

## INTERNATIONAL TRADE IN WILDLIFE: HOW EFFECTIVE IS THE ENDANGERED SPECIES TREATY?

International trade in wildlife is a surprisingly lucrative business. Annual global trade averages of two to five billion dollars<sup>1</sup> rank the trade in wildlife and wildlife products as one of the world's largest industries.<sup>2</sup> Estimates of illegal exports alone total one-half billion dollars per year<sup>3</sup> and boast profit margins higher than those of the illicit drug industry.<sup>4</sup> The diversity of this international market is

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1. Interviews with Linda McMahan, Director of Trade Record Analysis of Flora and Fauna in Commerce-(U.S.A.) (TRAFFIC), in Washington, D.C. (Jan. 3 and 6, 1984). "TRAFFIC is a program of World Wildlife Fund, and is part of an international TRAFFIC network cooperating with the International Union for Conservation of Nature and Natural Resources." See *infra* note 35. TRAFFIC monitors "the international trade in wild plants and animals," gathers data and analyzes wildlife trade statistics. 5 TRAFFIC, 1983 Newsletter No. 1, at 2.

2. See Rea, *The Fortune Directory of the Largest U.S. Industrial Corporations*, FORTUNE, May 2, 1983, at 228.

3. Hanley, *Illegal Trade in Wildlife Threatens Many Species*, Hartford Courant, July 25, 1983, at A7, col. 1. The United States Fish and Wildlife Service (USFW) estimates that illegal imports into the United States alone currently total \$100 million per year. *Illegal Trade in Wildlife Goes Unchecked*, 5 FOCUS, 1983 Newsletter No. 5, at 1. World Wildlife Fund (WWF) estimates that over one-third of the annual global trade of all wildlife and wildlife derivatives is illegal. *Id.*

4. Wildlife trade can generate profits ranging from 300 to 400 percent. For example, the horn of the Northern white rhinoceros (*Ceratotherium simum cottoni*) yields between twenty to fifty dollars per horn for the poacher who kills the animal in the wild. The average horn of a full grown specimen weighs anywhere between twenty to fifty pounds, depending upon its age. The horn's value will rise to approximately \$250 per pound upon reaching a major exporting city, and eventually will bring up to \$1,000 per pound in the pharmacies of the Far East, where it is believed to have medicinal value, and up to \$13,000 in North Yemen, where young men wear rhino horn daggers as ceremonial signs of maturity. Cowell, *On Foot Patrol in Rhinoceros Country*, N.Y. Times, Sept. 5, 1983, at 2, col. 1; Shabecoff, *Yemen Acts to Stem the Trade in Rhino Horns*, N.Y. Times, Oct. 31, 1982, at 24, col. 1; Cowell, *Increased Slaughter of Rhinos Feared*, N.Y. Times, May 23, 1982, at 3, col. 1; Jaynes, *Yemeni Wealth Decimates Rhinos*, N.Y. Times, Mar. 8, 1981, at E20, col. 4.

Profit margins of this proportion are not limited to rhinoceros horns, but are representative of those attending most wildlife products. To illustrate, a single bald eagle (*Haliaeetus leucocephalus*) can bring up to \$1,000 on the black market. One ordinary leopard skin coat can sell for up to \$20,000. The gall bladder of the American grizzly bear (*Ursus arctos horribilis*) sells for \$300 an ounce in San Francisco's Chinatown and the Far East. Exotic birds are perhaps the most expensive class of specimens. For example, a single Hyacinth macaw (order *Psittaciformes*) is valued at up to \$5,000; an Asian cockatoo \$8,000; and a Blackpalm cockatoo between \$10,000 to \$20,000. See Sand, *Stop This Shameful Traffic*, NATUROPA 56, 57 (No. 34/35) (Council of Eur.) (1980); *The Hunt for Illegal Skins and Furs*, BUS. WK., Mar. 7, 1983, at 70; Boucher, *The Wildlife Trade*, ATLANTIC, Mar., 1983, at 10; Tonfexis, *Adventures in the*

extensive, and the demand for wildlife products steadily increases pressure on a limited supply of resources.<sup>5</sup>

Efforts to regulate and manage wildlife trade have historically been either non-existent, illusory or at best minimally effective stop gap measures.<sup>6</sup> Consequently, over-exploitation has resulted in the extinction or near-extinction of innumerable plants and animals, and currently there is no reasonable indication that this pattern will change.<sup>7</sup> An extensive body of evidence<sup>8</sup> strongly suggests that the trend toward widespread extinction is actually escalating at an inor-

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*Skin Trade*, TIME, May 28, 1984, at 82; Shabecoff, *Warrants Issued for Slayers of Eagles Over Eight States*, N.Y. Times, June 16, 1983, at 18, col. 1.

5. Wildlife trade is as varied as it is extensive. For example, scientific and medical research firms create a tremendous demand for many species, perhaps the most noteworthy of which are primates. Approximately 250 great apes are traded annually, and in 1977 the United States alone imported over 28,000 primates. Zoos and museums are also voracious collectors of live specimens. United States and Canadian zoos alone add to their collections approximately 760,000 specimens per year. Personal collections outside of zoos also account for large volumes of trade. Over seven million live birds were shipped internationally in 1975. Americans alone imported over seven million cacti between 1977 and 1978, over 250 million tropical fish in 1979, and over 700,000 live birds in 1981. In 1982 United States wildlife imports included five million live animals, five million furs, 958,000 leather skins and 943,000 reptile skins. Often one particular species is the subject of an immense volume of trade. Between 1967 and 1972, for example, the United Kingdom imported over 1.2 million specimens of one species, the Mediterranean spurthighed tortoise. Wild cat furs imported into Europe totalled almost one million skins in 1976, and the tonnage of African ivory exports to Europe that year represented approximately 700,000 elephants. See generally P. EHRlich, *EXTINCTION: THE CAUSES AND CONSEQUENCES OF THE DISAPPEARANCE OF SPECIES* 119-126 (1981); T. INSKIPP & S. WELLS, *INTERNATIONAL TRADE IN WILDLIFE* 27-75 (1979); Tonfexsis, *supra* note 1.

