuna was “produced” through fisheries methods that implied the death of thousands of dolphins, did not satisfy U.S. regulations issued under the U.S. U.S. Marine Mammal Protection Act (MMPA)

⁴ https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm

which set the dolphin protection standards for the domestic American fishing fleet and that after an amendment by the so-called Pelly-Magnuson Act extrapolated them to countries whose fishing boats catch yellowfin tuna in the eastern tropical Pacific Ocean (WTO “dolphin safe”).

For Bowman *et al.* (2010) the Tuna-Dolphin case illustrates the issue of whether unilateral national conservation measures that imply trade restrictions and may have extraterritorial effects are or not valid. It was important to understand that the United States could not prohibit imports of tuna founding those measures exclusively in the method of production or when the resources are not its resources because they are not within its territorial jurisdiction.

After the success of Mexico’s claim the debate of the conflicts between national environmental rules enacted to protect international environment and international trade rules only exacerbated. The real result was to force an international agreement so that U.S. rules would be on line with international rules and not only unilateral.⁵

Bowman *et al* (2010) conclude that even if there is an international environmental treaty the solution is not easy so there is still a lot of work to do concerning the details of the implementation of WTO rules and they conflict that they create when confronted with the implementation of international rules protecting wildlife.

In the Shrimp-Turtle Case (WTO shrimp-turtle)⁶, decided under the new rules on conflict settlement put in place after the establishment of the WTO itself in 1995, what was at stake was the validity under WTO rules of the U.S. Endangered Species Act of 1973 (ESA) which had listed as endangered or threatened the five species of sea turtles that range in U.S. waters, and prohibited their “take” within the U.S., in its territorial sea and the high seas”. Under the ESA, the U.S. required that U.S. shrimp trawlers use “turtle excluder devices” (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles, unless the harvesting country was certified to have a regulatory program and an incidental take-rate comparable to that of the U.S., or that the particular fishing environment of the harvesting nation did not pose a threat to the sea turtles. “In practice, countries that had any of the five species of sea turtles within their jurisdiction and harvested shrimp had to impose on their trawlers technical requirements comparable to those imposed by the U.S. on its fishing fleet, if they wanted to be certified to export shrimp products into the U.S. In fact, this meant the use of TEDs” (Alonso 2011). The body of the WTO was much more prone to admit the validity of such rules and the United States lost the case mainly because it had irrationally discriminated between different members of the WTO when enforcing the measure, rather than because the measure might be illegal and against WTO rules *per se*. The big problem that the conflict resolution mechanism faced in this case, and the big problem that this system and its Appellate Body face in general, is that the conflicts are solved more in a case-by-case basis instead of through the settling of general rules confronting the real merits of the issues implied in them, For example in this case the Appellate Body decided that “We do not pass upon the question of whether there is an implied jurisdictional limitation in Article XX(g), and if so, the nature or extent of that limitation⁷”, although the Appellate Body also insisted

⁵ In this case, the Agreement on the International Dolphin Conservation Program was signed in Washington D.C., in May 15th 1998 and entered into force in February 15th 1999 (see Alonso 2011) <http://www.iattc.org/PDFFiles2/APICD-Sistema-certificacion-Dolphin-Safe-REV-Oct2005.pdf>

⁶ WT/DS58/AB/R, Report of the Appellate Body of the WTO, October 12th 1998.

⁷ Ibid, paragraph 133.

in the value of multilateralism as formulated by Principle 12 of the Rio Declaration: *“Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.”*

The case on the ban of imports of fur by the European Union imposed by Regulation (EEC) n° 3254/1991, of the Council, of 4 November 1991 –which entered into force in January 1st 1995-, is also worth of attention. The Regulation prohibited the import of furs from animals caught with leghold traps which cause a never ending agony and suffering to the captured animal. Only countries which had prohibited these methods could export them to the EU. So Russia, the United States and Canada brought the case before the WTO once its reform allowed for a more streamlined conflict settlement procedure. The EU decided to negotiate with them specific agreements, all of them weaker, in order to prevent the WTO Appellate Body from issuing its decision. Instead of outright prohibition, these instrument establishes the procedure through which a better and long standing agreement on the method could improve animal welfare of animals captured with leghold traps. So while these agreements are in force (Agreements on international humane trapping standards) the EU cannot enforce its 3524/1991 Regulation to block the importation of these fur products. In accordance with then a certified method of capture is required such [International Standardization Organization (ISO) (ISO 10990)] in order to prevent discrimination in the international trade of fur products and although general trapping standards are in place they are not focused on specific leghold methods so they can be used although international trade might then be hampered.

See also, on these rules about non-cruel capture, Recommendation 3.089 of the International Union for the Conservation of Nature (IUCN) “on Humane trapping standards” (IUCN 2004a).

In all these cases, the WTO panels or Appellate Body decisions implied a big crack on the previous general understanding of international environmental law (Brufau 2014, Alonso 2011). It is true, though, that international environmental law has not accepted entirely the decisions taken by conflict resolution bodies, such as those of the WTO which are not the ones that under the environmental conventions should be called to settle conflicts. Even in the most important case, in which the WTO panel decided that the EU moratorium on import of products containing GMOs was against article XX although the Cartagena Protocol on Biosafety had been signed (but not ratified) by countries that challenged the EU position (the EC-Approval and Marketing of Biotech Products case), the WTO panel refrained itself from questioning the value of the Protocol (obviously a multilateral treaty, although “environmental-biodiversity conservation” treaty), because it had not yet entered into force and was not applicable for the time when the conflict was raised (See Alonso 2011).

In general, this highlights the considerable difficulties implied in the allocation to the WTO of the power to manage environmental issues (until now, though, cases in which the measure restricting trade in part of an international environmental treaty have not been adjudicated).

The solutions of these controversies that unfortunately have settled that animal protection cannot restrict the trade of commodities, have nevertheless recently counterbalanced by the decision of the WTO to allow the European Union to maintain the ban of seal products (mostly seal fur) in order to address public morals linked to the perception of animal welfare, an exception that can

also override the rules of free trade (WTO Seals). In this case⁸, the Appellate Body concluded that the EU Regulation was “necessary to protect public morals” in the sense that this terms have as paragraph a) of the list of exceptions of article XX of GATT. The rules concerned in this case were those that prohibited the import and commerce inside the EU of such products [Regulation (EC) No. 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products and Commission Regulation (EU) No. 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No. 1007/2009 of the European Parliament and of the Council on trade in seal products], in response to the public concerns of European citizens and Governments about “the animal welfare aspects of the killing and skinning of seals and about trade occurring in products possibly derived from seals that have been killed and skinned with avoidable pain, distress and other forms of suffering”.

It should be noted that in this case the WTO recognized that its impossibility to refrain the EU from adopting the ban was based in paragraph a) of article XX (measures “necessary to protect public morals”, and not in paragraph b) (measures “necessary to protect human, animal or plant life or health”), so the Appellate Body missed an opportunity to directly address the issue of animal welfare as it relates to commerce and in particular to GATT and TBT agreements.

Nevertheless, this WTO decision to admit public morals as a basis for the international recognition of animal welfare is being perceived as something positive. As Khanum (2011) says, animal rightist have been pressing the international community to have rules and standards on animal welfare included as topics in the negotiations of international trade treaties within the WTO as a as a “non-trade concern”, arguing it is a moral issue. Khanum’s proposal insists that as much as public morals can be used to argue among members of the WTO, equivalent to the use of arguments on children labor, alcoholic beverages, or pornographic materials, animal welfare values could be given the same value in international trade agreements. Following Khanum, the use by the EU of public morals as a valid principle admitted by the Appellate Body, and within the WTO in general, opened s a door full of hope in order to include more cases within the content of paragraph a) of article XX of GATT.

4.1.3.3.d) The WTO and OIE rules

The discussion about the significance and the implications of animal welfare rules for bilateral and multilateral trade policies have been discussed within the OIE (OIE Kahn & Varas). The OIE understands that probably the interest of consumers on the welfare of farm animals will continue to grow, in particular in countries where food safety is ensured. Taking into account this fact and also the need to improve animal welfare standards at the global level, the task of the OIE in the formulation of the rules of animal welfare and in providing aid to countries trying to implement them is being considered as having maximum relevance.

Nevertheless, it seems also clear the countries and regional organizations will hesitate to adopt official rules on animal welfare legally binding for international trade, at least while the relationship between such rules and the WTO and GATT agreements show some degree of confusion. It is evident that WTO members hesitate to include animal welfare as a topic to be considered as part of the agenda of the WTO negotiations. Mainly because any concession might “open the door” to additional social interest issues might affect trade, including environmental and labor law issues, all of which could introduce restrictions to international trade. Looking into these clarifying revelations,

⁸ WT/DS400/AB/R and WT/DS401/AB/R, May 22nd 2014

the OIE (2013) has urged its member States and other international organizations to fully support its work on this area and tasks, while at the same time they try to pass rules on animal welfare that do not imply barriers to trade.

4.1.3.4 Animal protection as a legal principle that can be used for the interpretation of international treaties

During the last decades the attention given at the international level to animal welfare as something different from nature and biodiversity conservation and resource management has been growing steadily (Sykes 2014). Sykes (2014) reminds us that Michael Bowman's *et al.* (2010), in the second edition of Lyster's International Wildlife Law dedicates a separate chapter to wildlife and animal welfare, conceding that there is an international law legal principle of animal welfare. Bowman *et al.* (2010) argue that the increasing capacity to introduce animal welfare considerations in legal and international instruments is a clear sign of the convergence that it is a general legal principle. Bowman *et al.* also argue that there are more than enough reasons to maintain that the principle is broadly acknowledged as such both in the national legal systems as well as a universal principle at the global level and that the declarations passed on animal welfare legislation reflect such a convergence on this formulation as a general legal principle both formally and a matter of substance. In this way, animal welfare would have a substantive meaning as a "goal-principle" usable in the process of interpretation of international treaties, even within the WTO context: animal welfare would be part of the general public interest or public morals, which would allow restrictions on conducts otherwise protected general terms by, for example, trade law of human rights law. As Bowman *et al.* (2010) conclude, animal welfare could them, in appropriate circumstances, as an adequate restriction of human rights or basic freedoms (in the same sense, analyzing in detail all the judicial decisions the European Court of Human Rights, the Court of Justice of the EU, and the decisions of the Spanish Council of State, Supreme and Constitutional Courts, see Alonso 2010).

Under the European Convention of Human Rights, for example, the protection of "public morals" is broadly recognized as a legitimate state interest in a democratic society to limit the scope of human rights (see articles 8 to 11). And since the Council of Europe acknowledges that the humane treatment of animals is a distinctive feature of European western civilization it would be surprising if this fact would not have its consequences concerning the interpretation of these provisions.

As Alonso, E. (2010) has analyzed in detail, it should be remembered, in this context, that the European Court of Human Rights (ECtHR) has clearly stated three basic principles: 1.- Property owners can object and block others, including any public power, from hunting in their property based on their freedom of conscience against hunting as a cruel sport practice (*Chassagnou and others v. France*, decision of April 29th 1999); 2.- Animal welfare regulation to prevent suffering in the slaughtering of farm animals prevails over practices/rites based in freedom of religion in some cases (*Cha'are Shalom Ve Tsedek v. France*, Decision of June 27th 2000); and 3.- Special participation rights and status that animal protection NGOs enjoy a democratic society in order to enable them to promote animal welfare as a basic value (*VgT Verein gegen Tierfabriken v. Switzerland*, decision of June 28th 2001).

Sykes (2014) summarizes the situation as follows: animal welfare as a value is much more broadly acknowledged compared with the historical previous situation and there seems to be a widely shared consensus in the global community not to treat animal welfare only as a local or national

issue. And international law seems to be following this trend in the last decades. The mentioning of animal welfare that keeps on showing up in international documents is a reflection of this trend, to the extent that one can talk about a new legal principle, a public policy guideline that will eventually transform itself into a legally binding rule of law.

4.1.4 Conservation and protection of animals

4.1.4.1 Differences and coincidences between species conservation and protection of animals

The knowledge about the needs of animals, and of the legal requirements and policy directives on animal welfare, is an important variable for the success of the management of wildlife (OIE 2002b). Society in general admits that there is a moral obligation to protect animals either because they are useful and have value for human beings or because they have intrinsic value, or because they are individuals of populations of endangered species or part of a valuable ecosystem.

Since its origin, nature conservation science has promoted the preservation of natural processes, populations and ecological systems (Soulé 1985). While the science of animal welfare has concentrated in the quality of life of animal individuals themselves (Fraser 2008, Recarte & Alonso 2006), conservation biology has as main objective the preservation of species and the prevention of their extinction while animal welfare has as main objective the protection of individual animals independently of the status of conservation of their populations.

In addition to that, conservation biology awards particular value to rare species or to those species which are very valuable for biodiversity (Soulé 1985), such as keystone species that conform the habitats where they live (Recarte 2004), while animal welfare is applied to all sentient animals (Fraser 2008, Recarte 2006).

But from the point of view of popular culture, the differences are blurred. And there are no big differences between biology conservation and animal welfare/rights, since both are perceived as an expression of an ethics choice that grants value to nature whether it focuses in whales or in wetlands, rhinos or forests (Minteer 2013). Both trends consider immoral and condemn events such as the killing of dolphins in Taiji (Japan) for their consumption or their capture for aquaria, as well as whaling in the Arctic, the killings of gorillas and chimps for bushmeat or the poaching of elephants in Africa for the ivory trade.

Both positions back the idea that animals should live in their natural environments but also question each other on many issues such as the culling of wild populations to maintain their carrying capacity or to prevent conflicts with humans, their slaughter to maintain rich genetic pools, or for the control of exotic invasive species. Thus, although both positions share a common objective of preventing damage to wildlife it cannot avoid deep discussions (Dubois & Fraser 2013).

The conservationist position justifies the suffering or death of individuals of a given species in order to maintain the optimum carrying capacity of an ecosystem or the conservation of a different threatened species. This is also the case of some public policy decisions taken to preserve ecosystems or species based release or reintroduction of predators previously displaced or endangered by unsustainable hunting. Some examples could be mentioned such as the reintroduction of the Canadian lynx in Colorado where the restoration of the ecosystem led to the

death due to hunger of some of these individuals because they were placed where there was not enough prey (rabbits and squirrels) for them (Bekoff 1999).

In these cases the position backing that animal welfare should prevail would not accept the intentional eradication of individuals to protect other species without previously analyzing all possible alternatives that could reduce the suffering and animal rightists would openly oppose these conservation policies that imply the death and/or the suffering of animals, even when the survival of another species are at stake, backing any policy that would prevent authorities from having to take those decisions.

For Paquet & Darimon (2010), though, many conservationists also have serious ethics considerations about animal welfare both of the species and of the individuals and their efforts are also focused on preventing their suffering. Nevertheless in order to consolidate this position (conservation biology informed by animal welfare principles) conservation biology should internalize much more the basic ethics of animal welfare/rights (Goodall & Bekoff 2002) because the lack of awareness about the second will continue to be an obstacle for the implementation of wildlife animal welfare policies.

4.1.4.2 Solution to prevent the conflicts between conservation and protection

Biology conservation and animal welfare science are research areas of knowledge which are multidisciplinary and that confront as a common challenge to develop the science to guide policy and practice, in many cases involving ethical and empirical issues where there is still a lot of uncertainty (Fraser 2010).

The solution proposed points to the linkage of both disciplines. In this sense, Fraser (2010) suggests that communication and cooperation between both areas should lead to improvements in science and better practice. For Paquet & Damon (2010) both individual animals and nature (conservation) have value so the ethics dilemma that we have is how to reconcile both of them in equitable terms. If it is clear that both animal welfare and biodiversity preservation are values for society, managers of wildlife should ultimately be able to develop management activities trying to abide by those societal requirements that attach value to both principles at the same time (Dubois & Fraser 2013).

In this sense, proposals have already been forwarded (Paquet & Darimon) so that the Five Freedoms can be adapted and integrate the interests of conservation and of animal welfare, that could be applied at least to wild captive animals (even as pet companion animals) in particular when improvements in welfare may lead to decrease the need to capture animals in the wild.

4.1.5 Compassionate conservation

4.1.5.1 A new and growing discipline: compassionate conservation

Looking for ways to make compatible traditional conservation, that focuses on populations, species and ecosystems, and animal protection, that focuses on individual animals as sentient beings, a new international social movement called “compassionate conservation⁹”.

⁹ See, e.g., <http://compassionateconservation.net>

This growing discipline, that applies animal welfare to biology conservation, that also assumes that the more territorial development and human population growth happens the more conflicts will there be both for animal populations and individuals, suggests that the path that must be taken is to work jointly toward both goals, improvement of both the individual animals welfare and the endangered species or populations survival and that of their habitats (Fraser 2010).

For a better integration animal welfare science and animal ethics philosophy should reach the activities of conservation biology that damage the animals, in particular while these activities grow due to the increase of human population growth (Fraser & McRae 2011). There is no doubt that this approach would imply the final acknowledgement of the similarities between conservation, animal welfare and human welfare (Fraser & McRae 2011).

4.1.5.2 Guiding Principles of compassionate conservation

The Guiding Principles of compassionate conservation are the following¹⁰:

RECOGNISING that wild animals, whether free-ranging or in captivity, may be affected by the intentional or unintentional actions of humans as well as the natural processes within ecosystems and the wider environment;

CONCERNED that many human activities, including those undertaken for a conservation purpose, may directly or indirectly cause harm to individual wild animals, populations, species, or ecosystems;

RECOGNISING that both conservation and wild animal welfare should implicitly respect the inherent value of wild animals and the natural world, and that both disciplines should try to mitigate harms caused by humans to other species;

BELIEVING that all harms to wild animals should be minimised wherever and to the extent possible, regardless of the human intention and purpose behind them;

PROPOSING that the principles and actions that underpin Compassionate Conservation, by combining consideration of animal welfare and conservation, will lead to a reduction in harm and in the suffering of individual wild animals, and will improve conservation outcomes.

4.1.5.3 Scope and projection of compassionate conservation

This international movement is really growing in particular among the scientific communities and the academy, evidence of which is the steady increase of the number of conferences, books and other publications as well as entities working on this theme and that try to build bridges between those positions (animal welfare and biodiversity and ecosystem conservation). The inaugural symposium took place in Oxford University in 2010¹¹, and was followed by other international meetings (see e.g. the International Congress for Conservation Biology, Baltimore, July 2012¹², or the meetings that took place at the University of Vermont, October 2012¹³ and in the University of

¹⁰ See, e.g: <http://compassionateconservation.net/about/principles/>

¹¹ <http://compassionateconservation.net/about/flagship-symposium/>

¹² <http://quaker-animals.co.uk/2013/08/born-free-symposium-on-compassionate-conservation/>

¹³ <http://www.uvm.edu/president/marsh/SILLEROpsterOct2012.pdf>

Technology, Sydney, 2013 and 2014), where the Centre for Compassionate Conservation¹⁴ has been established, an innovative research, education and consulting center fully dedicated to the improvement of the protection of wild animals while working with conservation techniques. Two of the areas of research of the Center are focused on “International Treaties” and “Trade in live wildlife or their parts”, which is one hundred percent related to CITES.

“Ignoring Nature No More: the case for compassionate conservation” (Bekoff 2013), is the first book exclusively oriented to analyze compassionate conservation. Its content is formed by several essays by different authors from disciplines such as biology, psychology, sociology, social work, economy, political science and philosophy. The motives for looking to nature from these different disciplines with a pro-active mentality centered in the empathy and compassion leading to the wellbeing of individual animals, species, populations, ecosystems and humans as a whole.

Concerning publications and research on animal welfare of wild animals this compassionate conservation movement will identify, study and mitigate many of the problems that the pursuance of human wellbeing cause to free wild animals (Walker *et al.* 2014, Fraser & McRae 2011, Harrop 2011, Mathews 2010).

Scientists of wildlife from the different disciplines (McMahon *et al.* 2012) complain that each day they face more difficulties in their research on wildlife, endangered species which are absolutely necessary to analyze and evaluate biodiversity loss due to the opposition of the defenders of animal welfare. In parallel to their rejection of this trend they recognize that society is increasingly engaged on issues about the treatment given to animals notwithstanding that what they do improves nature conservation and that this confrontation has generated a tense debate between conservation biologists and animal welfarists (McMahon *et al.* 2012).

In this scenario, compassionate conservation seems to be the best available option capable of providing an adequate answer to this dispute (Draper & Bekoff 2013).

Thus, starting with the “First do no harm principle”, this new ethics defends that the killing of sentient individuals in the name of conservation is unacceptable, whether it is grounded in the need to save individuals of the same or of other species. The black-footed ferret can be cited as an example (Bekoff 2010), whose population (18 free individuals in the mid-1980s) was captured and submitted to a captive breeding program in order to have enough individuals for the reintroduction of their offspring in the mid-1990s. Before their reintroduction in the wild they were trained to hunt prairie dogs and hamsters (only in 2008 and 2009 they were fed with 7,300 hamsters -5,100 given to them alive- and 2,466 prairie dogs -1,280 alive-), whose the death and suffering was justified in the Program because they were not from any threatened or endangered species, which ran counter to the premises of compassionate conservation.

Using as the new axis for conservation the principles of compassionate conservation, the results of a cost benefit analysis of the commercial slaughter of kangaroos showed that the profits for society of the slaughter of kangaroos were much less than those previously expected, while the costs, measured in terms of animal welfare, tended to be considerably higher (included the damage caused to young and still dependant kangaroos that the industry considered to be byproducts of commercial slaughter, as well as the damage caused to adult kangaroos whose mortality rates increase during the dry season) and this is the reason why the code of good practices with which

¹⁴ <http://www.uts.edu.au/research-and-teaching/our-research/centre-compassionate-conservation>

the industry usually complies needed amendments that would also amount to an increase in animal welfare (Ben-Ami et al. 2014 y Ramp 2014).

4.1.5.4 Compassionate conservation and international trade with animals

Without any doubt, compassionate conservation is a recent movement which has an undeniable potential for the analysis and the public debate about animal protection in the context of biodiversity conservation as well as of international trade.

From the perspective of the ethics of conservation biology aiming to put into practice policies and management methods which prevent animal suffering, some of the most relevant and urgent areas of focus are the following¹⁵:

- Reducing or eliminating altogether the harm being meted out to individuals in captivity and in the wild. These include keeping animals in zoos or aquaria in the name of conservation and education
- Captive breeding
- Methods used to mark or tag animals for identification
- Conservation consequences of wildlife rescue, rehabilitation and release
- The reintroduction (repatriation) of animals into habitats from which they have disappeared
- Pest management and sustainable use, and the whole substitution concept, wherein one death is ethically proposed as the solution for another's life – so-called pest eradication as the salvation for certain native or endemic species
- The international trade in live wild animals

On the combination of factors from both conservation and trade, baker (2014) thinks that it is already widely accepted that conservation of biodiversity can influence trade, but animal welfare considerations are still absent.

¹⁵ <http://www.forbes.com/sites/michaeltobias/2013/05/09/compassionate-conservation-a-discussion-from-the-frontlines-with-dr-marc-bekoff/>

4.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora

4.2.1 Objectives of the Convention

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention), which entered into force since July 1st 1975, with 180 signatories, has as objective to prevent international trade of specimens of wild fauna and flora (living or dead and their parts and derivatives) is not detrimental to their survival -or incompatible with it, depending on the exact text of the Convention.

In this work the term “animals” will be used to describe living animals and the term “specimens” to both living and dead animals as well as their parts and derivatives.

The Strategic Vision of CITES is to conserve biodiversity and to contribute to its sustainable use ensuring that no species of wild fauna and flora subject to unsustainable international trade. CITES’ current Strategic Vision was adopted by Conf 16.3 Resolution (CITES Strategic Vision: 2008-2020), acknowledges that the policies of the Convention are constantly evolving it takes into account new international initiatives, consistent with the terms of the Convention.

Around 5,000 species are covered under CITES, included in three Appendices and their trade is very diverse, from animals themselves to their parts or derivatives.

4.2.2 Purposes of international trade in animals and origin of the specimens

Following CITES terminology, [see Resolution Conf. 12.3 (Rev. CoP16) on Permits and certificates], the trade might have as purpose the a purely commercial transaction as well as scientific, personal use, medical, educational (including biomedical research), zoos, circuses or travelling exhibitions, hunting trophies, reintroduction or introduction into the wild, breeding in captivity or artificial propagation, or law enforcement / judicial / forensic.

The origin of the specimens [(Resolution Conf. 12.3 (Rev. CoP 16))] might also be diverse: captured in the wild, captured in the sea beyond the jurisdiction of any State, bred in farms, bred and grown in captivity, confiscated, pre-convention animals or animals of unknown origin.

4.2.3 Specimens in international trade

The description of the specimens in the Guidelines for the preparation and submission of CITES annual reports (February 2011) is the following (limited to those related to animals –excluding plants): Baleen (whalebone), body (substantially whole dead animals, including fresh or processed fish, stuffed turtles, preserved butterflies, reptiles in alcohol, whole stuffed hunting trophies, etc), bone (bones, including jaws), calipee (calipee or calipash (turtle cartilage for soup), carapace (raw or unworked whole shells of Testudines species), carving (carvings (including wood, and including finished wood products such as furniture, musical instruments and handicrafts). NB: there are some species from which more than one type of product may be carved (e.g. horn and bone); where necessary, the description should therefore indicate the type of product (e.g. horn carving), caviar (unfertilized dead processed eggs from all species of Acipenseriformes; also known as roe), claw (claws – e.g., of Felidae, Ursidae or Crocodylia NB: 'turtle claws' are usually scales and not real claws), cloth (cloth – if the cloth is not made entirely from the hair of a CITES species, the weight of hair of the species concerned should instead, if possible, be recorded under 'hair'), coral (raw) (coral, raw or unworked. NB: the trade should be recorded by number of pieces only if the coral specimens are transported in water), ear (ears – usually elephant), egg (whole dead or blown

eggs - see also 'caviar'), egg (live) (ive fertilized eggs – usually birds and reptiles but includes fish and invertebrates), eggshell (raw or unworked eggshell except whole eggs), feather (feathers – in the case of objects (e.g. pictures) made of feathers, record the number of objects), fin (fresh, frozen or dried fins and parts of fins), fingerlings (juvenile fish of one or two years of age for the aquarium trade, hatcheries or for release operations), frog legs, foot (feet – e.g. of elephant, rhinoceros, hippopotamus, lion, crocodile, etc), gall, gall bladder, garment (garments – including gloves and hats but not shoes. Includes trimming or decoration on garments), genitalia (castrates and dried penes), hair (hair – includes all animal hair, e.g. of elephant, yak, vicuña, guanaco), horn (horns – includes antlers), leather product (large) (large manufactured products of leather – e.g. briefcases, furniture, suitcases, travel trunk), leather product (small) (small manufactured products of leather – e.g. belts, braces, bicycle saddles, cheque book or credit card holders, earrings, handbags, key fobs, notebooks, purses, shoes, tobacco pouches, wallets, watch-straps), live animals, meat (meat, including flesh of fish if not whole (see 'body'), fresh or unprocessed meat as well as processed meat - e.g. smoked, raw, dried, frozen or tinned), medicine, musk, oil (oil –e.g. from turtles, seals, whales, fish, various plant), piece – bone (pieces of bone, not manufactured), piece – horn (pieces of horn, not manufactured – includes scrap), piece – ivory (ivory pieces, not manufactured – includes scrap), plate (plates of fur skins – includes rugs if made of several skins), powder, scale (scales – e.g. of turtle, other reptiles, fish, pangolin), shell (raw or unworked shell of mollusks), side (sides or flanks of skins; does not include crocodilian Tinga frames - see under 'skin'), skeleton (substantially whole skeletons), skin (substantially whole skins, raw or tanned, including crocodilian Tinga frames, external body lining, with or without scales), skin piece (skin pieces – including scraps, raw or tanned), skulls, soup (soup – e.g. of turtle), specimen (scientific) (scientific specimens – includes blood, tissue -e.g. kidney, spleen, etc.-, histological preparations, preserved museum specimens, etc.), swim bladder (hydrostatic organ, including isinglass / sturgeon glue), tail (tails – e.g. of caiman, for leather, or fox, for garment trimming, collars, boas, etc.), tooth (teeth – e.g. of whale, lion, hippopotamus, crocodile, etc.), trophy (trophy – all the trophy parts of one animal if they are exported together: e.g. horns (2), skull, cape, backskin, tail and feet (i.e. ten specimens) constitute one trophy. But if, for example, the skull and horns are the only specimens of an animal that are exported, then these items together should be recorded as one trophy. Otherwise the items should be recorded separately. A whole stuffed body is recorded under 'body'. A skin alone is recorded under 'skin'), tusk (substantially whole tusks, whether or not worked. Includes tusks of elephant, hippopotamus, walrus, narwhal, but not other teeth), wax (wax, including ambergris), whole (entire animal or plant -dead or alive).

4.2.4 How CITES works

Cites submits international trade of specimens to different types of controls so that all imports, exports, re-exports, and introductions from the sea of species listed in the appendices of the Convention are submitted to permits and certificates. Each Contracting Party must designate a Management Authority in charge of granting the permits or certificates on behalf of that Party, and a Scientific Authority, whose role is to advice the Management Authority.

The species are listed in appendices I, II and III depending on the level of threat to their extinction and their biological state due to international trade and the existing level of protection of each of them.

Appendix I, includes all species threatened with extinction which are or may be affected by trade. Appendix II, all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival. Appendix III, all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or minimizing the exploitation, and to the extent that that Party needs the cooperation of other Parties in the control of their trade.

CITES, which is a legally binding for all the Parties, offers a legal framework that must be respected by them, who must also pass internal legislation to ensure its enforcement at the national level.

4.2.5 Structure and bodies of CITES

CITES is based in the Conference of the Parties (CoP) and a Secretariat.

Approximately every three years, the CoP meets during a period of two weeks in a country of one of the member States in order to examine the implementation, interpretation and compliance with the Convention. In these meetings, in which the delegates of the Parties and admitted observers can participate, as known as CoPs and its powers are listed in article XI of the Convention. The Appendices are legally binding too, notwithstanding the power of the CoP to amend them, adding, suppressing or modifying the listed species, agreed to through voting (no need of farther ratification by the rest of the Parties, as it would be required in other treaties). This decision-making process gives CITES a special bite as an international legal instrument.

The CoP also passes Recommendations that can adopt the form of Resolutions or Decisions. Resolutions usually are intended for long term policies while the Decisions usually are addressed to the other bodies of the Convention and designed to be implemented by them within a give deadline. Although it is considered that neither the Decisions nor the Resolutions have legally binding power, they have considerable force of persuasion because they are based in the text of the Convention and are usually approved by consensus (see CoP12 Doc. 26, " Interpretation and implementation of the Convention. General compliance issues", 2002; about the power "beyond soft law" of the so-called "shaming effect" of CITES Resolutions, see Alonso 2011, Chapters 2 and 3).

The CoP is assisted by a series of Standing Committees, regulated by Resolution Conf.11.1 [(Rev. CoP16) (Establishment of Committees)], that also play a significant role in the CoPs themselves: the Standing Committee, the Animals Committee and the Plants Committee.

The Standing Committee is the senior Committee and reports to the CoP; the Animals Committee and the Plants Committee also report to the CoP at its meetings and, if so requested, to the Standing Committee between meetings of the Conference of the Parties. The CoP, the Standing Committee and the Animals and Plants Committees may appoint working groups with specific terms of reference as required to address specific problems.

The CITES Secretariat is administered by the United Nations Environmental Program (UNEP) and its statutory seat based in Geneva (Switzerland). Article XII of the Convention describes its powers and functions. It regularly publishes Notifications to the Parties in order to inform them about issues of diverse nature, announce the subsequent meetings, or confirm the definitive approval or text of the Resolutions and Decisions.

4.2.6 Cooperation of CITES with other biodiversity-related conventions

The intent of CITES to directly cooperate with other multilateral agreements on biodiversity has been formalized in the last CoP (Bangkok, 2013) by Resolution 16.4 (Cooperation of CITES with other biodiversity-related conventions) that encourages Parties to consider further opportunities to strengthen the cooperation, coordination and synergies among the biodiversity-related conventions at all relevant levels. The framework of negotiation and cooperation of the Secretariat on administrative and substantive matters had already been established through the Biodiversity Liaison Group (BLG)¹⁶ and the Environmental Management Group (EMG)¹⁷. The goal of further improving the relationship with relevant multilateral environmental agreements and related conventions so that they are coherent and mutually supportive stems also from CITES Strategic Vision itself.

4.2.7 CITES and the protection of animals

Under CITES, all international trade of the listed species cannot affect their survival, but CITES says nothing, at list explicitly, about the potential or hypothetical damage caused that such trade might cause to each individual animal of the said species.

Does that not mean that both the text and some of the Resolutions adopted by the CoP do not address issues related with the protection of animals that will be analyzed in depth immediately in the following pages, where both the explanation and the parameters that provide the framework for what is meant by protection will be clarified.

Although CITES focuses primarily in the trade and conservation of species it is the most relevant international convention for animals of endangered species (Bowman *et al.* 2010) and to start with, even in its Preamble, it mentions the *protection* of certain species of wild fauna and flora against over-exploitation through international trade (it uses the term “protection” and not “conservation”). On this particular issue Bowman (1998) called the attention about the fact that, although in many international instruments the word “protection” is used as an alternative to “conservation”, this does not seem to be the case of CITES. And he uses the example of article XI.7, that foresees the participation in the CoPs of any body or agency “technically qualified in protection, conservation or management of wild fauna and flora”.

CITES is, above all, a biodiversity conservation treaty, but these commitments to animal welfare as individuals seem to reflect some concern different from its clearly designed objectives (conservation). And with the passing of time it has been shown that it is a concern precisely about the mistreatment that usually goes hand in hand with the type of trade of animals that CITES tries to control (OIE 2002b).

Bowman (1998) has already emphasized the significance of animal welfare in the Convention when he asserted that although it, on the one side, tries to harness commercial interests and, on the other side, global concern for conservation, its text is full of provisions that deal with the welfare

¹⁶ It is composed by the Secretariats of the Convention on Biological Diversity (CBD); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Convention on Migratory Species (CMS); the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); the Ramsar Convention on Wetlands; and the World Heritage Convention (WHC).

¹⁷ The Environment Management Group (EMG) is a UN system-wide coordination body on environment and human settlements which includes all the bodies and regimes created by treaties under the auspices of the UN and is presided by the Executive Secretary of UNEP (see Alonso 2011, Chapter 1).

of individual living specimens. As Currie & Provost (2011) say, since the end of the 19th century a sophisticated regime for the conservation, protection and management of wildlife has been developed at the international level; a regime that includes recommendations and guidelines that promote animal welfare and the minimization of the suffering of animals, individually considered, CITES being the most prominent example.

Bowman (1998) also regrets that, in practice, the Contracting parties have routinely abandoned these obligations and for Bowman *et al.* (2010), trying to ensure the implementation of these obligations has implied a great challenge for CITES which, precisely for that reason, it requires a major effort if it is to be given the attention that it deserves; an attention that, to the contrary, was called by the representative of Italy, as the host of the 37th CoP meeting which took place in Rome (1996)¹⁸, who in its opening surprised the rest of the delegates of the Parties attending the meeting with an opening statement that emphasized the growth of social awareness about environmental issues but that specifically underlines that “the Government of Italy wished to focus on welfare issues”.

Another piece of evidence, showing that CITES is not alien to animal protection and welfare, is the fact that the current Secretary General of CITES, John E. Scanlon, in an interview coinciding with the celebration of the 40th anniversary of CITES, in March 4th 2013¹⁹, acknowledged that he had already met with some animal rights and animal welfare NGOs, as well as others (aligned with the classic biodiversity conservation objectives of the Convention): “*I personally met with a whole raft of groups in the non-government sector, be they come from animal rights, animal welfare, conservation, sustainable use perspective, because we have a wide suite of interests in the convention*”.

When looking at the text of CITES direct and indirect references to the protection of animals are abundant and significant; I have opted in this work to classify them in the following sections:

- 1.- Preparing, shipping, housing and caring of animals
- 2.- Identification and marking of animals
- 3.- Caring of animals during any period of transit, holding or shipment
- 4.- Confiscation of animals
- 5.- Observers at the CoPs
- 6.- Primarily commercial purpose
- 7.- Exemptions
 - a.- Animals that remain in Customs control
 - b.- Animals that are personal or household effects
 - c.- Animals bred in captivity

¹⁸ <http://www.cites.org/sites/default/files/esp/com/sc/37/S37-SumRep.pdf>

¹⁹ [CITES 40th Anniversary: Reflections of CITES Secretary-General John Scanlon](#)

d.- Animals which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition

e.- Exemptions not explicitly in the text of the Convention: rescue of live specimens in special circumstances

8.- States which are not a Party to the Convention

9.- Roles of the Secretariat

10.- International measures in cases of inefficient implementation of the Convention

11.- Adequate measures to adopt more strict internal national measures: trade bans

12.- Animal Ranching

4.2.7.1 Preparation, shipping, housing and caring of animals

CITES is based on a trade permits and certificates system that can be obtained if certain conditions are met and that must be presented to the authorities before the sending of specimens are authorized to exit or enter a country. Depending on whether the specimen is of a species listed in Appendix I, II or III, articles III, IV and V of the Convention, respectively, establish the conditions that need to be met, in each case, for the Management and Scientific Authorities to be able to grant the permits.

Permits required by animals of species included in Appendix I

Article III Regulation of trade in specimens of species included in Appendix I

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

Permits required by animals of species included in Appendix II

Article IV Regulation of trade in specimens of species included in Appendix II

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

Permits required by animals of species included in Appendix III

Article V Regulation of trade in specimens of species included in Appendix III

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

The text of articles III, IV and V of the Convention (and the list of species included in Appendices I, II or III to which each of the articles remand) lists the requirements to be met to trade animals. Among these requirements, as soon as the Management and Scientific Authorities verify, through the permitting process, the following –concerning animal protection- should be met:

1.- The animal will be so **prepared and shipped** as to minimize the risk of injury, damage to health or cruel treatment

These requirements apply to the following commercial activities:

Export and re-export of specimens of a species included in Appendix I [article III.2.c) and III.4.b)]

Export and re-export of specimens of a species included in Appendix II [article IV.2.c) and IV.5.b)]

Export of specimens of a species included in Appendix III [article V.2.b)]

The animal will be so **handled** as to minimize the risk of injury, damage to health or cruel treatment.

Introduction from the sea of any specimen of a species included in Appendix II [article IV.6.b)]

2.- The proposed recipient of the animal is suitably equipped to house and care for it.

These requirements apply to the following commercial activities:

Import of specimens of a species included in Appendix I [(article III.3.b)]

Import and introduction from the sea of any specimen of a species included in Appendix I [article III.5.b)]

4.2.7.1.a) Preparing and shipping of the animals

Articles III, IV and V of the Convention state that the animals will be so prepared and shipped (Appendices I, II and III) and so handled (Appendix II) as to minimize the risk of injury, damage to health or cruel treatment.

Following Bowman (1998) the legal principle of good faith proclaimed by articles 26 and 31 of the Vienna Convention on the Law of Treaties of 1969 (United Nations 1969) requires that the CITES Management Authority should, at least, deny the permit whenever the circumstances allow it to know or be suspicious that the conditions for preparation and shipping are not satisfactory and therefore it needs to have specific information in the form of "(i) a set of criteria in accordance with which preparation and shipment arrangements could be evaluated, and (ii) adequate statistical data regarding poor welfare, stress and mortality in the past which would enable an assessment to be made as to the likelihood of compliance with those criteria."

One of the questions that should be emphasized is the lack of specifics about what should be understood by minimize the risk of injury, damage to health or cruel treatment, which constitutes, precisely, the core and the purpose why animals need to be correctly prepared and shipped.

- Preparation of animals. Attempts to include the capture and collection of animals within the scope of CITES

At the 4th meeting of the CoP (CoP4, Gaborone, 1983) the delegation of Gambia (Doc. 4.32) the Gambian delegation proposed that the term "prepared and shipped" should be interpreted so as to embrace "all handling and manipulation of a specimen from the instant it is removed from the normal conduct of its life in nature" and that the term "cruel treatment" be understood to include the use of "cruel and painful trapping devices", so Management Authorities should therefore refuse export permits in respect of specimens removed from the wild by means of cruel and painful trapping devices

The proposal, thus, was intended to block commerce when the animal had been captured from the wild and through a cruel method, basing this assertion on the requirement of adequate “preparation” and “shipping” “as to minimize the risk of injury, damage to health or cruel treatment”, of the text of the Convention. Although Gambia’s proposal received the backing of some States and it also received the full support of almost all the observers, but the Secretariat concluded that this text of the Convention could not be interpreted in this way, so the Resolution would have been beyond its scope, and then existing Technical Committee (later substituted by Committees I and II) concluded that this issue was not pertinent to the Convention considering it also beyond its scope, so it was rejected by 30 votes to 6. During the debate of the proposal the delegation of the Seychelles and in so doing pointed out that in one area of international law there had been “more intrusive” developments in the name of animal welfare, and urged CITES “to follow the example of the IWC and extend its scope” to include the implementation of animal welfare requirements for the hunting, capturing and killing of animals.

According to Bowman (1998) “this decision confirms that CITES cannot be utilized as a vehicle for the advancement of animal welfare generally: its relevance in that regard is limited to the context of international trading activities, as specifically elaborated through the provisions of the Convention itself”. Nevertheless, also according, to Bowman, “it would be mistaken to assume, however, that the question of removal from the wild falls wholly outside the scope of the CITES permit procedures. It [should] be remembered that one condition of the grant of an export permit is that the specimen must not have been obtained in contravention of the laws of the exporting state governing the protection of flora and fauna” [articles III.2.b), IV.2.b) and V.2.a)]. “Given the wide ambit of the term “protection”, which is appropriate to include protection against cruel or inhumane methods of capture, a permit should be refused if, for example, the specimen was obtained by means of a technique or device prohibited under the relevant national legislation.”

Similarly, Harrop (2011) has already said that “CITES is the only international convention to make express references to welfare in its foundational text” and that “It seeks to protect the welfare of wild animals from the point that live animals come into trade or are otherwise under human control in that process”, but not when they live in the wild. Concerning the debate about Gambia’s proposal, Harrop (2011) also lists a series of convincing arguments that lead to the conclusion that CITE’s decision to reject it was premature. His opinion is that the decision, if taken, would have implied a lot of complicated issues that CITES would have needed to take care about additionally, which would have been very difficult to monitor; but this should not have carried as consequence the denial that trapping methods are detrimental to species survival not only because they are cruel but also because they are non-selective. Certainly it is reasonable to think that hunting with non-selective methods can have an impact in the conservation of populations of species with are not the target species of the hunt and the trading of which is banned by CITES due to their Appendix I endangered status.

Moreover, says Harrop, the knowledge that we now have concerning linkages between habitat fragmentation and climate change, the pressures on wild animals are becoming greater as their ranges constrict and their populations (formed by individuals) decrease, which leads to a re-designed approach, 31 years later, of Gambia’s proposal to regulate methods of capture and killing, on both a welfare and conservation basis, an approach that as Harrop (2013) says, would radically alter the animal welfare extending it to animals in the wild, even beyond the WCI’s.

Along this same line, at the 11th meeting of the CoP (Cop 11, Gigiri, 2000), Kenya presented another proposal, Doc 11.55 that also tried to define “so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment” of articles III, IV and V of the Convention, taking into account “the high levels of morbidity and mortality experienced by wild-caught animals that are traded internationally is of concern on both humane and conservation grounds”. “Moreover, clearly mortality of live animals in international trade is wasteful, is harmful to efforts to conserve wild populations because additional animals will be removed from the wild to replace those that perished, and undermines the potential for sustainability of the trade”.

So, Kenya’s proposal to the CoP, following Gambia’s 1983, that the scope of the preparation requirement should be from the capture to the export, so that all along that process there should not be any risk of injury, damage to health, or cruel treatment.

According to the Secretariat the merits of the argument were totally correct since when animals are captured the method should be humane and adequate in every moment and not only when preparing it for shipment and during the transport to the other country. But, nevertheless, the Secretariat considered also that CITES had no business on regulating these conditions. Under its opinion the objective of the Convention is not to regulate conditions of the treatment given to wildlife within the territory of each Contracting Party; if that were not the case it would not have remained silent on questions such as the millions of animals that are consumed, or whose parts and derivatives are traded, and whose removal from the wild probably causes more damage than the shipment itself of the living specimens. It reminded the Parties about the fate of Gambia’s proposal and did not back the approval of the Kenyan proposal arguing that even if the document was worth of praise, it did not adequately reflect neither the intent, nor the objectives or the scope of the Convention”. The document was finally withdrawn not without a previous in depth debate within Committee II, along the following lines:

The delegation of Kenya introduced document Doc 11.55 and referred to a report prepared by the Royal Society for the Prevention of Cruelty to Animals (RSPCA) dealing with the humane shipping and mortality of animals during the transport process. Noting that the entire pre-shipment period could have a subsequent effect on the viability of the animals, they believed it was important that the term “prepared”, as used in Articles III, IV and V of the Convention, should include all processes from capture to the point of export. However, they noted this should only apply to animals destined for export. The delegation of Switzerland stated that although animal welfare was an important issue they would have problems implementing such a decision and shared the opinion of the Secretariat that the issue was not within the scope of the Convention. Similar concerns were voiced by the delegations of Canada, Japan, Portugal on behalf of the Member States of the European Union, South Africa and the United States of America. The last of these suggested that the issue would be better addressed by the Transport Working Group of the Animals Committee. The observer from the Western Association of Fish and Wildlife Services, speaking for all three of the Associations, also opposed the draft resolution and noted that its implementation would require re-drafting of legislation in all 50 States of the United States of America. The delegations of Ecuador and Israel supported the document, as did the delegation of Zimbabwe, who suggested the definition should be expanded to include reference to the importing country as conditions in quarantine could also play a part. The observer from the International Fund for Animal Welfare (IFAW) echoed this view.

The observer from the RSPCA stated that packing conditions before, during and after export affected the condition of the animals and therefore, for the definition to be biologically sound, it must include the entire transport process. They also stated that the effect of mortality before export was not considered in estimating the effect of international trade on wild populations.

The Chairman observed that, despite the importance of the issue, there was little support for the document. However, he noted that there was considerable support for the suggestion that the Transport Working Group of the Animals Committee should consider the issue and produce recommendations and guidelines. On the understanding that this process would be followed, the delegation of Kenya agreed to withdraw the document (see Summary Report Com.II. 11.1 First session: 11 April 2000).

Based on the outcomes of the debates of both proposals from Gambia and Kenya, it is crystal clear that the attempts to extend, within CITES, animal welfare to the capture of wild animals have failed.

Nevertheless, it should be taken into account that during the last CoP of the Bonn Convention of Migratory Species (CMS) (Bonn Convention, Quito, 2014) a Resolution (UNEP/CMS/Resolution 11.22) was adopted (Resolution of the Bonn Convention 2014) on live captures of cetaceans from the wild for commercial purposes, which for the first time at the international level, acknowledging the increasing global concern for animal welfare in relation to the live capture, transport and keeping of cetaceans, for public display in commercial aquaria and travelling shows, such as dolphins, pilot whales, beluga whales, killer whales or boto dolphins. The Resolution also seeks to enhance cooperation and collaboration with other international regimes, such as CITES, and, on the one side, invites Parties to the CMS itself, that have not already done so, to develop and implement national legislation, as appropriate, prohibiting the live capture of cetaceans from the wild for commercial purposes; as well as, on other side, urges the same Parties to consider taking stricter measures in line with CITES article XIV with regard to the import and international transit of live cetaceans for commercial purposes that have been captured in the wild.

So CITES should reconsider if it continues to consider itself alien to these issues methods of capture of animals of species listed in its Appendices. This cooperation between CITES and the Bonn Convention began with Resolution Conf. 13.3 [(Cooperation and synergy with the Convention on the Conservation of Migratory Species of Wild Animals (CMS)] and the Memorandum of Understanding signed in 2002 between both Secretariats. To some extent, the preoccupations about what happens to animals during their capture had already been advanced by the Vicepresident of the Working Group on Introductions from the sea during the 61st meeting of the CITES Standing Committee (SC61 Summary Record) who stated, when expressing the concern about the challenge of implementing the Convention's provisions on introduction from the sea mentioned explicitly, among other issues, "e.g. the humane handling of live specimens".

As a contribution to the work of the CITES Animals Committee the NGO Responsible Ecosystems Sourcing Platform (RESP), through its International Working Group on Reptile Skins, initiated a process to develop an information data base system on traceability of reptile skins whose conclusions and recommendations were included in document AC27 Doc. 19.4 (Veracruz 2014), that was presented by Switzerland, the host country where this NGO has its statutory seat, to the Animals Committee. Among the requisites that should be developed by the information system, as suggested by the different interested parties concerned, include welfare data all along the different phases of the process, including the capture itself of the animals, was introduced late in the

process, the instrument simply stated that “due to the fact that the document The Animals Committee is invited to consider the results of the consultation conducted by RESP on the system requirements of a global traceability information system for reptile skins and to provide its recommendations to the Standing Committee for consideration”.

- Transport of the animals

IATA regulation of air transport

Air transport is the preferred mean of transport of live animals, and it has to follow certain regulated conditions that affect animal welfare. During the transport of living animals the member States of IATA need to abide by the International Air Transport Association (IATA) Live Animals Regulations (IATA-LAR). Accepted by CITES and admitted to be the international rule for the transport of living animals the IATA Live Animals Regulations is the main and essential source of information about how can they be flown with safety and in a humane manner. It specifies the minimum requirements for the international transport of animals and the precautions that have to be taken by the airlines, the agents and the professional staff who is in charge both in land and during the flight.

CITES Guidelines for the non-air transport of live wild animals and plants

For non-air transport CITES passed the so-called (CITES Guidelines for the non-air transport of live wild animals and plants, adopted by the 2nd meeting of the CoP (CoP2, San José, 1979), and revised in its 16th meeting (CoP16, Bangkok, 2013), as previously passed by the Animals Committee in its 26^a meeting (Geneva 2012).

The scope of the Guidelines include the operation previous to and following the shipment which constitutes an unnatural situation for the animal and is most likely to cause it some degree of stress; for reasons of animal welfare, animal transport should be quick, efficient and strive to avoid as much stress as possible to the animal; the transport of live animals must be well planned, well prepared and effectively executed; all necessary facilities and equipment for crating, hoisting of containers, loading and unloading should be in place and readily available to minimize the time for loading and unloading, to ensure the animal's welfare, and to minimize the risk of unnecessary fear, injury, damage to health, suffering and cruel treatment; it is essential that specific measures are implemented to safeguard the health and welfare of animals and all personnel during and after loading and unloading; the transport should be carried out without delay to the destination and the welfare conditions of the animals must be regularly checked and appropriately maintained by competent personnel; in case of a delay during transport, all necessary actions required to safeguard the welfare of the animals and reduce the risk of unnecessary fear, injury, damage to health and suffering should be taken by the transporter; when animals fall ill or are injured during transport, they should receive appropriate veterinary treatment as soon as possible and, if necessary, undergo emergency euthanasia in a way which does not cause them any unnecessary suffering in compliance with legislation as applicable.

Resolution Conf. 10.21 [(Rev. CoP16) (Transport of live specimens)]

Although neither the IATA nor the CITES Guidelines for transport can qualify as legislation, the countries which have incorporated them as internal law have awarded to the, legal status (OIE 2002). In any case, the application of both instruments depends on the respective national legislation that has to be passed by the Parties.

Thus, Resolution Conf. 10.21 [(Rev. CoP16) (Transport of live specimens)] recommends that suitable measures be taken by the Parties to promote the full and effective use by Management Authorities of the IATA *Live Animals Regulations* (for animals), the IATA *Perishable Cargo Regulations* (for plants) and the *CITES guidelines for the non-air transport of live wild animals and plants* for the preparation and transport of live specimens by all means of transport, whether by air, land and sea or inland waterways. The CoPs calls the attention of exporters, importers, transport companies, carriers, freight forwarders, inspection authorities and international organizations and conferences competent to regulate conditions of transport also, whether by air, land and sea or inland waterways.

Shipping of tortoises and freshwater turtles

A particular remark that animal welfare must be considered is included in Conf. 11.9 [(Rev. CoP13) (Conservation of and trade in tortoises and freshwater turtles)] that urges all Parties to ensure that all shipments of live tortoises and freshwater turtles are transported in compliance with relevant IATA guidelines and to facilitate the development of partnerships between interested non-governmental organizations or other bodies to develop and operate rescue centers for seized or confiscated tortoises and freshwater turtles.

Animal transport and the Animals Committee

The Animals Committee is in charge of all affaires related to the transport of living animals and it must be consulted by the Standing Committee and the Secretariat in the regular review, revision and approval of amendments to the Guidelines on this matter [see Resolution Conf. 10.21 (Rev. CoP16)]. Moreover, the CITES Guidelines state that the Committee should always have this topic in its agenda and proceed to a systematic exam of the amount and causes of mortality, injuries, or damage to health²⁰.

The Animals Committee created a Transport Working Group open to the participation of animal protection NGOs such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA) or The Humane Society of the United States (HSUS). The Working Group has discussed multiple issues, including in its agenda humane treatment or the identification of the causes of mortality. See e.g. how in the 15th meeting of the Animals Committee (Antananarivo, 1999) it urged all stakeholders involved in the shipment of living reptiles and amphibians to monitor the implementation of the new IATA-LAR, proposed by the Group and accepted by IATA itself. In the 17th meeting of the Committee (Hanoi 2011) the Transport Working Group discussed the problem of transportation of live animals for food versus live animals for the pet trade or other purposes and concluded that conditions of live animals for food, especially reptiles, were particularly bad because traders did not comply with IATA because it was expensive; it also agreed to create a sub-group concerning transport-related subjects in the trade in freshwater turtles and tortoises in Asia, including the collection of mortality data. In the 18th meeting, once more, of the Animals Committee (San José 2002), the report of the Transport Working Group concluded that the question of humane treatment of live animals through all stages of their lives after being taken from the wild must be a main objective for all countries involved in live-animal trade since the

²⁰ See final Note in <http://www.cites.org/esp/resources/transport/index.php> But this source and statement is only in the Spanish version of the web page and not in the English text (see <http://www.cites.org/eng/resources/transport/index.php>) nor in the French language text (see <http://www.cites.org/fra/resources/transport/index.php>).

Convention itself demands that animals be prepared and transported humanely. It met subsequently and concluded that that mortality of living animals during transport is an important issue that needs further attention and investigation (see e.g. a previous meeting in Washington D.C. in 1998). In the 17th meeting of the Animals Committee (Hanoi 2001) Transport Working Group had been also requested to analyze the results of the mortality questionnaires which had been received by the Secretariat and report back at the next meeting of the Animals Committee, and in the next meeting (18th, San José 2002) a draft of the said report, the content of which will be later exposed.

Mortality of animals during transport

Concerning mortality rates of animals during transport, CITES had followed the following process:

The old Resolution Conf. 9.23 (Transport of live specimens) that was repealed and substituted by Resolution Conf. 10.21 in 1997, recommended all Parties maintain records of the number of live specimens per shipment and of mortalities in transport and note obvious causes of mortality, and that they publish these data annually, providing a copy to the Chairman of the Animals Committee.

The CoP approved this recommendation after declaring itself concerned “that the official figures of mortalities due to the trade have not been reduced significantly, despite recurring efforts by the Parties to improve transport conditions, and that mortality in transport undermines the concept of sustainable trade”. As an outcome of this Resolution on animals’ mortality during transport of living animals, the Secretariat issued Notification to the Parties N° 848, of April 18th 1995, in which it enclosed a form (check-list) to collect data during inspections of shipments of live specimens, particularly birds, at the time of import and to form the basis for preparing reports to be sent to the CITES Secretariat every year. Since this form did not allowed a meaningful evaluation of the information received it was replaced by Notification to the Parties No. 1999/48 Geneva, July 1st 1999 (that was also later repealed) and that annexed and attached to the Notification a new abbreviated reporting form (only for some species) so that it could be would distributed in sufficient copies to all agencies involved in inspecting shipments of live specimens, asking, graciously, that the forms be returned on a monthly basis.

Since there were few responses, the Secretariat, under the request of the Animals Committee, sent letters to 58 Parties and in the 11th meeting of the CoP (Gigiri, 2000) it communicated that it had received answers from 12 Management Authorities. Both the Secretariat and the Animals Committee urged the Parties to do an additional effort to collect the requested information.

During the 17th meeting of the Animals Committee (Hanoi 2001) the Transport Working Group was requested to analyze the results of the mortality questionnaires which had been received by the Secretariat or sent directly to it. In the 18th meeting (San José 2002) This report presented the analysis of 769 forms that were submitted by 12 Parties from November 1999 to December 2001, representing shipments of 83,971 animals. The average mortality rate on arrival was 1.25 per cent. Of the animals that arrived alive, 85.9 per cent were reportedly in good condition, 12.1 per cent in medium state, and 2 per cent in poor condition. Ninety per cent of the shipments did not experience any mortality upon arrival. For six of the 12 target species, to conclude that there was no conspicuously high dead-on-arrival rate for any of the species.

Resolution Conf. 9.23 was repealed in the 10th meeting of the CoP (Harare 1997) and replaced by Resolution 10.21²¹, which noted that although there had been some improvements in the transport of living animals, in the case of some species the rate of mortalities due to the trade have not been reduced significantly, despite recurring efforts by the Parties to improve transport conditions, and that mortality in transport undermines the concept of sustainable trade. So it urged (and not only recommended) the Parties that permit imports of live animals: to maintain records of the number of live specimens per shipment and of mortalities in transport of species listed in the appendices; to note obvious causes of mortality, injury or damage to health; and to provide these data relating to the previous calendar year along with their annual reports. It further instructed the Animals Committee, in consultation with the Secretariat to establish the format for the presentation of data and to conduct a systematic review of the scope and causes of the mortality and injury or damage to health of animals during the shipment and transport process and of means of reducing such mortality and injury or damage to health.

In the Santiago the Chile CoP (2002) the Animals Committee recommended that the Secretariat stop the collection of data on mortalities caused by transport using the forms since few Parties were used to answer to them. It proposed instead that the import countries should do studies and investigations about injury cases and deaths.

In CoP 13 (Bangkok 2004) Decision 13.89 ordered the Animals Committee, in consultation with the Plants Committee and the Secretariat, to undertake a review of Resolution Conf. 10.21 on Transport of live animals, in order to revise the requirements regarding the collection, submission and analysis of data on mortality and injury or damage to health in transport of live animals, domestic measures directed to Parties, and reporting obligations.

In CoP 14 (The Hague) the revised Conf. 10.21 Resolution, although it maintained the efforts of the Parties to improve transport conditions since they were not sufficient to decrease mortalities, the mention of reporting and presentation of the reports of the Parties disappeared. The explanation provided, as expressed by document CoP14 Doc. 41 (Rev. 1)²², was the following: "At AC21 (21st meeting of the Animals Committee), the Animals Committee agreed that its Chairman should liaise with the Chairman of the Plants Committee with regard to proposed new wording for Resolution Conf. 10.21 in compliance with Decision 13.89, paragraph a), and that the TWG could take the lead in redrafting Resolution Conf. 10.21. A suggestion made at that meeting to reintroduce a recommendation to report in annual reports on transport-related mortality of live animals was declined by the Animals Committee. Levels of mortality during transport were recognized to be generally low. Given that mortality was likely to occur mainly before or – to a lesser extent – after transport itself, it was felt that it was sufficient to address it on a case-by-case basis. The AC Chairman also stated that the issue of mortality could only be looked at in the context of transboundary transport."

Instead, Resolution Conf. 10.21 (Rev. CoP14) directed the Animals and Plants Committees to deal with matters related to the transport of live specimens, and, in particular, to examine regularly high mortality shipments of live specimens and make recommendations to relevant Parties, exporters, importers and transport companies on how to avoid this in the future.

²¹ <http://www.cites.org/sites/default/files/esp/cop/10/res.pdf>

²² <http://www.cites.org/eng/cop/14/doc/E14-41.pdf>

At its 23rd meeting (Geneva, April 2008), the Animals Committee agreed on the actions needed to implement these instructions and invited the Parties to send to the Chair of the Transport Working Group information about the cases of high mortality of living specimens (see Notification to the Parties N° 2008/050, of July 20th 2008 (Transport of Live Animals). In the next meeting (24th, Geneva 2009), it noted that no cases of high mortality shipments had been reported to the TWG chair by any Party (Document AC24 Doc. 15.1).

Afterwards, resolution 10.21 (Rev. CoP16) has wiped off from its preamble any reference to mortality of live animals and slightly amended Resolution Conf. 1021 (Rev. CoP14), under the request of both the Animals and Plants Committees (see CoP16 Doc 39 (Rev. 1)²³ so the current text of Conf. 10.21 directs the Standing Committee and the Animals and Plants Committees, in consultation with the Secretariat (...) d) to examine, when appropriate, any high mortality shipments of live specimens and make recommendations to relevant Parties, exporters, importers and transport companies on how to avoid this in the future.”

As a summary, as document AC24 Doc. 15.2 states, the levels of mortality during such transport have been recognized by the Committee to be generally low. Parties are therefore no longer requested to submit regular reports of mortalities which occur during transport (unless there is supra-national or national legislation requiring such reports). Instead, they have been invited to provide the Chairman of the Transport Working Group with information concerning cases of high mortality of live specimens, using standard reporting forms for shipment mortality. So, currently, the analysis and evaluation of mortalities of animals during transport, depending on the shipping characteristics, is an issue that falls fully within the responsibilities of the Animals Committee.

In any case, the information about mortalities during transport is an obligation the fulfillment of which is still requested to the Management Authorities in the biannual reports, in accordance with the format for those reports described in Notification to the Parties N° 2005/035, of July 6th 2005. For example, in the last biannual report from Spain (2011-2012) the Management Authority communicated that “the information about mortality in transport in exchanges with third Parties is given by the CITES Management Authority in its annual reports, as well as the amounts traded, and these data are provided by the CITES Authorities that control the shipments and/or are taken by the Customs Authorities in the CITES permits”²⁴.

Finally, some importing countries and supranational organizations (such as the European Union) have rules that allow them to establish restrictions on imports from countries with high rates of mortality in transport. The rules of some countries also allow the Management Authorities to adopt more strict national measures concerning transport.

The Standing Committee and the transport of animals

The transport of live animals has also been a constant theme discussed in the meetings of the Standing Committee. See e.g. its 28th meeting (Lausanne 1992) where the issue of the mortality of birds during transport was discussed. See, also, the report of the Transport Working Group presented to the 29th meeting of the Standing Committee (Washington D.C. 1993), that invited the exporters who had been experiencing high mortality rates in their shipments to participate in workshops in this subject. In its 31st meeting (Geneva 1994) the Working group continued to

²³ <http://www.cites.org/sites/default/files/esp/cop/16/doc/S-CoP16-39.pdf>

²⁴ <http://cites.org/sites/default/files/reports/11-12Spain.pdf>

express concern about the high mortality of birds in transport; in the 36th meeting (Geneva 1996) issues concerning IATA Regulation were debated; in the 42nd meeting (Lisbon 1999) the Secretariat presented Doc SC42.13 that contained the Notification to the Parties on the forms that should be sent concerning mortalities and injuries; and in the 65th meeting (Geneva 2014) the Secretariat presented document SC65 Doc 30 where it communicated that the secretariats of the OIE and CITES had started to work on a draft of a Memorandum of Understanding on cooperation.

The Conference of the Parties and the transport of animals

The CoPs have also given a lot of attention to the transport of live animals. It was one of the items in the agenda of the first CoP in 1976. In 1979 it adopted the so-called *Guidelines for transport and preparation for shipment of live wild animals and plants*, that were revised in 1981. During the 4th CoP (Gaborone 1983) the Parties passed Resolution Conf. 4.20 in which the IATA LAR were declared to be equivalent to as the Guidelines approved by the Parties implementing the Convention concerning air transport. The Guidelines on Non-Air Transport and the IATA LAR have been constantly promoted later on as the main instruments conditioning trade under CITES. That is what the official forms of permits and certificates recommended by the CoP currently reflect [see Annexes 1 and 2 of Resolution Conf. 12.3 (Rev. CoP16)].

In its 6th meeting (CoP6 Ottawa 1987) the Secretariat was asked by the Chairman of the Standing Committee to prepare and present to the Parties what became Doc. 6.39 so that it could recommend to the Parties that applicants for export permits or re-export certificates be notified that, as a condition of issuance, they are required to prepare and ship live specimens in accordance with IATA Live Animals Regulations; and to assist enforcement officers, CITES export permits or re-export certificates be accompanied by a crating, health and welfare checklist (see attached model) to be signed immediately prior to shipment by a person designated by a CITES Management Authority; as well as that on arrival at the destined port of entry, the reporting system recommended in Resolution Conf. 4.21 –later repealed- (International Reporting System for Specimens Stressed during Transport) be used; and something additional and quite relevant: that where Parties to the Convention have designated ports of exit and entry, the provision of animal holding facilities be made available. For this purpose, Parties should ensure that airline terminal animal holding facilities and cargo sheds are open at all times for inspection of shipments by enforcement personnel and/or qualified technical observers. Also in this document a checklist was approved so that the Management Authorities could check, among other points, that the shipment had been prepared by a veterinarian, that the model and the crates are designed and constructed to comply with IATA Live Animals Regulations (adequate size -not crowded-, adequately ventilated, provided with externally refillable water, food and cleaning facilities and undamaged, as well as that all the animals are alive and apparently free from injury and disease) so that shipments are not to be authorized if these conditions are not met.

In the 7th CoP (Lausanne 1989) recommendations were kept on the designation of entry and exit ports, on adequate facilities –ready to be inspected in any moment, and with documentation also ready under request of the inspectors or Management Authority and supplying it to the transport companies-, and on the keeping of records on mortality and its underlying causes. The checklist was also kept in place.

In the 8th CoP (Kyoto 1992) transport issues were also reviewed: Committee II adopted Doc. 8.36, introduced by the Chairman of the Transport Working Group in which the Working Group was directed to continue, in consultation with the CITES Secretariat, Parties and interested non-

governmental organizations, with its efforts to identify, analyze, and develop solutions for transport problems. At the Plenary, the Chairman of Committee II was invited to present the Doc for approval and after thanking him, the Chair of the Plenary asked all Parties to cooperate with the Working Group to ensure that CITES specimens were transported in a safe and humane manner.

In Resolution Conf. 8.12 (afterwards repealed) (Trade in Live Birds Experiencing High Mortalities in Transport) Parties were asked to take appropriate measures, including temporary suspension of trade for commercial purposes between Parties when appropriate, regarding trade in species of birds that have significant high mortality rates in transport.

In the 9th meeting (CoP9 Fort Lauderdale 1994) it was approved to cooperate with the Secretariat in presenting training workshops focused on assisting exporting Parties in implementing the treaty and relevant Resolutions dealing with the preparation for shipment and humane transport of live animals and also to seek information from the Parties, with the assistance of the Secretariat, in an effort to obtain data and information on:

(i) numbers of live specimens per shipment and mortalities and causes thereof related to transport; and (ii) individual cases of high mortalities in transport for any CITES-listed species (in accordance with Resolutions (currently repealed) Conf. 7.13 and 8.12.

In this CoP, the Chair of the Working Group made some recorded personal reflections/recommendations, worth of being reproduced:

"I believe that if live animals cannot be prepared and transported according to CITES and IATA requirements (which have been adopted by the CITES Parties as satisfying the treaty's requirements for preparation for shipment and transport), then they should not be transported at all; the requirements are reasonable, feasible and in the best interest of the health and well-being of the animals concerned.

It is my personal opinion that today, twenty years after the inception of the treaty, that, there is no excuse for indifference to live animal transport requirements. If one looks at findings of the Animals Committee and scientific experts on where the greatest detriment is to wild populations due to significant trade, all too often it relates to international commercial trade in live animals. That is in no small part due to indiscriminate handling, preparation for transport, and shipment that result in high mortalities; those mortalities result in greater numbers of animals taken from the wild to meet a given demand. It is my opinion that economics should not be a factor in compliance with transport requirements. Indeed, for commercial trade in CITES Appendix-II species, we are dealing with species that "may become threatened with extinction". Therefore, it is totally inappropriate and inconsistent with conservation and sustainable utilization to accept the philosophy that animals worth little should be treated differently than animals with a greater profit potential."

In the 11th CoP (Gigiri 2000), Doc. 11.54 was adopted as presented by the Secretariat which concluded that efforts to determine and monitor the incidence and impact of transport-related mortalities in CITES listed species continue to be hampered by a lack of response from Parties to requests for information. Resolution Conf. 10.21 therefore appears to be implemented by very few Parties, and consideration should be given at the 12th meeting of the Conference of the Parties to its amendment or repeal. This issue was also discussed in Committee I of the CoP and the Chair of the animals Committee reminded to the Parties that all of them were obliged to comply with articles III and IV of the Convention.

In the 12th CoP (Santiago 2002) it was reported that from the analysis of the data collected from the forms between 1999 and 2001, as well as from other studies that showed similar results, the conclusions were that mortality during air transport seemed to be low or very low (at least from the species selected for the study). This led the Secretariat to recommend that, instead of requesting the Parties to continue sending the forms on mortality and the Animals Committee to review the data stemming from them, the future work should concentrate in other elements of Resolution Conf. 10.21 and Decision 12.85 was approved after extensive consultations with the Working Group. Which directed the Animals Committee, in collaboration with interested non-governmental organizations and the Secretariat, to develop recommendations regarding transport of live animals by road, rail or ship to supplement, where necessary, the IATA Live Animals Regulations.

In the 13th CoP (Bangkok 2004) Decisions 13.88 and 13.89 (Transport of live specimens) were adopted, following the recommendations of Resolution Conf. 10.21 on national legislation and national procedures for inspections and controls of facilities. During the sessions of Committee I of the CoP the delegation of the Democratic Republic of the Congo noted that the refusal by some airlines to carry live animals had led to the use of circuitous trade routes and potentially increased mortality. The draft of decision 13.88 was sent to the Plenary after the proposal of the delegation of Jamaica was accepted; it had suggested inserting the word “proper” before preparation in the first draft decision whose final text approved by the CoP had the following language: “The Animals Committee, in collaboration with interested non-governmental organizations and the Secretariat, shall: ... b) ... develop recommendations to the Parties regarding the proper preparation, proper handling and transportation of live animals, particularly in exporting countries”. The addition of a new concept to the text of articles III, IV and V of the Convention needs to be emphasized since it seems to indicate that the treatment of the animals to protect them from injuries, activities detrimental to their health or mistreatment starts before the preparation itself for shipment. The notion of proper preparation and handling is included in the studies undertaken by the Secretariat in accordance with article XX.2.c).

In the 14th and 15th CoPs (The Hague 2008 and Doha 2010), instructions were given to the Parties, the animals Committee and the Secretariat concerning transport of live animals in Decisions 14.58, 14.59, 15.50 and 15.60.

In the 16th CoP (Bangkok 2013) Document CoP16 Doc. 39 was prepared and introduced by the Working Group and the Chair of the Animals Committee, in which the cooperation of the Secretariat with the OIE was explained. The CITES Secretariat had written to the OIE/World Animal Health Organization and drawn its attention to the Secretariat’s mandate under Resolution Conf. 10.21 (Rev. CoP14) and Decision 15.60 to develop a relationship and explore enhanced cooperation between CITES and OIE, emphasizing the potential role of the OIE as the source of global, intergovernmental animal welfare standards for CITES-listed species. CITES Parties were informed that the OIE was participating in an international expert panel launched by Switzerland to develop recommended euthanasia standards for snakes. There was also some initial discussion about enhanced cooperation between the CITES and OIE Secretariats in the margins of the third Liaison Group meeting and that this will be followed up through electronic communications.

National measures to be adopted concerning transport of animals

As a development of the project on national legislation the Secretariat introduced during the 24th meeting of the Animals Committee (Geneva 2009) document AC24 Doc 15.2 in which, concerning the Draft legislative guidance for the transport of live specimens, the Secretariat has tried to

develop a set of legislative guidance elements which are categorized as essential (derived from the Convention), desirable (derived from applicable Resolutions) and optional (derived from Parties' additional and perhaps stricter domestic measures).

Derived from the Convention, National legislation must require as a condition of export, re-export, introduction from the sea and movement of travelling exhibitions (in conformity with Articles III, IV, V and VII of the Convention) that any living specimen will be so prepared and shipped or so handled or so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment. Trade in specimens in violation of these and other provisions of the Convention must be prohibited and penalized. Secondly, in conformity with Article VIII, national legislation must require, as far as possible, that specimens pass through formalities required for trade with a minimum of delay and require that all living specimens are properly cared for during any period of transit, holding or shipment so as to minimize the risk of injury, damage to health or cruel treatment.

As a result of the Resolutions already in force, national legislation should provide punishable administrative and criminal offences for the failure to comply with IATA regulations and other regulations made applicable by or provided in national legislation.

The following elements should always be in the national legislation:

1.- national legislation should designate ports of entry and exit for the transport of live specimens of animals and plants by air, land or sea, and it should cross-reference other legislation relevant to the transport of living specimens (e.g. international animal transport, animal health or protection).

2.- national legislation should authorize shipments of live specimens to be examined and necessary action taken to ensure the well-being of the specimens by CITES-designated persons or transport company personnel during extended holding periods at transfer points.

3.- national legislation should provide for holding facilities for live animals and plants at ports of entry and exit that are designated for live specimens and authorize enforcement officers to inspect such facilities.

4.2.7.1.b) Housing and caring of animals

For live animals of Appendix I, article III of the Convention requires that "... the proposed recipient of a living specimen is suitably equipped to house and care for it".

If the grant of the permits, once more, is conditioned to welfare and conservation, the issues related to welfare in this case are quite different because the reference to housing, now, is to that of the location of destiny (Bowman 1998). However, there is a gap regarding to such housing conditions and resolutions or appropriate guidelines are still needed (Orenstein 2010). When considering the requirement of suitable equipment to house and its caring, Bowman *et al.* (2010) remark that, since the species, by definition, is endangered, the destiny of each individual becomes a major one since its welfare and its conservation are totally linked (see, in the same sense, Recarte & Alonso 2006, who flag out the same issue as being the only one in which environmental law & animal law converge one hundred percent).

Concerning the obligations of the recipients of the animals Resolution Conf. 11.2 (Definition of the term "appropriate and acceptable destinations") introduces some light into the meaning of "housing and caring" by defining the term "appropriate and acceptable destinations" as "destinations where the Scientific Authority of the State of import is satisfied that the proposed recipient of a living

specimen is suitably equipped to house and care for it”, noting farther, in the reasoning of the Resolution, “that appropriate and acceptable destinations for live animals should be those that ensure that the animals are humanely treated, which, once more, shows some evidence about the fact that the welfare of the animals destined for export in international trade is one of the objectives. But the legal force of this Resolution is merely interpretative and to be used as an analogy due to the fact that this Resolution was passed to be used only where the term ‘appropriate and acceptable destinations’ appears in an annotation to the listing of a species in Appendix II of the Convention with reference to the export of or international trade in live animals, and so that the Scientific Authority of the State of import is satisfied with the status of the proposed recipient of a living specimen.

This requirement is also present in Resolution Conf. 5.10 [(Rev. CoP15) Definition of “primarily commercial purposes”)], where it is established that it is possible for an import for scientific or zoological exhibition purposes to be inappropriate where it is found that the ultimate recipient of the specimens lacks facilities suitably equipped to house and properly care for the specimens.

In accordance with article III of the Convention, Resolution Conf. 10.3 (Designation and role of the Scientific Authorities) is also relevant since the Scientific Authority has either to make the findings required on the suitability of the recipient to house and care for live specimens of Appendix-I species being imported or introduced from the sea, or to make its recommendations to the Management Authority prior to the latter making such findings and the issuance of permits or certificates.

4.2.7.2 Identification and marking of animals

Article VI.7 of the Convention states that where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen.

Article VI Permits and certificates

Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes “mark” means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

For these purposes “mark” means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

Additionally, the CoP has recommended that with respect to the identification of live specimens, any marking system that requires the attachment of a tag, band or other uniquely marked label, or the marking of a part of the animal's anatomy be undertaken “only with due regard for the humane care, well-being and natural behavior of the specimen concerned”. This how it is expressed in Resolution Conf. 7.12 (Rev. CoP15) (Marking Requirements for international trade in specimens of taxa with populations in both Appendix I and Appendix II).

In a later Resolution, Conf. 8.13 [(Rev) (Use of coded-microchip implants for marking of live animals in trade)], the Cop also required that microchip transponders be implanted where consistent with the well-being of the specimens concerned.

4.2.7.3 Caring of animals during any period of transit, holding or shipment

According to article VIII.3, the Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

Article VIII Measures to be taken by the Parties

As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

The already seen Resolution that regulates transport, Conf. 10.21 (Rev. CoP16), takes these requirements of article VIII under consideration in its reasoning, but one must examine Resolution Conf. 9.7 [(Rev, CoP 15)] (Transit and transshipment) since it defines “transit” as follows:

1.- specimens that remain in Customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic; and

2.- cross-border movements of sample collections of living specimens which form part of a travelling zoo, circus, menagerie or other travelling exhibition and are accompanied by an ATA carnet²⁵.

If the shipment is not accompanied by the required permits and certificates, under CITES it must be seized. So, Resolution Conf. 9.7 (Rev. CoP15) recommends that when an illegal shipment in transit or being transhipped is discovered by a Party that cannot seize it, the Party provide to the country of final destination and to the Secretariat all relevant information on the shipment as soon as possible and, if applicable, to other countries through which the shipment will pass in transit.

Interpreting article VIII.3, Bowman (1998) states that “this provision contains two distinct, albeit related, aspects - the minimization of delay and the enforcement of proper welfare standards. This obligation should be regarded as being of particular importance in the case of live animal shipments, and the Parties should clearly take note of the principle in the CITES Transport Guidelines [and IATA LAR] that animals should be given priority over merchandise.

The most important aspect of article VIII.3 concerning animal welfare, though, is the obligation of the Parties to guarantee that the animals during any period of transit, holding or shipment, are properly cared. Nevertheless, Bowman (1998) calls the attention that this clause must surely rank as one of the most neglected of all CITES' provisions. He regrets that it is hardly ever referred to in the documentation or discussions regarding transportation questions, or in academic analysis, and, when it is, it seems to be regarded merely as a reiteration of the welfare provisions of previous articles (articles III, IV and V of the Convention). This inefficient implementation could be prevented by applying article VIII.1 that, in general, mandates that the Parties shall take appropriate

²⁵ An ATA Carnet is an international customs and temporary export-import document. It is used to clear customs in 84 countries and territories without paying duties and import taxes on merchandise that will be re-exported within 12 months, such as commercial samples, professional equipment, or goods for fairs & exhibitions (limited to 6 months) listed in the Annexes of the Brussels Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, opened for signature in December 6th 1961.

measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof, and which should be applied to article VIII.3 and the rest of the animal welfare obligations with the same level of efficiency as the regulation of international trade of CITES.

For Bowman *et al.* (2010), article VIII.3 includes an obligation which is not limited to the State that initially authorized the operation but to whatever other Party who has jurisdiction over the shipment or has any control over it. They also indicate that although this provision seems to require from Parties to enact and strictly implement internal legislation, in many countries this does not happen.

In fact this should be a duty included in the functioning of customs in every country, although at the international level it has not been acknowledged at such in the various cooperation agreements that the World Customs Organization (WCO) has signed concerning CITES. In July 4th 1998 the WCO and CITES signed a Memorandum of Understanding (WCO – CITES MoU 1996) that does not contain any specific measure to ensure animal welfare of animals under customs control, and it is exclusively focused on stopping illegal trade. Another agreement is the one signed between the WCO and the OIE in November 19th 2008 (WCO – OIE 2008), in which each of them will keep the other Party informed of activities that may be of common interest, such as the collaboration with IATA, import controls on live animals and the strengthening of links between the Veterinary Services and the Customs. WCO has also signed collaborative instruments with TRAFFIC26 through a Memorandum of Understanding signed in October 21st 2013 (WCO – TRAFFIC 2013), with the objective of joining efforts to improve information exchanges on the implementation of law on illegal wildlife trade. The international multilateral cooperation of the WCO as a member of ICCWC²⁷, an organization created to combat crime against wildlife in collaboration with CITES Secretariat, the world's largest international police organization - Interpol, the United Nations Office on Drugs and Crime (UNODC), and the World Bank, is at the basis of the WCO Declaration on the Illegal Wildlife Trade (WCO – Declaration 2014). Also, the "Green Customs Initiative" is a cooperation project supported by CITES' Secretariat whose objective is ensuring that customs officials receive adequate training and have at their disposal all necessary tools to fight environmental crimes and crimes against wildlife (see "The Green Customs Guide to Multilateral Environmental Agreements" 2008).

None of these documents has any explicit reference to the adequate caring of live animals to minimize the risk of unnecessary fear, injury, damage to health, suffering and cruel treatment in accordance the article VIII.3 and it should be regretted that these opportunities, due to existing frameworks of international cooperation, has been totally missed. It seems that the WCO makes a strict and rigorous interpretation of article VIII.3 and remands this responsibility to the competences of its members, assuming that its own powers enforce or direct more cooperation among national customs does not allow it to go any farther. Upon a request for information by the author of this work on the WCO role, its answer was that it does not pass specific guidelines to its members about how to implement CITES at the national level since the management and the administrative procedures can vary in each country.