6. [E]arly wildlife legislation was concerned with welfare (e.g., the UK Cruelty to Animals Act 1876), the control of agricultural pests (e.g., the UK Destructive Imported Animals Act 1932), the control of hunting and the taking of trophies (e.g., the Wild Animals and Birds Protection Enactment 1925 of the Federated Malay States, the Ugandan Game Ordinance 1926 and the Kenyan Game Ordinance 1937) and the setting up of national parks and game reserves (e.g., the Kenya National Parks Ordinance 1945 and the 1926 Act founding the Kruger National Park in South Africa); the early legislation concerning national parks did little except ensure that European colonists could get their hunting trophies.

INSKIPP & WELLS, *supra* note 5, at 4.

7. Examples of species that have become extinct in North America since 1600 include the Eastern elk (*Cervus canadensis canadensis*), Queen Charlotte Island caribou (*Rangifer tarandus dawsoni*), Eastern bison (*Bison bison pensylvanicus*), Badlands bighorn sheep (*Ovis canadensis anduboni*), Southern California kit fox (*Vulpes macrotis macrotis*), Stellar's sea cow (*Hydrodamalis stelleri*), Atlantic gray whale (*Eschrichtius gibbonus*), six species of wolves (order *Canis lupus*), Passenger pigeon (*Ectopistes migratorius*), Carolina parakeet (*Conuropsis carolinensis*), Labrador duck (*Camptorhynchus labradorium*), and Palas cormorant (*Phalacroedax perspillatus*). Most of these species disappeared in the twentieth century, and comprise only a small list from one geographic region.

Examples of species in immediate danger of extinction include the Whooping crane (*Grus americana*), which were reduced to 21 by 1941 and are now approaching 150; the Northern white rhinoceros, which have been reduced to approximately 1,000; and the Mountain gorilla,

dinate rate.<sup>9</sup> Over 600 species of fauna<sup>10</sup> and 20,000 species of flora<sup>11</sup> are presently recognized as threatened with extinction.<sup>12</sup> Current figures indicate that most of these species will be exterminated in the near future unless effective restrictions are placed upon this ongoing myopic trade.<sup>13</sup>

In an effort to reverse this trend a multilateral treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>14</sup> was adopted. CITES is designed to protect species of animals and plants determined by the Convention to be presently or foreseeably threatened by commercial movement.<sup>15</sup> The treaty is based on the premise that by focusing efforts on controlling trade in endangered species, defensive State reactions to over-exploitative trade will be reduced, and the free commercial move-

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which have been reduced to less than 300. C. CADIEUX, THESE ARE THE ENDANGERED (1981); D. STEWART, FROM THE EDGE OF EXTINCTION (1978).

8. Formal scientific data on species' population status is gathered by various governmental and independent research groups such as the USFW, TRAFFIC, Wildlife Trade Monitoring Unit (WTMU), African Elephant and Rhino Group, and the Pet Industry Joint Advisory Committee (PIJAC). The TRAFFIC Network is currently comprised of seven members located in Japan, Australia, West Germany, Belgium, the Netherlands, the United Kingdom and the United States. 5 TRAFFIC, 1983 Newsletter No. 4, at 18. See *supra* note 1.

9. Approximately ten percent of all species of plants and animals are presently believed to be threatened with extinction. S. EXEC. REP. NO. 14, 93d Cong., 1st Sess. 1 (1973). In particular, wild mammals and birds are being exterminated at an estimated rate of one species per year. An arguably conservative figure for the present extinction rate of all species is approximately one species becoming extinct per day. N. MEYERS, THE SINKING ARK 31 (1979); K. CURRY-LINDAHL, LET THEM LIVE vii (1972). "In the case of mammals alone, nearly 60 percent of recorded extinctions have occurred in the 20th Century in less than 4 percent of the 2,000 years of record." 68 DEPT. ST. BULL. 613 (1973) (statement of Mr. Train, Chairman of U.S. Delegation). See also COUNCIL ON ENVIRONMENTAL QUALITY, ELEVENTH ANNUAL REPORT 23 (1980) [hereinafter cited as ENVIRONMENTAL QUALITY REPORT].

10. "Flora" is defined as "plant or plant life characteristic of, or peculiar to a region or locality." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 874 (1967).

11. "Fauna" is defined as "animal or animal life characteristic of, or peculiar to a region or locality." *Id.* at 829.

12. See *infra* text accompanying notes 42-74.

13. It is estimated that if present trends continue, by the year 2000 over one million species may become extinct as a direct result of man's activities. This figure represents an average of 100 species becoming extinct per day. MEYERS, *supra* note 9, at 31; Russakoff, *Endangered Species Act Stemming the Trend*, Wash. Post, Jan. 1, 1984, at 1, col. 1.

14. Convention on International Trade in Endangered Species of Wild Fauna and Flora, July 1, 1975, 27 U.S.T. 1087, T.I.A.S. No. 8249 [hereinafter cited as CITES]. For the legislative history, see President of the United States, Message to the Senate Transmitting the Convention on the International Trade of Endangered Species of Wild Fauna and Flora, S. EXEC. REP. NO. 14, 93d Cong., 1st Sess. (1973); 68 DEPT. ST. BULL. 613 (1973). See also Comment, *Legislative Developments: Convention on the International Trade of Endangered Species of Wild Fauna and Flora*, 6 LAW AND POL'Y BUS. 1211, 1216 (1974) [hereinafter cited as *Legislative Developments*].