²⁶ TRAFFIC, is the wildlife trade monitoring network of the joint WWF and IUCN program, Ot works cooperating with the CITES Secretariat.

²⁷ The International Consortium on Combating Wildlife Crime. <http://www.cites.org/esp/prog/iccwc.php>

4.2.7.4 Confiscation of animals and disposal of confiscated animals and specimens

CITES Convention also foresees the protection of live animals when they are confiscated and they cannot be returned to the country of origin destined to a rescue center or to other location that would ensure its welfare. This is clearly stated in article VIII.4 and 5:

Article VIII Measures to be taken by the Parties

4.-Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

Resolution Conf.11.9 [(Rev. CoP13) (Conservation of and international trade in tortoises and freshwater turtles) deserves special notice. It focuses its attention in transport and the confiscation of tortoises and turtles since they represent a group of the most affected species by international trade, affecting millions of animals each year.

The CoP urges all Parties to ensure that all shipments of live tortoises and freshwater turtles are transported in compliance with relevant IATA guidelines and to facilitate the development of partnerships between interested non-governmental organizations or other bodies to develop and operate rescue centers.

4.2.7.4.a) Guidelines for the disposal of confiscated live animals

As an attempt to guide the authorities on their difficult task to take care of confiscated live animals, Resolution Conf. 10.7 [(Rev. CoP15) (Disposal of confiscated live specimens of species included in the Appendices)] has continuous references to the protection of animals which are confiscated alive. It contains in its Annex I the CITES Guidelines for the disposal of confiscated live animals (CITES Guidelines confiscation).

The IUCN has also adopted Guidelines for the Disposal of Confiscated Animals (IUCN 2000) as well as Guidelines for Reintroductions (IUCN 2013) both of which were taken into account by Resolution Conf. 10.7 (Rev. CoP15). Both pretend human care of confiscated live animals, as well as the reduction of stress and suffering of reintroduced animals.

Annex 1 of Resolution Conf. 10.7 [(Rev. CoP15) CITES Guidelines for the disposal of confiscated live animals starts with a Statement of principle (first paragraph of Annex 1) that asserts that the Parties should provide a humane solution whether this involves maintaining the animals in captivity, returning them to the wild, or employing euthanasia to destroy them.

The use of the term “euthanasia” needs, some comments since it is a clear mistake of the Resolution since euthanasia really means ending a life due to health reasons (incurable disease or clear unbearable quality of life for the animal) and never should be used as a method or decision taken exclusively for management purposes as this Guideline seems to imply. A more correct expression could be “sacrifice”, understood as inducing the death of a healthy animal or with a disease that can be treated or an undetermined disease (See Decision nº 865/2014 of the Spanish Council of State).

The basis for Resolution Conf. 10.7 (Rev. CoP15) is that the Convention itself lacks any explanation about the confiscation of live animals beyond the text of paragraphs 4 and 5 of article VIII., and this is the reason why the Administrative Authorities had to act following their own interpretation not only about the return to the place of origin but also on the terms “appropriate and consistent” of the Convention.

Concerning animal welfare, the points worth of notice from the Guidelines are the following:

Management options

In deciding on the disposal of confiscated animals, managers must ensure both the humane treatment of the animals and the conservation and welfare of existing wild populations of the species involved. Options for disposal fall into three principal categories: 1) maintenance of the individuals in captivity; 2) returning the individuals in question to some form of life in the wild; and 3) euthanasia. The last option may often prove the most appropriate and most humane.

OPTION 1 - CAPTIVITY

Depending on the circumstances, animals can be donated, loaned or sold. Placement may be in zoos or other facilities, or with private individuals. Finally, placement may be in the country of origin, the country of export (if different), the country of confiscation, or a country with adequate and/or specialized facilities for the species in question. If animals are maintained in captivity, in preference to either being returned to the wild or destroyed, they must be afforded humane conditions and ensured proper care for their natural lives.

Transfer of animals to either zoological gardens or lifetime-care facilities should generally provide a safe and acceptable means of disposal of confiscated animals. When a choice must be made between several such institutions, the paramount consideration should be which facility can provide the most consistent care and ensure the welfare of the animals. The terms and conditions of the transfer should be agreed between the confiscating authority and the recipient institution. The custodian (zoo, welfare organization) of confiscated animals should only move the animals to another facility for legitimate humane and propagation purposes with the authorization of the administrative authority.

Zoological gardens, aquaria and safari parks are the captive facilities most commonly considered for disposal of animals, but a variety of other captive situations exist. These include the following:

a) Rescue centres, established specifically to treat injured or confiscated animals, are sponsored by a number of humane organizations in many countries.

b) Lifetime-care facilities devoted to the care of confiscated animals have been built in a few countries.

c) Specialist societies or clubs devoted to the study and care of single taxa or species (e.g. reptiles, amphibians, birds) have, in some instances, provided an avenue for the disposal of confiscated animals without involving sale through intermediaries.

d) Humane societies may be willing to ensure placement of confiscated specimens with private individuals who can provide humane lifetime care.

e) Universities and research laboratories maintain collections of exotic animals for many kinds of research (e.g. behavioural, ecological, physiological, psychological, medical). Attitudes towards vivisection, or even towards the non-invasive use of animals in research laboratories as captive study populations, vary widely from country to country. Whether transfer of confiscated animals to research institutions is appropriate will therefore engender some debate, although transfer to an establishment that conducts research under humane conditions may offer an alternative, and one which may eventually contribute information relevant to the species' conservation. In many cases, the lack of known provenance, and the potential that the animal in question has been exposed to unknown pathogens will make transfer to a research institution an option unlikely to be exercised or desired.

f) Sale of confiscated specimens to traders, commercial captive breeders, or others involved in commercial activities can provide a means of disposal that helps offset the costs of confiscation. However, sale should only be considered in certain circumstances, such as where the animals in question are not threatened and not subject to a legal prohibition on trade (e.g. CITES Appendix II) and there is no risk of stimulating further illegal or irregular trade. Sale to commercial captive breeders may contribute to reducing the demand for wild-caught individuals. At the same time, however, it may prove to be a poor option owing to the risk of creating a public perception of the State's perpetuating or benefiting from illegal or irregular trade. Finally, confiscating authorities should be aware that, unless specific legal provisions apply, it is impossible to assure the welfare of the animals following placement.

OPTION 2 - RETURN TO THE WILD

Before "Return to the wild" of confiscated animals is considered, several issues of concern must be considered in general terms: welfare, conservation value, cost and disease.

a) Welfare. While return to the wild may appear to be humane, it may be nothing more than a sentence to a slow death. Humane considerations require that each effort to return confiscated animals to nature be thoroughly researched and carefully planned. Such returns also require long-term commitment in terms of monitoring the fate of released individuals. Some authors have advocated that the survival prospects for released animals must at least approximate those for wild animals of the same sex and age class in order for return to the wild to be seriously considered. While such demographic data on wild populations are, unfortunately, rarely available, the spirit of this suggestion should be respected; there must be humane treatment of confiscated animals when attempting to return them to the wild.

OPTION 3 – EUTHANASIA

The killing of animals carried out according to humane guidelines – is unlikely to be a popular option amongst confiscating authorities for disposal of confiscated animals. However, it can not be overstressed that euthanasia may frequently be the simplest and most humane option available. In many cases, authorities confiscating live animals will encounter the following situations.

a) return to the wild in some manner is either unnecessary (e.g. in the case of a very common species), impossible, or prohibitively expensive as a result of the need to conform to biological and animal welfare guidelines.

b) Placement in a captive facility is impossible, or there are serious concerns that sale will be problematic or controversial.

c) During transport, or while held in captivity, the animals have contracted a chronic disease that is incurable and, therefore, a risk to any captive or wild population.

Euthanasia may be in the best interest of the welfare of the confiscated animals. Unless adequate finances are available for reinforcement of existing populations or reintroduction, release to the wild will carry enormous risks for existing wild populations and severely jeopardize the survival prospects of the individual animals, which may, as a result, die of starvation, disease or predation.

Each Party, according to its internal legislation and policies, should develop a plan of action that can be executed without delay in the event that live specimens are seized that should be developed in accordance with the CITES guidelines (Annex III of Resolution Conf. 10.7). Nevertheless, the Contracting Parties do not seem to have developed any routine of putting in place national legislation in the subject (Galhardo 2007).

Guidelines on the establishment and operation of rescue centres and Guidelines on cooperation between rescue centres and enforcement officers rescue centres are still needed (Orenstein 2010).

The CoP has also recommended to the Parties, through Resolution Conf. 9.10 [(Rev. Cop15) (Disposal of confiscated and accumulated specimens)] that they should inform the public about their procedures for dealing with seized and confiscated specimens and about rescue centers. In this sense, the lack of rescue centers is a major problem for the protection of the animals. Resolution Conf. 10.7 (Rev. CoP15) notes that shipments of Appendix-II or -III live specimens often include large quantities of specimens for which no adequate housing can be made available, and that in general there are no detailed data about country of origin and site of capture for these specimens. Concerning this point, the Animals Committee, in its 25th meeting (Geneva 2011) flagged out that many Management Authorities and other bodies that implement CITES encounter major difficulties to dispose of confiscated animals in rescue centers or other centers that can provide adequate long term care and that since reintroduction of animals in their natural habitats is not practical or is very difficult to organize, euthanasia could sometimes be the only available option. To confront this situation the Animals Committee recommended the Parties to open a broad consultation process in order to identify facilities that could offer housing and both immediate and on the long term. See .g. the 21st meeting of the Animals Committee (Geneva 2005) when the Working Group on conservation of and trade in great apes, open to the participation of NGOs such as Born Free USA; David Shepherd Wildlife Foundation or the Humane Society of the United States, urged all Parties to notify the CITES Secretariat of any sanctuary facilities within their countries suitably equipped to house and care for great apes confiscated from trade, to be included

in the list of facilities originally circulated by the CITES Secretariat in Notification to the Parties 2002/074 (“Confiscation of Live Animals”). Another example can be found in the 27th meeting of the Animals Committee (Veracruz 2014) where the Working Group on illegal trade in cheetahs, open to the participation among others of NGOs such as Born Free USA, the Humane Society International and International Fund for Animal Welfare (IFAW), under a mandate, among other things, to focus its recommendations on measures concerning the disposal of confiscated live specimens.

From the perspective of the cooperation of CITES with NGOs that work for the protection of animals, since 2002, the Species Survival Network (SSN)²⁸ has been collecting information regarding facilities and organizations that could offer assistance to Parties following the confiscation of live animals. This list of rescue facilities compiled by SSN is notified to the Parties by the Secretariat (see Notification to the Parties N° 2009/009).

Another example of collaboration is the Memorandum of Understanding (2011) between the CITES Secretariat and the Executive Director of the World Association of Zoos and Aquariums (WAZA) of December 20th 2011 (WAZA – CITES MoU 2011), whose main areas of collaboration are the care and housing of seized live animals and the shipping of live animals.

4.2.7.4.b) Return to the wild

Reintroduction of animals to the wild is also difficult and the same Resolution Conf. 10.17 (Rev. CoP15) suggests that this measure can be one of the least appropriate ones due to many reasons.

Harrington *et al.* (2013) have done a systematic review of the recent scientific literature on reintroductions of captive-bred and wild-caught animals (mammals, birds, amphibians, and reptiles) to quantify the occurrence of animal welfare issues. Potential welfare issues (of variable nature and extent) were recorded in 67% of 199 projects reviewed; the most common were mortality >50%, dispersal or loss of animals, disease, and human conflict. That is the reason why they conclude that comparative mortality rates, health risks, post-release stress, effectiveness of supportive measures, and behavior of individuals warrant further research to improve animal welfare in reintroductions and to increase success of such projects. Additionally, Liv Baker, in the University of British Columbia (Canada) has indicated that reintroductions usually fail due to the absence of consideration of the behavior of the animals’ individual personalities, estimating that 50-80% are unsuccessful (Tobias & Gray 2013).

This same views about reintroductions is admitted in the June 2014 Declaration of the Customs co-operation council [WCO] on the illegal wildlife trade, that acknowledges that the majority of seized specimens of wildlife and wildlife products cannot be reintegrated into their natural habitat and can serve only as an indicator of the scale of the crime committed. The difficulty to reach a consensus on the issue of reintroduction can also be understood by looking at the 8th CoP (Kyoto 1992) where the delegation of The Netherlands introduced document 8.56 on Return to the wild of confiscated live animals of species included in Appendices II and III, that was later withdrawn, nevertheless listed a while array of the problems that the return to the State of origin and release in the wild implied, thus meaning that it was not the most appropriate solution, neither from the perspective of

²⁸ The Species Survival Network (SSN) is a coalition of 65 environmental and animal protection entities of 26 countries, some of whom also participate in CITES meetings on an individual basis.

ecology nor from that of animal welfare. After long and in depth discussions it was agreed that the issue was too complex to be solved in that same meeting of the CoP, so the delegation of The Netherlands withdrew the proposal with the understanding that the Animals Committee would draft a resolution in the future. That Resolution was never adopted afterwards by subsequent CoPs, but part of its findings were included in the current Resolution Conf. 10.7 (Rev. CoP15): See Option 2, Return to the wild, of its Annex 1.

4.2.7.4.c) Confiscation of specimens. In particular, of ivory

The previous analysis has focused only on the confiscation of live animals. CITES also regulated the disposal of death specimens confiscated and accumulated of Appendices I, II and III in Resolution Conf. 9.10 (Rev. CoP15). Concerning death specimens, of species of Appendix I, including parts and derivatives, it Recommends Parties that they dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for *bona fide* scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable. It is also worth of mentioning the decisions of some countries to destroy, by fire, tons of seized illegal ivory, as a strong signal of their position that ivory should by any circumstances reenter the market in order to combat poaching and the illegal trade itself, a position that ultimately produces benefits for the wellbeing of elephants.

4.2.7.5 Observers in the Conferences of the Parties

4.2.7.5.a) Participation of animal protection NGOs in the CoPs

Paragraph 7 of article XI of the Convention dictates that the NGOs admitted to participate as observer in the CoPs shall have the right to participate but not to vote. Observers that can ask for participation under XI.7 are those who are technically qualified in protection, conservation or management of wild fauna, and the animal protection NGOs have been considered as such.

Article XI Conference of the Parties

Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one- third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

In many of the issues discussed in the meetings of the CoPs, the observer NGOs have a high level of experience and specialized knowledge.

The following are some of the NGOs of animal protection or animal welfare who attend the meetings: International Fund for Animal Welfare (IFAW), Friends of Animals, World Society for the protection of animals (actualmente World Animal Protection International) (WSPA), International Primate Protection League, Royal Society for the Prevention of Cruelty to Animals (RSPCA), International Primate Protection League, International League for the protection of cetaceans, Animal Protection Institute, Friends of Animals, The Human Society International (HSI), Animal Welfare Institute, American Society for the Prevention of Cruelty to Animals (SPCA), Canadian Council for Animal Care, National Animal Rights Association, Franz Weber Fondation, Animal

Legal Defense Fund (ALDF), Animal Rights Center (Japan), Born Free Foundation, Committee for Humane Legislation, Species Survival Network (SSN), Save the Elephants, Animal Defenders, Pet Care Trust, Animals Asia Foundation, Eurogroup for Animal Welfare, European Association of Zoos and Aquaria (EAZA), African Elephant Foundation, Friends of Whalers, Fondation Brigitte Bardot, Robin Des Bois, Environmental Investigation Agency (EIA), The Jane Goodall Institute, International Elephant Foundation, Sea Shepherd Conservation, World Wide Fund for Nature (WWF), Whale and Dolphin Conservation, Africa Network for Animal Welfare, David Shepherd Wildlife Foundation, Lewis & Clark College, Pax Animalis, People for Animal Trust, or World Association of Zoos and Aquariums (WAZA).

These NGOs have been active in the debates, participating in the Working Groups and consulted on diverse issues that have had impact on animal welfare individually considered, such as the regime applicable to confiscated live animals or the use of specimens in traditional medicine.

Their influence and their impact on the outcomes have been undeniable and their work acknowledged in the 11th CoP (Gigiri 2000). It was here that the United States introduced document Doc. 11.16 “ Recognition of the important contribution made by observers to the CITES process at meetings of the Conference of the Parties”. In the document, the U.S. complained about the fact that a number of organizations that attended the 10th CoP as observers expressed their concerns about the limited level of participation afforded to observers at that meeting. In any case since this document, that proposed a increasing the accessibility of observers to discussions in the meetings of the CoPs triggered an important debate about article XI.7 which led to the acknowledgement of their relevant role in the CITES process in general and the Parties were urged to preserve their rights to participate actively in all the meetings of the CoP. During the Plenary, the Secretary General reiterated the importance of their role and the document was finally approved.

The report of the Secretariat introduced in CoP15 (Doha 2010), entitled “Collaboration with non-governmental organizations” also acknowledged that a number of non-governmental organizations had offered CITES-related training to CITES Parties, and encouraged governments to take the lead in any CITES capacity-building efforts supported by NGOs. It also expressed its will to continue working with NGOs on capacity building and training (see Doc. 16.10. point 21).

4.2.7.5b) Intervention of animal protection NGOs in other CITES-related matters

But the work of the NGOs is not limited to the meetings of the CoPs. Taking into account that CITES is the only international treaty that contains animal welfare related detailed provisions, the participation of NGOs on all aspects of the CITES regime is quite substantial. In some areas, such as animal shipping/transport, the CoP itself has also acknowledged their role [Resolution 10.21 (Rev. 16)] and invites them, particularly veterinary, scientific, conservation, welfare and trade organizations, to provide the necessary financial, technical and other assistance to those Parties in need of it.

Usually these NGOs have as objective and purpose in their statutes and by-laws the protection of animals from the point of view of conservation biology as well as from that of the protection of animals as individuals. The expertise of NGOs in both areas makes them excellent counsels for the inclusion of considerations on species populations and their habitats as well as on the protection of individual animals. The advice that they provide usually happens during the meetings

of the CoPs but it also takes place in the meetings of the Animals Committee and of the Standing Committee, as well as support to the Secretariat.

In general, the review of records of all the meetings of all the bodies of CITES has allowed us to conclude that NGOs specialized in animal protection has kept on increasing in their numbers.

Cooperation of CITES bodies with NGOs is promoted by the Secretariat. See e.g. Notification to the Parties N° 2004/078, of December 9th 2004, Submission of enforcement-related information by the public and non-governmental organizations to the CITES Secretariat, intended to help guide members of the public and NGOs who may wish to submit information regarding illegal trade in specimens of CITES-listed species.

NGOs are also usually invited to participate in the Animals Committee. See Annex 2 of Notification to the Parties N° 2013/063, December 20th 2013, Procedure for the admission of observers from organizations and the private sector to meetings of the Animals Committee or the admission of observers from organizations and the private sector to meetings of the Animals Committee, as well as the Rules of Procedure for meetings of the Animals Committee (adopted at the 27th meeting, Veracruz, may 2014, effective from 4 May 2014), under which NGOs may provide documents and can be called as speakers by the Chair.

The NGOs that usually attend the meetings of the Animals Committee, which are almost the same, although not 100% coincident with those that attend the meetings of the CoPs, had the opportunity to participate also in the Committee's Working groups, and they have attended, offered advice, financial support etc., on issues such as live animal transport, captive breeding or animals used in by traditional medicine.

They are also present in the meetings of the Standing Committee, whose Rules of Procedure (as amended at the 65th meeting, Geneva, July 2014), also allow the Chair to invite them to participate in the debates. One of the basic roles of NGOs is raising awareness. See e.g. Doc. SC65 Doc. 43.1 of the 65th meeting of the Standing Committee (Geneva 2014) , where the Rhinoceroses Working Group gave due notice about a partnership program that Humane Society International the CITES Management Authority for Viet Nam had initiated to help Viet Nam tackle consumers demand for rhino horns.

4.2.7.6 Primarily commercial purposes

4.2.7.6.a) The prohibition of commercial trade

Species listed in Appendix I are endangered, and to prevent their loss, their international trade is prohibited, although it can be authorized in exceptional circumstances. Under the general rule established by article III.3, the specimens can only be authorized for export, inter alia, when it is not to be used for primarily commercial purposes. Among the species included in Appendix I are goats, deer, wolves, tigers, zebras, rhinoceroses, leopards, panthers, pumas, otters, seals, bears, whales and dolphins, bats, chimps, gorillas, orangutans and many other primates, elephants, eagles and falcons, parrots and macaws, crocodiles, snakes, turtles and tortoises, frogs, saw sharks, scorpions and spiders, among many others.

Article III. Regulation of Trade in Specimens of Species Included in Appendix I

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

4.2.7.6.b) Definition of primarily commercial purposes

Resolution Conf. 5.10 (Rev. CoP15) defines “primarily commercial purposes” so that the term ‘commercial purposes’ should be defined by the country of import as broadly as possible so that any transaction which is not wholly “non-commercial” will be regarded as “commercial”, and in transposing this principle to the term “primarily commercial purposes”, it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature, with the result that the import of specimens of Appendix I species should not be permitted. The burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.

4.2.7.6.c) Examples of primarily commercial and non-commercial purposes

The Resolution includes a list of examples of non-commercial transfers of specimens of species listed in Appendix I, such as:

a.- Purely private use: it refers to article VII, paragraph 3, of the Convention contains special rules for specimens "that are personal or household effects".

b.- Scientific purposes, where this purpose for such import is clearly predominant and economic benefit is not the primary intended use.

c.- Education or training of Customs staff in effective CITES control.

d.- For the biomedical industry, where the importer makes a clear showing to the Management Authority of the country of import that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit.

e.- Imports for captive-breeding purposes to sell surplus specimens to underwrite the cost of the captive-breeding program to the benefit of the Appendix-I species, if any profit made would not inure to the personal economic benefit of a private individual or shareholder.

f.- Imports through a professional dealer by a qualified scientific, educational, zoological or other non-profit organization if the ultimate intended use would be captive breeding and where a binding contract (including a contract conditioned on the granting of permits) for the import and sale of a particular specimen of an Appendix I species has already been concluded between the professional dealer and the purchasing institution. The same should apply to imports for the

biomedical industry if the sale is incidental to public health and not for the primary purpose of economic benefit.

Examples of primarily commercial purposes are the following (ppt presentation on “Permits and Certificates” of the CITES Secretariat²⁹):

- profitable scientific or biomedical research
- commercial captive breeding (under article VII.4 of the Convention specimens of an animal species included in Appendix I bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II)
- professional traders
- circuses

Examples of non-commercial purposes are the following (ppt presentation on “Permits and Certificates” of the CITES Secretariat):

personal hunting trophies (Resolution Conf. 13.7 (Rev. CoP16) states that they can be considered as personal and household effects if they are so)

- non-profit scientific or medical research
- non-profit teaching & training
- bona-fide captive breeding programs
- non-profit exhibitions
- non-profit zoological gardens

Thus, the ban on trade of species included in Appendix I when intended primarily for commercial purpose implies that the specimens can be traded for purposes such as scientific research teaching and training, research, biomedical industry, captive breeding for the reintroduction to its natural habitat, or surplus of populations of the species where their conservation status is favorable when transferred to another state for its reintroduction in the wild. In all these cases the competent authority must be sure that the recipient institution, whether educational, scientific or whatever, has facilities suitably equipped to house and properly care for the specimens can provide adequate housing and caring. The same Resolution Conf. 5.10 (Rev. CoP15) has explicitly underlined that all other applicable provisions of the Convention must still be satisfied in order for the import to be acceptable, and in particular, article III, paragraphs 3 or 5. For example, says the Resolution, “an import for scientific or zoological exhibition purposes to be inappropriate where (...) it is found that the ultimate recipient of the specimens lacks facilities suitably equipped to house and properly care for the specimens”

Nevertheless, says Bowman (1998), “the obligation not to allow commercial trade in Appendix I specimens must require the relevant authority to verify that the educational, scientific or other institution to which the specimen is to be sent is a *bona fide* recipient, and not merely a holding point for some commercial concern to which the animal is subsequently to be transferred.

²⁹ <https://cites.unia.es/file.php/1/trainers/Permits.ppt>

Furthermore, it is at the very least desirable that some general monitoring of housing and treatment be undertaken, if only to enable informed decisions to be taken regarding the acceptability of allowing future consignments to the same recipients.”

Notwithstanding all this, and in a clear contravention of article III.3.c) of the Convention and of Resolution Conf. 5.10, one can find nowadays animals of species listed in Appendix I in circuses and in zoos that were not bred in captivity. As an example one could recall the debate that took place in the 13th CoP (Bangkok 2004) when the Secretariat introduced document Doc. 28 , on Conservation of and trade in Asian big cats, when Thailand registered as zoological gardens facilities that may not deserve to be described in such terms, the Sriracha Tiger Zoo was cited as an example (which is rather essentially a place of public entertainment) which confirmed that unwillingness by zoos in North America and Europe to participate in scientific exchanges with Asian zoos had led several Asian zoos to acquire specimens for exhibition, to help increase visitor numbers, without caring greatly whether the specimens were of a legal origin or not. The Secretariat, noting these cases, did not believe that the guidance in Resolution Conf. 5.10 Rev CoP13 had been followed and insisted that the focus when determining whether trade should be authorized should continue to be on the purpose of the import and that Management Authorities determine whether a facility’s acquisition of specimens of Appendix I species is for a primarily non-commercial purpose, using the guidance in Resolution Conf. 5.10 Rev. CoP13. Finally, the Secretariat, being aware that the activities of some professional dealers in specimens of Appendix I species give cause for concern, decided to address this specific topic by the issuance of an Alert³⁰.

To the proposal submitted by the Russian Federation (Doc. 10.74) during CoP10 (Harare 1997) in the sense that circuses should be awarded non-commercial status, the Secretariat responded that it was against Resolution Conf. 5.10 (later revised in CoP15), since in nearly all circuses, the public pays to see the performance and when this is not the case, it is the organizers who pay the circus to perform. Therefore there is, in both cases, an economic benefit (even if there is no profit).

Concerning great apes in particular, the CoP has urged the Parties to limit the international use of great apes to nationally approved zoological institutions, educational centers, rescue centers and captive-breeding centres in accordance with CITES [(see Resolution Conf. 13.4 (Rev. CoP16) on Conservation of and trade in great apes)].

In spite of this Resolution, and in clear contravention of it as well as of article III.3 c), one can still find in zoos non captive-bred animals of species included I Appendix I in zoos and circuses.

4.2.7.7 Exemptions

Article VII of the CITES Convention regulates the exemptions to the general system already described. Before we start the analysis it should be remembered (Bowman 1998) that article XIV.1 allows the Parties to adopt stricter domestic measures than the provisions of the Convention and that one of the obvious mechanisms that could be used would simply consist in not taking into account in the internal legislation, totally or partially, the exemptions of article VII.

³⁰ The CITES Secretariat has established an email alert service on its website. By subscribing to it, users receive emails informing them on CITES activities, such as issuance of Notifications to the Parties, meetings, press releases, etc. Established in December 2010, its functioning is described in Notification to the Parties. N° 2010/040.

Limiting ourselves to the exemptions that are related to the trade of animals, they are the following:

4.2.7.7.a) Animals on transit or transshipment while they remain in Customs control

Article VII Exemptions and other special provisions relating to trade

1. The provisions of Articles III, IV and V shall not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

This paragraph 1 of article VII of the Convention allows the transit or transshipment of animals through or in the territory of a Party while they remain in Customs control without the need to obtain the permits mandated by articles III, IV or V, which softens the requirements.

In order to prevent that this clause may be abused (due to the fact that this exemption was frequently utilized to ship illegal specimens or to store them in Custom zones) Resolution Conf. 9.7 (Rev. CoP15) as we saw, defines “transit or transshipment of specimens” (see previous point 3) as:

a.- specimens that remain in Customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic; and

b.- cross-border movements of sample collections of living specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition and are accompanied by an ATA carnet.

Resolution Conf. 9.7 (Rev. CoP15) recommends to the Parties to the extent possible under their national legislation:

1.- that they verify the presence of a valid CITES permit or certificate as required under the Convention or to obtain satisfactory proof of its existence.

2.- that they seize and confiscate specimens in transit or being transhipped without a valid permit or certificate or proof of the existence thereof.

To this end it is necessary that the Parties adopt legislation allowing them both to inspect, control documents and seize/confiscate the animals in transit or being transhipped without a valid permit or certificate or proof of the existence thereof.

It should also be reminded that in these cases of transit or transshipment, or customs control, article VIII.3 oblige the Parties to verify that the animals during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment. And, as Bowman (1998) also noticed, having in mind that the only other article where the term “transit” is used is article VII.1, which removes the need for trade permits to be issued in respect of certain such periods, and that the duty to ensure the welfare of living specimens is stated to apply during *any* period of transit, there could scarcely be a clearer indication that the intention underlying Article VII.1 was not to eliminate the applicability of substantive welfare obligations in the exempted situations. Thus, there is no doubt that the Parties have the duty to care for the animals and to minimize the risk of injury, damage to health or cruel treatment during all moments of the transit, transshipment or under Customs control, and this duty is applicable even in the case when the exemptions are applied. Unfortunately, it is far from clear that this point

has been fully appreciated in the practice of the Parties (Bowman 1998). This lack of interest that was flagged out already by Bowman in 1998 has also been affirmed by the commercial traders who openly show their preoccupation for the lack of measures to adequately care for the animals during customs inspections (TRAFFIC 2007), while neither the Memoranda nor Agreements have addressed this issue to call for incentives for the Parties to adopt measures (WCO - CITES 1996 MoU, WCO – OIE 2008 Agreement; WCO – TRAFFIC 2013 MoU).

4.2.7.7.b) Animals that are personal or household effects

Paragraph 3 of article VII regulates the exemption of “personal or household effects” from the obligations of articles III, IV or V of the Convention, unless any of the circumstances described in subparagraphs a) and b) of this paragraph apply in which cases either an import and export permit (in cases described in a) or an export permit (in b) cases) will be required.

Article VII Exemptions and other special provisions relating to trade

The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

(a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or

(b) in the case of specimens of species included in Appendix II:

(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

Resolution Conf. 10.20, on Frequent cross-border movement personally owned live animals, says that the exemptions should not be used to avoid the necessary measures for the control of international trade in live animals that are often involved in frequent movement across international borders for a variety of legitimate purposes, including but not limited to companion or competition animals, and animals moved as household effects or for falconry. In these cases, the Management Authority should issue for each live animal a certificate of ownership as a personal or household effect, valid for a maximum period of three years, as soon as it was not acquired in breach of the Convention; a certificate of ownership that will also be valid only if the conditions of transport are in accordance with IATA – LAR and the CITES Guidelines on non-air transport [Resolution Conf. 12.3 (Rev.CoP16)]. Additionally, the Parties have to inspect such a live animal to ensure that it is transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment (Resolution Conf. 10.20). In this way, multiple cross-border movements if the animals have been legally acquired, accompany the owner are marked, and covered by a “certificate of ownership” that complies with certain animal welfare requirements.

In Resolution Conf. 13.7 [(Rev. CoP14) on the Control of trade in personal or household effects, the CoP decided that the term “tourist souvenir specimens” does not apply to living specimens.

4.2.7.7.c) Animals bred in captivity

Most international trade is in animals bred in captivity. Paragraphs 4 and 5 of article VII of the Convention regulate a special system for captive-bred animals of Appendices I, II and III which amounts to approximately 60% of all the animals traded.

The scope of the definition of animals bred in captivity for commercial purposes of Resolution Conf. 10.16 (Rev.) includes specimens bred in captivity of species included in Appendix I, II or III, whether or not they were bred for commercial purposes.

Animal protection NGOs groups have objected to captive breeding because of the methods of capture, and the conditions of transport, breeding and non-humane slaughter. The welfare of wildlife in captivity is usually addressed following the Five Freedoms as adapted to them. In captive breeding, animal welfare is seriously compromised due to the fact that the facilities where the animals are bred, in some occasions intensively and under severe conditions of stress, cannot behave naturally. Captive breeding is conducted in a way that directly impacts one of Freedoms which is an essential indicator of welfare: the need of the animal freely to express its normal behavior. Although the Five Freedoms were originally determined as applicable only to farm animals they are also being used to assess the physical and psychological state of animals in captivity. Many mammals and birds suffer if their environment is excessively restricted; evidence that their behavioral needs are not fulfilled is shown by the appearance of abnormal behaviors such as inactivity, apathy or stereotypes (Alonso 2013, Poole 1988, 1990; Zhang 2007, Fernández 2014).

Animals usually respond to captivity in different ways and sometimes with chronic stress. Poor captive welfare has ethical implications for those concerned about animal wellbeing and practical implications for those wishing to establish self-sustaining captive populations (Mason 2010). Even the CITES Guidelines for the disposal of confiscated live animals (CITES Guidelines confiscation) give a warning: confiscating authorities should be aware that, unless specific legal provisions apply, it is impossible to assure the welfare of the animals following placement.

Animals included in Appendix I bred in captivity for commercial purpose

Since the focus of CITES is the conservation of wild species, the specimens of species included in Appendix I that have been bred in captivity are considered species included in Appendix II, and they should be traded following the rules set in article IV.

Article VII Exemptions and other special provisions relating to trade

Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

The term “bred in captivity for commercial purposes”, as used in Article VII, paragraph 4, shall be interpreted as referring to any specimen of an animal bred to obtain economic benefit, whether in cash or otherwise, where the purpose is directed toward sale, exchange or provision of a service or any other form of economic use or benefit [Resolution Conf. 12.10 (Rev CoP15)].

Thus, animals of species included in Appendix I if bred in captivity can be traded for commercial purpose, which is a clear example of the fact that CITES does not give preeminent value to the animal welfare of animals considered as individuals.

In any case, animals of species in Appendix I bred in captivity for commercial purpose are considered animals of Appendix II species, which has as a practical consequence that the Management Authority of the State of export, before granting the export permit, need to be satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment, a requirement that routinely applies to animals of species of Appendix II. Also, the information that should be included in CITES permit [in accordance with the provisions of Resolution Conf. 12.3 (Rev. Cop16)], should include a statement that the permit, if it covers live specimens, is only valid if the transport conditions comply with the IATA - LAR, or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants. By the same token, loss of Appendix I status will eliminate the need for any enquiry into the reception facilities of the proposed recipient (see paragraphs 3 and 5 of article III, as well as Resolution Conf. 5.10 (Rev. CoP15).

In any case the CoPs have also adopted Resolution on the welfare of captive-bred animals, so animal welfare is not totally disregarded in captive breeding:

- An essential element of captive breeding, as the definitions in Resolution Conf. 10.16 (Rev.), on specimens of animal species bred in captivity, imply, means that breeding in a controlled environment must have as general characteristics that it may include but are not limited to: artificial housing; waste removal; health care; protection from predators; and artificially supplied food. The Management Authority, as advised by the Scientific Authority, is in charge of making sure that the breeding complies with Resolution Conf. 10.16 (Rev.).

- Bred in captivity specimens of species of Appendix I primarily for a commercial purpose when the operations that breed the specimens are registered by the Secretariat following the requirements listed in Resolution Conf. 12.10 [(Rev. CoP15), on Registration of operations that breed specimens of Appendix I species in captivity for commercial purposes]. The first and major responsibility for approving captive-breeding operations under Article VII, paragraph 4, shall rest with the Management Authority of each Party, in consultation with the Scientific Authority of that Party. This Resolution encourages Parties to provide simple application forms and clear instructions to operations that wish to be registered a sample application form is provided in its Annex 3, which contains a description of mortality rates and about how the operation is carried out at all stages to ensure that animals are treated in a humane (non-cruel) manner. Thus, in the information about operations to be registered that the Management Authority has to provide to the Secretariat has to include:

- Description of the facilities, with detailed information on the number and size of enclosures and about the availability of veterinary services

- Information on the percentage mortalities

- Assurance that the operation shall be carried out at all stages in a humane (non-cruel) manner

Currently there are 257 operations from 25 countries, of captive breeding of animals of Appendix I species for commercial purposes registered in the official Register of the Secretariat.

Following Bowman (1998), it could be said that, given that the parties are expected to restrict commercial imports of Appendix I species to those produced by registered operations, this is potentially a powerful mechanism which could be used in order to ensure the application of

adequate welfare standards in all these facilities [if compliance with Resolution Conf. 12.10 (Rev. CoP15) is ensured, we would add].

It should also be remembered that when confiscated animals are given to a captive-breeding operation (instead of returning them to the wild or sacrificing them) the animals should anyhow be adequately taken care of and treated during their whole lifetime [Resolution Conf. 10.7 (Rev. CoP15)].

Captive-bred animals of species included in the three Appendices

Paragraph 5 of article VII of the Convention states that the Management Authority of the State of export can issue a certificate that any animal was bred in captivity in lieu of any of the permits or certificates required under the provisions of Article III, IV or V. Therefore, this provision applies a harmonized treatment of captive-bred animals of any of the species listed in any of the three Appendices.

Article VII Exemptions and other special provisions relating to trade

Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V.

While for animals of species of Appendix I, if bred in captivity for commercial purposes, they are considered as if they were of a species included in Appendix II, for animals of species of Appendix I bred for a non-commercial purpose the permits are replaced by such certificate that any animal was bred in captivity. That is what article VII.5 dictates: that for animals of species of Appendix I bred for a non-commercial purpose accompanied by a certificate that any animal was bred in captivity, permits are not required independently of whether they are or not traded for commercial purposes. Paragraph 5 of article VII extends the exemption of articles VI and V to captive-bred animals of species included in Appendices II and III.

The abovementioned regime is applied without prejudice to the application also of Resolution Conf. 10.16 (Rev.) to any captive-bred animal –in addition to those traded for commercial purposes of species listed in Appendix I; and that the in the certificate that any animal was bred in captivity has to include an explicit declaration that it will only be valid if the conditions of the shipment comply with the IATA-LAR, or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants [Resolution Conf. 12.3 (Rev. Cop16)].

It should also be remembered that currently the operations that need to be registered and comply with the animal welfare requirements of [Resolution Conf. 12.10 (Rev. Cop15)] re only applicable to animals of species included in Appendix I bred for commercial purposes mentioned in paragraph 4 of article VII of the Convention.

CITES has also expressed interest in preventing the cruel slaughter of snakes during the process of captive breeding (see point dedicated to “Examples of integration of animal welfare in subsistence means within the scope of CITES”).

4.2.7.7.d) Animals which form part of a travelling zoo, circus, menagerie or other travelling exhibition

Another exemption of the permits or certificates required by articles III, IV and V applies to animals which form part of a travelling zoo, circus, menagerie, or other travelling exhibition. But in these cases, the permits are replaced by a certificate of travelling exhibit.

Article VII Exemptions and other special provisions relating to trade

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

- (a) the exporter or importer registers full details of such specimens with that Management Authority;*
- (b) the specimens are in either of the categories specified in paragraph 2 or 5 of this Article; and*
- (c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.*

The CoP got interested for the first time on animals forming part of travelling exhibits in its 8th meeting (CoP8, Kyoto 1992). It was in this 8th CoP that Resolution Conf. 8.16, on Travelling Live-Animal Exhibitions (repealed), was adopted. It recommended to the Parties to issue a pre-Convention certificate or certificate of captive breeding as appropriate, for each animal which forms part of a travelling zoo, circus, menagerie or other travelling animal exhibition and is travelling to another State. This Resolution was replaced by Resolution Conf. 12.3 (Rev. CoP16) and currently what is required is a “travelling-exhibition certificate” for animals forming part of travelling zoos, circuses, menageries, and other such exhibitions, as soon as they were acquired before July 1st 1975 or before the date of inclusion of the species in any of the Appendices of the Convention or bred in captivity as defined in Resolution Conf. 10.16 (Rev.), and, in any case, as soon as that Parties check travelling exhibitions closely, at the time of export/re-export and import, and note especially whether live specimens are transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment.

In other words, the fact that, under article VII.7 of the Convention, the Management Authorities may allow the cross-border movement without permits and certificates does not mean that they are exempted from other CITES documents. Instead, they need a “travelling-exhibition certificate”, that will only be valid if the conditions of the shipment comply with the IATA - LAR, or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants and, therefore, the Parties check travelling exhibitions closely, at the time of export/re-export and import, and note especially whether live specimens are transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment [Resolución Conf. 12.3 (Rev.CoP16)].

Reading article VII.7 as a whole the conclusion that should be reached is that animal welfare conditions should not be weakened if provisions contained in paragraph a) (registration of full details of animals with the Management Authority), and c) (the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment), are strictly complied with. Nevertheless, as Bowman (1998) says, the situation is complicated by the fact that paragraph 7 is stated only to apply where the specimens can also be shown to fall within paragraphs 2 or 5 (i.e. cases of pre-Convention acquisition –article VII.2- or captive breeding –article VII.5-). Regrettably, this provision introduces considerable

internal incoherence into the text, since, if the specimens in question fall within those categories, it would seem natural to process them as such, rather than by reference to article VII.7. In this way the additional welfare safeguards which article VII.7 establishes can be circumvented entirely. This point has been expressly confirmed in the practice of the UK Management Authority in the case of three circus elephants shipped back and forth between the UK and the Far East during the autumn of 1986. When pressed by the Royal Society for the Prevention of Cruelty to Animals as to whether the welfare determinations envisaged by article VII.7.c) had been undertaken, the Authority responded that the animals had not been shipped under that exemption, but under article VII.2, to which no such safeguards applied.

This decision was taken before the adoption of Resolution Conf. 8.16 (later replaced by current valid Resolution Conf. 12.3. Both provided a solution to this problem of lack of consistency when it was recommended that Parties check exhibitions closely, for export/re-export and for import, and note especially whether live specimens are transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment. All this independently of the fact that when the certificate is applied to living specimens (under the model attached to resolution Conf. 12.3) it will only be valid if the IATA –LAR or CITES Guidelines on transport are complied with.

It is also interesting to realize that starting a few years ago, many countries have banned circuses that use animals because they consider that minimum conditions of animal welfare cannot be met. The same debate is slowly reaching zoo animals which are always in an artificial environment not comparable to natural wild conditions or habitat of the animals. Additionally, it is difficult to satisfy in them the Five Freedoms, and many animals show abnormal behavior that would not take place in natural conditions (such as e.g. stereotypes) which is the reason why many zoos have delisted from their inventories some species which are incapable of adaptation to life in captivity, such as polar bears or elephants.

When the list of infractions introduced by the Secretariat was examined in the 8th and 9th CoPs (see Doc. 8.19 and Doc. 9.22, respectively), infractions by circuses immediately show up. It should be taken into account that since the 11th CoP (Girigi, 2000), the real and specific infractions ceased to be followed and reported by the Secretariat.

In particular, as Doc. 8.19 shows, the Secretariat observed that, in the case of circuses, infractions of the Convention and disregard for the Resolutions have reached alarming proportions. The problem observed is that the number of infractions related with the emission of documents and fraud has increased and most countries apply few CITES controls to circuses.

Concerning Doc. 9.22, the Secretariat reported that live specimens of CITES-listed species used in exhibitions continue to be illegally traded on a large scale, many of them transporting live Appendix I specimens without CITES documents or with documents that are invalid. And it continues: “Many animals included in these travelling exhibitions are of illegal origin and, even when valid CITES documents are presented, it is often difficult to ensure that the animals included in the exhibition are the same as those mentioned in the documents (...) [and] even when it is evident that animals are of illegal origin, border inspectors or Customs authorities are sometimes reluctant to seize or confiscate large quantities of live and perhaps dangerous specimens.”

The problem of circuses was also noticed in Doc. 9.23, on the implementation of the Convention within the European Union, that even asserted openly that the control of circuses simply does not take place.

4.2.7.7.e) Exemptions unwritten in the Convention: permits from CITES Management Authorities to ensure the well-being of animals in dangerous situations

Before finalizing the analysis of exemptions, we would like to call the attention about the failed attempt to create exemptions from permits to ensure the well-being of animals in dangerous situations. It happened in the 12th CoP (Santiago 2002), when Kenya introduced CoP 12 Doc. 63 (The rescue of dependent apes from war zones), intended to direct the Secretariat to establish a system that would, on a case-by-case basis in writing, permit the export of living specimens of great apes to a State party to the Convention seeking to import great apes rescued from probable death in a war zone, without the prior grant of an export permit, providing that the export is understood to be a temporary, life-saving measure and, once normality returns to the State of export, the ape will be repatriated if its safety and long term welfare can be assured in the State of export, and unless the States of export and import agree to alternative arrangements beneficial to the individual and the species. The Secretariat, in its comments to the proposal, stated that in many of these cases, the persons were attempting to leave the country with their own animals or wished to export animals that were in captivity for welfare reasons or that had been removed from persons who had possessed them illegally and that, as the intended countries of destination were willing to authorize the imports, it was clearly frustrating for those involved that the movements could not take place in compliance with the provisions of the Convention. It also declared that although it believed, consequently, that the concerns raised by Kenya were valid, the proposed solutions were contrary to the fundamental provisions of the Convention and that such concerns are not restricted to specimens of ape species. So it was of the opinion that it would not be practical to establish or implement such a system that could only be achieved by an amendment to the Convention. The document was withdrawn but two Decisions emerged from the debate: Decisions 12.98 and 12.99 (Rescue of live specimens on special circumstances).

4.2.7.8 States which are not a Party to the Convention

CITES also has considered the protection of animals in cases of commercial operations with states that are not Parties to the Convention (see article X).

Article X Trade with States not party to the Convention

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

This provision of the Convention has been further developed by Resolution Conf. 9.5 (Rev. CoP16) (Trade with States not party to the Convention) under which Parties can authorize import from and export or re-export to States not party to the Convention of specimens of wild origin of Appendix I species only in special cases where it benefits the conservation of the species or provides for the welfare of the specimens.

4.2.7.9 Functions of the Secretariat

According to article XII.2.c), the functions of the Secretariat shall be: to undertake studies concerning standards for appropriate preparation and shipment of living specimens.

This provision that explicitly allows studies on preparation and shipment of live animals necessarily implies that issues concerning the protection of animals considered as individuals must be included in them and it is important to remember that these studies will contribute to the implementation of the Convention itself.

4.2.7.10 International measures in cases of inefficient implementation of the Convention

Article XIII International Measures

1. *When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.*

2. *When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.*

3. *The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.*

Every CoP the Secretariat introduces a review of alleged infractions in which it has intervened, or of which it has received some information and considers of interest for the Parties, since it is also about many other cases addressed by the Parties without having any need to inform the Secretariat. It also acknowledges explicitly in these reports that even the cases of which it knows about are too many so a selection of a small percentage of them is made for the report. Some of these infractions do precisely fall fully within the scope of animal welfare.

The first report presented, under the mandate of article XIII.1 [Doc. 6.19 (Rev.)] was introduced in the 6th CoP (Ottawa 1987), informed the Parties about a shipment of four crates with 250 *Psittacus erithacus* (African Grey Parrot) from Ghana to Saudi Arabia via Austria and in which it was found that the birds had received a non-humane and cruel treatment since many of them were already dead as a result of overcrowding. Another case reported a shipment of 30 military macaws (*Ara militaris*), exported from Guatemala, with final destination Singapore, via Mexico, Spain and India. No CITES permit accompanied the shipment which was intercepted in India. Crates were not in accordance with IATA Regulations. Eleven birds were already dead, five escaped through damaged crates, and the remainders were seized.

In the 7th CoP (Lausanne 1989) the report of the Secretariat on alleged infractions (Doc. 7.20) includes the following: a batch of 40 macaws, of which 21 had died of maltreatment; a European country inspection of a crate from a Latin American country that was destined for an Southeast Asian island that contained sixty blue-fronted Amazon birds (*Amazons aestiva*), 90% of which were not even old enough to feed themselves. There was nothing for them to drink. What is more, the Latin American country had issued an export permit and a veterinarian had signed a health certificate -according to Article IV, paragraph 2.c) of the Convention CITES a permit should not have been issued.

The Secretariat encouraged the Parties to send it a detailed report about any cases involving deplorable transport conditions for live animals.

In the 8th CoP (Kyoto 1992) the report of the Secretariat [Doc. 8.19 (Rev.)] showed numerous cases of non compliance with animal welfare rules. To start with the Secretariat informed that no more than a dozen Parties had applied the recommendation that Parties include on the CITES documents they issue for live animals the statement that they are valid only if the transport conditions conform to CITES pertinent guidelines. Also it is clear that, a great many Parties still fail to respect the obligations of the Convention to issue CITES permits only if the Management Authority is satisfied that the live specimens will be prepared for transport and shipped in such a way as to minimize the risk of injury, damage to health or cruel treatment. The fact that certain airline companies, generally those that have made the most effort in applying the IATA Live Animal Regulations, have recently decided to refuse to transport some, or even all, categories of live animals had in other airlines, those not accustomed to handling this type of freight, and which appear to pay very little attention to the IATA regulations, transporting live animals, sometimes in quite appalling conditions.

The transport of live animals on aircraft as accompanied baggage also often causes problems. Other reported cases are: import of chimpanzees from Uganda destined to a circus in the USSR before any document had been issued which impacted on their welfare; inspection of the luggage of a passenger in transit towards Istanbul in which thirty three monkeys were found tightly packed in a crate with no food and no water, some of them were injured and all of them were stressed, and two further crates tightly packed with African grey parrots (in his report, the border veterinarian stated that this was the worst infringement of the animal welfare law he had ever witnessed); two illegal shipments of 1,040 birds from Tanzania to France. The veterinarian stated that the first shipment contained and that in view of the number of birds which had died, the health of the remaining birds, and the fact that the importers had done nothing, it was necessary to destroy all the birds; confiscation of a crate, containing six African grey parrots and one monkey, arriving from Zaire without any CITES documents; confiscation of a shipment of seven African grey parrots, and various birds of prey, in transit from Benin to Libya with no CITES documents accompanying the shipment and one of the birds with both legs broken and a broken wing, and all the birds severely stressed; seizing of a shipment from the Tanzania was seized at the Amsterdam Airport while in transit to the United States of America, of 511 pancake tortoises and 307 leopard tortoises (*Geochelone pardalis*) fifty of which were already dead and it was feared that at least another 400 would not survive; illegal sale of wildlife in a market of the United Arab Emirates, including a peregrine falcon, clouded leopards (*Neofelis nebulosal*) and various species of bear, deer and primates, ivory, rhino horn, musk and furs; export of two elephants from Hungary to France with no CITES and which, for animal welfare reasons, they were allowed to pass; shipment of birds from Tanzania to Belgium that was confiscated for animal welfare reasons; arrival in France of two rhinoceroses bred in captivity and destined for a zoo in Germany that had become extremely destructive and the owner was not able to solve the problem and in which the aggressiveness of the animals was believed to have been caused by them being kept in crates for six days, which was the reason why the French authorities had filed a complaint for cruelty to animals.

The report on alleged infractions (Doc.9.22) introduced in the 9th CoP (Fort Lauderdale 1994) keeps on insisting on the problems caused during the shipments of live animals since many Parties still fail to respect the obligation of the Convention to issue CITES documents only if the Management Authority is satisfied that the live specimens will be prepared for transport and shipped in such a way as to minimize the risk of injury, damage to health or cruel treatment, and the number of Parties implementing the Resolution adopted for the purpose of reducing mortality in shipment of live animals, is still very small. Nevertheless, the Secretariat is pleased to note

significant progress by some Parties, in particular those which include the statement on their permit forms concerning the conditions of transport for live specimens. The Secretariat also notes that certain airline companies, some of which have made great efforts to implement the IATA Live Animals Regulations (IATA/LAR) have decided to refuse to transport live wild birds. As a result, other airlines, not accustomed to handling this type of freight, have taken their place, transporting live birds in appalling conditions.

In the 10th CoP (Harare 1997), the report of the Secretariat (Doc. 10.28) also alerts the Parties about the lack of implementation of the provisions of the Convention and the Resolutions on live animals shipments. In particular, it focuses on circuses and other travelling exhibitions of live animals due to use of false or invalid documents to illegally transport specimens and there is little control over these activities circuses. See e.g. the case of circus bears located in transit to the Russian Federation with falsified documents and in which and for humane considerations they were allowed to return to the place of origin, or the case of the gorilla and bonobo destined to Lisbon Zoo in which the Secretariat recommended that they should be seized and the animals could then be considered for transfer to another zoo on welfare grounds.

After the 11th CoP (Gigiri 2000) the Secretariat reports adopted a different format and changed their focus from in specific cases of real life to more generic aspects of infractions.

4.2.7.11 Appropriate measures to enforce the provisions of the Convention and right of Parties to adopt stricter domestic measures: prohibition of trade

4.2.7.11.a) Adoption of appropriate measures to enforce the provisions of CITES

According to article VIII.1 of the Convention, the Parties shall take appropriate measures to enforce the provisions of the Convention, which certainly include those related to the protection of animals. Article VIII.1 also grants the Parties the power to prohibit trade in specimens in violation of any provision of the Convention.

Article VIII Measures to Be Taken by the Parties

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

In this article Parties shall take appropriate measures, first, to enforce the provisions of the Convention and, second, to prohibit trade in specimens in violation thereof, including measures to penalize trade in, or possession of, such specimens, and to provide for the confiscation or return to the State of export of such specimens.

Concerning implementation of this article VIII.1 of the Convention, CITES Strategic Vision 2008-2020, adopted by Resolution Conf. 16.3, underlines the importance of implementation and of having adequate legislation. Moreover, Goal 1 of the Strategic Vision is “Ensure compliance with and implementation and enforcement of the Convention”, the Parties being called to comply with their obligations under the Convention through appropriate policies, legislation and administrative procedures that are transparent, practical, coherent and user-friendly. The Strategic Vision also emphasizes that the implementation of the Convention at the national level should be consistent with decisions adopted by the Conference of the Parties. Nevertheless, Resolution Conf. 8.4 [(Rev.

CoP15) (National laws for implementation of the Convention)] notes that approximately half of the Parties have not yet taken the appropriate measures to enforce the provisions of the Convention.

This gap implies a deficit in the foreseen mechanisms concerning the protection of animals and affects in a significant way compliance with animal welfare provisions, representing one of the major problems faced by the implementation and enforcement processes of CITES animal protection provisions.

4.2.7.11.b) Right of Parties to adopt domestic measures stricter than those of CITES

Related to article VIII.1 prohibition of trade, article XIV of the Convention uses similar terms:

The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.

Thus, according to this article XIV, the provisions of the Convention do not have any bearing concerning the right of the Parties to adopt stricter domestic measures on trade, on the taking, on the possession or transport of animals, or on their outright prohibition.

And article XIV.1 says that Parties can adopt stricter domestic measures with a very significant scope reaching even the possibility of allowing the prohibition of the possession of animals and of trade *per se*, even of species not included in the Appendices.

As Bowman *et al.* (2010) suggest, the suspension of trade can also be used as a compliance tool.

The stricter domestic measures that Parties have adopted using this article have also included measures on protection of animals. The Secretariat explicitly noted this point in document SC54 Doc. 37 (Rev.1) prepared for the 54th meeting of the Standing Committee (Geneva 2006) in the following terms: "Stricter domestic measures are generally established by legislation, and both consumer and producer countries have adopted such measures to achieve conservation and animal welfare objectives": and it continues: "The use of stricter domestic measures may provide a means of protecting certain species from overexploitation for international trade or addressing animal welfare, veterinary or human health concerns."

It is obvious that the exchange of information on stricter measures of the parties would help preventing shipments that imply breaches of the Convention. In this sense, Resolution Conf. 4.22 (Proof of foreign law) recommends that Parties inform the Secretariat of the existence, adoption or amendment of stricter domestic measures.

Analyzing the currently valid Notifications of the Secretariat to the Parties, the adoption of domestic measures in accordance with article XIV.1, and which consist in prohibition of trade due to consideration related to animal protection, can also be checked. See, as an example, the following Notifications to the Parties:

No. 2001/029: Argentina decided to suspend authorization to import dolphins directly from or originating in the Russian Federation after a shipment of five dolphins arrived in Argentina, from the Russian Federation, of which two were dead on arrival.

Thus, with this suspension of imports of dolphins, the suffering and premature death of animals that, as those described, could die during the shipment.

No. 2004/025: Israel prohibited the import of specimens of wildlife for circus activities and the import and export of primates as pets.

Concerning circus animals, the measure adopted by Israel, as in many other countries and municipalities of the world, is grounded in animal protection considerations. The author of this work made a study on countries that have in place legislation prohibiting, totally or partially, the presence of animals in circuses connected to her participation in the official hearings of the Parliament of Catalonia (<http://www.parlament.cat/activitat/dspcc/10c510.pdf>) as part of the debate within the procedure toward the enactment of a bill that would prohibit circus exhibits with animals in Catalonia. Bolivia, Greece, Cyprus, Bosnia and Herzegovina and Malta have banned the use of any type of animal in circuses; Austria, Belgium, Bulgaria, Croatia, Slovenia, Costa Rica, Perú, Paraguay, Colombia, Panamá, El Salvador, Singapur, Israel, **Czech Republic**, Denmark, Finland, Hungary, Norway, Portugal, Sweden, Ecuador, Slovakia, Estonia, Poland and Portugal have banned the use of all or some species of wild animals in circuses (wild species); and there are local bans with different scope Canada, U.S.A., Mexico, Spain, Brazil, Chile, Australia, Argentina, United Kingdom, and Ireland. For more information on welfare of circus animals (see the point dedicated to “Unacceptable and conflictive situations”).

The prohibition of trade of primates as pets also intends to prevent the suffering of these animals as individuals, among other reasons due to human safety or health since their complex social and emotional needs can hardly be taken care of by their household guardians (IPS; CAPS). Some countries have already prohibited the private possession of primates as pets (Eurogroup for Animals 2013 (Eurogroup for Animals 2013; and for a comparative study, with maps included, for the 28 member States of the EU and 50 States of the U.S.A., see Fernández 2014, pgs. 134-136 for the U.S. and 140-143 for the EU member States) because, in general, there is strong evidence in the sense that there are adequate pets nor that their welfare can be achieved in households (Soulsbury 2009).

No. 2015/015: Australia limits imports and exports of specimens of African lions and of several other species.

It seems that, with the adoption of these stricter domestic measures, and affecting also the debate on whether hunting trophies are or not necessary or beneficial for the conservation of the species, Australia sides itself with the position that defends that the hunting of lions should be avoided, probably due to the need of their individual protection.

Using international cooperation as one of the pillars of the Convention, Resolution Conf. 6.7, on Article XIV, paragraph 1, of the Convention, recommends that each Party intending to take stricter domestic measures regarding trade in specimens of non-indigenous species included in the Appendices make every reasonable effort to notify the range States of the species concerned at as early a stage as possible prior to the adoption of such measures, and consult with them.

Decisions 14.28 y 14.29 (Cooperation between Parties and promotion of multilateral measures) are currently valid, as well as Annex 1 Terms of Reference for the consultancy envisaged in Decision 14.30, which also affects the adoption of stricter domestic measures.

4.2.7.11.c) Prohibition of trade and the World Trade Organization (WTO)

The trade policies of the WTO are probable source of conflicts. Some WTO members, the Secretariat and various commentators have noted that stricter domestic measures based on unilateral criteria constitute an area of potential tension between WTO and CITES and that a balance is needed between application of the precautionary approach [which is CITES' approach] and WTO rules, since, if they are considered to be unilateral, discriminatory, non-transparent or insufficiently based on science they could constitute a challenge to WTO rules (see SC54 Doc. 37).

CITES acknowledges the right of Parties to adopt stricter or more trade restrictive domestic measures to achieve its objectives, without being more specific about which type of measures it is referring to when mentioning "restricting measures", which makes reasonable to think that these measures could also include, as we have seen above, measures for the protection of animals. Concerning the potential conflict based on the degree of unilateralism of a State that could decide to put in place a measure to protect animals of a species within the range of another State which would be more restrictive of trade than the measures existing in that range State, it should be noticed that the export State could perceive those measure as a unilateral restriction of trade of the import State since this measure was never discussed in a multilateral forum and it I not subject to the control of any international authoritative body, but it is also true that the degree of unilateralism would be very low, in its minimum, since the export country, although it did not concede to the measure adopted by the import State, did originally concede to award to it the right to freely and unilaterally opt for the measure (Elizalde 2007), when ratifying CITES we would add (see also Alonso 2011).

Taking this into account, Barrena (2012), asks herself what is the real scope of decision within which States can adopt domestic measures without modifying or creating a conflict with the WTO trade policies, reminding us all that the WTO legal system admits the specific protection of social values such the environment or (of the protection of animals) in conformity with its exceptions as agreed within the framework of rights and obligations of the WTO, so the adoption and subsequent implementation of such national measures would be valid if adjusted to the terms of such exceptions (see in in introductory part, when analyzing the framework, the point on "Decision of the World Trade Organization").

Independently of the question of unilateralism *versus* multilateralism, the international legal systems of the a WTO and the CITES (and all related biodiversity multilateral and environmental Conventions) differ also in a basic point which is also at the background, and many times at the surface, of these conflicts: while the former ids based on the "principle of necessity" (in justifying a measure under Article XX must rely on scientific sources which, at that time, may represent a qualified and respected opinion" – so, only if there is enough scientific evidence the unilateral or multilateral measure is valid) while CITES needs to obey (under Principle 15 of the Rio Declaration on Environment and Development 1992) to the "precautionary principle" ("Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"), this is an additional reason why document the above cited document SC54 Doc. 37 literally also said that in order to avoid conflicts between the stricter domestic measures and in general CITES rules and WTO rules, "a balance is needed between application of the precautionary approach [of CITES] and WTO rules" (on how and when to apply simultaneously both of those principles, with a review of cases, see Alonso 2011).

To prevent these conflicts it could be very useful to use the WTO Committee on Trade and Environment -CTE- established in 1994, that is open to the participation of all the WTO members, who as CITES, have observer status.

Bowman *et al.* (2010) are of the opinion that the framework of relative transparency and openness to participation of the multilateral environmental treaties (MEAs) has had some real impact in the WTO decision-making processes, leading to the acceptance of *amicus curiae* in the conflict settlement procedures and the cooperation between the WTO and the Secretariats of the environmental treaties. As it was previously described, CITES Secretariat has a seat as permanent observer at the ordinary meetings of the CTE and it has also expressed its interest in participating at list in an *ad hoc* manner in the meetings of the bodies of the WTO relevant for CITES, besides the CTE, such as WTO's General Council, Committee on Sanitary and Phytosanitary Measures (the "SPS Committee"), Committee on Technical Barriers to Trade (the "TBT Committee") and the Committee on Regional Trade Agreements (CRTA) (Geneva 2009, SC58 Doc.12).

Nevertheless, during the 6th meeting of the Liaison Group of the Biodiversity-related Conventions (BLG) that took place in Bonn in 2008, CITES informed that although it had explored the possibility of concluding cooperative MoUs with WTO, it now appeared more appropriate to pursue an informal cooperation.

In any case, reality shows that no State has ever raised to the level of formal conflict a dispute in which the compatibility of CITES powers on trade restrictions with GATT/WTO is at stake, and there are different opinions on these issues. Since both Conventions have growing numbers of Parties the potential of conflict between the WTO and CITES is both becoming real and also growing (Khanum 2011), although, from a different perspective, it would be more realistic to envision cases in which a non-Party to CITES would bring a controversy before the WTO bodies to challenge some of these measures or that the high number of State Parties to CITES would opt not to defer the problems related to the interpretation of the CITES Convention to the WTO bodies (on the problem of whether MEAs –including CITES- can, and how, create duties or impose obligation on non-Parties, see the subsection on "Breach of the 'ideal' of necessary intervention of a State in order to have that State bound by a treaty as a principle of international environmental law", in Alonso 2011, Chapter 2).

4.2.7.12 Ranching of animals

It may have been that this attempt to go beyond the official limits of CITES, in order to extend its scope to the regulation of the capture of animals, may have already been realized, as Harrop (2011) suggests, when CITES regulated "ranching" because, to start with, ranching is not limited to the "production" of wild animals and their products for the international market and, also, many of these animals will not even enter the market flow as commercial commodities.

When regulating ranching CITES has explicit and significant mentions of animal welfare. Although the text of the Convention does not even use the term "ranching", the CoP has adopted two Resolutions on the subject, understanding by "ranching" "the rearing in a controlled environment of animals taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving to adulthood". Specifically for these cases, Resolution Conf. 11.16 [Rev. CoP15 (Ranching and Trade in Ranched Specimens of Species Transferred from Appendix I to Appendix II)] conditions the approval of the transfer to Appendix 2, where some regulated international trade may be permitted whilst the wild representatives of the species remain in

Appendix 1, to the assurance that “the [ranching] operation shall be carried out at all stages in a humane (non-cruel) manner”. In a similar way, the CoP has also recommended that the Parties maintain records of mortality rates of the animals in captivity as well as the causes of such mortality and inform the Secretariat if so requested by it.

Somehow as a consequence of the previous Resolution, a different one was adopted for turtles: Resolution Conf. 9.20 [(Rev.) Guidelines for evaluating marine turtle ranching proposals submitted pursuant to Resolution Conf. 11.16 (Rev. CoP 15)], any Party seeking to transfer a marine turtle population from Appendix I to Appendix II pursuant to Resolution Conf. 11.16 (Rev. CoP15) provide information on (among other things): injury levels and mortality during collection and transport, feeding, veterinary care, treatment procedures and slaughter procedures, including specimen selection, methods used to collect and transport specimens to the processing site, humane slaughter technique.

4.3 CITES and the European Union

The European Union (UE) is both an important destination as well as a transit point for the international trade of wild animals. All the member States of EU are Parties to CITES and, after thirty years³¹, the EU finally became a Party EU Decision 2015/451/EU: Concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Since 1984, nevertheless, the UE, based on its own internal legislation, applies the Convention through a set of rules known as the “EU Regulations on Trade in Wild Fauna and Flora” (EU Wildlife Trade Regulations) in order to ensure uniformity of on the trade restrictions of its member States to third States (Parties and non-Parties to CITES) in all the territory of the internal market, instead of having individualized decision of each of them.

The main Regulations of the EU in this subject are the following:

- Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (EU Basic Regulation). This Regulation includes the provisions and documents required for such trade (import and export permits, re-export certificates, import notifications and internal trade certificates) of specimens of species listed in Annexes A,B, C and D and establishes a number of bodies at EU level, i.e. the Committee on Trade in Wild Fauna and Flora, the Scientific Review Group and the Enforcement Group, all of which consist of representatives of the Member States and are convened and chaired by the European Commission.

³¹ The Gaborone amendment to the cites, adopted by a special CoP in 1983, modified article XXI of the Convention so that access to the Convention, previously limited to States, was opened to regional economic integration organizations constituted by sovereign States having competence in respect of the negotiation, conclusion and implementation of international agreements in matters transferred to them by their Member States and covered by the Convention, i.e. the usual clause in treaties when the Parties want to allow the EU to be a Party duplicating the membership of its member States which are also a Party. That happens because international environmental policy is a concurrent competence of both the UE and its member States (see article 191, paragraph 4, of the Treaty on the Functioning of the European Union). The Gaborone amendment to the Convention entered into force on 29 November 2013 when it reached the required number of ratifications by Parties to CITES.

The EU Basic Regulation has the said four annexes (A, B, C and D). Annexes A, B and C are equivalent to Appendices I, II and III of the CITES Convention. Annex D has got any equivalent in CITES: it includes some species of Appendix III of the Convention and some other not listed in any of its Appendices.

- Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (EU Implementing Regulation), amended by Commission Regulation (EC) No 100/2008, of 4 February 2008, Commission Regulation (EU) No 791/2012 of 23 August 2012, and Commission Regulation (EU) No 792/2012 of 23 August 2012, and Commission Implementing Regulation (EU) 2015/56 of 15 January 2015. It lays down detailed rules for the implementation of Council Regulation (EC) No 338/97 and addresses practical aspects of its implementation. The standard model forms that must be used for permits, certificates, notifications and applications for these documents, as well as labels for scientific specimens, are contained in the previously mentioned Commission Implementing Regulation (EU) No 792/2012 laying down rules on the design for permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 (EU Permits Regulation), which was amended by Commission Implementing Regulation (EU) 2015/57 of 15 January 2015.

- Commission Recommendation No 2007/425/EC, of 13 June 2007, which identifies a set of actions for the enforcement of Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, known as the “EU Action Plan for the enforcement of CITES”, which specifies that measures to be taken by the member States for the enforcement of the previous Regulations (EU Recommendation).

The EU Basic Regulation and the EU Implementing (and permits) Regulations are legally binding documents for the EU member States while the Recommendation suggests the actions that they must follow without imposing legally binding mandates.

Independently of these rules, the member States can adopt stricter measures at the national level.

The EU CITES Regulations contain rules on the protection of animals, on issues such as transport, housing, marking, seizure and confiscations and, in certain circumstances, restrictions or prohibitions of trade or of possession of live animals based on animal welfare considerations.

In December 2007, TRAFFIC made public its report, prepared for the European Commission, “Study on the Effectiveness of the EC Wildlife Trade Regulations” (See TRAFFIC 2007). It was based in surveys to traders and member States, a revision of the compatibility of the Regulation with the text of CITES, a general analysis of the problems of interpretation and implementation of the CITES Regulations, analysis of Member States’ stricter national measures, an exam of the efficiency of the import restrictions and assessment of how legislative amendments and/or (non-legislative) actions would lead to improve the effectiveness of the said Regulations.

The report has several mentions of the protection of animals that will be explored in the chapter. In the introduction itself it is underlined that there is a divergence of views concerning the extent to which the Regulations should reflect an ethical stance on animal welfare and related issues. Some stakeholders have ethical objections to the keeping of live animals in captivity or would at least like to see more stringent provisions regarding their welfare – independent of any conservation considerations.

Based on the deficiencies identified in the report, the European Commission organized a stakeholder meeting with a view to collect input from traders and NGOs, that were summarized by the Commission in a written 2008 Summary Report (European Commission 2008).

Without prejudice to the full implementation of the CITES Convention and its interpretative and implementation Documents to all the member States, i.e., all that has been discussed in the previous chapter of this work, we now will analyze the references to the protection of animals as individuals in the EU regulations, dividing the issues in the following points:

- 1.- Preparation, transport and housing.
- 2.- Identification and marking
- 3.-Trade restrictions
- 4.- Animals in Customs control
- 5.- Seizure and confiscation of animals
- 6.- Primarily commercial purpose
- 7.- Exemptions
 - a) Animals of species included in annex A bred and born and bred in captivity for commercial purposes
 - b) Animals in transit
 - c) Specimens considered personal and household effects. Privately owned animals.
 - d) Animals that form part of travelling exhibitions

4.3.1 Preparation, shipping and housing

The EU system is also conformed, as CITES Convention, by an array of permits and certificates that can be issued when requirements are met, and among them all, those that concern the protection of the animals. Member States are obliged to reject the application for permits or certificates when such requirements are not met, and also to inform the European Commission of the said rejection and of the reasons for rejection (article 6 of the Basic Regulation)

Permits for annex A species

Article 4

1. The introduction into the Community of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when the following conditions have been met:

(c) the competent scientific authority is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly; and

(f) in the case of introduction from the sea, the management authority is satisfied that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

Article 5

1. The export or re-export from the Community of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by a management authority of the Member State in which the specimens are located.

2. An export permit for specimens of the species listed in Annex A may be issued only when the following conditions have been met:

(c) the management authority is satisfied that:

(i) any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment;

3. A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) ... have been met ...

Permits for annex B species

Article 4

2. The introduction into the Community of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when:

(b) the applicant provides documentary evidence that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

(c) the conditions referred to in paragraph 1(b)(i),(e) and (f) have been met.

Permits for annexes B and C species

Article 5

4. The export or re-export from the Community of specimens of the species listed in Annexes B and C shall be subject to completion of the necessary checks and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by a management authority of the Member State in whose territory the specimens are located.

An export permit may be issued only when the conditions referred to in paragraph 2 (a), (b), (c) (i) and (d) have been met.

A re-export certificate may be issued only when the conditions referred to in paragraph 2 (c) (i) and (d) and in paragraph 3 (a) to (d) have been met.

Permits for annex C species

Article 4

3. *The introduction into the Community of specimens of the species listed in Annex C shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import notification and :*

(a) in the case of export from a country mentioned in relation to the species concerned in Annex C, the applicant shall provide documentary evidence, by means of an export permit issued in accordance with the Convention by an authority of that country competent for the purpose, that the specimens have been obtained in accordance with the national legislation on the conservation of the species concerned; or

(b) in the case of export from a country not mentioned in relation to the species concerned in Annex C or re-export from any country, the applicant shall present an export permit, a re-export certificate or a certificate of origin issued in accordance with the Convention by an authority of the exporting or re-exporting country competent for the purpose.

Permits for annex D species

Article 4

4. The introduction into the Community of specimens of the species listed in Annex D shall be subject to completion of the necessary checks and the prior presentation of an import notification at the border customs office at the point of introduction.

Consequently, the text of articles 4 and 5 of the EU Basic Regulation the trade of animals, depending on which of the annexes A, B, C or D its species is listed in, can take place if the Management and Scientific Authorities have verified the respective requirements on the protection of animals via the emission of the pertinent permits as follows:

1.- that any live specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

These requirements apply in the case of the following commercial activities:

Introduction from the sea, export and re-export of specimens of species in annex A (article 4.1f), article 5.2c.i and y article 5.3).

Import, export and re-export of specimens of species in annex B (article 4.2c) and article 5.4).

Export and re-export of specimens of species in annex C (article 5.4).

Import of specimens of species in annex C and D (article 4.4).

2.- that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.

These requirements apply in the case of the following commercial activities:

Import of specimens of species in annexes A and B (article 4.1.c) and article 4.2.b)).

One of the main aspects to be emphasized is that the import into the EU has stricter requirements than CITES. Thus, for animals of species included in annex B, an import requirement is needed, while that is not necessary under CITES for specimens of species included in Appendix II. Consequently, for these animals there is also an obligation to verify that they will be adequately transported and that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.

4.3.1.1 Preparation and shipping of animals

Articles 4 and 5 of the EU Basic Regulation state that live animals will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

This requirement is grounded in the assertion of recital (11) of the Regulation that states that measures should be taken to minimize the adverse effects on live specimens of transport to their destination, from or within the EU.

Transport of live animals must take place in accordance with article 9.5 of the EU Basic Regulation:

Article 9

5. When any live specimens are transported into, from or within the Community or are held during any period of transit or transshipment, they shall be prepared, moved and cared for in a manner such as to minimize the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with Community legislation on the protection of animals during transport.

Under this article 9.5, living specimens transported into, from or within the EU or that are held during any period of transit or transshipment shall be prepared, moved and cared for in a manner such as to minimize the risk of injury, damage to health or cruel treatment.

Thus, in the case of live animals, transport must inform to EU legislation on the transport of animals. This requirement, which applies to all live animals of species included in annexes A, B, C or D, remands to Council Regulation (EC) n° 1/2005 of 22 December 2004, on the protection of animals during transport and related operations. Concerning air transport, this Regulation remands to the IATA – LAR.

In this way the Basic Regulation and EU law on transport of animals make compliance with the CITES guidelines on non-air transport and the IATA – LAR mandatory for EU member States.

For live animals of species included in annexes A, B and C, the forms of the import and export permits, the re-export certificates, the personal ownership certificates, the travel exhibition certificates shall conform to the model set out in Annex I of the EU Permits Regulation. In all these models there is a Box on “Special Conditions”, in which it is explicitly mentioned that “this permit/certificate is only valid if live animals are transport is in compliance with the Guidelines for the Transport and Preparation for Shipment of Live Wild Animals or, in case of air transport, the Live Animals regulations published by the International Air Transport Association (IATA)”³².

In the cases in which an import notification for the introduction into the EU of animals of species listed in annexes C and D, the model of the form, which is in annex II of the EU Permits Regulation, requires that for specimens that are of species listed in CITES Appendix III the necessary documents of the export or re-export country are attached. In these cases, according to article V.2.b) of the CITES Convention, that a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

³² It should be remembered that, as stated in the previous part, when dealing in general with transport under CITES, that currently after CoP16, Bangkok, 2013, the *Guidelines for the non-air transport of live wild animals and plants* were adopted by the Conference of the Parties to CITES at its sixteenth meeting.

4.3.1.2 Adequate housing for the animals

Under article 4 of the EU Basic Regulation, one of the requirements of import permits of animals of species listed in annexes A and B is that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly, so a detailed description of the intended housing facilities must be submitted, together with the application for animals of all Annex A and B listed species in order to allow the Scientific Authority for Annex A, and Scientific or Management Authority for Annex B, to judge their adequacy (see the EU and CITES Reference Guide 2013).

Recital (10) of the EU Basic Regulation concedes that there is a need, in order to ensure the broadest possible protection for species, to lay down provisions for controlling trade and movement of specimens within the Community, but also the conditions for housing specimens.

Article 9

Movement of live specimens

1. Any movement within the Community of a live specimen of a species listed in Annex A from the location indicated in the import permit or in any certificate issued in compliance with this Regulation shall require prior authorization from a management authority of the Member State in which the specimen is located. In other cases of movement, the person responsible for moving the specimen must be able, where applicable, to provide proof of the legal origin of the specimen.

2. Such authorization shall:

(a) be granted only when the competent scientific authority of such Member State or, where the movement is to another Member State, the competent scientific authority of the latter, is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

3. However, no such authorization shall be required if a live animal must be moved for the purpose of urgent veterinary treatment and is returned directly to its authorized location

Concerning non captive-bred live animals of species in annex A³³, the issuing authority may prescribe the location at which they are to be (see the Instructions and explanations to Box 6 - "Authorized location for live specimens of Annex A species"- of the formats of the EU permits Regulation).

In accordance with article 9.2 of the EU Basic Regulation, any movement from the location indicated in the import permit requires prior authorization from a management authority of the Member State in which the specimen is located unless it must be moved for the purpose of urgent veterinary treatment and is returned directly to its authorized location. This authorization, according to articles 4 and 5 of the EU Basic Regulation can only be granted when the competent scientific authority of such Member State or, where the movement is to another Member State, the competent scientific authority of the latter, is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.

³³ According to the EU CITES Reference Guide (2013) the notion of captive-bred specimens usually does not include ranched animals, since when it wants to include them, it distinguishes carefully among those two types of animals along the comments to the Regulations.

Article 9

4. *Where a live specimen of a species listed in Annex B is moved within the Community, the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for.*

5.

Concerning live animals of species in annex B, whoever holds the living specimen can only transfer it to a new recipient if the latter is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for (article of the EU Basic Regulation).

The most relevant outcomes of the interpretation of paragraphs 1 and 2 of article 9 of the EU Basic Regulation reflected in the TRAFFIC report (2007) point towards the need of additional advice from the EU (already requested by some member State) on the type of information that needs to be consulted in order to assess if the accommodation where the animals must be housed is adequately equipped to conserve and care for them properly, as well as if national legislation on animal welfare are sufficient to determine those criteria.

Concerning article 9.4 of the EU Basic Regulation the report considers that this provision is meant to encourage live animals traders that sell them, for example, as pets to provide information on the keeping, caring and needs of the specimens concerned to their potential customers.

Nevertheless, this provision was assessed as inapplicable mainly because there is no adequate sanction in article 16 associated to its contravention, so the proposal called for its future inclusion in the Regulation through its formal amendment.

Eurogroup for Animals³⁴ (European Commission 2008), regretted that there is an urgent need for guidance to be given to the definition of “place of destination” linked to the provisions on housing and care of live specimens under Articles 4.1.c), 4.2.b), 9.2 and 9.4. Its concern is based on its belief that live animals should be equally adequately housed and cared for wherever they are kept before they reach their final destination. Eurogroup also believes that clear guidance should be provided for Member States on how they are expected to ensure compliance with this requirement.

4.3.2 Identification and marking of animals

Sometimes live animals are exempt from the marking requirements of article 66 of EU Implementing Regulation due to animal welfare or protection. This is the case of birds born and bred in captivity and vertebrate animals other than birds, that will not be marked as indicated by the regulated system when the management authority is not satisfied that the method is appropriate because of the physical or behavioral properties of the animal or the species, respectively (paragraphs 2 and 3 of article 66 of the EU Implementing Regulation). Article 67 is even more precise since it explicitly mentions the animal welfare of the animals that are supposed to be marked, with this precise language:

Article 67

Humane marking methods

³⁴ <http://eurogroupforanimals.org>

Where, in the territory of the Community, the marking of live animals requires the attachment of a tag, band, ring or other device, or the marking of a part of the animal's anatomy, or the implantation of microchip transponders, this shall be undertaken with due regard to humane care, well-being and natural behaviour of the specimen concerned.

Be done with due regard to the welfare of the animal and to its natural behavior, preventing any mistreatment through all the process. And in case, (such as with juveniles) where this cannot be guaranteed, the Management Authorities of the member States can authorize and officially validate other methods or alternative procedures.