15. CITES, *supra* note 14, art. II.

ment of plentiful wildlife will be enhanced. When CITES was first drafted,<sup>16</sup> the primary task was to identify threatened species and construct a workable system of guidelines to effectively protect them.<sup>17</sup> For the most part this was successfully achieved by the Convention's framework and organizational structure.<sup>18</sup> However, CITES has had only limited success in actually curbing over-exploitative trade in those species which have been identified as in need of protection. This impotence can be traced to several problems that limit the treaty's practical effectiveness: (1) inherent weaknesses resulting from provisions that allow major trade exemptions,<sup>19</sup> and (2) practical obstacles to effective enforcement.<sup>20</sup> Acutely aware of these deficiencies, the central focus of the Parties today is on enforcing CITES regulations and improving the overall implementation of the treaty.<sup>21</sup>

This Comment will explore the issues surrounding over-exploitative international wildlife trade and address the need for a cooperative effort to resolve the conflicts which the practice has created. Presently, the most significant international mechanism designed to curb such trade is CITES; its structure and operation will therefore be examined. An analysis of the Convention's strengths and weaknesses will follow, focusing on exemptions from trade restrictions and the practical difficulties of effectively implementing and enforcing specific provisions. The signatories' responses to these issues will be evaluated in light of their effectiveness, and suggestions will be offered in an effort to minimize operational problems and extend current successes.

## I. THE NEED FOR A COOPERATIVE INTERNATIONAL EFFORT

Increased environmental awareness and scientific sophistication has resulted in the establishment of a strong case for wildlife preservation. Public opinion continues to support the historically offered contention that aesthetic, ethical and cultural arguments alone justify efforts to protect the earth's wildlife.<sup>22</sup> Scientists have demonstrated that as a practical concern a strong relationship exists between the

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16. See *infra* note 36 and accompanying text.

17. Train, *It's Time to Get Tough*, 5 FOCUS, 1983 Newsletter No. 5, at 2. See 68 DEPT. ST. BULL. 611. Mr. Train is currently President of the World Wildlife Fund.

18. See *infra* text accompanying notes 42-106.

19. See *infra* text accompanying notes 121-226.

20. See *infra* text accompanying notes 230-324.

21. Train, *supra* note 17, at 2.

22. MEYERS, *supra* note 9, at 41; EHRlich, *supra* note 5, at 35-52.

planet's ecological stability and a high diversity of species.<sup>23</sup> Commercial enterprises have also found that "the genetic resources of species serve many pragmatic purposes of humankind. These purposes bring immediate utilitarian benefits to society, through contributions to modernized agriculture (for example, new foods), to modernized medicine and pharmaceuticals (drugs from plants), and industrial processes (raw materials)."<sup>24</sup> Considerations such as these prompted several nations to enact legislation and adopt other measures to protect various species since the turn of this century.<sup>25</sup>

Initial efforts made little progress in controlling over-exploitative international trade, as domestic measures were generally directed only at internal problems.<sup>26</sup> Most of the world's exporting nations traditionally did little to regulate wildlife taken from their territories.<sup>27</sup> As a result, many species were removed from the wild faster than they could reproduce, and large percentages of potentially renewable wildlife resources were reduced to a fraction of their original numbers.<sup>28</sup> The economic yield that these "range States" derived

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23. MEYERS, *supra* note 9 at 48-52; EHRLICH, *supra* note 5, at 32-80; ENVIRONMENTAL QUALITY REPORT, *supra* note 9, at 32-80. For example, "the Interior Department estimates that the extinction of one plant can lead to the disappearance of 30 other species, including insects and higher animals." Grier, *U.S. Marks Decade of Special Care for its Endangered Wildlife*, *Christian Science Monitor*, Jan. 31, 1984, at 28, col. 3.

24. MEYERS, *supra* note 9, at 56; *see also* EHRLICH, *supra* note 5, at 53-76; ENVIRONMENTAL QUALITY REPORT, *supra* note 9, at 32-80.

25. Congress has passed several acts protecting various species since the turn of the century. *See, e.g.*, Endangered Species Act of 1966, Pub. L. No. 89-669, 80 Stat. 926 (repealed 1973); Land and Water Conservation Fund Act of 1965, Pub. L. No. 88-578, 78 Stat. 897 (codified as amended at 16 U.S.C. §§ 460-464 to 460-411 (1976 and Supp. III 1979)); Black Bass Act of 1926, ch. 346, 44 Stat. 576 (codified as amended at 16 U.S.C. §§ 851-856 (1976)); Migratory Bird Treaty Act of 1918, ch. 128, 40 Stat. 755 (codified as amended at 16 U.S.C. §§ 703-711 (1976)); Lacey Act of 1900, ch. 553, 31 Stat. 187 (partially codified at 16 U.S.C. §§ 667e, 701 (1976)).

Decisive action has also been taken by non-governmental groups. Notably, in 1966 United States zoo officials placed an embargo on the import of orangutans (*Pongo pygmaeus abelli*, *P. pygmaeus*) that was joined by the United Kingdom, Japan and West Germany. *See* Oberle, *Endangered Species: Congress Curbs International Trade in Rare Animals*, 197 *SCI.*, Jan. 9, 1970, at 153.

26. *See, e.g., supra* notes 6 & 25. *But see* R. BOARDMAN, *INTERNATIONAL ORGANIZATION AND THE CONSERVATION OF NATURE* 26-34 (1981).

27. This was particularly true of developing countries. *See* INSKIP & WELLS, *supra* note 5, at 27-77.

28. For example, the Northern white rhino is native to Kenya. In 1973, the Northern white rhino population was estimated at only 20,000. Today their numbers have been further reduced and hover alarmingly near 1,000. Of the other five species of rhinoceri, there are now thought to exist approximately 10,000-20,000 black rhinos; 3,000 Southern white rhinos; 2,000 Indian rhinos, 200 Sumarian rhinos; and fewer than 60 Javan rhinos. African Elephant and Rhino Group, 1983 Newsletter No. 1, at 5-11. *See also* Webster, *Foul Humored Rhinos Going to Texas Haven*, *N.Y. Times*, Mar. 24, 1984, at 1, col. 1.

from the export of native wildlife dwindled as desired species became increasingly less obtainable.<sup>29</sup> Eventually, many of the nations which depended upon wildlife trade were forced to re-evaluate their conservation policies and concluded that concerted action was necessary to correct what had become an economically self-defeating situation.<sup>30</sup> Facing the impending permanent loss of vital national assets, these nations began to appreciate that effective conservation and trade regulation were necessary to insure that native wildlife would remain a renewable resource.<sup>31</sup> Gradually, the practice of benign neglect was replaced with the understanding that wildlife “can and should be used correctly, for the benefit of the resource, and the people on whose land it occurs.”<sup>32</sup>

The growing economic impetus to regulate trade brought many range States whose wildlife resources had seriously dwindled to a common ground with many developed nations which had already attempted to limit wildlife trade for what are generally referred to as

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29. As species become rare, they often become increasingly valuable due to intensified demand. Although the volume of trade in such species is reduced, dealers benefit economically as they are able to obtain proportionately higher prices for rare species. See *supra* note 1. Conversely, States which rely on wildlife exports for substantial percentages of their national revenue depend on high volume trade. These countries are disadvantaged by depletions of wildlife populations despite the higher profits increasingly rare specimens bring to individual dealers.