4.3.3 Trade restrictions

The European Union can restrict trade in some species even if it is allowed by CITES. Recital (8) of the EU Basic Regulation appeals to such power “in order to guarantee effective protection of species of wild fauna and flora” (and therefore beyond the conservation of the imported or exported species itself), and it includes restrictions:

- 1) on the introduction of specimens into, and the export thereof from, the EU
- 2) on the movement of live specimens within the EU
- 3) on the holding of live specimens within the EU

4.3.3.1 Restrictions on the introduction of live specimens

Under articles 4.6 of the EU Basic Regulation and 71 of the EU Implementing Regulation, the EU can restrict and even fully prohibit the introduction of live animals into the territory of its member States as a general restriction, or a restriction relating to certain countries of origin.

The basis on which these measures can be adopted are listed in subparagraphs a), b), c) and d) of the said article 4.6.

4.3.3.1.a) Conservation status of the species to which the animals belong [article 4.6 a) and b)]

The EU has passed several Regulations to suspend or prohibit the import into the EU from certain countries of animals of species included in annexes A and B due to conservation of the species in the country of origin or the ecological threat they represent for indigenous species of the EU.

Currently, the prohibitions of introduction into the EU of species included in annexes A or B whose conservation status is weak is governed by Commission Implementing Regulation (UE) N° 888/2014 of 14 August 2014 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora (EU Regulation on prohibition of introduction). This Regulation is based in the conclusion that their conservation status will be seriously jeopardized if their introduction into the Union from certain countries of origin is not prohibited.

It should also be remembered that, under these powers, the Council also passed Regulation (EEC) n° 3254/91 of 4 November 1991 prohibiting the introduction into the Community of pelts and manufactured goods of certain wild animal species (beaver, otter, coyote, wolf, lynx, bobcat, sable, raccoon, musk rat, fisher, badger, marten, and ermine) originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

4.3.3.1.b) Mortality during shipment or while in captivity [article 4.6 c)]

The basis invoked by subparagraph c) of article 4.6 of the EU to reject imports of live specimens is that they are of a species that has a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span.

Article 4 of the EU Basic Regulation

6. In consultation with the countries of origin concerned, in accordance with the procedure laid down in Article 18 and taking account of any opinion from the Scientific Review Group, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community:

(c) of live specimens of species listed in Annex B which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span.

Artículo 71 del Reglamento de aplicación

1. Immediately on the establishment of a restriction in accordance with Article 4(6) of Regulation (EC) No 338/97 and until such time as it is lifted, Member States shall reject applications for import permits concerning specimens exported from the affected country or countries of origin.

So, if this article is applied, live animals of a species listed in annex B cannot be introduced into the EU when:

- a) They have a high mortality rate during shipments
- b) They are unlikely to survive in captivity for a considerable proportion of their potential life span.

Currently there are no restrictions in force based on this article 4.6.c). In fact, it has never ever been activated by the EU based on mortality during shipments and there was a suspension, based on captivity survival, of 17 tortoise species, in the years immediately following the entry into force of the Regulations, that was lifted in 2006.

- Mortality during shipments

The European Commission, when examining the duties of the CITES Scientific Authorities and Scientific Review Group under both the EU Basic and Implementing Regulations (see European Union duties 2014) made (*Attachment E*) some comments in order to improve the application of this article as well as of CITES recommendations included in Resolution Conf.10.21 (Rev. CoP16) including the following proposals:

- Evaluate the information collected under article 69.3 of the EU Implementing Regulation have to maintain records of the percentage of specimens of species listed in Annexes A and B which were dead at the time of introduction into the Community
- Define “high” mortality

Article 69.3 of the EU Implementing Regulation: “With regard to imports of shipments containing live animals, Member States shall, where possible, maintain records of the percentage of specimens of species listed in

Annexes A and B to Regulation (EC) No 338/97 which were dead at the time of introduction into the Community”.

These proposed measures are consistent with the report on the effectiveness of the EU CITES Regulations (TRAFFIC 2007), that paid a lot of attention to this article 4.6, reaching the conclusion that the power to suspend imports of certain species on the grounds of risk of mortality in transport has never been used by the Commission based on the fact that the Transport Working Group of the Animals Committee has concluded that mortality in shipment is negligible if IATA Regulations are complied with and this is mandatory for import of live specimens. But it also emphasized that reporting by the member States under article 69.3 had been erratic, which makes it difficult to effectively apply article 4.6.

On mortality during shipments, Eurogroup for Animals (European Commission 2008), is of the opinion that it should not be narrowly interpreted as mortality during international transport but should reflect fully the mortality which affects the traded species, taking into account mortality during the whole life-cycle of the trading process, including capture and storage before shipment, and mortality in quarantine and after arrival at the place of destination, ensuring a better enforcement of the provision under article 69.3 of the EU Implementing Regulation which requires Member States to maintain records of dead on arrival.

The website cited below provides a global vision on the information presented by then 27 EU member States and five candidate countries for EU accession in their annual report for the year 2010 on the Convention on the Trade in Endangered Species of Wild Fauna and Flora (CITES). It describes their trade in species included in the Appendices of the CITES Convention and in the annexes of the EU Regulations on international wildlife trade adopted to ensure the application of CITES within the EU.

UNEP-WCMC (United Nations Environment Programme - World Conservation Monitoring Centre-) analyzes all the information provided annually by the member States and five candidate countries for EU accession, available on line since 2010: <http://euanalysis2010.unep-wcmc.org>. According to the information provided by Species Programme UNEP-WCMC, mortality data were part of the annual reports of the EU member States that UNEP-WCMC compiled for the Commission until 2010, after which this information ceased to be required for the analysis. The data were not incorporated either into the “CITES trade database” [CITES Trade Database – unep-wcmc-apps.org](http://www.unep-wcmc.org/cites-trade-database), accessible from the web page of CITES and maintained by UNEP-WCMC on behalf of the Secretariat.

Looking into the 2010 report, on “animals dead on arrival to the EU”, it shows that the data on recorded mortality affect only one country, Germany: 53 animals of species of annex B arrived dead [23 monitor lizards (*Varanus indicus*), 28 chameleons (*kinyongia tavetana*, *Chamaeleo dilepis*, *Chamaeleo bitaeniatus*, *Chamaeleo gracilis*, *Chamaeleo melleri*, *Kinyongia fischeri*, *Bradypodion pumilum*), 1 tortoise (*Testudo horsfieldii*) y 1 snake (*Candoia carinata*)]. In the same report, Austria, Belgium, Czech Republic, Poland, Slovakia, Slovenia and Spain declared that no animals had been found dead on arrival to their territories.

Therefore, only eight countries had provided some information on mortality of animals arriving to the EU, so the results cannot be considered representative of what might be happening in real life, with a possibility that the rates might be higher.

- Mortality of captive animals

Concerning the basis invoked by the EU in order to limit the introduction of animals unlikely to survive in captivity and looking its application, the European Commission, in the report of the duties of the CITES Scientific Authorities and Scientific Review Group (European Union duties 2014), proposes the following measures:

Comment on Commission import restriction proposals to be made on the basis of:

- determination of the potential life span of the species concerned – where this information is available
- comparison of rates of mortality between captive and wild specimens at different stages of their life history – where this information is available
- examination of any available evidence that the species is unlikely to survive in captivity for a considerable proportion of its potential lifespan – if known

The TRAFFIC study (2007), also reminds, once more, that in the years immediately following the entry into force of the Regulations, the Commission suspended imports of certain tortoise species on the grounds that they were thought to be at risk of premature mortality in captivity. However, these suspensions were lifted in 2006 following advice from the Scientific Review Group that gave this advice after attempting – unsuccessfully – to develop guidelines for a more systematic application of article 4.6. The reasons for the lack of success were several, e.g. the lack of knowledge about the life expectancy of most species when in their natural environments; specimens held in captivity may live longer due to protection from predators, improved/regular diet, veterinary treatment, disease eradication etc.; age of imported specimens, taken from the wild, is not always known; the difficulties met when comparing the rate of mortality in captivity to that of wild populations; or the fact that just because a species doesn't survive well in captivity, doesn't automatically mean that trade is unsustainable. It concluded that this article 4.6 does not serve any useful purpose at present and that the provision could be looked at again if the Council Regulation is re-opened although it recognized that a proposal to delete it could be misinterpreted as lack of concern for animal welfare and thus cause political controversy.

On this same issue of mortality in captivity, Eurogroup for Animals (European Commission 2008) disagrees with the decision adopted by the European Commission in 2006 on the lifting of the suspension of imports of tortoises of the 17 species following advice by the Scientific Review Group that not enough data is available to allow the use of article 4.6. Eurogroup is of the opinion that this decision was contrary to the precautionary principle - to which the EU has an obligation (and that CITES also explicitly acknowledged in Resolution Conf. 9.24, that states, that, "by virtue of the precautionary approach"³⁵, "in case of uncertainty regarding the status of a species or the impact of trade on the conservation of a species, the Parties shall act in the best interest of the conservation of the species concerned"), and, in any case, it proposes that criteria or guidelines need to be developed on which species qualify for trade suspension under article 4.6.

³⁵ Nevertheless, it should be remarked that the "precautionary principle" is not the same as the "precautionary approach". The former is part of EU constitutional law; the latter, of less value than a legal principle –no legal value at all- is the one used in many countries that deny that it is a legal principle, e.g. by the United States, and in general, by international law. See Alonso 2001.

Another opinion about article 4.6 also mentioned in the report (European Commission 2008) that of Species Survival Network (SSN)³⁶. SSN recalled all the participants in the stakeholders meeting that in 2003 the Scientific Review Group was tasked with considering guidelines for the implementation of article 4.6.c) and that despite its conclusion, that “many species have poor survival rates in captivity”, the Group chose to severely limit the scope of the said article and ultimately concluded that it was not applicable. SSN did not agree with that conclusion and believed that the extent of the problem and the wealth of data already available on high mortality rates in trade and in captivity must no longer be ignored. SSN, thus, recommended that a revision of the Regulation should redefine the wording of Article 4.6.c), ensuring it can be adequately implemented and taking into account the precautionary principle and that all stages of trade (pre- and post shipment) and captivity are covered.

4.3.3.1.c) “Invasive” Species [article 4.6 d)]

The EU can also establish restrictions to the holding or movement of live animals of species submitted to restrictions on imports according to article 4.6 d) of the EU Basic Regulation if the present an ecological threat to wild species of fauna and flora indigenous to the EU.

Article 4

6. In consultation with the countries of origin concerned, in accordance with the procedure laid down in Article 18 and taking account of any opinion from the Scientific Review Group, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community:

(d) of live specimens of species for which it has been established that their introduction into the natural environment of the Community presents an ecological threat to wild species of fauna and flora indigenous to the Community.

The EU Implementing Regulation

The Commission Implementing Regulation (EU) No 888/2014 of 14 August 2014 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora (EU Regulation on introduction) listed a number of species whose introduction into the EU was suspended. The species currently submitted to restrictions under subparagraph d) of article 4.6 of the Basic Regulation (all of them listed in annex B) are: the North American ruddy duck (*Oxyura jamaicensis*), the North American bullfrog (*Lithobates catesbeianus*), la tortuga de Florida (*Trachemys scripta elegans*), the red-eared terrapin (*Chrysemys picta*), the Pallas's squirrel (*Callosciurus erythraeus*), the grey squirrel (*Sciurus carolinensis*) and the Fox squirrel (*Sciurus niger*).³⁷

4.3.3.1.d) Exemptions

Article 71.4 of the EU Implementing Regulation limits the restrictions of imports established in article 4.6 to animals not included in any of its subparagraphs a), b) and c), i.e. those born and bred in captivity, those being imported for the purposes of research under exceptional

³⁶ <http://www.ssn.org>

³⁷ On invasive species see also Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, which entered into force in 1 January 2015.

circumstances, and those, alive or dead, that are part of the household possessions of persons moving into the EU to take up residence there, which are significant exceptions to the power to restrict trade.

Article 71 (EU Implementing Regulation)

4. *Save where otherwise provided, the restrictions referred to in paragraph 1 shall not apply to the following specimens:*

(a) specimens born and bred in captivity in accordance with Articles 54 and 55 [...];

(b) specimens being imported for the purposes specified in Article 8(3)(e), (f) or (g) of Regulation (EC) No 338/97 [i.e. those required under exceptional circumstances for the advancement of science or for essential biomedical purposes where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity; those intended for breeding purposes from which conservation benefits will accrue to the species concerned; or those intended for research or education aimed at the preservation or conservation of the species].

(c) specimens, alive or dead, that are part of the household possessions of persons moving into the Community to take up residence there.

4.3.3.2 Limits to the movement and holding of live animals

In parallel to the potential restrictions to the introduction of animals into the EU based on the abovementioned reasons, article 9.6 empowers the EU to establish restrictions on the holding or movement of the animals (by that meaning those which already are within EU) of species whose introduction into the EU has been restricted (by a later rule, it is to be understood).

Article 9

6. [...] *the Commission may establish restrictions on the holding or movement of live specimens of species in relation to which restrictions on introduction into the Community have been established in accordance with Article 4(6).*

4.3.3.3 Prohibition of holding

According to article 8 of the EU Basic Regulation, member States can adopt additional measures at the national level including the prohibition of holding live animals in their respective territories.

Article 8

2. *Member States may prohibit the holding of specimens, in particular live animals of the species listed in Annex A.*

Its introductory Recital (3) also say that the provisions of this Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by the Regulation.

Even when article 8 only mentions annex A specimens, the power of the member States to prohibit their holding is not limited to them, and can be applied to animals listed in the rest of the annexes.

The free movement of goods within the EU member States is a fundamental principle of the Treaty on the Functioning of the European Union (TFEU) explicitly reflected as a prohibition, included in article 34 –article 28 of the previous treaties-, of quantitative restrictions on imports between

member States as well as of all measures having equivalent effect. This prohibition, nevertheless, does not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property, as soon as they do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States (article 36 TFEU –former article 30-).

The Court of Justice of the European Union (CJEU) had the opportunity to decide on the validity of the prohibition of holding of animals of species included in annex B in a Decision taken in 19 June 2008 in a preliminary ruling concerning a case against Belgium (see CJEU 2008).

According to this Decision, a national legislation providing a positive list of mammals which may be held in the member State concerned, whose effect is to rule out the holding of the species [referred to in Annexes B, C or D of the EU Basic Regulation and of those not covered by the said Regulation] authorized in other Member States whose legislation complies with EU law, can only be considered valid if it meets several requirements. In this case the Decision had to interpret article 36 TFEU –former article 30- as well as the Basic Regulation (EC) n° 338/97, in order to answer to the question raised by the Belgium Council of State (Raad van State van België) that was adjudicating a claim brought against Belgium by the National Council of Animal Breeders and Animal Lovers (Nationale Raad van Dierenkwekers en Liefhebbers VZW) and a non-profit association grouping together traders in the bird, pet and pet accessories sales sector (Andibel VZW) against the Royal Decree of 7 December 2001 that had established the list of animals which may be held, imported or traded in Belgium, since in this country only those belonging to a species included in the list of annex I of this Royal Decree can be held, imported or traded, unless an exception of those included in article 3.2 bis of the parliamentary statute on animal welfare (Law of 14 August 1986 concerning the protection and welfare of animals).

Within this legal framework, the operative part of the Decision pointed out at the outset that, in accordance with recital (3) of the EU Basic Regulation, as it relates to its article 8.2, the provisions of that Regulation do not prejudice any stricter measures which may be taken or maintained by Member States, in compliance with the Treaty, in particular with regard to the holding of specimens of species covered by the said Regulation. Furthermore, article 176 EC provides that protective measures which, like Regulation No 338/97, are adopted pursuant to article 175 EC are not to prevent any Member State from maintaining or introducing more stringent protective measures, which must be compatible with the Treaty.

The Decision, paragraphs 27 to 29, lists the public interests that can justify such type of limitations of the free movement of animals, such as their welfare, of the protection of the health and life of humans or animals and the protection of the environment.

27. “[...] the protection of animal welfare is a legitimate objective in the public interest, the importance of which was reflected, in particular, in the adoption by the Member States of the Protocol on the protection and welfare of animals, annexed to the Treaty establishing the European Community [similar to the current article 13 TFEU] (...) Moreover, the Court has held on a number of occasions that the interests of the Community include the health and protection of animals (see Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-0000, paragraphs 22 and 23, and the case-law cited)”.

28. “[...] according to Article 30 EC, the provisions of Articles 28 EC and 29 EC are not to preclude prohibitions or restrictions justified on grounds, inter alia, of the protection of the health and life of humans or animals, provided that such prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States, and that the Court has held that the protection of the health and life of animals constitutes a fundamental requirement recognised by Community law (see, to that effect, Case C-350/97 *Monsees* [1999] ECR I-2921, paragraph 24)”.

29. "As regards the risk that specimens, once they have escaped into the wild, may continue to exist there and may therefore constitute an ecological threat, it must be borne in mind, thirdly, that the Court has consistently held that restrictions on the free movement of goods may be justified by imperative requirements such as the protection of the environment (see Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 62, and Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 55)”.

Consequently, national laws of the member States complies with EU law if it abides by the following requirements:

- The national list of species of mammals which may be held are based on objective and non-discriminatory criteria;
- National law provides for a procedure enabling interested parties to have species of mammals included in that list, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;
- Applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements;
- Conditions for the holding of specimens of mammals not referred to in that list are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.

Taking into account these considerations, the Decision declared that articles 28 and 30 EC (current articles 30 and 36 of TFEU), read separately or in conjunction with Council Regulation (EC) No 338/97, do not preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that Regulation, if the protection of or compliance with the interests and requirements referred to in paragraphs 27 to 29 of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.

Consequently, if these requirements are met, according to article 8.2 of the EU Basic Regulation, member States can prohibit the holding of animals although it might be prohibited in other member States.

In another case, concerning the validity of a French Ministerial Order of 15 May 1986 that banned the purchase and sale and the use of certain bird species from the Department of French Guyana, a French Court (Tribunal de grande instance de Grenoble) asked for a preliminary ruling from the European Court of Justice (CJEU) on whether the CITES Convention and the EU Basic Regulation, as well as of articles 30 to 36 of the EC Treaty, can be interpreted as allowing a member State to take or maintain domestic measures prohibiting at any time and in the whole territory of that State any commercial use of captive born and bred specimens of wild species occurring in the wild in all or part of the territory of that State.

On its Decision (CJUE 2001) the Court settled several issues related to trade restrictions by a member State, such as the following:

- Regarding species covered by Annex A to the EU Basic Regulation, the said Regulation must be interpreted as not precluding legislation of a member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.
- Regarding species covered by covered by annex B to the EU Basic Regulation, the said does not prohibit the commercial use of specimens of those species, provided that the conditions laid down in article 8.5 of that Regulation are met, i.e. except where it can be proved that such specimens were acquired and, if they originated outside the EU, were introduced into it, in contravention with the legislation in force for the conservation of wild fauna and flora.
- Legislation of a Member State imposing a general prohibition in its territory of all commercial use of captive born and bred specimens of those species, is against the EU Basic Regulation in so far as it applies to specimens imported from other Member States, if it is apparent that the objective of protection of the latter, as referred to in article 36 of the Treaty –currently article 30 TFEU–, may be achieved just as effectively by measures which are less restrictive of intra-Community trade.

Therefore, a measure of this type that would affect species of other member States is compatible with the Treaty only to the extent that it is necessary for effectively achieving the objective of the protection of the health and life of animals and if the health and life of animals cannot be protected just as effectively by measures which are less restrictive of intra-Community trade.

4.3.4 Animals under Customs control

Recital (12), and later article 12, of the EU Basic Regulation, states that in order to ensure effective controls and to facilitate customs procedures a limited number of customs offices should be designated for carrying out the necessary formalities and corresponding checks and where there should also be facilities guaranteeing that live specimens are adequately housed and cared for.

Article 12

Places of introduction and export

1. Member States shall designate customs offices for carrying out the checks and formalities for the introduction into and export from the Community, in order to assign to them a customs-approved treatment or use, within the meaning of Regulation (EEC) No 2913/92, of specimens of species covered by this Regulation and shall state which offices are specifically intended to deal with live specimens.

2. All offices designated in accordance with paragraph 1 shall be provided with sufficient and adequately trained staff. Member States shall ensure that accommodation is provided in accordance with relevant Community legislation as regards the transport and accommodation of live animals.

3. All offices designated in accordance with paragraph 1 shall be notified to the Commission which shall publish a list of them in the Official Journal of the European Communities.

Summarizing, member States are obliged to designate custom offices for carrying out the necessary formalities and checks of the Regulation and the offices specially design for the reception of live animals must have adequate housing conditions. The list of customs offices is in: http://ec.europa.eu/environment/cites/pdf/list_points_of_entry.pdf.

The introduction of live animals into the EU, including introductions from the sea, as well as their exports and re-exports from the EU, are business operations that require the presentation of the permits and certificates documentation in order to have them verified by the transboundary customs offices of the member States and where the formalities involving movement of live animals are also carried. Concerning these procedures the TRAFFIC report (2007), on its effectiveness, reveals that sometimes the long processing time for breeders leaves the animals waiting for long periods of time in the breeding facilities causing overcrowding with consequences for animal welfare and increased risk of disease.

Also, some member States do not comply adequately or implement in real practice some of the duties, as the report says (TRAFFIC 2007), since some traders felt that animal welfare is significantly compromised due to border inspections, mainly pointing to a lack of import facilities for prolonged inspections; slow procedures at airports; and lack of 24 hour alert teams. Some of them even repeatedly mentioned lengthy border inspections as a problem resulting in reduced animal welfare and increased mortality.

So their proposals emphasized that Customs authorities must prioritize their inspections in order to control live shipments first, that there is a need for CITES-trained personnel to be available at all major airports and that experienced animal handlers must be present at all remaining points of entry into the member States.

4.3.5 Seizure and confiscation of animals

According to article 8.6 of the EU Basic Regulation, confiscated live animals of species included in annexes B, C or D, can be sold by the competent authorities of the member States, as soon as they are not returned to the person from whom it was confiscated or who was party to the offence.

Artículo 8

6. The competent authorities of the Member States shall have discretion to sell any specimen of the species listed in Annexes B to D they have confiscated under this Regulation, provided that it is not thus returned directly to the person or entity from whom it was confiscated or who was party to the offence. Such specimens may then be treated for all purposes as if they had been legally acquired.

The seizure and where appropriate, confiscation of live animals is a measure that can be added to the main list of sanctions (article 16.2 of the EU Basic Regulation) that has to take place as mandated in article 16.3 of the EU Basic Regulation

Article 16

3. Where a specimen is confiscated, it shall be entrusted to a competent authority of the Member State of confiscation which:

(a) following consultation with a scientific authority of that Member State, shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation; and

(b) in the case of a live specimen which has been introduced into the Community, may, after consultation with the State of export, return the specimen to that State at the expense of the convicted person.

Also, the confiscation of live animals of species included in annexes B or C that arrive without the appropriate valid permit or certificate, must be handled in accordance with paragraph 4 of article 16.

Article 16

Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into the Community without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure.

Thus, a first requirement for the member States is to establish centers where to relocate confiscated animals. Unfortunately, the destiny of many animals to which CITES is applied is uncertain because of the lack of adequate facilities and in very often they are given back to the offenders appointed as depositaries. The lack of rescue centers for confiscated live animals is a real problem. The need to have adequate facilities destined for seized or confiscated animals is explicitly remarked by the EU Recommendation (2007) that includes measures that the member States should implement to improve the effectiveness of their implementation capacities, such as:

- ensuring that facilities are available for the temporary care of seized or confiscated live specimens and mechanisms are in place for their long-term rehoming, where necessary.
- assisting other Member States with the temporary care and long-term re-homing of seized or confiscated live specimens.

4.3.6 Primarily commercial purposes

Under article 4 of the EU Basic Regulation, one of the conditions to authorize imports of animals of annex A species is the verification that it is not to be used for primarily commercial purpose, or, with another words, that it is not used for any purpose the non-commercial aspects of which do not clearly predominate (see definition of “primarily commercial purposes” in article 2.m) of the EU Basic Regulation).

Article 4

1. The introduction into the Community of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination. The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when the following conditions have been met:

(d) *the management authority is satisfied that the specimen is not to be used for primarily commercial purposes.*

The prohibition of imports of animals intended primarily for commercial purposes one of the basic requirements of the EU system. Anyhow, even if such trade is prohibited, for annex A species, there are a number of exemptions that allow the trade to take place if a certificate is provided in accordance with articles 8.3 of the EU Basic Regulation and 60 of the EU Implementing Regulation.

Article 8

1. The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.

[...]

3. In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:

- a) were acquired in, or were introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex CI to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens; or*
- b) are worked specimens that were acquired more than 50 years previously; or*
- c) were introduced into the Community in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned; or*
- d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens; or*
- e) are required under exceptional circumstances for the advancement of science or for essential biomedical purposes pursuant to Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes where the species in question proves to be the only one suitable for those purposes and where there are no specimens of the species which have been born and bred in captivity; or*
- f) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned; or*
- g) are intended for research or education aimed at the preservation or conservation of the species; or*
- h) originate in a Member State and were taken from the wild in accordance with the legislation in force in that Member State.*

Artículo 60

Without prejudice to Article 9 of Regulation (EC) No 338/97 a derogation from the prohibition laid down in Article 8(1) thereof may be granted to scientific institutions, approved by a management authority in consultation with a scientific authority, by the issue of a certificate covering all specimens in their collection of species listed in Annex A to that Regulation, that are intended for either of the following:

- 1) captive breeding or artificial propagation from which conservation benefits will accrue to the species concerned;*

2) *research or education aimed at the preservation or conservation of the species concerned.*

Both the Eurogroup for Animals and SSN (European Community 2008) consider that the Regulations lack clear guidelines to define when a specimen is not traded for “primarily commercial purposes” and therefore when the exemptions can be granted, permitting trade in Annex A specimens. Concerning the use of animals of annex A species for research or education aimed at the preservation or conservation of the species, Eurogroup for Animals calls the attention to the fact that member States grant import permits for Annex A specimens to entertainment parks with clearly predominating commercial purposes and disapproves the transfer to zoos and other fauna exhibitions when it is not strictly limited to those involved either in captive breeding or research with conservation benefits for the species involved, without being necessary to display wild live animals outside their natural habitats for educational purposes. SSN calls the attention about the fact that the display of high profile Annex A specimens can generate increased income since several entertainment parks and dolphinariums even charge additional entrance fees for shows in which Annex A specimens are displayed. Eurogroup for Animals also considers that very strict criteria and thorough assessment of research activities and its benefits to the conservation of the concerned protected species should be a pre-requisite for a zoo to receive live specimens of species listed on Annex A. SSN also raises doubts and questions concerning imports of animals of species included in annex A for educational or research purposes stating that the design of the research or education project should primarily aim at and be able to produce results that are meaningful for the conservation of the species in the wild. Similar concerns are expressed by WWF International concerning article 60 of the EU Implementing Regulation, and insists on the need to clarify to which institutions should the its term “scientific institutions” be or not applied since in practice zoological parks are the main beneficiaries of article 60.

Concerning the use of animals of annex A species for breeding or propagation purposes that contribute to the conservation benefits for the species concerned, SSN lists a series of problems that render it useless (e.g. the genetic diversity of the breeding stock is too low even for a viable captive population, let alone for eventually re-stocking the wild population; or cooperation with regard to coordinated breeding programs and genetic exchange is inadequate), the result being that breeding success in captive facilities is often considerably lower than in the wild and captive bred offspring is only very rarely being reintroduced into the wild. A breeding project can not simply be directed at maintaining a captive population per se, instead, it must not only compensate for the off-take of wild animals but also specifically contribute to the conservation of the species *in-situ*. This can only be achieved by qualified and coordinated breeding programs, aiming at the re-introduction of captive bred animals into the wild. However, facilities importing wild-caught Annex A specimens for breeding purposes often do not live up to these requirements and many programs, instead, aim merely at “self-sustaining” captive populations.

4.3.7 Exemptions

Article 7 of the EU Basic Regulation has specific provisions, on particular captive-bred animals when in transit or when they are personal or household effects, that are exemptions to the general system. There are also additional exemptions for animals of travelling exhibitions or held for personal non-commercial purposes in articles 30 and 37 of the EU Implementing Regulation, respectively.

4.3.7.1 Animals of species included in annex A, born and bred in captivity for commercial purposes

The prohibition of trade in animals of annex A for commercial purposes, is only applicable to animals of wild origin and not to those bred in captivity. Since CITES and the EU Regulations are focused entirely on the conservation of wild species, live specimens of species of the said annex that are born and bred in captivity are considered animals of annex B species.

Article 7.1

(a) Save where Article 8 applies, specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Annex B.

The system is the same as that of the CITES Convention. If animals of species included in annex A (Appendix I of CITES) are captive-bred, they are considered as if they were animals of species of annex B (Appendix II of CITES), so they can be traded in accordance to what is required in articles 4 and 5 of the EU Basic Regulation.

An even more relaxed regime is drawn for specimens of captive born and bred animals of the species listed in annex X of the EU Implementing Regulation, and hybrids thereof, for which no certificate shall be required. Until today, this annex has only included birds which are bred in great numbers.

Article 62

The provision laid down in Article 8(3) of Regulation (EC) No 338/97, to the effect that exemptions from the prohibitions in Article 8(1) are to be granted by the issue of a certificate on a case-by-case basis, shall not apply to, and no certificate shall be required for, the following: 1) specimens of captive born and bred animals of the species listed in Annex X to this Regulation, and hybrids thereof, provided that specimens of annotated species are marked in accordance with Article 66(1) of this Regulation.

On this subject see the previous point on “Animals born and bred in captivity” since this exemption is equivalent to the one regulated by article VII.4 of the Convention, related to the effects of captivity on animal welfare.

4.3.7.2 Animals in transit

Where a specimen is in transit, the border customs office shall not require the presentation of permits, certificates and notifications mandated by the EU CITES Regulations (article 7.2 of the EU Basic Regulation). “Transit” is defined in article 2.v) of the said EU Basic Regulation that considers such only the specimens that remain under customs control and are in the process of being shipped to a named consignee, i.e. and applying the definition of the term literally, to the “specimens between two points outside the Community through the territory of the Community which are shipped to a named consignee and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic”. It should be noted that the deposit in an existing customs warehouse facility customs deposits is equivalent to an import into the EU, so it will require a permit. In any case, this transit regime is understood to be without prejudice to the rule that mandates that the animal, while held during any period of transit, shall be prepared, moved and cared for in a manner such as to minimize the risk of injury, damage to health or cruel treatment (article 9.5 of the EU Basic Regulation).

Article 7.2

(a) By way of derogation from Article 4, where a specimen is in transit through the Community, checks and presentation at the border customs office at the point of introduction of the prescribed permits, certificates and notifications shall not be required.

(b) In the case of species listed in the Annexes in accordance with Article 3(1) and Article 3 (2) (a) and (b), the derogation referred to in (a) shall apply only where a valid export or re-export document provided for by the Convention, relating to the specimens that it accompanies and specifying the destination of the specimens, has been issued by the competent authorities of the exporting or re-exporting third country .

(c) If the document referred to in (b) has not been issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions specified by the Commission in accordance with the procedure laid down in Article 18.

To sum up, animals, where in transit, do not need import permits neither a notification to enter the EU nor a re-export certificate to leave it. Nevertheless, for animals of species included in annexes equivalent to Appendices I and II of the CITES Convention, an export permit or a re-export certificate needs to be issued by the country of origin or re-export. In these documents the final destiny of shipment needs to show clearly and, animals without them shall be confiscated.

On this subject, see the point on “Animals under Customs control during transit or transshipment” since this exemption is equivalent to the one regulated by article VIII.3 of the Convention on duty to verify the caring of animals during this period of the shipping.

4.3.7.3 Specimens considered personal or household effects and privately owned animals

Personal or household effects, understood as dead specimens belonging to a private individual and that form part of his normal goods and chattels (see their definition in article 2 of the EU Basic Regulation), including hunting trophies, are exempt from permits for their introduction into and export or re-export from the EU, unless they are used for profit, as mandated by articles 7.3 of the EU Basic Regulation and 57 and 58 of the EU Implementing Regulation.

Article 7.3

By way of derogation from Articles 4 and 5, the provisions therein shall not apply to dead specimens, parts and derivatives of species listed in Annexes A to D which are personal or household effects being introduced into the Community, or exported or re-exported therefrom, in compliance with provisions that shall be specified by the Commission in accordance with the procedure laid down in Article 18[.3].

Article 57

Introduction and reintroduction into the Community of personal and household effects

1. The derogation from Article 4 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.

That derogation shall only apply to specimens, including hunting trophies, if they meet one of the following conditions: [...]

Article 58

Export and re-export from the Community of personal and household effects

1. *The derogation from Article 5 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.*

That derogation shall apply to specimens only if they meet one of the following conditions: [...]

As soon as the amounts do not surpass specified maximum limits, some items, i.e. caviar of sturgeon species, crocodile dead worked specimens, shells (of queen conch and giant clam) and seahorses, all of them species listed in annex B of the EU Basic Regulation do not require either the presentation of a (re-)export document or an import permit (article 57.5 of the EU Implementing Regulation).

About hunting trophies, and the discussion on its ethical implications on the issue of animal welfare versus conservation biology, see point “Unacceptable and conflictive issues”.

In order to facilitate the movement of privately owned live animals, e.g. pets or companion animals, the permit can be replaced by a “personal ownership certificate” to be issued only for one specimen, with a period of validity that shall not exceed three years, this exemption being applicable only to legally acquired live animals, held for personal non-commercial purposes, as determined by articles 37 to 44 of the EU Implementing Regulation –and 10.3 for the three year time limit.

Article 37.1

1. Member States may issue personal ownership certificates to the legal owner of legally acquired live animals, held for personal non-commercial purposes.

On this subject, see point “Animals that are personal or household effects” since this exemption is equivalent to the one regulated by article VIII.3 of the Convention.

4.3.7.4 Animals in zoological parks, circuses and other exhibitions

In order to facilitate the movement of animals which are frequently shipped for travelling exhibition, the required permits are replaced by a “travelling exhibition certificate”, covering only one specimen, and valid for a maximum of three years.

According to the definition of article 1.6 of the EU Implementing Regulation a “travelling exhibition” includes travelling circuses, menageries, and zoological sample collections used for commercial display for the public.

In any case, the “travelling exhibition certificates” are valid only to the extent that animals are transported complying with IATA – LAR of the CITES Guidelines on non-air transport.

Article 30.1

1. Member States may issue travelling exhibition certificates in respect of legally acquired specimens which form part of a travelling exhibition and which meet either of the following criteria: (a) they were born and bred in captivity in accordance with Articles 54 and 55, or artificially propagated in accordance with Article 56; (b) they were acquired in, or introduced into, the Community before the provisions relating to species listed in Appendices I, II or III to the Convention, or in Annex C to Regulation (EEC) No 3626/82, or in Annexes A, B and C to Regulation (EC) No 338/97 became applicable to them.

Only two categories of animals are exempted of the required permits, those born and bred in captivity and those acquired in, or introduced into, the EU before the provisions of the CITES Convention or the EU CITES Regulations entered into force and are applicable to them.

According to article 31 of the EU Implementing Regulation, besides the replacement of the import, export or re-export permits and certificates, the issuing of the travelling exhibition certificate is a case of exemption to the rule of article 8.3 of the EU Basic Regulation that prohibits public display of animals of annex A.

Article 31

A travelling exhibition certificate may be used as follows:

- (1) as an import permit, in accordance with Article 4 of Regulation (EC) No 338/97;*
- (2) as an export permit or re-export certificate, in accordance with Article 5 of Regulation (EC) No 338/97;*
- (3) as a certificate in accordance with Article 8(3) of Regulation (EC) No 338/97 for the sole purpose of allowing the specimens to be displayed to the public for commercial purposes.*

On this subject, see point “Animals in zoological parks, circuses, simple zoological collections and other travelling exhibitions since this exemption is equivalent to the one that regulated by article VII.7 of the Convention, which deals with the impacts of travelling activities on animal welfare.

4.4 Published scientific studies on the trade in wildlife and animal protection

The following part of this work analyzes the study published in 2013 by Baker *et al.* 2013, dedicated to a review of the literature that between 2006 and 2011 has assessed the impacts of international trade in wildlife on the welfare of the animals. The outcome is that “wildlife trade is a big and burgeoning business, but its welfare impacts have not been studied comprehensively”. The following points should be emphasized:

- ⤴ Rarely was the term “welfare” mentioned at all in the scientific articles.
- ⤴ Research on the impacts of trade on wildlife has not focused on animal welfare.
- ⤴ There is a clear lack of evidence-based science on the impacts of trade on wildlife. And the welfare impacts of trade may be underreported in general and particularly in international, illegal, and wild-caught trade and trade in reptiles.
- ⤴ Recommendations for the future made in the articles included improved enforcement (15%), improved regulation or legislation (13%), more study (12%), improved monitoring of trade (11%), increased education (11%), changes to the CITES Convention (6%), identifying or promoting substitutes (5%), and improved species identification (4%). Only 2% of the recommendations involved changes to benefit animal welfare directly and they were the most likely those in which the animals were used alive.
- ⤴ Literature focused on mammals and on animals killed on site, for luxury goods or food, and for traditional medicine.
- ⤴ Animals are used in many ways that may compromise their welfare, including in farming, as working animals, for traditional medicine, as pets and companion animals, for entertainment, as wild meat (or bushmeat), and as status symbols and ornamentation, whether 1) killed on site; 2) captured, transported, and killed shortly before or after sale; and 3) used alive following capture, transportation, and sale (the three welfare impact categories). Trade was also analyzed according to the three welfare impact categories: animals were killed on site in 60% of articles, the demand for luxury goods or food and for traditional medicine being the important drivers of such killing on site; captured, transported, and killed in 21%; and used alive in 43%, the demand for pets and entertainment being the driver for the use of live animals. Mammals were the taxa most likely to be killed on site—for example, for elephant ivory (Wasser *et al.* 2007) and for tiger bones, teeth, claws, whiskers, and skin used in traditional medicine and magic (Ng and Nemora 2007). The animals captured alive and either killed later or used alive were most likely to be birds, reptiles, or amphibians, for example, frogs for the frog-legs trade (Gratwicke *et al.* 2010) and animals traded as pets, including parrots (Cantú Guzmán *et al.* 2007), freshwater turtles and tortoises (Nijman and Shepherd 2007), and iguanas (Chomel *et al.* 2007).
- ⤴ Improving animal welfare was the least likely recommendation in the cases in which the animals were killed on site, and it was the most likely recommendation in those in which the animals were used alive. Conservation and economics were the levers most often mentioned when animals were killed on site, and human health was the most often cited when animals were captured and either killed or used alive.

- ⤴ Many animals that have been captured alive for trade die in transit, through crushing, asphyxiation, starvation, dehydration, temperature shock, disease, injury, or stress (e.g., see Cantú Guzmán *et al.* 2007).
- ⤴ This focus on mammals killed on site might not reflect the trade that actually occurs, in terms of either scale or welfare impacts. Indeed, mammals suffer greatly in some trade sectors involving live use (e.g., bear bile farming).
- ⤴ The impacts that might be considered more immediate or acute (food or water deprivation or malnutrition; environmental challenge; and disease, injury, or functional impairment) were most often reported when animals were captured, transported, and killed (e.g., live turtles in supermarkets face environmental challenges such as being kept on ice, CWI 2007, cited in Baker *et al.* 2013). In contrast, potentially more chronic effects (*behavioral or interactive restriction or anxiety, fear, pain, or distress*) were most frequently reported when the animals were used alive (e.g., tigers kept as tourist attractions may have tiger urine sprayed in their faces, which they perceive as an aggressive display and which elicits submissive behavior and stress responses; CWI 2008, cited in Baker *et al.* 2013). Traders handling animals that are captured alive but destined to be killed before use may allow them to suffer acute types of impact associated with captivity, in the belief that sufficient numbers of animals will survive, in sufficient condition, to complete the trade and that the costs of keeping the animals in better conditions outweigh the benefits. Those handling animals destined for live use may care for them sufficiently to avoid acute impacts that could result in the animal dying before it can be sold or that could otherwise reduce the chance of sale. Animals already in live use, when this was reported in the literature, may be better cared for (and may therefore avoid acute impacts), but they may be subject to the chronic impacts of captivity.

On the basis of this processed information, Baker *et al.* 2013, make the following recommendations:

- More evidence-based research is needed. In order to develop and use animal welfare arguments for influencing trade, it will be necessary to increase the scientific credibility of those arguments. Moving welfare onto the political wildlife trade agenda requires more and better scientific evidence.
- Research should focus more on the implications of the wildlife trade for animal welfare; this is important because as the wildlife trade grows, the associated welfare impacts are likely to increase.
- *Animal welfare should be integrated with wider issues*; animal welfare needs to be seen not as an isolated peripheral interest but as associated with wider concerns (such as its correlation with human well-being –including public health–) that conspicuously affect our collective future (Dawkins 2012) who also suggested that the way forward in animal welfare science must be to find solutions that both benefit people and ensure the welfare of animals. Perhaps a reasonable aspiration might therefore be to limit (or eradicate) trade that is illegal, unsustainable, or otherwise deemed irretrievably unacceptable (e.g., on welfare grounds) and to improve animal welfare in the remaining wildlife trade.
- Collaboration between conservationists and animal welfarists might prove mutually beneficial.

- Greater attention should perhaps be paid to the welfare of animals traded alive and in larger numbers (e.g., birds, reptiles, amphibians) and to those—including mammals—potentially subject to greater impacts through live use (e.g., as pets).
- For animals killed on site, there is at least the possibility that this occurs humanely, but animals captured alive are bound to suffer to some degree—potentially greatly—and for a much longer time.
- An example of a welfare recommendation was that an improvement in animal welfare standards and practices should be mentioned explicitly in the Trans-Pacific Partnership Free Trade Agreement as a priority area for further development and cooperation (HSI 2009).
- With nearly 180 member countries (www.cites.org), CITES has the capacity to reach many wildlife-trading countries and, potentially, to persuade members to adopt measures for improved animal welfare in wildlife trade. CITES could better emphasize the importance of animal welfare by implementing existing policies and creating new ones; this might have a significant impact on the composition and volume of the wildlife trade.

4.5 Conservation versus welfare

4.5.1 Species conservation as the main goal of CITES

Biodiversity conservation is unconditionally linked to the over-exploitation of species also through their trade, since the latter is a relevant factor contributing to its impoverishment and loss (IUCN 1992). Species trade has even been considered the second cause of the global biodiversity loss³⁸.

The main objective of CITES is to ensure that trade in specimens, i.e., live animals, dead animals or their parts or derivatives (also plants, although they are out of the scope of this work) is not detrimental to species survival.

Nevertheless, international trade of such specimens, whether legal or illegal, has consequences for animal welfare.

4.5.2 Legal trade: animal welfare as a benefit for species conservation

While there is undoubtedly a degree of tension between these interests (conservation, trade and animal welfare), a careful analysis reveals that there is no fundamental incompatibility (Bowman 1998).

Currie & Provost (2011) also think that, for example, if an animal dies while in transit, it is injured or its health is compromised to the extent that there is an increase in risk of death, the objective of conservation is weakened. But mistreatment is a different story since the fact that an animal is shipped temporarily subject to pain, stress or other forms of suffering has no impact whatsoever on the conservation of the species.

If there are provisions on animal welfare in CITES, their implementation contribute to the conservation of the species in the long-term. The provisions on the welfare of live animals in captivity (breeding and raising in destiny) is evidence of this assertion, since they have the potential to minimize the need for replacement of those specimens created by their death due to improper conditions or their flight if they interact with other wild populations. Another example is the balancing of interests involved in particular contexts when confiscated. The CITES Guidelines for the disposal of confiscated live animals, Annex I to Resolution Conf. 10.7 (Rev. CoP15) state that In deciding on the disposal of confiscated animals, managers must ensure both the humane treatment of the animals and the conservation and welfare of existing wild populations of the species involved.

The linkage between species conservation and animal welfare acquires its foremost strength in the case of animals of species included in Appendix I since, being an animal part of species on the brink of extinction, the destiny of each and every one of the individuals acquires a major relevance (see, in particular, Recarte & Alonso 2006).

Hence, the importance of the protection of animals as individuals for the adequate and sustainable management of species conservation policies. Welfare goals are focused on the individual whereas conservation goals are focused on the population. However, since populations are composed of individuals there must be a large domain where conservation and welfare goals are

³⁸ http://www.wwf.es/que_hacemos/especies/problemas/trafico_de_especies/

compatible. This shared domain can be increased when sound behavioral research is applied to solve real-world conservation and welfare problems in reintroduction programmes (Swaisgood 2010). This is so because, despite differences in focus, goals, and strategies between conservation biology and animal welfare, both are inextricably linked in many ways, and greater consideration of animal welfare, although important in its own right, also has considerable potential to contribute to conservation success (Harrington *et al.* 2013).

From this perspective, the lack of animal welfare is detrimental for species conservation.

4.5.3 Unlawful trade: the lack of consideration of animals as individuals

Concerning the fight against legal trade and poaching, measures are directed toward the conservation of the species to which the animals belong, such as it is shown by the examples of measures adopted for elephants, bog cats, sharks, great apes, rhinoceroses, or Ethiopian antelopes. The Secretariat reported in the 16th CoP (Doc. 29, Bangkok 2013), that Illegal trade in wildlife is happening at a scale that poses an immediate risk to wildlife and to people whose livelihoods depend on them, it may even undermine and threaten legal and sustainable trade [Resolution Conf. 11.3 (Rev.CoP16) (Compliance and enforcement)].

This means that measures proposed to end illegal trade in animals have as main goal to ensure the survival in the long-term of populations in the wild and of local economies, and not to prevent the suffering and death of individual animals that, in a great scale, is a consequence also of such illegal trade.

See, e.g., Maisels, F. *et al.* 2013, who revealed that African forest elephants are being poached at accelerating rates and their population size declined by ca. 62% between 2002–2011- These data are consistent with those of the Monitoring the Illegal Killing of Elephants (MIKE)³⁹ program, according to which Central Africa is where the largest killing of elephants has happened since 2002 when compared with other regions in Africa. The Secretary General of CITES has himself acknowledged that “the situation is particularly acute in Central Africa—where the estimated poaching rate is twice the continental average⁴⁰”,

Looking into the different data and comparing those of the reports on African elephants of the IUCN and CITES [(the IUCN/SSC African Elephant Specialist Group⁴¹, the Elephant Trade Information System (ETIS)⁴² and the Elephant Database)]⁴³, it has been estimated that only around 90.000 to 150.000 survive in the Central Africa region⁴⁴.

The dire magnitude, amount and relevance of illegal wildlife trade, the consequences of which threaten not only biodiversity but also global security and human health, has been emphasized in multiple reports that also remark the growing trends of such trade, that affect millions of specimens (*sensu* CITES) and hundreds of thousands of animals per year.

³⁹ <http://www.cites.org/esp/prog/mike/intro/intro.shtml>

⁴⁰ Link to these news on line: http://www.cites.org/eng/news/pr/2013/20131202_elephant-figures.php

⁴¹

http://www.iucn.org/about/work/programmes/species/who_we_are/ssc_specialist_groups_and_red_list_authorities_directory/mammals/african_elephant/

⁴² <http://www.cites.org/esp/prog/etis/index.shtml>

⁴³ <http://www.elephantdatabase.org>

⁴⁴ <http://oxpeckers.org/2014/08/user-report-protecting-elephants-could-encourage-forest-growth-in-central-africa/>

See on this issue the following documents and bibliography:

1. Nellemann, C; Henriksen, R; Raxter, P; Ash, N; Mrema, E. 2014. The Environmental Crime Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources: A Rapid Response Assessment. UNEP & Interpol.

<http://www.unep.org/unea/docs/RRCrimecrisis.pdf>

2. Lawson, L. & Vines, A. 2014. Global Impacts of the Illegal Wildlife Trade: The Costs of Crime, Insecurity and Institutional Erosion. CHATHAM HOUSE, the Royal Institute of International Affairs.

<http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0214Wildlife.pdf>

<http://www.chathamhouse.org/publications/papers/view/197367>

3. IFAW-International Fund for Animal welfare. 2013. Criminal Nature: The global security implications of the illegal wildlife trade.

http://www.ifaw.org/sites/default/files/ifaw-criminal-nature-2013-low-res_0.pdf

4. WCO. World Customs Office. 2013. Illicit Trade report.

http://www.wcoomd.org/en/topics/enforcement-and-compliance/~/_media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Illicit%20Trade%20Report%202012/ILLICIT%202013%20-%20EN_LR2.ashx

5. IFAW-International Fund for Animal welfare Wanted-Dead or Alive. 2014. Exposing Online Wildlife Trade. International Fund for Animal welfare.

<http://www.ifaw.org/sites/default/files/IFAW-Wanted-Dead-or-Alive-Exposing-Online-Wildlife-Trade-2014.pdf>

6. Bibliography on "Illegal trade in wildlife". 2014. Some references obtained from a search from CAB Abstracts database.

<http://knowledge.rcvs.org.uk/document-library/illegal-trade-in-wildlife/>

7. OIE. World Organisation for Animal Health. Karesh, W. B., Smith, K. M., Asmussen, M.V. 2012. The unregulated and informal trade in wildlife: implications for biodiversity and health. Animal health and biodiversity: preparing for the future. Compendium of the OIE Global Conference on Wildlife, Paris, France, 23-25 February 2011; 2012. :51-57. 19 ref. Publisher. OIE (World Organisation for Animal Health)

<http://www.OIE.int/doc/ged/d12062.pdf>

8. Also among the available documents, TRAFFIC has compiled the data on illegal trade in the European Union (TRAFFIC 2011; 2012).

In 2011 (TRAFFIC 2011), A total of 667 seizure records were reported by 14 EU Member States in 2011. Of these, 486 seizure records could be classified as "international", i.e. relating to shipments involving external or third countries and so took place at EU external borders. The main types of commodity seized at EU borders in 2011 were medicinal products (over 2 million items), including

not only medicinal products but also parts/derivatives for medicinal use, live reptiles (461 specimens), ivory (354 specimens and approximately 100 kg), reptile bodies, parts and derivatives (987 specimens), mammal bodies, parts and derivatives (192 specimens), and corals (347 specimens and approximately 1600 kg).

A total of 967 seizure records were reported by 17 EU Member States in 2012 (TRAFFIC 2012), of which 799 were classified as international. The main types of commodity seized at EU borders in 2012 were: medicinal products (over 3 million items), including rhino horns, ivory (1523 specimens and approximately 70 kg), live reptiles (812 specimens), reptile bodies, parts and derivatives (1629 specimens), caviar (51 kg), mammal bodies, parts and derivatives (316 specimens), and corals (1387 specimens and approximately 2850 kg).

In conclusion, the measures proposed to combat illegal trade in specimens are focused in preventing the threat that it implies for the survival of species. Nevertheless, it is very difficult to assume that, for example, poaching having as purpose the illegal trade of animal populations does not have detrimental impacts on the live and physical integrity of each and every one of the animals that are part of such populations.

4.6 Animal welfare and means of subsistence

4.6.1 Human well-being and animal welfare

Worldwide, ideas of what is important for animals are influenced by the standard of human welfare (Fraser 2008), so the dimension of the relevance of animal welfare is minimal where human poverty is widespread or common (Ramaswamy 1998). In many areas of the world, animal welfare is a relatively new and still evolving concept, albeit often influenced by its European or North American concept (Baker *et al.* 2013).

The majority of wild animal species protected by CITES are in developing countries [Resolution Conf. 8.3 (Rev. CoP13) (Recognition of the benefits of trade in wildlife)], where there is no evidence that animal welfare is neither a prevailing nor a predominant value.

The integration of animal welfare aspirations with the rights of indigenous peoples and local communities in relation to the manner in which they carry out subsistence practices has already been established as meriting special treatment in conservation instruments (Harrop 2013). See, e.g., the IWC's specific "aboriginal subsistence" whale killing clause of the Schedule to the Whaling Convention (since its amendment in the second meeting of the Parties in 1950), the Agreement on Humane Trapping Standards also has specific permits exemptions for indigenous traps (see Agreements on international humane trapping standards 1998) that allow exemptions in the trapping methods used by indigenous communities, the EU Regulations on trade in seal products (EU Regulations of 2009 and 2010) and the 1979 Bonn Convention on the Conservation of Migratory Species permits (article III.5.c) the taking of protected animals where this is to accommodate the needs of traditional subsistence users.

4.6.2 Advantages of the incorporation of animal welfare over the means of subsistence

Besides supplying goods and services to consumers all over the world, wildlife trade provides the means of subsistence of some communities that live in megadiverse countries which are at the same time the least developed or simply part of the developing world. Wildlife trade in those countries usually affects the rural communities that cohabit with natural resources and depend from them. Many Decisions adopted by the CITES CoPs take into account the socioeconomic context in which it operates in the real life and acknowledge local communities.

Existing synergies between conservation and development has been addressed in two Resolutions of the CoP: Resolution Conf. 8.3 (Rev. CoP13), that acknowledges that commercial trade may be beneficial to the conservation of species and ecosystems or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question, and Resolution Conf. 16.6 (CITES and livelihoods), that invites the Parties to maximize the benefits for rural communities of CITES implementation and trade concerned.

This is no obstacle for the local communities having also to abide with the animal welfare obligations which are part of CITES, as it happens in other areas (see, e.g., Resolution Conf. 11.3 [Rev.CoP16) (Compliance and enforcement)], that recognizes "that the developing countries, because of their special socio-economic, political, cultural and geographic circumstances havemajor difficulties in meeting appropriate control requirements, even though this does not exempt them from observing the highest possible degree of effectiveness."

Moreover, animal welfare could benefit local communities since inadequate levels of animal welfare endanger the capacity to grow, reproduce and survive. Therefore, including animal welfare in trade could be advantageous and contribute to the increase of the means of subsistence of local communities and rural development, as a consequence of the survival of endangered species in the long-term.

From a totally different perspective although correlated to these issues, consumer countries of CITES specimens have a clear interest in that ethical treatment of animals

More recently, issues of animal protection have come to the forefront of the global stage as it has been recognised that they are intimately associated with the requirements of the global consumer.

This idea is supported by the OIE (Kahn & Varas 2013) that are of the opinion that the interest of consumers in the welfare of food producing animals is likely to continue growing, particularly in countries where food safety is assured. For example, in the EU this has been repeatedly asserted by surveys and public campaigns and communications among the several EU institutions and bodies as well as those directed to, and asking about attitudes from, European citizens^{45 46}. Moreover, in general, a great part of public opinion does not concede to cultural and traditional attitudes against animals as a legitimate ground for their cruel treatment or poor welfare.

Therefore, animal welfare is also one of the factors to have in mind by consumers when acquiring goods in the market. For example, within the reach of the scope of CITES, the major brands believe that a traceability system would give credibility to the industry and enhance consumer confidence, by putting the industry in a better light regarding animal welfare compliance up to the final product (AC27 Doc. 19.4).

4.6.3 Examples of integration of animal welfare within the means of subsistence within the scope of activities of CITES

An example of the integration of animal welfare as part of the tools for poverty alleviation is described in the said Resolution Conf. 16.6. This Resolution lists some strategies for developing appropriate solutions to mitigate negative impacts of the implementation of the CITES Convention on the livelihoods of rural communities that focus on income-generation approaches, such as eco-tourism, an activity which according to the United Nations Rio+20 Conference (2012), that besides improving the economic sustainability of local economies, contributes to “respect wildlife”.

An example of the joint work of CITES animal welfare and local means of subsistence is the support received by CITES, through its representative if the Working Group on Snakes and its Secretary General, for the launching of the Python Conservation Partnership⁴⁷.

⁴⁵ <http://sancodogandcat.izs.it/limesurvey/w/p/index.html>

⁴⁶ http://ec.europa.eu/public_opinion/archives/ebs/ebs_270_en.pdf

⁴⁷ http://cites.org/esp/news/sundry/2013/20131127_python_partnership.php

The Python Conservation Partnership is a global research initiative focused on the international trade in python skins, established by the International Trade Center (ITC)⁴⁸, a WTO body, the International Union for Conservation of Nature (IUCN/SSC Boa & Python Specialist Group) and the Kering group, focused on sustainability, transparency, animal welfare and local livelihoods issues related to the international trade in python skins. The first report of the Partnership that emphasizes relevant aspects on humane killing of these reptiles, is on line in the web and can be downloaded⁴⁹.

The origin of this collaboration is a 2012 study of the ITC, in collaboration with the IUCN and TRAFFIC as well as the CITES Working Group on snakes (see Kasterine *et al.* 2012), in which the value of this trade and its benefits for the subsistence of communities became public but also the problems of its legality and its impact on animal welfare. Regarding this point, the report highlights that the high number of skins traded has raised concerns about the conservation impact of harvests upon wild python populations and the potential animal welfare issues associated with this trade and offers solutions for the humane slaughter of pythons. It also reviews the current knowledge on the linkage between sustainability and welfare concerning the breeding of pythons to trade their skins, providing recommendations for all stakeholders, CITES among them.

The report describes three common methods of python slaughter. These include decapitation, brain destruction and suffocation. The suffocation method appears to result in a considerable time before death is reached (15 to 30 minutes). The report recommends all slaughterhouses are encouraged to use brain destruction as a slaughter method and to introduce an anvil type system to reduce suffering through badly aimed blows. In addition, research into alternative, and potentially more acceptable, methods of slaughter should be used.

It should also be remarked that, as the study recognizes, that the fact that animal welfare groups had campaigned against cruelty in the transport and slaughter of snakes helped its undertaking. In particular, in 2007, some images of the slaughter method of pythons (Appendix II) were made public. Their jaws are forced open so that a tube can be jammed down their throats in order to pump their bodies full of water and make the skins easier to remove while ropes are tied tightly around their necks to prevent any fluids from escaping their bodies. Bloated, suffering, and dying slowly, they can be left hanging for more than 10 minutes. Their bodies are slit open from end to end to loosen their skin, and when it is limp, it is ripped from the snakes' bodies while they are still alive and they often suffer for several days, without the skin, before dying from dehydration.

⁴⁸ ITC is the joint cooperation agency of UNCTAD and WTO for business aspects of trade development. https://www.wto.org/english/thewto_s/coher_s/wto_itc_s.htm

⁴⁹ http://www.kering.com/sites/default/files/document/pcp_1st_report_executive_summary_0.pdf



Accordingly, and in part as a consequence of what was just described, the 15th and 16th CITES CoPs decided to consider the feasibility of implementing a traceability system for snake skins. In response, UNCTAD and the CITES Secretariat jointly commissioned a scoping study on “Traceability Systems for a sustainable international trade in South East Asian Python Skins” (UNCTAD 2014) that includes Animal Welfare and Humane Killing Guidelines and that urges Governments to provide for adequate funding to have them implemented. This Humane Killing Report was submitted to the OIE for consideration as an international standard for the Humane killing of reptiles.



Pictures: PETA (People for the Ethical Treatment of Animals) Asia-Pacific. Killing of pythons (*pythonidae spp.*).

4.7 Impacts of trade on the protection of animals. Unacceptable and conflictive situations

4.7.1 Introduction

In order for the trade in animals to be possible, some are captured from the wild and others are captive-bred, and they can be traded alive or dead (as such, or their parts and derivatives). Thus, the origin of the animals can be, as said, capture from the wild or captive-born and bred, farm or ranches or seizures and confiscations, all of them events where the welfare of the animal can be disregarded or degraded, pretty much as this might also happen in its destiny as commodity traded for a commercial purpose, that usually implies immediate death or death soon after the sale, its captivity for the rest of its lifetime or its reintroduction into the wild.

The final objectives of the international trade governed by CITES is very diverse, and they include traditional medicine, pet markets, scientific research, the pharmaceutical or chemical industries, "canned hunting" and hunting trophies, decoration and ornamentation, dressing, and peltry in its broad sense, bushmeat or other type of food (subsistence food or cultural and luxury products), display in zoological parks, aquarium and circuses, captive-breeding, reintroduction into the wild... The majority of the trade objectives do not pursue the survival of humans, buy much more trivial ends.

The preamble itself of the Convention admits the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view. All these activities impact the welfare of animals and some of them, due to their great potential of causing their suffering, are considered by society, from the perspective of ethics, unacceptable, reprehensible and blameworthy in different degrees.

This trade affects a great variety of mammals, birds, reptiles, amphibians and fishes and there are species whose individual animals' welfare suffers to a very high degree, such as e.g. the elephant that is commercialized for its ivory, skin, due to its capture for zoos or circuses, or hunted for a trophy, or for tourism or wild meat.

The scope of this work does not allow the analysis of each of this causes and its collision with animal welfare will focus on some conflictive examples, some of them related to legal trade, others to illegal trade.

4.7.2 Causes why trade impacts animal welfare

For the analysis we have divided the causes in the four alternatives where animal welfare is compromised by the use that trade pursues:

- Animals are killed on site or in the wild
- Animals are captured, shipped and killed after their sale
- Animals are held captive during all their lifetime or a large part of it
- Animals are reintroduced into the wild

4.7.2.1 Death in the wild

Following Baker *et al.* (2013), who made an exhaustive scientific review of this subject, as we previously saw, the available literature the data registered show that animals die while they are in the wild when trade is intended for luxury items, food or traditional medicine. The highest percentage of killed animals are mammals and among them, for example, the elephant in order to obtain ivory⁵⁰, (Wasser *et al.*, 2007; Maisels *et al.* 2013; SC65 Doc. 42.1 Geneva, 2014); Nellemann *et al.* 2014 -UNEP & INTERPOL-), rhinoceros in order to obtain its horn as an ingredient for traditional medicine (CoP16 Doc. 54.2 Bangkok, 2013); Nellemann *et al.* 2014)⁵¹, tiger for its bones, teeth, claws, whiskers, and skin used in traditional medicine (Ng y Nemora 2007; Stoner & Pervushina 2013)⁵²; and pangolin killed for food and the medicinal use of its scales (SC65 Doc. 27.1 Geneva, 2014); WCO 2013⁵³.

⁵⁰ The estimate of annual killings of elephants in Africa, for ivory, is between 22.000 and 25.000, out of an estimated population of between 420.000 and 650.000 individuals. Information available in: http://www.cites.org/esp/news/pr/2013/20131202_elephant-figures.php Experts think that, during 2013, 50.000 were killed to satisfy the demand for ivory: <http://eia-international.org/ivory-trade-ban-essential-to-save-elephants>

⁵¹ More than 1.000 rhinos were killed in Africa, during 2013, out of a population of 20.165 white rhinos and 4.880 black rhinos that were estimated to live in the wild. Information available in: <http://www.cites.org/esp/cop/16/doc/S-CoP16-54-02.pdf>; <http://www.unep.org/unea/docs/RRACrimecrisis.pdf>;

⁵² More than 1.500 tigers have been killed in the last decade, a significant figure if it is realized that there are only 3.200 in the wild. Information available in: http://assets.worldwildlife.org/publications/542/files/original/traffic_species_mammals73.pdf?1363877296&_ga=1.187236267.2091242150.1422370725

⁵³ Illegal trade of pangolin is growing at an alarming rate. The estimate is that more than 200.000 pangolins were killed between 2011 and 2013. In April 2013, for example, the WCO Regional Intelligence Liaison Office for Asia and the Pacific informed that more than 10 tonnes of frozen pangolins had been discovered in a Chinese vessel. Another example is confiscation of 6.200 kg of frozen pangolin, original from Indonesia, at the Port of Hai Phong, Viet Nam, on 12 August 2013. During 2013, there were also reports about a seizure of 5.565 kg of pangolin meat at the Hong Kong airport, a cargo of 4.633 kg of meat from Indonesia and another one of 932 Kg from Singapur. Moreover, there were 20 confiscations of pangolin specimens in January 2014 during "Operation COBRA II". Information available in: SC65:<http://www.cites.org/sites/default/files/esp/com/sc/65/S-SC65-27-01.pdf>; WCO <http://www.wcoomd.org/en/media/newsroom/2014/june/wco-publishes-the-illicit-trade-report-2013.aspx>; Annamiticus <http://annamiticus.com/2013/10/24/pangolin-trafficking-2011-to-october-2013-infographic/>



Picture: David Sheldrick Wildlife Trust/Barcroft. Elephant (*Loxodonta africana*) after being hit by a poisoned arrow.



Picture: stoprhinopoaching. Rhinoceros (*Rhinocerotidae spp.*) whose horn has been cut off, still alive after one week.



Pangolin meat seized by Hong Kong Customs
Photo courtesy of Hong Kong Customs



Pangolin scales seized by Cameroon Customs
Photo courtesy of Cameroon Customs

Pictures: Customs of Hong Kong and of Aduana de Hongkon of Cameroon. Pangolin meat seized by Custom officers.

Many countries, especially in Africa, foster conservation programs with a high component of sustainable use, including tourism safaris that include hunting of animals of species included in Appendix I. The trade of hunting trophies of animals of species of all the Appendices is allowed and covered by CITES [Resolution Conf. 2.11 (Rev.); Resolution Conf. 13.5 (Rev. CoP14); Resolution Conf. 10.14 (Rev. CoP16); Resolution Conf. 10.15 (Rev. CoP14)] and it is quite controversial. For some, they are a way to generate income to cover the costs of the species conservation management while for others this does not imply sustainable management of the species and they do not admit killings for this purpose (TRAFFIC 2007). The IUCN itself has acknowledged the wise and sustainable use of wildlife can be consistent with and contribute to its conservation and that trophy hunting can be part of a conservation strategy in specific locations (IUCN 2012). But there is a strong opposition against these activities (see, e.g., Notification to the Parties No. 2014/037 through which the U.S.A. temporarily suspended imports of sport-hunted trophies of African elephant taken in the United Republic of Tanzania and Zimbabwe), motivated by a profound distaste for the killing of endangered species, such as elephants or leopards, for fun, and against minimal animal welfare considerations.

In general, international trade in hunting trophies protected under CITES is being questioned by some Parties and a very recent example is the restriction of trade of African lions introduced by Australia, that includes the prohibition of imports of hunting trophies from African lions recently obtained and their export and re-export from that country (Notification to the Parties No. 2015/015, 19 March 2015).

Method to obtain hunting trophies that has generated particular rejection, and in which animal welfare is severely compromised is the so-called “canned hunting” of lions simply for the sake of obtaining the trophies, and in which lions are captive-bred for their hunt with arrows or with rifles in small areas. There is an on-going worldwide campaign requesting the elimination of this practice (Campaigning Against Canned Hunting - CACH)⁵⁴.

⁵⁴ <http://www.cannedlion.org>

Some MPs of the U.K.⁵⁵ and Spain⁵⁶ have also requested the ban of imports of hunting trophies of African lions obtained through this practice, although the position of both Governments is clearly in favor of them if its legality is ensured (without pronouncing themselves on the issues related to animal welfare)⁵⁷. The IUCN (Recommendation 3.093) has also condemned the killing of animals in closed enclosures or other forms of captivity where they have no opportunity of escaping or where they have not been raised in freedom (UICN 2004b).



Picture: CACH. Lions (*Phantera Leo*) expressly bred and raised to be killed in small enclosures.

4.7.2.2 Capture, shipping and killing

The most acute and immediate welfare impact domains (food deprivation, water deprivation, or malnutrition; environmental challenge; disease, injury, or functional impairment) are more frequently mentioned in the literature as linked to capture, transportation, and killings shortly before or after sale, such as it happens, e.g., to live turtles and frogs being kept on ice in supermarkets (Baker *et al.* 2013; CWI 2007). Animals which, captured alive, die shortly after their sale are mainly birds, reptiles or amphibians, and among them, e.g., frogs for the frog-legs trade (Gratwicke *et al.* 2010; Baker *et al.* 2013).

Primate species are also heavily traded as supply for the biomedical industry and pharmaceuticals' markets, the entertainment industry or the pets' markets (Nijman *et al.* 2011)⁵⁸, and, among them, e.g., the Bengal slow loris (*Nycticebus bengalensis*) (Nijman 2014).

⁵⁵ Early day motion 282, 21 July 2014: <http://www.parliament.uk/edm/2014-15/282>

⁵⁶ Written question to the Government. 12 September 2014. Between 2007 and 2012, almost 450 lion trophies were imported into Spain
<http://www.senado.es/web/expedientdocbobservlet?legis=10&id=140408>; More information available in: http://www.apdda.es/p/iniciativas-parlamentarias_13.html

⁵⁷ Answer of the Government: <http://www.senado.es/web/expedientdocbobservlet?legis=10&id=147191>

⁵⁸ In the last 15 years, exports of live primates have increased While the trade of live primates reaches tens of thousands of specimens worldwide per year, the trade of dead ones reaches millions.

A great number of animals traded within the CITES framework are captured in the wild. Capturing methods are outside the scope of CITES (CoP4, Gaborone, 1983, Doc. 4.32; CoP11, Gigiri, 2000, Doc. 11.55), although it is a well known fact that many of these species are often captured with cruel methods (Brufau 2014).



Picture: FurBearerDefenders. Lynx (*Lynx canadensis*) trapped in the wild



Picture: FreeMontana. Wolf (*Canis Lupus*) trapped in the wild

In general, an amount, qualified as large, of wild animals captured in the wild for their trade as pets, die or are injured during their capture and shipment, a fact denounced by the Canadian Veterinary Medical Association (CVMA) [see “Position: The Canadian Veterinary Medical Association (CVMA) is opposed to the capture of wild animals to be kept or sold as pets (November 2012)” after a careful analysis of numerous studies (among them, Engebretson 2006⁵⁹; Livengood & Chapman 2007⁶⁰; Natusch & Lyons 2012⁶¹. Eurogroup for animals (2011)⁶² and EFSA (European Food Safety Authority)⁶³ have also expressed their opposing views to the trade of wild animals as pets.

Long distance transport of animals has animal welfare consequences caused by overcrowding, fighting, of lack of water or food. Concerning mortality rates during transport, there is evidence of lack of data [(see the points on “Housing and transport of animals” and “Mortality during transport” (CITES in the European Union)]. Nevertheless, for tortoises and turtles, it is acknowledged that their shipments do not comply with IATA – LAR [Resolution Conf. 11.9 (Rev.CoP13)]. Also, in November 2013, a MP of the European Parliament registered a question to the Commission⁶⁴ about several cases of contraventions of the IATA – LAR in the transport of dolphins in which both the origin and the location of destiny were two EU member States (see question E-013216-13). There is also enough evidence on the fact that many animals that have been captured alive for trade die in transit, through crushing, asphyxiation, starvation, dehydration, temperature shock, disease, injury, or stress, and never make it into trade (e.g., see Cantú Guzmán et al. 2007⁶⁵).

Similarly, it is also estimated that out of ten animals illegally captured in the wild with commercial purposes, only one makes it to their final destiny and the other nine die in the moment when they are captured or during transport (see., e.g., among many others Lopes (2011), Geo Brasil 2002; Cabañas 2009; and APASDEM 2014).

⁵⁹ The physical deterioration as a consequence of stress has been observed in a great variety of mammals and birds as linked to their capture and handling. Changes of temperature and stress during shipments can be the cause of significant mortality even when the imports are legal.

⁶⁰ The biggest losses of aquarium fishes captured in the world usually happen during capture, local storage and harbor loading operations.

⁶¹ A great number of reptiles and amphibians captures in the wild do not reach their destiny due to the deaths and injuries caused all along the commercial chain.

⁶² The legal or illegal trade of wild animals as pets has a profound impact both in the species populations as well as on individual animals, since they are captured to unsustainable levels and in terrible conditions, facing high mortality rates mainly in transport and when housed temporarily during the shipment process operations.

⁶³ The high mortality rates and generalized suffering of wild birds destined to zoos and as pets are underlined by EFSA: <http://www.efsa.europa.eu/en/topics/topic/animalwelfare.htm>

Scientific opinion (2006) 410, 1-55: <http://www.efsa.europa.eu/en/efsajournal/pub/410.htm>

⁶⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2013-013216+0+DOC+XML+V0//EN>

⁶⁵ 75% of the parrots captured in Mexico for the pet trade die before reaching a buyer, that represents between 50.000 and 60.000 dead animals per year and 31% died during the shipments, which allows the characterization of this trade as an incredible inhumane activity as well as a plain waste.



Picture: P.Tansom/TRAFFIC. Hamilton's Black Pond Turtles (*Geoclemys hamiltonii*) found in the international airport of Suvarnabhumi.



Picture: Jessica Lyons. Pitón verde (*Morelia viridis*) with a head injury probably caused by its enclosure in a wet crate and pressing against it to try to escape. See Natusch & Lyons 2012.

All these activities do not only have severe consequences on animal welfare but also on the conservation of the species (mammals, birds, reptiles, amphibians, and fishes), since it seems that in order to compensate the high level of mortality, at least an equivalent number of animals is extracted from the wild. As an example, among many others, the last report of the Great Apes Survival Partnership in collaboration with the United Nations Environmental Programme (GRASP-UNEP 2013) states that, between 2005 and 2011, 14.146 chimps have being taken off their habitats. And it is also estimated that ten chimps die per each baby chimp that is captured. GRASP Executive Director, Doug Cress, has stressed this fact: for each chimpanzee captured another ten die. "When hunters and traffickers get into the jungle is not to get one. They have to fight. They have to kill other chimps in the group," said Cress during a press conference at the 2013 meeting of CITES in Bangkok.⁶⁶



Picture: GRASP/UNEP

Most of the trade in wild animals for meat takes place at the national level and therefore it is not related to CITES. Nevertheless, CITES recognizes that international and transboundary trade of bushmeat, at the location where it is produced, is often unsustainable and illegal (CITES Secretariat and bushmeat 2011). Trade in wild animals captured for their meat of species listed in the CITES Appendices (e.g., bonobos, gorillas, chimps, crocodiles, pangolines, etc.), impacts both conservation and animal welfare and the latter still is quite large (for example, according to the study of N.V. Morf *et al.* 2013, between September 2011 and January 2013, Swiss airports found that a third part of bushmeat specimens comes from animals of species of the CITES Appendices).

⁶⁶ <http://www.abc.es/sociedad/20130305/rc-tres-grandes-simios-victimas-201303050204.html>
<http://www.projeto-gap.org.br/en/noticia/grasp-denounces-the-imminent-disappearance-of-great-apes/>

One of the most conflictive methods of capture and killing of animals is the one used for Cape fur seals (*Arctocephalus pusillus*), which are included in Appendix II (04/02/1977)⁶⁷, a slaughter that has been categorized as unlawful, unnecessarily brutal, cruel and unsustainable (De Klerk 2013). According to the “CITES trade database”, furs from the pups of these seals have been exported to more than 21 countries since the species was included in CITES⁶⁸. The trade keeps on growing and the CITES Secretariat as well as other local stakeholders suggest that there is still a high demand for the seal bulls’ genitals from Namibia (De Klerk 2013; Campbell *et al.* 2011).



Picture: blueseals.org. Clubbed Cape fur seals (*Arctocephalus pusillus*)

Different animal protection NGOs have denounced the unlawful harvesting/hunting methods of several species included in the CITES Appendices, such as e.g. turtles, among many others⁶⁹.

4.7.2.3 Captive breeding and animals that are held captive during all their lifetime or a large part of it

Many animals of species included in the CITES Appendices are maintained out of their natural habitats under human control in order to be bred or raised and held in captivity. These animals that are captive-bred out of their natural habitats are totally dependent from human beings to provide

⁶⁷ The Government of Namibia authorizes a yearly harvest of between 80.000 and 85.000 pups of these animals (for furs) y 6.000 adults (for the genitals of the bulls, considered an aphrodisiac in some parts of Asia). http://www.harpseals.org/about_the_hunt/cape_fur_seal_alert.php

⁶⁸ <http://www.actionagainstopoisoning.com/CAPEFURSEALALERT/NAMIBIANSEALTRADE/namibiansealkillingtrade.html>

⁶⁹ <http://www.thebalidaily.com/2013-06-20/bali-urged-stop-turtle-slaughter.html>

for their specific needs, deprived from their freedoms and denying them the possibility of fulfilling all their ethological and natural needs.

Moreover, captive breeding cannot be guaranteed to take place in non-cruel manner [Resolution Conf. 12.10 (Rev. CoP15)] or in a controlled environment [Resolution Conf. 10.16 (Rev.)]. For example, in the 27th meeting of the Animals Committee (Veracruz, 2014), the Secretariat introduced the Inspection manual for use in commercial reptile breeding facilities in Southeast Asia, produced by TRAFFIC, in which open injuries and type of injuries in captive-bred pythons and lizards were shown, as well as ill, dying, or death animals in their enclosures [AC27 Inf. 17 (Rev.1)].

Box 4: Shell damage in freshwater turtles and tortoises.

For example, tortoise poachers often drill a hole through the edge of the shell to secure animals while collecting. Captive-bred animals should not have open wounds or chipped and badly scarred shells. Some slight damage may occur to the shell during mating (even in captivity), but this should only result in minor scarring.




Photo: Katie Morgan




Photo: J. Lyons/TRAFFIC




Photo: J. Lyons/TRAFFIC





Photo: J. Lyons/TRAFFIC

Cuora amboinensis


All images show *Indotestudo elongata*, unless stated.

Box 5: Presence of wounds and other injuries in pythons and monitor lizards


Captive-bred animals should not have open wounds. Wounds may have been sustained in the wild. Eg. by predation, fire, fighting etc., or by rough handling during capture or in transit.




Python reticulatus




Morelia spilata




Morelia viridis



Morelia viridis



Varanus salvadorii



Varanus doerianus

All photos: D. Natusch/J. Lyons

Box 9: Presence of sick or dead animals

Dead or dying animals should not be present in enclosures (although it is accepted that animals do die in breeding facilities).

Significant numbers of these are a strong indication that animals are being wild sourced. The high investment and value of captive bred animals suggests that facilities will care for them in an appropriate manner.

Animals that enter a facility illegally from the wild are likely to be stressed and more prone to disease than those that have been captive bred. Mortality rates for wild-caught animals are generally much higher than for captive born stock.



Indotestudo elongata



Varanus doreanus



Cuora ambainensis



Emydura subglobosa

Photos: D. Natusch/J. Lyons

As Baker *et al.* (2013) say, for animals killed on site, there is at least the possibility that this occurs humanely, but animals captured alive are bound to suffer to some degree -potentially greatly- and for a much longer time, and they cite as an example of a species included in Appendices I or II, the incredible suffering of the captivity of bears for bile production for international trade. According to Dallaire *et al.* 2012, over 10,000 captive Asiatic black bears (*Ursus thibetanus*) are farmed for bile, used in traditional Chinese medicine, in China, Vietnam, and Korea.

These animals experience solitary confinement, extreme physical restriction, and malnutrition in addition to bile extraction, every one to three days, through a catheter or fistula (Loeffler *et al.* 2007, 2009). These animals' poor welfare is manifest, when rescued, in physical health problems (eg chronic infection) and behavioral changes (e.g. excessive fear of keepers, abnormal repetitive behaviors, such as self-sucking or head rolling). Besides the problems associated to animal welfare, the current unlawful expansion in the number of facilities for the bile extraction from bears has also caused international alarm about the conservation of the species (Livingstone & Shepherd 2014) and it is a constant theme in the agenda of CITES meetings [(Resolution Conf. 10.8 (Rev. CoP14) (Conservation of and trade in bears)].



Picture: Animals Asia Foundation (AAF). Bear farming (*Ursus thibetanus*) for bile extraction.

Although CITES has positioned itself against the breeding of tigers to cover the supply of parts and derivatives (Decision 14.69 on Asian big cats), in the past years, due to the scarce number of tigers in the wild, “tiger farms” have proliferated to trade their parts and derivatives, without having in place any mechanism effective enough to control these facilities, as the TRAFFIC report (Stoner & Pervushina) introduced in CoP16 (Bangkok, 2013) shows. This report also shows that the increase in the numbers of seizures of live tigers is probably due to their sale for the establishment of new captive-breeding centers, a finding that had already produced a formal declaration of the World Bank in 2010 calling Asian countries to close the private tiger farms considered cruel by conservationists and that supply the demand for furs and bones of these felines⁷⁰.

⁷⁰ <http://www.ecologiablog.com/post/3142/el-banco-mundial-urge-a-los-paises-asiaticos-a-cerrar-las-granjas-de-tigres>



Picture: International Tiger Coalition.

Another animal that is heavily exploited in captive conditions that make impossible its development of minimal natural behaviors, in very small crates (see the interview of officials of TRAFFIC⁷¹) is the Asian palm civet or musang (*Paradoxurus hermaphroditus* -Appendix III-), kept in cages (“farms”), almost exclusively fed coffee berries, which they then excrete. The enzymes in their stomach acid help produce a bean that is washed and roasted to create a coffee known as “civet coffee” or “Kopi Luwak”.

⁷¹ ["World's most expensive coffee tainted by 'horrific' civet abuse"](http://www.theguardian.com/environment/2012/nov/19/civet-coffee-abuse-campaigners)
<http://www.theguardian.com/environment/2012/nov/19/civet-coffee-abuse-campaigners>



Picture: Neil D'Cruze. Asian palm civet (*Paradoxurus hermaphroditus*) in a crate.