30. This is particularly true for developing countries, especially those with an indigenous population of crocodiles, e.g., Paraguay, Columbia, Bolivia and Argentina; elephants, e.g., Botswana, Zambia and the Republic of South Africa; parrots, e.g., Brazil; rhinoceri, e.g., Kenya; leopards, e.g., Congo, Zaire, Uganda and Kenya; and sea turtles, e.g., Mexico and the Caiman Islands. See generally INSKIPP & WELLS, *supra* note 5.

31. To illustrate, Thailand enacted protective wildlife legislation in 1960. Brazil entirely banned export of all wildlife products in 1967. Venezuela banned the export of crocodile hides in 1970. INSKIPP & WELLS, *supra* note 5, at 5.

32. Proceedings of the Fourth Meeting of the Conference of the Parties, Gaborone, Botswana, Conf. 4.14 (Apr. 19-30, 1983) [hereinafter cited as Botswana Proceedings]. Effective wildlife management requires trade regulations that guarantee stable population levels maintained at numbers that do not threaten the species' survival chances. If this balance is achieved certain percentages of native wildlife can be regularly “harvested” or “culled” to provide continued income for their range States. See IUCN, *WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT* (1980). However, if trade is not regulated and becomes over-exploitative, nations are often forced to choose between continuing trade and risking the loss of the species, or prohibiting or severely limiting trade in order to allow the depleted population to attempt to replenish itself. If the restrictions come too late, however, the species may not be able to recover despite even total trade bans. For example, in 1941 the entire Whooping crane population was reduced to twenty-one birds. Although both the United States and Canada acted to totally protect the species' entire migratory and nesting areas, the population has risen to only 150 birds in almost twenty-five years of concerted conservation effort. See J. FISHER, N. SIMON & J. VINCENT, *WILDLIFE IN DANGER* 223-225 (1969). The California condor (*Gymnogyps californianus*) provides another illustrative example of a situation in which this has occurred. See CADIEUX, *supra* note 7, at 25-29.

humanitarian reasons.<sup>33</sup> By the late 1960's the international community began to coalesce into an integration of two distinct blocs that were unified by their common desire to control wildlife trade, although distinguished by differing motives.<sup>34</sup> The International Union for the Conservation of Nature and Natural Resources (IUCN),<sup>35</sup> under the direction of the United Nations Environmental Program (UNEP), circulated three drafts through the United Nations between 1967 and 1971.<sup>36</sup> Both the economic and conservation oriented nations recognized the necessity of international cooperation,<sup>37</sup> and by the early 1970's this understanding set the stage for the establishment of a legal mechanism that would promote "the maintenance of those species throughout their ranges at levels consistent with their roles in the ecosystems in which they occur."<sup>38</sup> In the

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33. See *supra* text accompanying note 22.

34. This categorization is not a formal designation, but rather is used here to help illustrate the historical background of international cooperation in the area of wildlife trade. See BOARDMAN, *supra* note 26, at 86-96 (1981).

35. The IUCN is "an independent international organization whose membership comprises States (irrespective of their political and social systems), governmental departments, private societies and institutions, and international organizations." Although it is not a United Nations Organization, it is supported by UN agencies "such as the Food and Agriculture Organization (F.A.O.), the Educational, Scientific, and Cultural Organization (UNESCO), the Economic and Social Council (ESOSOC), and that of the Council of Europe and other inter-governmental bodies. With all of these it has full consultative status." FISHER, SIMON & VINCENT, *supra* note 32, at 9.

The ICUN originally began on private initiative in Brussels in 1934 as *l'office International pour la Protection de la Nature* (O.I.P.N.). After an international conference sponsored by UNESCO and the Government of France, the O.I.P.N. evolved into the International Union for the Protection of Nature (IUPN) in 1948. After attracting widening support, the IUPN was redesignated the IUCN in 1956. *Id.* See generally BOARDMAN, *supra* note 26, at 26-123.

36. "The move towards an international convention to conserve species threatened with trade was launched at the 8th General Assembly of [the] IUCN in Nairobi in 1963. Formal drafts . . . were sent to governments . . . in September 1967, August 1969, and March 1971 . . . ." The governments of the United States and Kenya also prepared and circulated drafts. In June 1972, the UN Conference on the Human Environment held in Stockholm "recommended (Recommendation 99.3 of the Action Plan) that a plenipotentiary conference be held . . . to prepare and adopt a convention on export, import and transit of certain species of wild animals and plants." IUCN Memorandum Concerning the Working Paper for the Endangered Species Conference, Nov. 10, 1972, Doc. 4, annex 1 (unofficial copy on file at California Western International Law Journal). "The United States, aware of its . . . responsibilities as host Government . . . and recognizing that the Conference would be severely impeded should it be faced with three competing drafts, sent an informal mission to the IUCN and to Nairobi which achieved the Unified Working Paper subsequently used by the Conference." 68 DEPT. ST. BULL. 615.

37. Many nations had enacted domestic legislation to protect endangered wildlife within their own territories. See, e.g., *supra* notes 6 & 31. Legislation of this nature, however, was insufficient to control a problem of international dimensions. See generally BOARDMAN, *supra* note 26, at 25-124.

38. Botswana Proceeding, *supra* note 32, Conf. 4.14.

attempt to further two independent but arguably parallel goals through a single cooperative effort,<sup>39</sup> a multilateral treaty was signed in March 1973.<sup>40</sup> This treaty entered into force in July 1975 and was originally ratified by thirty-two countries. Currently eighty-seven nations are signatories to CITES, the most widely accepted international conservation consensus ever developed.<sup>41</sup>

## II. THE CONVENTION'S STRUCTURE: AN INTERNATIONAL ATTEMPT TO REGULATE WILDLIFE TRADE

CITES utilizes a comprehensive system of regulations designed to insure that endangered wildlife is not over-exploited by trade, and that non-endangered wildlife flows freely in international commerce. A discussion of the Convention's overall structure and operational mechanism is essential in understanding this system.

### A. CITES Permits and Appendices

CITES incorporates a system of import and export permits<sup>42</sup> which serves as the basic control mechanism in regulating the international trade<sup>43</sup> of those species<sup>44</sup> threatened with extinction. These permits are analogous to passports;<sup>45</sup> they must be presented at customs before shipments of endangered flora or fauna will be granted entrance to or exit from a Party State.<sup>46</sup>

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39. See CITES, *supra* note 14, preamble.

40. CITES was originally signed in Washington D.C., and is often referred to around the world as the "Washington Convention."

41. Compare CITES with Convention on the Conservation of Antarctic Marine Living Resources, May 20, 1982, T.I.A.S. No. 10240 (10 parties); Agreement on the Conservation of Polar Bears, Nov. 15, 1973, T.I.A.S. No. 8409 (5 parties); Convention for the Conservation of Antarctic Seals, June 1, 1972, 29 U.S.T. 443, T.I.A.S. No. 8826 (11 parties); Interim Convention on Conservation of Northern Pacific Fur Seals, Feb. 9, 1957, 8 U.S.T. 2285, T.I.A.S. No. 3948, 324 U.N.T.S. 105 (4 parties); International Plant Protection Convention, Dec. 6, 1951, 23 U.S.T. 2769, T.I.A.S. No. 7465, 150 U.N.T.S. 67 (entered into force for the U.S. in 1972) (82 parties); International Convention for the Regulation of Whaling, Dec. 2, 1946, 10 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 366 (last amendment July 26, 1980, T.I.A.S. No. 9946) (34 parties); Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Oct. 12, 1940, 56 STAT. 1354, 194 U.N.T.S. 485 (17 parties). See generally BOARDMAN, *supra* note 26, at 25-124.

42. CITES, *supra* note 14, arts. III (2-4), IV(2).

43. The Convention defines "trade" as the "export, import or introduction from the sea." *Id.* art. I (c).

44. The Convention defines "species" as "any species, sub-species or geographically separate population thereof." *Id.* art. I(a).

45. Grove, *Wild Cargo: The Business of Smuggling Animals*, 159 NAT'L GEOGRAPHIC 287, 294 (1981).

46. To facilitate processing specimens, the Convention provides that parties may designate



CITES lists those species that have been determined to require trade protection in one of three appendices.<sup>47</sup> The appendices indicate two important factors: (1) the permits required before a species can be legally traded, and (2) the requirements that must be met before a permit may issue.<sup>48</sup> Placing a species in one of the appendices therefore determines not only the conditions that must be satisfied before it can be traded, but also the degree of trade protection that the species will receive.

The appendices classify wildlife recognized as in need of protection into three different groups: (1) "presently" endangered (Appendix I), (2) "potentially" endangered (Appendix II), and (3) "locally" endangered (Appendix III).<sup>49</sup> An appreciation of the operation of CITES is best attained by examining its classification scheme.

Appendix I includes "all species threatened with extinction which are, or may be affected by trade."<sup>50</sup> Since their extinction is imminent, trade in Appendix I specimens<sup>51</sup> is subject to the strictest regulations imposed by CITES.<sup>52</sup> Examples of Appendix I species include the Humpback whale, Northern white rhinoceros, Mountain gorilla and Living rock cactus.<sup>53</sup> Trade in Appendix I specimens is limited to situations in which both the exporting and importing countries issue the requisite permits. A trader is required to present both an import and export permit at the customs office of the exporting country at the time of export,<sup>54</sup> and at the customs

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ports of entry and exit at which shipments must be presented for clearance. CITES, *supra* note 14, art. VIII(e). By limiting its wildlife trade access points a party can concentrate its law enforcement forces in specific areas, thus making the most efficient use of generally limited funds. There are currently nine designated points in the United States: Los Angeles, CA; San Francisco, CA; Honolulu, HI; Seattle, WA; Dallas, TX; New Orleans, LA; Miami, FL; Chicago, IL and New York, NY.

47. *Id.* art. II(1-3).

48. *Id.* arts. III(2-5), IV (2-7).

49. *Id.* art. II. The distinction between Appendix I and II species roughly corresponds to the United States distinction between those species that are "endangered" and those that are "threatened." Compare CITES with Endangered Species Act, 16 U.S.C. §§ 1531-1543 (1973 & Supp. III 1979).

50. CITES, *supra* note 14, art. II(1).

51. The language of the treaty regarding "specimens" has caused confusion and enforcement problems. For a detailed discussion, see *infra* text accompanying notes 189-226.

52. CITES, *supra* note 14, art. III(2-5).

53. Over fifty species of cacti are listed in Appendix I. For an excellent discussion of the issues surrounding United States conservation of flora, see McMahan, *What Is Protection?*, THE TENNESSEE CONSERVATIONIST, Mar./Apr. 1984, at 5-7; Comment, *Legal Protection for Rare Plants*, 29 AM. U. L. REV. 515 (1980).

54. CITES, *supra* note 14, art. III (2).

office of the importing country at the time of import.<sup>55</sup> This double checking procedure is employed to insure prevention of over-exploitative trade in presently endangered species.