Many animal species are captured from the wild and bred in captivity to be killed for their furs that are internationally traded. The fur trade uses from full pieces or parts of fur, leather and hides to manufactured goods such as shoes, handbags, belts or purses (crocodile, python) and skins of other species listed in CITES Appendices used for clothing such as e.g. the Patagonian grey fox⁷² (*Lycalopex griseus*), among many others. The production and trading of fur to manufacture coats, or parts thereof, has a big animal welfare impact and since years ago it is understood as a synonymous to cruelty and unnecessary suffering of animals. Nevertheless, CITES continues to support its trade⁷³



Picture: Jo-Anne McArthur/We Animals. Gray foxes (*Lycalopex griseus*) in a fur farm

⁷² <http://www.cites.es/es-es/informaciondeutilidad/paginas/estadisticas.aspx>

⁷³ <http://www.wearefur.com/latest/news/fur-trade-endorses-speech-secretary-general-cites>

Live or dead specimens are traded in the international arena primarily for scientific research purposes too, an activity for which the requirements of captivity are regulated in depth by many countries, but that nevertheless cannot avoid pain, suffering, anxiety and long lasting damage to live animals (see Directive 2010/63/EU), the prevention, suppression or mitigation of which is subject to a broad and intense ethical and scientific debate based on the so-called 3 Rs principle (replacement, reduction, refinement).

Usually, the rules governing research animals are based on an additional general principle according to which there is a preferential hierarchy among the three principles: replacement is preferable to reduction and both to refinement, which nevertheless should always be applied. For example, as recital (11) of the said EU Directive states, *“non-animal methods must be used and are preferred over animal methods whenever it is possible to achieve the same scientific aim in a satisfactory and corroborated manner. When choosing methods, the principles of replacement, reduction and refinement should be implemented through a strict hierarchy of the requirement to use alternative methods. Where no alternative method is recognised by the legislation of the Union, the numbers of animals used may be reduced by resorting to other methods and by implementing testing strategies, such as the use of in vitro and other methods that would reduce and refine the use of animals.”* [Article 4 Principle of replacement, reduction and refinement, of the Directive says in paragraph 1 that “Member States shall ensure that, wherever possible, a scientifically satisfactory method or testing strategy, not entailing the use of live animals, shall be used instead of a procedure]. In any case, the actions undertaken at the global level to promote alternative non-animal biomedical research methods are not sufficient and the principle of replacement of animals still not really implemented. One of the studies that examines the contraventions of CITES international trade provisions when the trade is intended for biomedical research purposes reports a high level of use of animals of species listed in the CITES Appendices (Maldonado *et al.* 2011).



Picture: British Union for the Abolition of Vivisection. Cambodia. Trapped wild monkey.

Animals captured alive that are used also alive are mainly birds, reptiles or amphibians, and among them, e.g., companion pet animals (Baker *et al.* 2013), including parrots (Cantú Guzmán *et al.* 2007), turtles and tortoises (Nijman & Shepherd 2007), and iguanas (Chomel *et al.* 2007). Some of these species that are included in Appendix I since 2007 and that have acquired some popularity in the last years as pets or as a touristic attraction since tourists like to have pictures taken with them are lorises (*Nycticebus spp.*), an illegal trade that has an additional incentive through their appearance in viral videos in Youtube⁷⁴.

⁷⁴ <http://www.traffic.org/home/2013/1/25/slow-lorises-the-focus-of-wildlife-trafficking-meeting.html>



Picture: Michael Whitehead. Loris (*Nycticebus spp.*) in an Indonesian market



Picture: Dr. Karmele Llano Sánchez, The International Animal Rescue (IAR). Loris (*Nycticebus coucang*) in an Indonesian market. Its teeth are often pulled out by sellers before being sold, in public, in plain view of bystanders.

The European Convention for the Protection of Pet Animals of the Council of Europe, opened to signature in Strasbourg on 13 November 1987 (it entered into force in 1 May 1992), already considered in its preamble “that the keeping of specimens of wild fauna as pet animals should not be encouraged” (Convention of the Council of Europe 1987). Bush *et al.* (2014) have revised both the scientific literature and the “CITES Trade Database” from 2006 to 2012 and concluded that the international market of exotic “pets” (birds, reptiles, and mammals) is a significant and growing contributor to biodiversity loss that also compromises minimum animal welfare standards. An real life example, among many others, are the parrots held as pets: “many significant aspects of parrot behavior in the wild, such as flocking, social interaction with conspecifics, foraging on a variety of foods and flight, are denied to varying degrees to parrots kept as companion animals. Captive parrots show high levels of stereotypy, suggesting poor welfare” (Engebretson 2006).



Picture: Asociación protectora de animales exóticos Catalunya (APAEC). Veiled Chameleon– or Arabian Peninsula Chameleon- (*Chamaeleo calyptratus*) abandoned after being purchased as a pet



Blue and Gold Macaw (*Ara Ararauna*).



Grey parrot (*Psittacus Erithacus*).

Pictures: Asociación protectora de animales exóticos Catalunya (APAEC). Rescued birds previously held as pets.

Another example of a species whose illegal trade has heavy negative animal welfare impacts as well as negative impacts on its conservation is the Barbary macaque (*Macaca sylvanus*, CITES Appendix II) of North Africa, traded as a pet, and the most confiscated animal in the EU, around 200 juveniles annually, according to Van Uhm (2013).



Picture: Primadomus Fundación APP. Rescued female Barbary macaque (*Macaca sylvanus*).

One of the professional associations which has expressed in public its disagreement with holding of wild animals as pets, due to animal welfare, species health conservation and human health considerations, is the Canadian Veterinary Medical Association (CVMA) [see “Position Statement: Keeping Native or Exotic wild animal as pets” (July 29, 2011)].

Eurogroup for Animals (2011) also calls the attention to the fact that the physiological and behavioral needs of wild animals held as pets cannot be duly met in terms of animal welfare, and it adds more problems such as abandonment or release into the wild (the novelty of owning an exotic animal may wear off as the animal grows in size, develops behavioral or health problems or becomes costly to maintain), where the animals which manage to survive can become a threat to indigenous wildlife and the environment.

In a more recent study, Eurogroup for Animals (2013) examined the countries the legislation of which has restricted in their territories, at the national or regional level, the trade or holding as pets of animals of certain exotic species, the outcome of which shows that there is a considerable number of countries with such policy in place (26 out of 31).

Portas (2013), compiles a list of authors who have identified relevant gaps in animal welfare science applicable to wild animals in captivity in zoos and aquariums. The focus is placed on abnormal or stereotypic behavior compared to the natural behavior exhibited by some species as an indicator of poor welfare as well as the high neonatal mortality rates of carnivores, among other indicators.

More recently, news about CITES backed exports to zoos of dozens of baby African elephants has generated a big citizen, NGO and expert protests due to the manifest lack of animal welfare considerations.⁷⁵

⁷⁵ <http://news.nationalgeographic.com/news/2015/01/150123-cites-scanlon-zimbabwe-elephants-china-uae-france-iucn/>



Picture: China Zoo Watch. A young elephant (*loxodonta africana*) exported in 2012 from Zimbabwe to a Chinese zoo, stands alone in a concrete confinement

Another current high stakes debate is the one in which there are opposing views of defenders of sound animal welfare science, who stand against the holding and exhibit of marine mammals in small compounds in aquaria (see e.g. the cases of the killer whales Morgan⁷⁶ and Lolita⁷⁷), a debate, that the “Blackfish” documentary (2013) has re-opened, on the great inconvenience of killer whales’ shows in aquaria. The public awareness about captive animals in some European countries has created a growing pressure of public opinion in favor of the closure of these types of facilities (Maiza 2007).

The activities that use cetaceans for shows and exhibits do not only negatively impact the welfare of these animals but also in the conservation of some species. The IUCN 2002-2010 Conservation for the World’s Cetaceans (IUCN cetaceans Action Plan) observed that the extraction of live cetaceans from nature for their exhibition (and research), is equivalent to their incidental or intentional death since animals held captive (or which die during capture) will not be able to contribute to the stabilization of wild populations. This vision is also shared by a Resolution adopted in CoP 11 of the Bonn Convention (Quito, 2014), that also considers the impact on the welfare of these animals when traded from public exhibitions purposes.

⁷⁶ <http://www.freemorgan.org/morgan-in-court/evidence-for-morgans-case/>

⁷⁷ <http://savelolita.org/action>

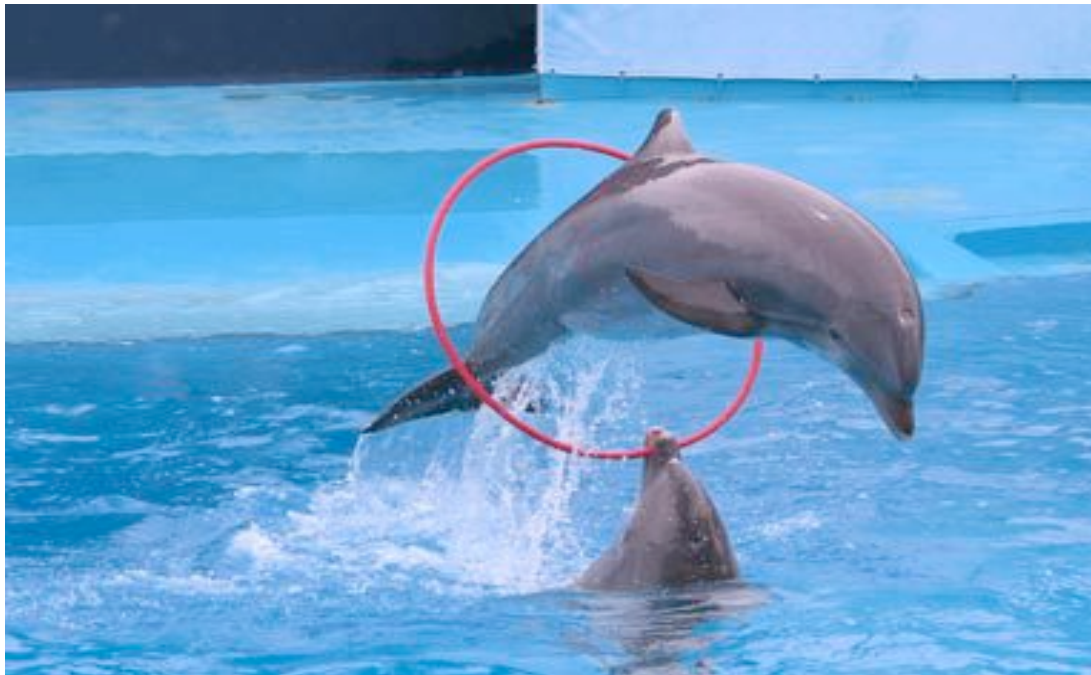


Picture: Oceanic Preservation Society. The tank where the killer whale (*Orcinus orca*) Lolita lives since 44 years ago.

The export of live Indo-Pacific bottlenose dolphins *Tursiops aduncus* from the Solomon Islands (the main export country of animals of this species) toward dolphin aquariums and similar facilities has also been controversial within the CITES community⁷⁸ because due to the amounts that some considered alarming, they are held in captivity all over the world, some countries allowing clients to swim among them⁷⁹. In this context, the Animals Committee (AC26 Doc. 12.2 Annex) has also concluded that live capture and international trade for the purpose of aquarium displays was considered a major threat (Hammond *et al.*, 2008), and that several authors, including members of the IUCN Cetacean Specialist Group, had expressed concerns and reported about live captures and exports of specimens of *T. aduncus* from the Solomon Islands without sufficient scientific basis for a non-detriment finding (Ross *et al.*, 2003; Reeves *et al. in litt.* to CITES Management Authorities of the Solomon Islands, 2007; Parsons *et al.*, 2010). Consequently, the Animals Committee (AC27 Doc.12.3), recommended that an annual export quota for this species of no more than 10 living specimens be established. But what has really triggered a major opposition at the global level, and become famous due to the documentary “The cove” (2009), has been the capture of dolphins in Taiji (Japan), part of which –the best samples- are sold to zoos and aquariums all over the world before the rest are killed and destined to human consumption.

⁷⁸ http://www.cites.org/esp/news/pr/2004/040305_dolphin.shtml

⁷⁹ <http://latin.wdcs.org/news.php?select=73>



Picture: swimmingfree. Dolphins (*Delphinidae*) acting daily in marine park shows showing antinatural behaviors.

According to the “CITES Trade Database”, more than 25,500 animals were exported globally to circuses and exhibits between 1975 and 2005 (Lossa *et al.* 2009; Eurogroup for Animals 2010). The species to which they belong include lions, tigers, leopards, bears, primates, parrots, elephants and crocodiles. It is also estimated that circuses maintain 31% of all the African and Asian captive elephants.

Recently, the Parliament of Catalonia has debated a bill to prohibit circuses with animals and during the public hearings experts showed that there are studies in the scientific literature which support enough evidence about the inadequacy of the living conditions of these animals in circuses, in particular as it relates to transport, management techniques and caring, limited space, social groupings, and the effects of public display on their behavior (affidavit of Carmen Maté García, Reseracher of the School of Biology of the University of Barcelona, during the hearings at the Parliament of Catalonia, 22 October 2014, on the bill concerning the potential amendment to Decree-law 2/2008, on the prohibition of circuses that display animals⁸⁰. The studies cited and introduced by her in the hearing wee the following: Friend 1999; Friend & Parker 1999; Gruber *et al.* 2000; Korte 2001, 2007; Cataldi 2002; Krawczel *et al.* 2005; Radford 2007; Morgan 2007; Lossa *et al.* 2009; Nijland 2013).

The shows and the rest of the conditions in which the life of animals in circuses evolves are a very important potential source of stress (affidavit by Jaume Fatjó, Veterinarian PhD, in the same set of hearings).⁸¹

⁸⁰ <http://www.parlament.cat/activitat/dspcc/10c510.pdf>

⁸¹ <http://www.parlament.cat/activitat/dspcc/10c510.pdf>

There are aspects that surround the use of animals in circuses that could be considered contraventions of any of the animal welfare Five Freedoms and in particular the training, transport, housing, breeding, the display and the interaction with the public (affidavit of Jordi Casamitjana, ethologist).⁸²



Picture: Ramón García. Hippopotamus (*Hippopotamus amphibius*) in a circus.

⁸² <http://www.parlament.cat/activitat/dspcc/10c510.pdf>



Picture: Ramón García. White tiger (*Panthera tigris*) in a circus, always in its crate for public display

The chronic effects that potentially have an impact on the welfare of the animals, causing anxiety, fear, pain, or distress are more often registered when the live animals are used, e.g., tigers used as touristic attractions (Baker *et al.* 2013; CWI 2008a; CWI 2008b). Together with “canned hunting” of hunting trophies, the facilities housing tigers as touristic attractions have been described by the Global Welfare Guidance for Animals in Tourism, from ABTA The Travel Association, as one of the “unacceptable practices”, understood as those that have detrimental consequences on the welfare of animals (Guidelines ABTA 2013). On the other side, CITES, recommends and emphasizes the significance for ecotourism of Asian big cats [Resolution Conf. 12.5 (Rev. CoP16)], although from an educational and public awareness perspective.

4.7.2.4 Reintroduction into the wild

The majority of the seized or confiscated specimens cannot be reintroduced into their natural habitats due to its cost, because the welfare cannot be ensured in the long-term, and because of the risk of disease transmission or unintended contamination of wild populations. Moreover, for a reintroduction program to be effective, a relatively large amount of animals is needed for them to form a new core group of the new population and, therefore, the small groups of animals that are normally seized or confiscated can be inappropriate. The reintroduction of the animals into the wild is not either an optimal solution from the point of view of their welfare. In general reintroductions drastically reduce the probabilities of survival of the confiscated animals and can cause their death due to hunger, diseases or predators; and although reintroduction seems humane, it is possible that ultimately planned releases of confiscated animals may doom these animals to a slow, painful death [see Resolution Conf. 10.7 (Rev. CoP15); Declaration of the Customs Co-operation Council on the Illegal Wildlife Trade, 2014].



Picture: CWI. The tigers are confined 21 hours per day and leave the crate only when they are displayed on lease and chains for picture taking sessions with tourists in the “Tiger Temple”, Thailand.⁸³

⁸³ Just at the closing of this work and after a 15 years campaign and complaints on abuses and unlawful trade of the tigers, the Government of Thailand has announced the confiscation of the tigers of this Temple in the very near future

4.8 Compliance and enforcement of CITES animal welfare provisions. Implementation of the obligations stemming from the Convention

The 2002 UNEP Guidelines on Compliance and Enforcement of Multilateral Environmental Agreements define “compliance” as “the fulfillment by contracting parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement” [Guideline 9.(a)]. A “compliance scheme” comprises the legal basis, institutions, procedures and measures used to promote and facilitate compliance (or prevent non-compliance) as well as to determine non-compliance and bring a party back into compliance.” It follows that “non-compliance” essentially is the failure to fulfill those obligations (CoP12 Doc. 26).

CITES bodies that intervene in compliance related processes are the CoP, the three committees (Animals, Plants, and Standing Committees) and the Secretariat.

In general, in most of the environmental treaties, and in particular in their protocols compliance control schemes have been set up through the establishment of ad hoc “compliance committees” that assess and follow their implementation. CITES, being one of the first international environmental agreements, does not include in its founding text the establishment of any Compliance Committee. Although the Standing Committee has *de facto* assumed such function, even to the extreme of being furnished with characteristics and elements that go beyond what compliance committees usually have, such as the establishment of verifying visiting missions to evaluate the Parties’ implementation of the Convention.

Conference of the Parties: article XI.3 of the Convention states that the Parties shall review the implementation of the Convention and may, where appropriate, make recommendations for improving the effectiveness of the present Convention. Article XIII.3 also states that the CoP “may make whatever recommendations it deems appropriate”, as a result of the processes initiated when there are allegations that the provisions of the Convention are not being effectively implemented. The reports of the Secretariat to the CoP and the subsidiary bodies of the Convention, e.g., the annual reports, the reviews on significant trade, on national legislation, on alleged infractions and other implementation issues, provide the documentation for the evaluation of the level of compliance with the Convention by the CoP.

Standing Committee: Resolution Conf. 11.1 [(Rev. CoP16) (Establishment of Committees)], empowers the Standing Committee to carry out, between one meeting of the Conference of the Parties and the next, such interim activities on behalf of the Conference as may be necessary and to provide guidance and advice to the Secretariat on any matters brought to it by the Secretariat in the exercise of its function. The CoP frequently directs the Standing Committee or delegates on it its authority. Compliance issues with which it deals include: monitoring and assessing overall compliance with obligations under the Convention; advising and assisting Parties in complying with obligations under the Convention; requesting special reporting from the Party concerned request; or taking compliance measures, such as issuing of a warning to the Party concerned that it is in non-compliance, sending a public notification of a compliance matter through the Secretariat to all Parties, advising that compliance matters have been brought to the attention of a Party, requesting a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion, among others; and, finally, the supervision of the implementation of the adopted measures and verification missions, upon the invitation of the Party concerned [(Resolution Conf. 14.3 (CITES compliance procedures)].

Secretariat: according to article XII.2.d) of the Convention, the functions of the Secretariat shall be, among others, “to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the (...) Convention.” In subparagraph) and h) it also adds “to invite the attention of the Parties to any matter pertaining to the aims of the (...) Convention” and “to make recommendations for the implementation of the aims and provisions of the (...) Convention, including the exchange of information of a scientific or technical nature”. It also monitors the implementation of compliance-related decisions (Resolution Conf. 14.3).

4.8.2 Implementation of the measures to ensure compliance with CITES obligations under the Convention

“Implementation” refers to, *inter alia*, all relevant laws, regulations, policies, and other measures and initiatives, that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement and its amendments, if any” (Guideline 9(b) of the 2002 UNEP Guidelines on Compliance and Enforcement of Multilateral Environmental Agreements, reproduced in).

CITES implementation is mainly a responsibility of the Parties and requires the adoption on national measures. Nevertheless, in cases where a Party’s compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance or a State not a Party is not issuing the documentation referred to in article X of the Convention, the Standing Committee may recommend the suspension of all trade in specimens. This was historically a special and exclusive CITES procedure, since no other international instrument had a similar provision. Some other multilateral environmental treaties introduced later similar provisions (see, in general, Alonso 2011, Chapters 2, 11 and 12).

4.8.3 CITES Resolutions on compliance and enforcement

CITES insists quite a bit on compliance and enforcement of the Convention (CoP12 Doc. 26).

The following Resolutions of the CoP are the most relevant in this context:

- Resolution Conf. 14.3 (CITES compliance procedures)
- Resolution Conf. 11.3 [(Rev.CoP16) (Compliance and enforcement)]

4.8.3.1 Resolution Conf. 14.3 (Procedimientos para el cumplimiento de la CITES): Guide to CITES compliance procedures

Resolution Conf 14.3 contains the so-called “Guide to CITES compliance procedures”, whose objective is to assist Parties in meeting their obligations regarding such compliance. Guide addresses compliance matters relating to the obligations under the Convention classified around 4 topics:

4.8.3.1.a) Designation of the management and Scientific Authorities

The first obligations that parties have to comply with is to designate one or more Management Authorities and one or more Scientific Authorities (article IX) and to permit trade in CITES-listed specimens only to the extent consistent with the procedures laid down in the Convention (Articles III, IV, V, VI, VII and XV).

In those provisions cited by the Guide are revisited, they contain the following requirements related to animal welfare:

a) The designated authorities will issue on behalf of the Party they represent the export or imports permits and the re-export or introduction from the sea certificates listed in articles III, VI and V, depending in which of the Appendices I, II or III the species that is being traded is listed, as soon as the following requirements are verified:

- The Management Authority is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.
- The Management Authority is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.
- The Scientific Authority is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for.

This general rules are subject to modifications through a set of exemptions:

- Permits are not required for living specimens during transit or transshipment while they remain in Customs control (article VII.1). In these case, though, Parties shall ensure that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment (article VIII.3).
- As to live animals privately owned that are personal or household effects, the Management Authority may allow the transboundary movement exempting it from permits though a “may issue a certificate of ownership” that shall contain the statement that it is only valid if the transport conditions comply with the IATA Live Animals Regulations or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants; and inspect such a live animal to ensure that it is transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment [(article VII.3, Resolution Conf. 10.20 and Resolution Conf. 12.3 (Rev.CoP16)].
- For captive-bred animals, the Management Authority a “certificate of captive breeding” be accepted in lieu of any of the required permits or certificates required, as soon as it contains the statement that it is only valid if the transport conditions comply with the IATA Live Animals Regulations or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants [article VII.5 y Resolution Conf. 12.3 (Rev. CoP16)].
- For animals which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition, the Management Authority may allow their transboundary movement waiving the required permits or certificates if they are replaced by “travelling-exhibition certificate”, shall contain the statement that it is only valid if the transport conditions comply with the IATA Live Animals Regulations or, in the case of non-air transport, with the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants; and inspect such a live animal to ensure that it is transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment and the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment [article VII.7 y Resolution Conf. 12.3 (Rev. CoP16)].

b) The Management Authority may affix a mark upon any specimen to assist in identifying the specimen which in the case of live animals must be done taking into account the welfare of the animal [article VI.7, Resolution Conf. 7.12 (Rev. CoP15) and Resolution Conf. 8.13 (Rev.)].

d) The Management Authority of a Party that confiscates a live animal may send it to a rescue centre to look after the welfare of living specimens, or such other place as the Management Authority, which may obtain the advice of a Scientific Authority therefore, deems appropriate and consistent with the purposes of the present Convention (articles VIII.4 and VIII.5).

e) The Management Authority of the exporting Party on the advice of the Scientific Authority, shall ensure that captive-breeding operations of animals of species included in Appendices I, II, or III, takes place in a controlled environment, e.i. an environment that the general characteristics of which may include but are not limited to: artificial housing; waste removal; health care; protection from predators; and artificially supplied food [Resolution Conf.12.10 (Rev.CoP15) and Resolution Conf. 10.16 (Rev.)].

f) The Management Authority, in consultation with the Scientific Authority of that Party, shall approve captive-breeding operations (facilities) for commercial purposes of animals of species of Appendix I, ensuring that the said operations/facilities shall be carried out at all stages in a humane (non-cruel) manner, and provides full information, including information on mortality rates, to the CITES Secretariat [article VII.4 and Resolution Conf.12.10 (Rev. CoP15)].

g) Although the text itself of the Convention does not mention anything concerning ranching operations, their activities shall be carried out at all stages in a humane (non-cruel) manner and report to the Secretariat the mortality rate in captivity and the causes of such mortality [Resolution Conf. 11.16 (Rev. CoP15)].

There is nothing in the Guide about the explicit obligation of the Parties, that has potential direct impact on animal welfare, contained in article VIII.3 of the Convention, which mandates that “the Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment”. Nevertheless, the Secretariat has considered that this point is an essential one that should be required to be implemented in national legislation (Document AC24 Doc. 15.2).

4.8.3.1.b) Annual and biennial reporting

The Parties are also obliged to maintain records and prepare periodic reports (paragraphs 6, 7 and 8 of article VIII).

Reporting is one of the essential elements for the adequate functioning of the monitoring and control of lawful and unlawful international trade of living specimens of species included in the Appendices of the CITES Convention. Under article VII.7 each Party shall prepare annual and biennial reports on its implementation and shall transmit them to the Secretariat. Annual reports should contain a summary of the information on the number and type of trade incurred, and biennial reports should focus on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention.

- Annual reports

In Resolution Conf. 11.17 (Rev. CoP16), on National reports, urges all Parties to submit their annual reports in accordance with the most recent version of the Guidelines for the preparation and submission of CITES annual reports. These Guidelines are currently the content of Notification to the Parties No. 2011/019, of 17 February 2011, where the information is requested from the Parties in a standard format for data on specimens imported, exported, re-exported or introduced from the sea, on the number and types of permits or certificates issued, on the quantity and type of specimens that entered or left the country, the scientific name of the species, and the origin and purpose of the trade. The available information can be seen in http://www.cites.org/sites/default/files/common/resources/annual_reports.pdf and for more detail in the "CITES Trade Database".

The Guide to using the CITES Trade Database (2013) lists the most common departures from them:

- Many annual reports do not clearly state whether the data were derived from the actual number of specimens traded or from the quantity for which the permits or certificates were issued (often considerably different);
- Information on seized or confiscated specimens is often absent or provided in insufficient detail;
- Information on the source of the material, e.g. wild-caught or bred in captivity, and the purpose of the trade, e.g. for commercial or non-commercial purposes, is sometimes lacking or used in a different way by importing and exporting countries; and
- Non-standard units are often used to describe the volume of articles or commodities in trade, e.g. 'boxes'.

It can be easily seen that part of the information concerning animal welfare is usually not clearly, or insufficiently, reported. Besides these departures, the consequences of not submitting the annual reports might even entail trade suspensions. The list of the Countries currently subject to a recommendation to suspend trade is available in the CITES website: <http://www.cites.org/eng/resources/ref/suspend.php>

- Biennial reports

The current format of the biennial reports that are to be sent to the Secretariat is contained in Notification to the Parties No. 2005/035, of 6 July 2005. It is divided in 5 parts, 3 of them directly related to animal welfare issues:

- Legislative and regulatory measures: the information to be reported to the Secretariat includes CITES-relevant legislation, the results of any review or assessment of the effectiveness of CITES legislation with regard to, among other things, transporting of live specimens, handling and housing of live specimens, as well as details of any additional measures addressed by any stricter domestic measures adopted for CITES-listed species (in accordance with Article XIV of the Convention), including trade restrictions or prohibitions, taking, possession, transport or others.
- Compliance and enforcement measures: the information to be reported to the Secretariat includes compliance monitoring operations been undertaken (inspections of traders, producers

and markets, and border controls), any administrative measures, criminal prosecutions and any other court actions (e.g. fines, imprisonments, bans, suspensions) and any significant seizures, confiscations and forfeitures of CITES specimens; as well as details of any additional measures taken.

- General Information Exchange: the information to be reported to the Secretariat includes about whether enforcement authorities have reported to the Management Authority mortality in transport as well as seizures and confiscations.

Although the format for the biennial reports is quite extensive and includes multiple issues of very diverse nature it should be noticed that it does not require absolutely any type of information concerning the verification of the conditions under which activities that have impact on animal welfare are undertaken, such as:

- 1) Whether captive-breeding and ranching is conducted in a humane (non-cruel) manner and in a controlled environment.
- 2) Whether during any period of transit, holding or shipment, live animals are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.
- 3) Whether all live animals of species listed in Appendix I is suitably housed and cared for.
- 4) Whether animals of Appendix I species deemed to be animals of species of Appendix II when sent to proper and acceptable recipients are assured a humane (non-cruel) treatment.
- 5) If the marking of live animals respects animal welfare requirements.

The Secretariat includes in the CITES website a box with updated information on the presentation of the biennial reports done by Parties

(<http://www.cites.org/esp/resources/reports/biennial.php>).

Another annual report that the Parties send to the Secretariat and that is not mentioned in the Guide, according to a recommendation included in Resolution 11.16 (Rev.CoP15), concerns registered ranching operations. It includes information on mortality rates in captivity and the causes of such mortality. The CITES website shows in a table the affected species (e.g. crocodiles), the Parties concerned (14) and the received reports (only from 8 countries) <http://www.cites.org/esp/resources/reports.php>

Ranching, according to this Resolution, has generated import suspension measures adopted by the Standing Committee. For example, since June 2010 and until 30 December 2014, Notification to the Parties No. 2010/015, 17 June 2010, was in force and it recommended the Parties not to accept Nile crocodile (*Crocodilus niloticus*) imports from Madagascar until new notice, after the report from Madagascar was sent to and evaluated by the Secretariat on the ranching operations in Madagascar. The said suspension was withdrawn by Notification to the Parties No. 2014/064, of 30 December 2014.

4.8.3.1.c) Domestic measures

The next obligation of the Parties is to adopt national measures to take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof (paragraph 1 of article VIII).

This provision, thus, includes the measures to penalize trade in, or possession of, such specimens, or both and to provide for the confiscation or return to the State of export of such specimens.

These measures are, in their immense majority, national legislative measures that are intended to facilitate the application of the provisions of the Convention and Resolutions adopted by the CoP, without prejudice to stricter domestic measures that could also be adopted under article XIV.1 (although the Guide contains no reference to this article) that reaches potential measures regarding the conditions for trade, taking, possession or transport of specimens (including the total prohibition of trade). Resolution Conf. 8.4 (Rev. CoP15) notes that approximately half of the Parties have not yet taken the appropriate measures to enforce the provisions of the Convention. According to Decisions 16.33 and 16.37, the Parties shall be submitted to suspension of trade if they have failed to adopt appropriate measures or agree an appropriate legislative timetable with the Secretariat by the 66th meeting of the Standing Committee (August 2015) will be subject to recommendations to suspend trade. Trade suspensions due to the lack of progress concerning the adoption of legislative measures can be consulted in <http://www.cites.org/eng/resources/ref/suspend.php>. According also to Decision 16.38, the Secretariat shall compile and analyze the information submitted by Parties on measures adopted before the 17th meeting of the Conference of the Parties (CoP17) to fulfill the requirements laid down in the text of the Convention and Resolution Conf. 8.4 (Rev. CoP15). In the 65th meeting of the Standing Committee the Secretariat introduced document SC65 Doc. 22, which contained a table with the updated information on national legislation compiled and analyzed until that date. But it does not include what legislation had been precisely compiled and analyzed so it is impossible to evaluate the extent to which the issues concerning animal welfare listed above in point 1 were included. The only way to evaluate it would consist in reviewing all the national biennial reports officially submitted and check which of them include legislative, regulatory and administrative measures adopted in accordance with what was said in previous point 2.

4.8.3.1.d) Responses to the requests of communications sent by the Secretariat

The Parties have to answer as soon as possible to the communications of the Secretariat that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented (article XIII).

The Parties can communicate with the Secretariat to inform him/her about the effective implementation of the Convention without any restriction, and could include all issues related to animal welfare. The Management Authority of the Country involved in this process responds to the request of the Secretariat who keeps the Parties informed as fully as possible, through Notifications to the Parties, of such compliance matters and of actions taken to solve them, and include such matters in its reports for meetings of the Standing Committee and the Conference of the Parties [Resolution Conf.11.3 (Rev.CoP16)].

Applying this article XIII, the Secretariat used to introduce a “Report on Alleged Infractions” in the CoP meetings until the 11th one (Gigiri, 2000). In these reports it is usual to locate information by the Parties on compliance issues concerning animal welfare (see, above, the point of this work on “Measures against ineffective implementation of the provisions of the CITES Convention”). Following CoP12 (Santiago, 2002), the Secretariat has been reporting to the Parties about illegal trade and on the implementation of article XIII in each CoP but in an abstract and more generic manner, focusing on patterns of non-compliance and not on real and specific contraventions.

In this moment there is no single Notification in force due to the application of article XIII and its real implementation is unknown. The report introduced by the Secretariat on the Application of article XIII during the last meeting of the Standing Committee (Geneva 2014) SC65 Sum. 3 (Rev. 1) was an oral report. The Standing Committee noted the oral report provided by the Secretariat and agreed that the Secretariat, as appropriate and respecting the generally confidential nature of communications between the Secretariat and individual Parties on specific compliance matters, would keep the Standing Committee apprised of further developments intersessionally.

4.8.3.2 Resolution Conf. 11.3 [(Rev.CoP16) (Compliance and enforcement)]

Resolution Conf 11.3 (Rev.CoP16) contains numerous recommendations to improve monitoring, cooperation, exchange of information, coordination, compliance and enforcement,... to achieve CITES’ compliance by the Parties. These recommendations are fully applicable to the implementation of the animal welfare related provisions.

This Resolution recognized the important role of the work of the International Consortium on Combating Wildlife Crime (ICCWC) in bringing coordinated support to the national wildlife law enforcement. When the ICCWC was contacted by the author of this work in order to get its opinion about the implementation of animal welfare within CITES, these considerations follow up: the main task of ICCWC is to combat illegal wildlife crime and, as such, it is not directly involved in animal welfare issues, an issue that it leaves entirely to national authorities. Nevertheless, CITES combines international cooperation with compliance and enforcement measures at the national level and therefore ICCWC dedicates a lot of efforts to engage in activities for the Parties that promote the building of their capacity -compliance and enforcement capacity. It is through these actions that ICCWC encourages the Parties to focus also on animal welfare issues.

4.8.4 Compliance and enforcement in the European Union system

Within the UE, Council Regulation (EC) n° 338/1997 of 9 December 1996 (EU Basic Regulation), has additional rules for the implementation of article 14 (Monitoring of compliance and investigation of infringements), 15 (Communication of information) and 16 (Sanctions). Besides these additional rules, it created an enforcement group shall be established consisting of the representatives of each Member State's authorities with responsibility for ensuring the implementation of the provisions of the Regulation, chaired by the Representative of the European Commission.

Besides these legally binding rules, Commission Recommendation 2007/425/CE (EU Recommendation), establishes a set of measures that the member States have to implement in order to improve their EU CITES-related compliance efforts that are quite similar to those preciously described included in Resolution Conf 11.3 (Rev.CoP16). These measures include the adoption of action plans, and the imposition of sanctions that are appropriate to the nature and gravity of listed infringements, increase of the awareness raising activities for enforcement agencies, prosecution services and the judiciary, and establishing procedures for coordinating

enforcement and the exchange of information among all their relevant national authorities of the member States as well as with third States and international organizations (such as, e.g., the ICCWC). The Recommendation explicitly mentions ensuring that facilities are available for the temporary care of seized or confiscated live specimens and mechanisms are in place for their long-term rehoming, where necessary, measures that there is no doubt do have positive impact on animal welfare.

5. DISCUSSION AND CONCLUSIONS

This work has made possible to provide to determine what is the international legal framework for the protection of animals; which areas within CITES contain elements concerning animal welfare; how relevant is animal protection for CITES; the knowledge about practices that, from the perspective of animal welfare, are either in disagreement with CITES rules or policies or simply unacceptable; the level of efficient implementation and compliance of animal welfare CITES requirements; and the assessment of the viability of the potential introduction of new animal welfare requirements or of the strengthening of the already existing ones

From the above listed outcomes, the following conclusions can be reached:

First.- International framework for the protection of animals

The protection of animals is already social value and therefore it is already acknowledged by the national or regional legislation of a significant number of countries worldwide. The development of rules which during the last decade have included the gradual adoption of measures to mitigate or prevent the unnecessary suffering of animals is especially remarkable. Currently, the efforts are pointing towards increasing the level of protection and the institutionalization of a legal status for animals. This new development widely spread in national legal systems has not run in parallel with what has been going on at the international level where there has been no progress toward its consolidation. Thus, at the international level, beside species conservation, where the protection is focused on preventing their extinction, the protection of animals as physical individual and sentient beings, whose protection will keep them from suffering, must be also considered has not been addressed.

Nevertheless, notwithstanding the fact that animal welfare has not reached the same amount and level of attention as biodiversity conservation, animal welfare is not a an issue totally alien to the international community.

Certain issue areas of two of the main international conventions on wildlife conservation do incidentally take into account the protection of animals as individuals. They are the Convention on the Conservation of European Wildlife and Natural Habitats (1979) that focuses on animal welfare via the regulation of non-selective hunting methods and types of hunting equipment, and the Convention on the Conservation of Migratory Species of Wild Animals (1979), that does it via the inclusion of considerations on the welfare of animals as individuals when addressing the live captures of cetaceans in one of its Resolutions.

Another international convention, the Antarctic Treaty (1959) through its additional agreements, the Convention for the Conservation of Antarctic Seals (1972) and the Protocol on Environmental Protection to the Antarctic Treaty (1991) had already pointed toward the same direction of trying to minimize to the maximum extent possible the suffering of animals to be captured in Antarctica, and this debate contributed to the consolidation of animal welfare as an issue within the International Whaling Commission who has agreed to include the topic in its agenda in order to prevent the suffering of whales in particular when addressing the whaling methods of capture and the secondary killing methods.

Another initiative adopted based on the idea of minimizing suffering of individual animals are the Agreements on international humane trapping standards (1997 and 1998) signed between the European Union and Canada and the Russian Federation and between the European Union and the United States of America, taking into account the ongoing work of the International Organization for Standardization (ISO) for trapping and/or killing animals belonging to 19 wild species, for the purposes of trading with their fur.

All the above, independently of the important statement and declarations, although generic, of the World Charter for Nature (1982) and the Convention on Biological Diversity (1992), and within the later, the 11th Practical Principle of the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (2004) that promote the ethical and humane use of components of biodiversity, and call for the respect for all life forms and for the acknowledgement of the intrinsic value of living beings and biological diversity.

As part of its role of intergovernmental international organization, the International World Organisation for Animal Health (OIE) has assumed leadership within the process of drafting and adopting international rules which are taken as reference for the decision making processes that may have an impact on animal welfare, the Five Freedoms being the more widespread guidelines (free from hunger and thirst, from discomfort, from pain, injury or disease, from fear and distress, and free to express normal behavior).

Both the definition of animal welfare, understood as the way how an animal confronts the conditions of its surrounding environment, as well as the patterns or freedoms that should govern its well-being, as universally accepted and, consequently, applicable to the animals of the species included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The freedom to express normal behavior is, perhaps, more difficult to implement comply with materialize with animals destined to submitted to international trade, that are extracted from their natural environment or bred and raised in captivity, without prejudice to the difficulty of compliance with the rest of the Freedoms in the different stages of the commercial flow in which the animals are not free from hunger, thirst, discomfort, pain, injury or disease.

Notwithstanding the fact that CITES can be considered an international instrument on the conservation of species with commercial interest, it is the first international treaty that explicitly and intentionally incorporates animal welfare within its founding text.

The specific scope of CITES is focused on the conservation and sustainable use of biodiversity, so that no wild animal species is submitted to non-sustainable exploitation because of international trade. To achieve this goal, CITES has many provisions on animal welfare when animals are under human control in the operations international trade and even after the trade itself has ended.

The implementation of CITES provisions that address the welfare of animals as individuals contributes to the survival of the species to which those animals belong and, from this general point of view, gaps in or absence of effective implementation is detrimental to the conservation of the species.

Moreover, due to the linkages between species conservation, animal welfare and human well-being, the best way to guarantee the viability of these three elements in the long term is to ensure a correct implementation of CITES as a whole, so that trade will not be detrimental for the species, to ensure the caring of the animal preventing its suffering and to prevent the loss of the means of subsistence of human beings.

The previous statement is not only a creed or a philosophical postulate but a proposal that already has its own ideology or discipline that has been framed by the so-called “compassionate conservation” that studies how it could be ensured that ethics and welfare of animals are taken into account in the praxis of conservation biology so that the welfare of the animals reaches their real life as individuals as well as of the species, populations, ecosystems, and humans as a whole.