The conditions that must be met under CITES before a species can be legally traded differ as to the importing and exporting nation. An importing nation must be satisfied that three conditions have been met before it can issue an import permit for an Appendix I specimen. First and most importantly, the importing State must be satisfied that the specimen will not be used for primarily commercial purposes.<sup>56</sup> Although CITES thereby limits trade of the most highly endangered species to bona fide scientific or cultural endeavors such as zoos, museums or biomedical research firms, these institutions may also pose potentially significant threats to endangered populations.<sup>57</sup> CITES therefore requires that the importing State must also determine that the proposed importation is not detrimental to the survival of the species' population in its native habitat, regardless of the specimen's eventual destination.<sup>58</sup> This condition ensures that highly threatened species cannot be traded for even non-commercial

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55. *Id.* art. III (3).

56. *Id.* art. III (4).

57. In 1977 the United States Department of Justice cracked a major wildlife smuggling ring in which nine of the nation's major zoos were implicated as buyers of illegally traded endangered reptiles. Proceedings of the Third Meeting of the Conference of the Parties, New Delhi, India, Doc. 3.34 (Feb. 25-Mar. 8, 1981) [hereinafter cited as New Delhi Proceedings]. See also Holden, *Cracking Down on Illegal Wildlife Trade*, 206 SCL, Nov. 16, 1979, at 801.

Zoos also put indirect pressure on endangered species. For example, prior to 1966 the wild orangutan population was seriously threatened as a result of demand by foreign zoos. Oberle, *supra* note 25, at 153. Another contributing factor is that the mortality rate of specimens held and shipped is inordinate, especially since zoos often obtain specimens from unscrupulous wildlife dealers. For example, in 1978 forty gibbons, three tapirs, three leopards and fifty macaques arrived at the Bangkok airport in a total of six cages. They were held at the airport for several days in extreme heat while awaiting shipment to Belgium before they finally died. Such incidents are especially significant in the case of threatened species. For example, the death of the forty gibbons actually represented the destruction of a least one hundred breeding groups. ERLICH, *supra* note 5, at 119-21.

Additionally, the high demand for primates for medical and scientific research has been largely responsible for pushing certain species towards extinction. This has been most noticeable in the cases of the gorilla (*Gorilla gorilla*) and chimpanzee (*Pan troglodytes*), both highly endangered species listed in Appendix I. Large numbers of these animals are often killed in the difficult and dangerous process of capture. A common method of capturing chimpanzees, for example, is to slaughter the adults in order to take the younger animals. Several chimpanzees may be killed in this process so that one may be traded abroad. As with all great apes, gorillas and chimpanzees have a very low breeding potential, and their wild populations have been seriously threatened by such practices. Moreover, the quality of some research is often questionable, and animals that survive capture are often sacrificed for use in dubious projects. INSKIP & WELLS, *supra* note 5, at 31; ERLICH, *supra* note 5, at 119-21.

58. CITES, *supra* note 14, art. III (3)(a).

purposes if that trade is damaging to the species' survival in the wild. Finally, CITES requires that the importing State must be satisfied that the proposed recipient is suitably equipped to house and care for the imported specimen.<sup>59</sup> Only if the above three criteria are satisfied may the importing State issue the necessary import permit.

CITES also places stringent restrictions upon those countries exporting Appendix I specimens. Before an exporting State can export an Appendix I specimen that State must first verify that a valid import permit has been issued by the importing State.<sup>60</sup> The exporting State must also determine that: (1) the specimen's export is not detrimental to the survival of the species;<sup>61</sup> (2) the specimen was not obtained in contravention of its own wildlife protection laws;<sup>62</sup> and (3) living specimens are prepared and transported so as to minimize the risk of injury, damage to health and cruel treatment.<sup>63</sup>

Appendix II includes all species which, although not presently threatened with extinction, may become so unless their trade is strictly regulated.<sup>64</sup> These species are not considered to be as seriously threatened as those listed in Appendix I. Examples of Appendix II species include the Pygmy hippopotamus, American grizzly bear<sup>65</sup> and most species of dolphins and porpoises.<sup>66</sup> The most signif-

59. *Id.* art. III (3)(b).

60. *Id.* art. III (2)(d).

61. *Id.* art. III (2)(a).

62. *Id.* art. III (2)(b).

63. *Id.* art. III (2)(c).

64. Appendix II shall include:

- (a) 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; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

*Id.* art. II (2)(a)(b).

65. For an interesting account of the role a threatened species such as the Grizzly bear may play in the effort to preserve wilderness habitats under the National Environmental Policy Act, 42 U.S.C. §§ 4331-4335, see Comment, *Montana Grizzly Bears Protest Exploratory Drilling in Wilderness Area*, 23 NAT. RESOURCES J. 467 (1983).

66. The legal issues surrounding various aspects of marine mammal conservation have received a modest amount of critical attention. See, e.g., Comment, *International Aspects of the Tuna-Porpoise Association Phenomenon: How Much Protection For Poseidon's Sacred Messengers?*, 7 CALIF. W. INT'L L.J. 639 (1977); Travalio & Clement, *International Protection for Marine Mammals*, 5 COLUM. J. ENVTL. L. 199 (1979); Nafziger, *Global Conservation and Management of Marine Mammals*, 17 SAN DIEGO L. REV. 591 (1980); M'Gonigle, *The "Economizing" of Ecology: Why Big, Rare Whales Still Die*, 9 ECOLOGY L.Q. 119 (1980); Bonker, *U.S. Policy and Strategy in the International Whaling Commission: Sinking or Swimming?*, 10 OCEAN DEV. & INT'L L. 41 (1980); Carlson, *The International Regulation of Small Cetaceans*, SAN DIEGO L. REV. 577 (1984).

icant distinction between the two appendices is that Appendix II specimens may be traded for commercial purposes.<sup>67</sup> Since commercial trade is often a major threat to wildlife populations, Appendix II species are afforded considerably less protection than that provided for Appendix I species. Moreover, trade in Appendix II specimens is not as highly regulated as trade in Appendix I specimens. Unlike Appendix I requirements, traders desiring to ship an Appendix II specimen must present only a valid export permit;<sup>68</sup> the issuance of an import permit by the State of importation is not required. Thus, protection of Appendix II species is the sole responsibility of the exporting country.<sup>69</sup> The criteria for issuing an export permit for an Appendix II species are much the same as those for an Appendix I export permit.<sup>70</sup> These include determining that the specimen's export is not detrimental to the survival of the species and that it was not obtained in contravention of the State's wildlife protection laws.<sup>71</sup>

Appendix III includes all species that are not considered endangered internationally, but have been identified by an individual party as subject to regulation within its own jurisdiction.<sup>72</sup> CITES supports a party's request for cooperation on the part of other parties in controlling trade of the species so listed. Similar to Appendix II specimens, traders in Appendix III specimens must present only a valid export permit<sup>73</sup> when importing and exporting such a specimen.<sup>74</sup> Thus, Appendix III specimens receive the same protection as Appendix II specimens and are subject to the same regulation.