Second.- Areas of CITES with animal welfare considerations

CITES addresses issues of animal welfare of animals of the species included in the Appendices at the global level in the following areas:

1. Preparation and shipment of live animals
2. Housing and caring of live animals in the import country and at destination in the location of the recipient
3. Transit, holding and Customs control
4. Disposal of confiscated animals
5. Identification and marking
6. Captive breeding
7. Ranched animals
8. Trade with State that are not Parties

Items 1,2 (only housing and caring), 3 and 4 are explicitly in the text itself of the CITES Convention that have been further developed by resolutions of the Conference of the Parties (CoP); items 2 (only location at destiny), 5, 6, 7 and 8 have been introduced by recommendations and agreements included within CoP Resolutions.

1. Preparation and shipment of live animals

Transport of live animals includes operations prior to and after the shipment itself, referred to by CITES as “preparation”. The Secretariat is required by the Convention to undertake studies “concerning standards for appropriate preparation and shipment of living specimens”⁸⁴.

The CITES Convention require that living specimens be prepared and shipped (Article IV.6(b) substitutes “handled”) so as to minimize the risk of injury, damage to health or cruel treatment⁸⁵.

This obligation is a necessary condition for the issuance of an export permit by the Management Authority of any Party, applicable to living specimens of species on all three Appendices and developed in several Resolutions.⁸⁶

⁸⁴ CITES Article XII.2c)

⁸⁵ Articles III.2(c); 111.4(b); IV.2(c); IV.5(b) and V.2(b)

⁸⁶ Resolution Conf. 12.3 (Rev. CoP16); Resolution Conf. 10.20

Although the Conference of the Parties has adopted explicit guidelines that include multiple references to humane treatment of animals⁸⁷, there has never been a debate on the interpretation of the phrase “cruel treatment” as it appears in the text of the Convention. Although mortality rates in shipment are relevant to any discussion of cruel treatment, recommendations originally included in Resolution Conf. 10.21 urging Parties to report the “number... of mortalities in transport of species listed in the appendices” have since been deleted⁸⁸.

All CITES permits and certificates relating to live animals should contain “a statement that the permit, if it covers live specimens, is only valid if the transport conditions comply with the *IATA Live Animals Regulations* (for animals)” or, in the case of non-air transport, with the *CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants*”⁸⁹. Parties are required to “refuse to accept any permit or certificate that is invalid, including authentic documents that do not contain all the required information as specified in the present Resolution...”⁹⁰ The IATA Guidelines are specifically referenced in a resolution on tortoises and freshwater turtles⁹¹.

The obligation to minimize the risk of injury, damage to health or cruel treatment during preparation, handling and transport is the more repeated clause included in CITES text and therefore the problems caused by the transport of live animals has polarized most of the debates concerning animal welfare that have taken place within the different bodies of CITES.

Parties have been reluctant to extend the mandate of CITES to the welfare of the animals during capture for international trade, including jurisdiction concerning hunting methods and equipment. At least twice proposals intended to prohibit trade in animals captured from the wild using cruel trapping techniques on the grounds that they violated the “prepared and shipped” requirements were withdrawn based on a restrictive interpretation of the scope of the Convention with respect to shipment. However, CITES could potentially address this issue on other grounds, including the making of non-detriment findings. One of the conditions for issuance of an export permit for a living specimen is the verification that the specimen “was not obtained in contravention of the laws of that State for the protection of fauna and flora”; this language could be interpreted to include existing domestic legislation on animal welfare.

At CoP12 Kenya presented a draft resolution, motivated by welfare considerations, that would have exempted great apes rescued from war zones from permit requirements⁹². However, the Secretariat, backed by the majority of the Parties, argued that it would be necessary to amend the Convention to do so.

⁸⁷ Resolution Conf. 10.7 (Rev. CoP15)

⁸⁸ Resolution Conf. 10.21 (Rev. CoP16); Wijnstekers, *The Evolution of CITES* (9th ed).

⁸⁹ Resolution Conf.12.3 (Rev. CoP16), Annex 1 par. (n)

⁹⁰ Resolution Conf. 12.3 (Rev. CoP16) op. cit

⁹¹ Resolution Conf.11.9 (Rev. CoP13)

⁹² CoP12 Doc.63

2. Housing and care of live animals in the country of import, including conditions at the recipient facility

The proposed recipient of a living specimen of a specimen on Appendix I must be suitably equipped to house and care for it as a condition for the issuance of an import permit⁹³. This provision is also a condition that the Scientific Authority has to verify so that the Administrative Authority can issue the permit and is applicable to animals of species included in Appendix I of the Convention⁹⁴. Two Resolutions⁹⁵ make some reference to this requirement. In particular, Resolution Conf. 5.10 (Rev. CoP 15) categorizes as inappropriate the import of live animals for zoo exhibits where it is found that the ultimate recipient of the specimens lacks facilities suitably equipped to house and properly care for the living specimens.

Specimens of some populations of African elephant and southern white rhinoceros transferred from Appendix I to Appendix II can be traded to “appropriate and acceptable destinations”, defined by Resolution Conf. 11.20 to mean “destinations where the Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it” and where it is ensured that the animals are humanely treated⁹⁶.

CITES Resolutions, however, provide little guidance on how suitability is to be determined, particularly for cases in which wild specimens are traded to zoos or other facilities. In a number of such cases questions have been raised as to whether the ultimate recipient of the specimens has facilities suitably equipped to house and properly care for them. For example, the CITES Tiger Technical Mission reported to CoP12 that “fraudulent or improper acquisition by zoos of specimens of CITES-listed species, particularly those in Appendix I” was a serious problem⁹⁷, but no specific measures to address these problems have been adopted.

CITES Resolutions and other instruments say almost nothing concerning the findings on the suitability of the recipient to house and care live animals of the species included in Appendix I at the location of destiny, which is an obligation that the Scientific Authority has to comply with in order to make its recommendation to the Management Authority, and even in the existing information there is no data on whether this obligation if efficiently implemented, as some sort of control of the treatment as optimum locations for their housing.

3. Transit, holding and Customs control

Article VIII.3 of the Convention requires that “Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment”⁹⁸. Within the European Union, for example, a 2007 TRAFFIC study revealed that some commercial traders have reported that animal welfare is

⁹³ CITES Article III. Extensible to animals of Annex B of the EU Commission Implementing Regulation.

⁹⁴ Article III of the CITES Convention. Extensible to animals of Annex B of the EU Commission Implementing Regulation

⁹⁵ Resolution Conf. 5.10 (Rev. CoP15); Resolution Conf. 10.3

⁹⁶ Resolution Conf. 11.20

⁹⁷ CoP13 Doc. 28

⁹⁸ CITES Article VIII.3

seriously compromised by lengthy transboundary inspections and a lack of suitable facilities and alert systems.

Comparing the amount of time dedicated to the transport of animals, the requirement to verify that the animals should be properly cared for during any period of transit, holding or shipment so as to minimize the risk of injury, damage to health or cruel treatment, has in fact been almost been suppressed as an issue to be discussed within CITES (including an unacceptable gap in the CITES Guidelines for developing legislation), with the exception of AC24 Doc. 15.2 reminded Parties of the need to comply with the obligation in Article VIII and suggested that it be enshrined in domestic legislation, but little appears to have been done to implement this recommendation.

4. Disposal of confiscated animals

The Convention (article VIII) requires that confiscated live animals that cannot be returned to their country of origin be sent to “to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention”⁹⁹. According to this article, a rescue centre means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated¹⁰⁰.

So, confiscated animals that have been illegally shipped have to be sent to a rescue center to care for its welfare. This provision is mandatory in case the animal cannot be returned to its place of origin by the export State and is applicable to animals of species included in any of the three Appendices. The disposal of confiscated animals has been extensively developed in several Resolutions¹⁰¹, most specifically in the Guidelines included in Resolution Conf. 10.7 (Rev. CoP15). Parties should provide a humane solution whether this involves maintaining the animals in captivity, returning them to the wild, or employing euthanasia to destroy them. Nevertheless, information about seized or confiscated animals is normally either omitted or insufficiently treated in annual reports of the Parties.

The subject has been discussed in different CITES bodies in order to alert about the lack of availability of rescue centers that could take care of the confiscated animals; debates that ended with the adoption of several Resolutions¹⁰², Notifications to the Parties¹⁰³ and a Memorandum of Understanding signed between CITES and the World Association of Zoos and Aquariums (WAZA)¹⁰⁴.

From the perspective of the cooperation of CITES with NGOs that work for the protection of animals, since 2002, the Species Survival Network (SSN) has been collecting information regarding facilities and organizations that could offer assistance to Parties following the confiscation of live animals. This list of rescue facilities compiled by SSN is notified to the Parties by the Secretariat (see Notification to the Parties N° 2009/009). Though the issue of rescue centres

⁹⁹ CITES Article VIII.4(b).

¹⁰⁰ CITES Article VIII.5

¹⁰¹ Resolution Conf. 10.7 (Rev. CoP15); Resolution Conf. 11.9 (Rev. CoP13); Resolution Conf 9.10 (Rev.15)

¹⁰² Resolution Conf. 11.9 (Rev. CoP13); Resolution Conf. 10.7 (Rev. CoP15)

¹⁰³ No 2002/074; No. 2009/009

¹⁰⁴ <http://www.cites.org/sites/default/files/eng/disc/sec/MOU/CITES-WCO.pdf>

is referenced in CITES Resolutions, Notifications to the Parties¹⁰⁵ and a Memorandum of Understanding, no guidelines for the establishment and operation of rescue centres have been adopted.

CITES also regulated the disposal of death specimens confiscated and accumulated of Appendices I, II and III in Resolution Conf. 9.10 (Rev. CoP15). Concerning death specimens, of species of Appendix I, including parts and derivatives, it Recommends Parties that they dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for *bona fide* scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable. It is also worth of mentioning the decisions of some countries to destroy, by fire, tons of seized illegal ivory, as a strong signal of their position that ivory should by any circumstances reenter the market in order to combat poaching and the illegal trade itself, a position that ultimately produces benefits for the wellbeing of elephants.

5. Identification and marking of animals

Marking of living animals is addressed in two CITES Resolutions¹⁰⁶. Resolution Conf. 7.12 (Rev. CoP 15) recommends that “any marking system that requires the attachment of a tag, band or other uniquely marked label, or the marking of a part of the animal's anatomy be undertaken only with due regard for the humane care, well-being and natural behaviour of the specimen concerned”. However, there are no data about on the implementation of this requirement.

6.- Captive breeding

To qualify as specimens bred in captivity under the terms of Article VII, paragraphs 4 and 5, animals included in Appendices I, II and III must be bred and raised in a controlled environment, i.e. in an environment whose general characteristics can include, and not limited to, health veterinary care, protection against predators and artificially supplied food¹⁰⁷. Registered captive breeding operations for animals of species included in Appendix I must ensure a non-cruel treatment in all the stages of the process¹⁰⁸.

7. Ranched Animals

Resolution Conf. 11.16 (Rev. CoP 15) recommends that no ranching proposal put forward as the basis of a proposal to transfer a population from Appendix I to Appendix II be accepted unless it contains “assurance that the operation shall be carried out at all stages in a humane (non-cruel) manner”¹⁰⁹. Data on “mortality rate in captivity and causes of such mortality” are to be made available to the Secretariat on request, though how thoroughly this has been done has been open to question. Resolution Conf. 9.20 (Rev.) on marine turtle ranching operations also refers to

¹⁰⁵ No 2002/074; No. 2009/009

¹⁰⁶ Resolution Conf. 7.12 (Rev. CoP15); Resolution Conf. 8.13 (Rev.)

¹⁰⁷ Resolution Conf. 10.16 (Rev.)

¹⁰⁸ Resolution Conf. 12.10 (Rev. CoP15)

¹⁰⁹ Resolution Conf. 11.16 (Rev. CoP15)

humane slaughter techniques¹¹⁰, but thus far no such operations have been approved under CITES.

In the very few occasions in which CITES bodies have analyzed these matters, evidence has been found that in reptile breeding operations there were cases of injured, dying, ill or dead animals¹¹¹, although CITES is trying to multiply its efforts to try to ensure their welfare at least in the moment of slaughter or sacrifice¹¹².

Particular attention has also been given to the animals welfare of snakes traded for their skins all along the traceability process of the commercial flow of he skins (most limited to the captive bred)¹¹³.

In any case, captive breeding is not free from difficulties on how to ensure the Five Freedoms when the conditions of the surrounding environment become adverse because the animals are not allowed to live in accordance with their biological and ethological characteristics. Consequently, it is the definition itself of captive breeding what lacks of the elements that ensure animal welfare.

8. Trade with States that are not Parties

Resolution Conf. 9.5 (Rev. CoP 16) recommends that Parties authorize the trade in wild-caught specimens of species listed in Appendix I with a State not a Party to the Convention only in special cases where it benefits the conservation of the species or provides for the welfare of the specimens. It is unclear why this language applies only to such specimens.¹¹⁴

This may lead to think that CITES does not forget about animal welfare in the trade with States that are not a Party to the Convention, because it is limited to its contribution to the welfare of animals of species included in Appendix I, a term that nevertheless have never been interpreted through the adoption of any official CITES document adopted, so its scope and how it should be implemented are unknown.

Some other not very precise and to some extent ambiguous issues are those raised by the exemptions of article VIII of the Convention, that in some situations could imply an unequal treatment in the implementation of the animal welfare provisions, although a more in depth study of the real practice is needed.

Although CITES is the only international treaty that has specific mandates to the Parties on animal welfare in a broad range of different areas, its implementation in practice has not resulted in perceivable benefits to individual animals that still have value essentially as commodities. Nevertheless, it could be interpreted that the World Charter for Nature and the Convention on Biological Diversity, as described above in the first conclusion, offer some hints about the treatment that individuals animals of the species that are protected should be submitted to, based on their intrinsic value and on ethical and moral considerations. The areas of cooperation,

¹¹⁰ Resolution Conf. 9.20 (Rev.)

¹¹¹ AC27 Inf. 17 (Rev.1)

¹¹² Kasterine *et al.* 2012; UNCTAD 2014

¹¹³ AC27 Doc. 19.4

¹¹⁴ Resolución Conf. 9.5 (Rev. CoP16)

coordination and synergies between CITES and these multilateral environmental agreements include working on the harmonization and even homogenization of their provisions and decisions, so CITES could also engage in a task of interpretation of numerous provisions on animal welfare consistent with the need to respect all living beings. This uniformity that is claimed from the several biodiversity-related environmental treaties could lead toward the integration of these terms in order to reinforce the relevance of the protection of animals subject to trade within the scope of CITES in its application “in action” compared what is currently now only “in the books”.

Third.- Unacceptable practices in the international trade of living specimens

Paragraph 1 of article XIII provides the legal grounds to monitor the implementation of the provisions of the Convention in an effective way.

Until the 11th CoP (Gigiri, 2000), the alleged infractions by the Parties, in accordance with article XIII, were known by everybody via the reports introduced by the Secretariat in each CoP, which used to include also the cases of non-compliance with animal welfare-related issues as well as the cases of unacceptable practice in this area (cruel and non-humane treatment during the transport of some live animals, such as birds, reptiles, primates or elephants, or under deplorable conditions of mistreatment of big mammals destined to circuses and zoos). Notices about these events ceased to be publicized from the following CoPs onwards and the problems concerning the implementation were addressed in abstract terms that described the problems and highlighted the successes. This change in the approach was introduced due to the reservation of some Parties to the reporting on repressive activities¹¹⁵, although this confidentiality issue has produced the loss of data on the effective implementation of the animal welfare provisions of the Convention, or of real use cases that could influence the range of the degree and level of implementation of aspects that remain uncertain or blurry, such as the mortality rate during transport.

There is a generalized rejection of certain practices that cause the death or suffering of the animals of species included in the Appendices of CITES and/or non-compliance with the parameters that conform their welfare requirements, and whose parts are subject to international trade such as those that regulate the killing of seals for fur or the confinement enclosure for bears for bile production, among others. In particular CITES neglects animal welfare when allowing for hunting trophies of “canned hunting” and in general the controversy generated by animal hunting trophies is legitimate. Trapping directly from nature and/or breeding animals exclusively intended for the peltry industry is relatively widely objected since decades ago. Also the shipping of animals belonging to species included in appendix I intended for commercial purposes and where their welfare conditions are questions, such as those existing in aquatic parks, parks or aquariums for dolphin, zoos and circuses, is met with a rebuff. For this reason, CITES disregard of the capabilities of individual animals to sense physically and emotionally, and of the survival or life of each of the individual animals, has been censured. Special mention is deserved for the debate on the legitimacy of commerce and possession of exotic animals as pets in which the trends point towards their restriction and their limitation to specific listed species. The mortality rates and the injuries suffered during transport are also the focus of attention, as well as the killing or death of other animals in order to ensure the supply of specimens that are going to be traded because of the commercial value, and in general the conditions of operations and facilities for captive breeding and raising primarily intended for commerce.

¹¹⁵ CoP12 Doc. 27

Finally, it should be pointed out that, notwithstanding the existence of mechanisms designed to control and to combat illegal trading, animals that enter the networks of poaching and illegal and underground traffic continue to suffer daily the consequences in the form of suffering and death, not only detrimental to the survival of the species but, concerning the protection and welfare of the animals as individuals, an aggravating circumstance in the already unacceptable situations triggered by poaching and illegal trade.

It has already been shown that the many references to animal welfare in the text of the Convention and some Resolutions addressing cruel or non-humane treatment and intended to promote or guarantee proper care of the animals, cannot be disregarded at all.

In any case, as praiseworthy as that might be, it is clear that more commitment of CITES is needed, oriented towards the management of trade so that more value is attached to the life of individual animals and social groups of animals, and not only populations or species.

According to the text of the Convention, wild fauna has value from the points of view of aesthetics, science, culture, recreation and the economy. Nevertheless, these important values attached to wild fauna can also be attached to animals subject to trade since these animals are sentient beings worthy of moral and legal protection. For this reason, beyond the mentioned values that provide for human needs, another transcendental one must be reclaimed and such one is their intrinsic value.

This proclamation would help and contribute to the disappearance of unacceptable practices that cause suffering and death so that they are replaced by alternative ones that will prevent these consequences for the animals.

Once sentience and the cognitive and emotional capabilities of animals, as well as their consciousness, are known, there is a need of a change in attitudes concerning the treatment given to the animals so that their mistreatment and abusive exploitation is prevented including having as final target the total ban in alarming or unacceptable circumstances. Precedents already exist, in the WTO, that have grounded the merits decisions ratifying the legality of the bans on imports of products of animal origin to protect public morals. In this same context, and in a more general setting, one can even have doubts about the moral importance of preserving and conserving wild animal species if they perpetuate the suffering of the individual animals that conform their populations.

Four.- Prohibition of trade based on the protection of the animals

Out of the scope of CITES in its strict sense, it should be emphasized, as an example of a precedent that has had impact on world trade policy, the positioning of the Appellate Body of the WTO that legitimized the European Union ban of products derived from seal species under article XX of GATT clause on public morals (see WTO seals).

In the same domain, CITES obliges the Parties to adopt “appropriate measures” to enforce the provisions of the Convention and the Resolutions adopted by the CoP. This does not prevent the adoption of “stricter domestic measures”. Therefore, the power to prohibit trade as well as the taking, possession or transport, is an exclusive right of the Parties, that usually takes place under the form of statutes or acts (not at the regulatory level but higher). Several countries have already passed such types of prohibitions in their territories, although its detailed study falls beyond the scope of this work and consequently, they are included in it.

In the case of the appropriate measures, the power to prohibit acquires all its meaning if there is any contravention of any provision of the Convention (the animal welfare prohibitions not being an exception) and in the case of the stricter domestic measures, it is a right of the Parties generally assumed in international instruments.

But this right of the Parties to adopt stricter measures that may consist even in the complete prohibition of trade based on the protection of animals would have limits in the WTO rules (for countries who are Parties to the WTO) if they are considered to be discriminatory, non-transparent or insufficiently based.

What has just been said is understood to be without prejudice to the possibility that the bodies of CITES may recommend the suspension of trade from a given Party or Parties considered to be not complying with the Convention, a decision that can be considered part of CITES routine. But there is no single recommendation of its Standing Committee suspending or prohibiting trade originated or based exclusively on evidence of noncompliance related to an animal welfare issue.

The EU legal regime is more likely to adopt such types of measures that restrict trade, including decisions that can be taken by the European Commission on limitations to the introduction of animals in the territory of any of its member States when there is evidence of high rates of mortality during transport or few probabilities of survival in captivity¹¹⁶.

Nevertheless, adoption of such measures has been very limited and almost non-existing since the EU has never made use of its right to suspend imports of species based on risks of mortality during transport, and the suspension of import of tortoises basis of adopted on the basis of their low probabilities of survival as captive specimens was lifted soon after the attempt to agree to develop some guidelines resulted in a failure (TRAFFIC 2007 and European Commission 2008).

Five.- Compliance and implementation of animal welfare requirements in CITES

Although the protection of animals, as well as the loss of wild species is a heavy preoccupation worldwide concerning the decisions to be taken at the high level on international trade of specimens, both at the national domestic level as well as at the international level, there is a real and manifest lack of interest about the protection of animals.

Based on the analysis on compliance and on the effectiveness of the implementation of the provisions of the Convention, it can be said that the Parties have focused in the capacity to guarantee the sustainable trade of the regulated species and have neglected fundamental elements of animal welfare because, whether they are embedded in the text itself of the Convention or in the exhortations included in the Resolutions that interpret and further develop that text. An indicator of this neglect is the lack of data concerning animal welfare in the annual or biannual reports of the Parties to the Secretariat. There is no indication about this theme either in the Resolution on Compliance and enforcement¹¹⁷.

Therefore, notwithstanding the different provisions and recommendations on the subject, the substrate that permeates CITES has not woken up a level of attention similar to its social interest neither of CITES bodies nor of the Parties who have neglected it when compared with the attention given to commerce and biodiversity conservation. This said, the International Consortium on

¹¹⁶ Article 4.6 c) of Council Regulation (EC) No 338/97

¹¹⁷ Resolution Conf. 11.3 (Rev.CoP16)

Combating Wildlife Crime (ICCWC) has asserted, responding to the consultation undertaken as part of this work, that the broad activities of information and surveillance in which this organization is engaged so that the Parties comply with the Convention do certainly include those related to animal welfare. Nevertheless, after the assessment of the interest that these issues have raised, it would be necessary to organize more informative and educational seminars and workshops on animal welfare addressed to the Parties concerned.

The use of the existing mechanisms to ensure the application of the animal welfare provisions could constitute one of the great challenges that CITES has, a task that cannot be faced without a major commitment of the Parties so that the former are included among the daily practice of their activities. There is also a core problem in the perceptions on the difficulties that an effective control for the provisions, guidelines and polices concerning animal welfare do entail in real life.

Summarizing, the preoccupation of CITES about animal welfare shows up in the numerous references included in the text of the Convention and the Resolutions adopted by the CoP.

It can also be concluded that the relevance that CITES attributes too animal welfare is correlated to the potential impact on wildlife populations since most of the animal welfare requirements are applicable only to animals of species of Appendix I, whose individualized treatment becomes more significant because that individual is part o a species endangered because of the its high probability of extinction¹¹⁸.

In general one of the main deficiencies in CITES is that it cannot be applied before trade operations start *estrictu sensu*, and neither does it work in internal commerce.

Finally, the more favorable treatment of animals could not be understood without taking into account the role of the NGOs who have participated in CITES. Thus, the relative attention that CITES pays to the protection of animals has become more open when they have been offered the possibility to intervene in the activities of CITES bodies, and the essential information provided by those NGOs to facilitate the debates among the Parties on issues introduced in the agendas of the CoPs has certainly contributed to promote the conservation of species as well welfare of animals as individuals.

Six.- Viability of proposals to introduce new animal welfare requirements or to reinvigorate the already existing ones

There is a general consensus around the idea that decisions on animal welfare need to be taken based on scientific evidence. On this issue, for the existing CITES requirements of animal welfare are properly complied with, or to introduce new requirements, the publications on scientific research should be intensified so that the arguments are not only convincing or reliable, but also well known and accessible so that their capacity to influence decision-making on commercial issues is increased.

Since CITES entered into force 41 years ago, the world has substantially changed, at the same time that the Convention has been evolving to maintain its effectiveness.

¹¹⁸ But within the EU CITES system, some requirements that CITES applies only to animals of species listed in Appendix I are expanded so that they become also applicable to those of species included in its Annex B (of the EU Regulation).

One of the visible changes in the last decades is the growth of public awareness and social consciousness on animal protection issues. Certainly, with any doubt, societies follow a path where animal mistreatment has no room. This growth of social interest has necessarily to have a reflection in the progress of CITES; a change that, although based on ethics and morals, produces in parallel benefits in biodiversity conservation, and the well-being of humans considered both as individuals and collectively.

The law, part of which consists in international conventions, is dynamic and has on its turn to adapt to social needs that depend on the content of the dominant public morals of the time and space, as factors that also change as scientific advancements reach society, which is applicable, in our case, to the science of animal welfare based on the study of animal needs and interests.

These social dynamics is captured in the Strategic Vision of CITES 2008-2020 (see Resolution Conf. 16.3), that acknowledges that the Conference of the Parties had shown that it is capable of adaptation to the changing circumstances and that, through its Resolutions and Decisions has also proved that its capacity to find pragmatic solutions to the exponential growth in complexity of the problems that are waiting for those solutions.

Anyhow, this study has limited its scope within the sphere of trade and conservation of wild animal species to the analysis and did not engage in the analysis of the broader changes needed to ensure the application of animal welfare norms and policies. In any case, the framework that the Strategy provides offers a vision for the future within which it is necessary to move in order to adapt to new changes, integrating and reaffirming animal welfare in all the areas of decision-making encompassed within the CITES universe.

Submerging ourselves a little bit more deep within that framework, it should be remarked that, in the twofold purpose offered by the CITES Strategic Vision, this idea of adaptation to new social needs is solidly affirmed since one of them is “to ensure that CITES policy developments are mutually supportive of international environmental priorities and take into account new international initiatives, consistent with the terms of the Convention”.

For the Strategic Vision the main goal to achieve this purpose is to ensure compliance with and implementation and enforcement of the Convention. And this context allows an ideal scenario in order to:

- 1.- urge the bodies of CITES to increase the number of mechanisms to effectively design or reinforce the measures intended to ensure compliance with and enforcement of provisions on animal care and welfare;
- 2.- urge the bodies of CITES to incorporate new animal welfare and protection requirements.

In pursuance thereof, we propose the following

6. RECOMMENDATIONS

Taking into account the previous conclusions, as well as the advances of animal welfare science, the international (global and regional in Europe - Council of Europe), supranational (European Union) and national law on the protection of animals and the ethical, moral and cultural foundations in which the progress of the former is grounded and that has contributed to the creation of an adequate level of public awareness backing them, these are the proposals and recommendations:

Cooperation with other international organizations and regimes

Strengthening of CITES cooperation with related international organizations as well as with organizations with functions on legal compliance and enforcement. The proposed activities are the following:

- ✦ In order to increase the visibility and transversality of animal welfare issues in biodiversity conventions, animal welfare should be included in the agenda of the future meetings of the Biodiversity Liaison Group (BLG) of the biodiversity-related Conventions.
- ✦ Revision of the Memorandum of Understanding signed between CITES and the WCO to increase cooperation concerning animal welfare and, in particular, so that the animals under Customs control are properly cared in order to minimize the risk of injury, damage to health or cruel treatment and so that equipped facilities for the housing and care of live animals are provided.
- ✦ Explicit integration of animal welfare measures in the agenda of the ICCWC in order to ensure compliance with and enforcement of the law. Inclusion of the appropriate references in the "Wildlife and Forest Crime Analytic Toolkit".
- ✦ Inclusion of animal welfare issues in the Memorandum of Understanding signed between CITES and the OIE which is currently on draft.
- ✦ Referencing of animal welfare issues in the collaborative scheme that CITES and the WCO are refining either via the signing of a new Memorandum of Understanding on the observer status of the CITES Secretariat in different bodies of the WCO or in other instruments that could be available and when it would conveniently fit.
- ✦ Continuation of the existing collaboration between CITES and UNCTAD in order to integrate animal welfare rules, policies and practice in other sector such as e.g. in the case concerning python snakes whose skins are in international trade.

Improvement of current standards and practices and incorporation of new elements addressing issues related to animal welfare

1) A clear outcome of the above described conclusions is that the clarification of several terms of the text of CITES could significantly contribute to scale up the level of implementation of already existing measures that are already "on-the-books-" to make them become "law-in-action". The terms in need of clarification are the following:

- ✦ Risk of injury, damage to health or cruel treatment (during preparations and shipments of animals).

- ⤴ Proper care so as to minimize the risk of injury, damage to health or cruel treatment (during the period of transit, holding and Customs control).
- ⤴ Suitable equipment house and care for animals of species of Appendix I in the import country.
- ⤴ Appropriate and feasible “marking” of animals (including humane marking).
- ⤴ Non-cruel treatment in all the stages of the process (in captive breeding).
- ⤴ Humane activities (in animal ranching).
- ⤴ Humane treatment (in operations and facilities that house and care animals in “appropriate and acceptable destinations”).
- ⤴ Trade that provides for the welfare of the specimens (for States that are not a Party).

2) An additional relevant step to improve the effectiveness in the implementation of existing CITES measures could consist in the development of guidelines and policy protocols to deal in real life with the previous issues, and in particular:

- Adequate housing conditions and requirements for whom pretends to receive an animal of a species included in Appendix I and to animals treated as if they were in Appendix II for the “appropriate and acceptable destinations” and for the verification and findings that the animal welfare requirements will be complied with when the animal arrives to such destination.

- Necessary measures to ensure that the animals remain in a favorable state during lengthy periods of transit or transshipment and adequate facilities for live animals in ports of entry or exit submitted to mandatory regular inspections

3) Taking into consideration what the Secretariat did concerning the transport of live animals in order to offer guidance to the Parties for the implementation of the Convention (AC24 Doc. 15.2), we recommend that these types of activities are extended so that they also take place within the framework of "Project on CITES national legislation" so that the rest of animal issues addressed by the Convention are also included in it.

4) National annual and biannual reports that the Parties send to the Secretariat are one of the main sources of information and incentive for compliance, so the lack of data, and absence of information, on animal welfare issues makes almost impossible to ascertain compliance (and implementation effectiveness). Concerning annual reporting we recommend that the Parties should be urged to report data on seized or confiscated animals. Concerning the biannual reports, we recommend that, as an addition to be included in the format of the reports, Parties report on the verifications of the animal welfare conditions under which the following activities take place: non-cruel activities in captive breeding in a controlled environment and humane treatment in captive breeding in ranching facilities, proper care in order to minimize the risk of injury, damage to health or cruel treatment during the periods of transit, holding and Customs control, as well as housing, for animals of species of Appendix I that are treated as if they were included in Appendix II that are to be suitably housed and care for and receive a non-cruel treatment, respectively, and marking of animals in accordance to the animal welfare needs. It is recommended that the Parties are urged to provide such information in order to ensure a more effective control of those aspects.

5) Since the Animals Committee acknowledged that it is highly probable that the mortality of animals is due to conditions previous to, and to a lesser extent, after the transport, this fact is not disregarded. Consequently, we recommend that Parties are again requested to periodically report on mortality rates during transport in a way that reflects mortality during capture, preparation previous to the shipment, quarantines, and upon and after arrival to the place of destiny, and that a study is done in parallel to officially figure out the cause of mortality.

6) The lack or insufficient number of rescue centers in the Party States to care for the disposal of confiscated animals could be included in the list of subject matters to be evaluated when recommending suspension of trade from a given export country.

7) After an alert is issued on the denial of permits for zoos, public entertainment facilities, and other exhibitions of animals of species included in Appendix I with educational, scientific or research purposes, it should be clarified when an animal is traded “primarily for a commercial purpose” so that the exemption that allows the trade of animals of species of Appendix I its use is clearly non-commercial. Depending on the results obtained, the Secretariat should reconsider its currently considers as non-commercial some activities that probably have an undercover non-commercial purpose.

8) Specially for animals of species included in Appendices I and II, the evaluation of the shipping of animals to zoos, circuses, aquariums, and other recreation-related activities, should be revised taking into consideration the characteristics of individual animals since they are going to remain captive, sometimes in extreme conditions, for the rest of their lifetimes.

9) We suggest that the requirements that hunting trophies need to meet to obtain the permits are revisited, so that a similar measure to the one described in Decisión 14.69 (Rev. CoP 15) is adopted that mandates that “tigers should not be bred as a supply for the market of parts and derivatives” and make it applicable to lions bred for “canned hunting”.

10) We recommend the following measures that address animal welfare issues are included in the Guide to CITES compliance procedures (Resolución Conf 14.3): verification that during any period of transit, holding or Customs control. Animals should be properly cared for so as to minimize the risk of injury, damage to health or cruel treatment, reporting to the Secretariat on ranching activities and operations and the activation of the right of the Parties to adopt stricter domestic measures such as the total prohibition of trade.

11) Verification that exemptions under article VIII of the CITES Convention, in particular when they are granted for the trading of live animals, does not amount a weakening of the state of their welfare.

In order for the mentioned recommendations to materialize, we suggest as a possibility the CoP considers directing the Secretariat to conduct a thorough and exhaustive review of all the issues concerning the protection of animals as individuals and drafts a proposal of recommendation thereof, with specific mandate to address all the previously described issues.

Unacceptable practices and prohibition of trade

It would be very adequate to reactivate the reports of the Secretaria on alleged infractions by the Parties as an informative, preventive, remedial and not only repressive measure introducing the “no blame culture” in this reporting activity.

Nevertheless when the practices are proven to be a persistent pattern of non-compliance or a case or cases of gross negligence of the animal welfare provisions, we recommend that the Standing Committee, as in many other matters, uses its power to recommend the suspension of commercial activities or all trade in animals and specimens.

When assessing the harm caused by illegal trade matters concerning animal welfare should be individually considered as an additional motive to combat the said illegal and unsustainable trade. Therefore, it is highly recommendable that the measures proposed in order to end illegal trading of animals or the ban of their consumption should not focus exclusively on the long term survival of the species in the wild but also on the suffering and death of the animals.

Finally, it is suggested that the continuation and maintenance of events of mistreatment or poor animal welfare could eventually lead to the promotion and development of other alternative forms of preventing the use of animals in international trade. The use of the precautionary principle in the decision-making process in order to prevent activities detrimental or damaging for animals is not at all out of the picture.

Compliance and implementation of animal welfare requirements in CITES

We recommend that the Parties double their efforts to ensure that the animal welfare related provisions and requirements of the CITES Convention through legislation, national plans, and surveillance, control and enforcement measures.

An additional recommendation would be the top down promotion by the higher bodies of CITES, in collaboration with the pertinent international organizations and bodies (ICWC, UNCTAD, UNEP, OIE) and specialized NGOs, of educational, public awareness raising, training, informative, capacity building, workshops, seminars and related activities on the welfare of animals in international trade, addressed to CITES Authorities, customs officials, security forces in charge of controlling CITES illegal trade, as well as local urban and rural communities, professional traders, sellers, consumers, and MPs or higher authorities of the public administrations as well as members and staff of the judicial branch.

Under the light of the previous consideration the pertinent findings activities should be undertaken in order to examine:

- The whole group of measures that the Parties must adopt in order to comply with the contracted obligations concerning animal welfare such as the passing of legislation and regulation on transport, seizure, confiscation, control management, inspections, national planning, adequate sanctioning and penalizing, restriction and prohibition of trade, etc.
- That the effective compliance by the Parties of the said obligations and that the adopted measures carry attached to them an appropriate level of real life implementation of the CITES regime as a whole.

NOTE ADDED IN MAY 2016

I really welcome the Cooperation Agreement between CITES and OIE signed at December 1st 2015 for agreeing to collaborate on animal health and welfare issues worldwide to safeguard biodiversity and protect animals¹¹⁹. The aim of the Agreement is to establish a framework for cooperation between the parties in fields of mutual interest. Such fields include but are not limited to the animal health and welfare standards for safe legal international trade in and transport of wild animals, especially endangered species included in CITES Appendix I, animal health and welfare standards for the killing of wild animals for subsequent international trade, safe and fast transport of biological samples from these animals for diagnosis or identification, prevention and control of invasive alien species and the combating of illegal trade in wildlife. And also the recent Cooperation Agreement between the OIE and the WCO adopted on 12th of June 2015, whose purpose and scope of the agreement is to include, for the 1st time, animal welfare aspects during transport (by land, sea and air). According to this Cooperation Agreement between OIE and WCO, "To implement this Agreement, collaboration with other intergovernmental organisations sharing also a mutual interest in the matters listed under point 2 of Article 1 such as WTO [2], WHO [3], FAO [4], CITES [5], BWC [6], ICAO [7], IATA [8], IMO [9], IUCN [10], CIC [11] and CBD [12], may be sought as deemed necessary by the OIE and WCO"¹²⁰.

In recent months, there have been so few new events promoted from the highest authority of CITES which have been a final push on the protection of animals that are traded internationally. Among them, we must highlight the 28th meeting of the Animals Committee of CITES (Tel Aviv, 2015), in which the Secretary-General John E. Scanlon, referred for the first time in the welcoming and opening remarks of meeting and the next day in a Symposium legal, to issues about "animal welfare" and "animal rights" of animals that are traded internationally in the debate on conservation and trade in wildlife.

In his opening remarks CITES Secretary General John Scanlon made some very interesting references to animal welfare issues, the possibility of CITES providing more guidance on how Parties should implement welfare-related commitments instead of leaving this to individual Parties, and whether CITES should engage (beyond its strict mandate) in wider animal welfare/rights debates and discussions.

In the words of Scanlon, CITES is possibly the only global forum in which we see experts and advocacy groups from such a wide range of perspectives – conservation and sustainable use, trade, development, livelihoods, animal welfare and animal rights – come together in one place to discuss, and contribute to the making of decisions and recommendations on such issues, which is a great strength of CITES, and that these related perspectives generated great interest among professionals and the general public, as reflected in the extent of coverage of public and social media and academic articles.

Since then, these animal welfare considerations by the Secretary General of CITES have been repeated similar events in different institutional, governmental and academic, which is already an assumption and consolidation of international public discourse in this direction. For example:

¹¹⁹ https://cites.org/sites/default/files/eng/disc/sec/Cooperation_Agreement_CITES_and_OIE_dec_15.pdf

¹²⁰ <http://www.oie.int/en/about-us/key-texts/cooperation-agreements/agreement-with-the-world-customs-organization/>

- CITES Secretary-General's remarks at the ATAG Global Sustainable Aviation Summit 2015. Geneva, 29 September 2015. 'Air transport's role in reducing Illegal trade in wildlife'.

- Keynote Address by CITES Secretary-General John E. Scanlon at the Ilia State University, Tbilisi, Georgia. Keynote Address. 'CITES and wildlife trade – how CITES works and what it is and isn't'. John E. Scanlon.

This event was followed by the meeting held during the 66th meeting of the Standing Committee (Geneva, 2016) between the General Secretariat and some NGOs on conservation and animal protection (Animal Welfare Institute, IFAW, Born Free Foundation, Foundation Franz Weber, Humane Society International and Species Survival Network), where the implementation of the provisions of CITES animal welfare issues were addressed. This meeting took place on January 15, 2016 in Geneva, as part of an event called "Implementing welfare Provisions Within the Convention", in which I participated with a conference on synergies between CITES, the Treaties and Multilateral Environmental Agreements and other conservation conventions and international organizations with jurisdiction over trade, customs and animal health.

This new institutional orientation is a breakthrough to start a strong international debate on the protection of animals that are traded internationally, beyond the traditional approach that focuses its efforts on the unsustainable exploitation or the need for conservation of Wildlife, an absolutely essential point, which should be combined with the protection of individual animals.

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3) TBT. Agreement on Technical Barriers to Trade
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4) SPS. Agreement on the Application of Sanitary and phytosanitary measures
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WTO "dolphin-safe"

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Resolution Conf. 5.10 [(Rev. CoP15) (Definition of 'primarily commercial purposes')]
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Resolution Conf. 8.4 [(Rev. CoP15) (National laws for implementation of the Convention)]
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Resolution Conf. 8.13 [(Rev.) (Use of coded-microchip implants for marking live animals in trade)]
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Resolution Conf. 9.5 [(Rev. CoP16) (Trade with States not party to the Convention)]
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Resolution Conf. 9.7 [(Rev.CoP15) (Transit and transshipment)]
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Resolution Conf 9.10 [(Rev. CoP15) (Disposal of confiscated and accumulated specimens)]
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Resolution Conf. 9.20 [(Rev) (Guidelines for evaluating marine turtle ranching proposals submitted pursuant to Resolution Conf. 11.16 (Rev. CoP15)]
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Resolution Conf. 10.3 (Designation and role of the Scientific Authorities)
<http://www.cites.org/eng/res/10/10-03C15.php>

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