### B. CITES Enforcement Provisions

CITES is not a self-executing treaty and the responsibility for enforcing its provisions is relegated to each Party State.<sup>75</sup> CITES directs parties to take appropriate enforcement measures which in-

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67. Compare CITES, *supra* note 14, art. III(2-3) with art. III (2).

68. *Id.* art. IV (2).

69. *Id.* art. IV (2-4).

70. *Id.* art. IV (2)(a-c).

71. *Id.*

72. *Id.* art. II (3).

73. Appendix III specimens may also be imported upon presentation of a certificate of origin, if the export is from a party not listing the species on Appendix III. *Id.* art. V (3).

74. *Id.* art. V (2-4).

75. *Id.* art. VIII (1). Self-executing treaties are enforceable by virtue of the agreement itself, whereas non self-executing treaties are dependent upon enabling legislation of parties for their enforcement. See Schneebaum, *The Enforceability of Customary Norms of Public International Law*, 8 BROOKLYN J. INT'L L. 289 (1982).

clude penalizing trade in or possession of species traded in violation of the Convention.<sup>76</sup> In addition, parties are to confiscate and return such specimens to the State of export.<sup>77</sup> The domestic wildlife laws of each party vary greatly in content, scope and effectiveness.<sup>78</sup> Consequently, CITES is implemented differently by each party according to its own enabling wildlife legislation.<sup>79</sup> Although the parties are unified in purpose, they are essentially on their own in implementing the treaty designed to further their common goal.

### C. National Management and Scientific Authorities

Each party to CITES must designate national authorities to administer the permit control system and make the mandated scientific determinations discussed above.<sup>80</sup> National authorities work in cooperation with one another to implement the Convention's provisions.<sup>81</sup> Each signatory's national authority must have both a scientific and management division.<sup>82</sup> The scientific authority makes the biological and ecological determinations required by CITES.<sup>83</sup> The most important of these determinations is deciding whether a species is sufficiently threatened to warrant protecting it under the Convention.<sup>84</sup> If this finding is positive the scientific authority also

76. CITES, *supra* note 14, art. VIII (1).

77. *Id.* art. VIII (4)(a). Confiscated live specimens are to be entrusted to the management authority of the State of confiscation. *Id.* The Convention also provides that the management authority shall return, after consultation with the State of export, live specimens to that State at the expense of the exporting State. *Id.* art. VIII (4)(b).

78. For a discussion of Canadian wildlife conservation legislation, see Versteeg, *The Protection of Endangered Species: A Canadian Perspective*, 11 *ECOLOGY L. Q.* 267, 284 (1984); for New Zealand's efforts in this area see Wells, *Protection of Wildlife in the Environment*, 4 *AUCKLAND U.L. R.* 382 (1983).

79. For example, CITES is implemented in the United States by the Endangered Species Act (ESA). Additionally, one of the major problems in enforcing other countries' wildlife laws is that often one Party State does not know the laws of another Party State. For a detailed discussion, see *infra* text accompanying notes 280-98.

80. CITES, *supra* note 14, art. IX (1).

81. Originally, the United States Scientific and Management Authorities were independent bodies, working together as required by Article IX (1) of CITES. The two branches were eventually combined (for primarily budgetary considerations), and transferred to the auspices of USFW by the 1979 amendment to the ESA. The Federal Wildlife and Permit Office (WPO) acts as the United States Management Authority, and the Division of Law Enforcement implements its directives. Additionally, the United States has seven regional offices working under the authority of USFW. Telephone interview with Bill Brown of the Environmental Defense Fund (Sept. 23, 1983). Mr. Brown was the first director of the United States Scientific Authority, from 1977-78.

82. CITES, *supra* note 14, art. IX(1).

83. *Id.* art. IX (1)(b).

84. *Id.* arts. III(2)(a), (3)(a)(b); IV (2)(a)(3).

determines the extent to which a species is threatened, and lists it accordingly in the proper appendix. Additionally, the scientific authority monitors the species' ongoing survival status and changes its appendix listing when appropriate.<sup>85</sup>

These scientific data are then relayed to the management authority, which carries out the mechanical implementation of CITES for the party.<sup>86</sup> The responsibilities of the management authority include granting permits on behalf of the party and carrying out the law enforcement aspects of the treaty. The management authority may not approve trade of a listed species by issuing the requisite permits unless the scientific authority has first made the necessary specific findings that the trade is authorized under CITES.<sup>87</sup> Ideally, the management authority will strictly regulate trade of species determined by the scientific authority to be in danger of extinction to insure their continued renewability.<sup>88</sup>

#### D. CITES Secretariat

The responsibility of coordinating the party's national authorities is delegated to the Convention's Secretariat.<sup>89</sup> This "small international secretariat . . . merely functions as a 'switchboard' to facilitate direct contacts between the countries concerned."<sup>90</sup> The Secretariat is a part of the ICUN, which administers the program on behalf of the Executive Director of UNEP.<sup>91</sup> Parties are required to keep detailed records of trade in species regulated by CITES and to forward these records annually to the Secretariat.<sup>92</sup> The Secretariat also receives biennial reports on each party's legislative, regulatory

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85. *Id.* art. XV, XVI. The parties have established formal scientific standards for determining the appropriateness of adding, deleting and transferring species and other taxa to and from the various appendices. These standards are known as the "Berne Criteria." Proceedings of the First Meeting of the Conference of the Parties, Berne, Switzerland, Conf. 1.1, 1.2, 1.3 (November 2-6, 1976) [hereinafter cited as Berne Proceedings].

86. CITES, *supra* note 14, art. IX (1)(a).

87. *Id.* arts. III (2)(a), (3)(a-b), (5)(a); IV (2)(a), (3), (5)(b), (6)(a).

88. For problems created by this bureaucratic network, see *infra* text accompanying notes 252-79.

89. CITES, *supra* note 14, art. XII (1).

90. Sand, *supra* note 1, at 56. Mr. Sand is a past Secretary General of the Convention's Secretariat. The offices of the Convention's Secretariat are located in Gland, Switzerland, and consist of the Secretary General, two scientists, two secretaries and a lawyer. The Secretariat is currently funded by UNEP and the IUCN. The future funding of the Secretariat and the Conference of the Parties is uncertain at this time. See, e.g., Botswana Proceedings, *supra* note 32, Conf. 4.3.

91. See *supra* notes 35-36.

92. CITES, *supra* note 14, art. VIII (6).

and administrative measures taken to enforce the provisions of the Convention.<sup>93</sup>

### *E. Conferences of the Parties and Amendment Procedures*

CITES also provides for biennial conferences of the parties.<sup>94</sup> Conferences serve primarily as a mechanism for modifying the appendices and improving the effectiveness of the Convention through party recommendations and resolutions.<sup>95</sup> Resolutions and recommendations are "criteria or standards" used to guide parties and the Secretariat in administrative and procedural implementation of the treaty, and are informal vehicles of modifying the treaty that may be adopted by consensus or majority vote.<sup>96</sup> Conference resolutions represent the articulated culmination of the parties' ongoing experience in their attempt to effectuate the treaty's purposes. Despite their extreme importance, however, conference resolutions are non-binding,<sup>97</sup> which concededly weakens their effectiveness. Resolutions represent at most an indication of a willingness on behalf of the parties to exert a bona fide effort to achieve the objectives addressed therein.<sup>98</sup>

The drafters of the Convention recognized that trade patterns and wildlife populations change over time, and that in order to remain effective CITES would have to contain an apparatus that ena-

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93. *Id.* art. VIII (7)(b). See *infra* text accompanying notes 278-79.

94. *Id.* art. XI. The Conference provides for a regular meeting of the parties at least once every two years. To date the parties have met in Berne, Switzerland (1976); San Jose, Costa Rica (1979); New Delhi, India (1981); and Garborone, Botswana (1983). The Fifth Meeting of the Conference of the Parties will be held in Buenos Aires, Argentina, Apr. 22-May 3, 1985.

95. The Convention also provides for participation by observers representing the United Nations and its specialized agencies, the International Atomic Energy Agency and non-party nations. CITES, *supra* note 14, art. XI (6). Additionally, government or non-government international agencies, national government agencies, and locally approved non-government agencies may be admitted and allowed to participate unless one-third of the parties present object. *Id.* art. XI (7). However, only parties to the Convention may actually vote. Nevertheless, effective observer status has been employed by both private conservation groups and economic lobby groups "ranging from luxury fur and leather industries (for wildlife products) to pet dealers, safari parks and biomedical research establishments (for live animals)." Sand, *supra* note 1, at 58.

96. Comment, *Enforcement Problems in the Endangered Species Convention: Reservations Regarding the Reservation Clause*, 14 CORNELL INT'L L.J. 429, 434 (1981) [hereinafter cited as *Reservations Regarding the Reservation Clause*]. See also Proceedings of the Second Meeting of the Conference of the Parties, Doc. 2.36 (San Jose, Costa Rica, Mar. 19-30, 1970) [hereinafter cited as San Jose Proceedings].

97. Interview with Bill Brown, *supra* note 81.

98. See *infra* text accompanying notes 337-41.

bled the signatories to adapt to such fluctuations.<sup>99</sup> To furnish this flexibility the Convention provides procedures for amending both the appendices<sup>100</sup> and the text of the treaty.<sup>101</sup> Appendix amendments allow the Conference to add, delete and shift species from one appendix to another, thereby adopting or relaxing protection for species considered either newly endangered or no longer threatened.<sup>102</sup> Appendices can be amended at biennial conferences, or between conferences via parties' submission of proposals to the Secretariat.<sup>103</sup> The signatories may also amend the treaty's text, but to do so the Secretariat must convene an extraordinary meeting of the parties.<sup>104</sup> This procedure is rarely invoked<sup>105</sup> and is only mandated upon written request to the Secretariat by at least one-third of the treaty's signatories.<sup>106</sup>

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99. Species may become endangered as a result of habitat destruction, abusive trade, heavy use as a food source or adverse climate conditions. The destruction of entire ecosystems, however, is considered to be the single greatest threat to wildlife populations. Currently, there is no international agreement designed to combat this problem. CITES is designed to deal only with abusive trade, and as such, it offers no protection to wildlife from habitat destruction. EHRlich, *supra* note 5, at 129-176; COUNCIL ON ENVIRONMENTAL QUALITY, TWELFTH ANNUAL REPORT 197-204 (1981); IUCN, *supra* note 32.

It has been demonstrated that effective conservation may be efficiently implemented through direct habitat protection. For example, the Bengal tiger (*Panthera tigris*) population had been reduced from 40,000 at the turn of the century to only 1,827 by 1972. In 1973 India began "Project Tiger," a measure that created eleven tiger reserves throughout the country. In ten years the population climbed to 3015 animals, an increase of 85 percent. WALL STREET JOURNAL, Aug. 6, 1982, at 1, col. 4.

100. CITES, *supra* note 14, art. XV, XVI. For detailed analysis of this procedure, see *Legislative Developments*, *supra* note 14, at 1224-25.

101. CITES, *supra* note 14, art. XVII.

102. *Id.* At the Botswana Proceedings the Conference made numerous amendments to the appendices. For example, the ostrich (order *Struthioniformes*), Agave cactus (*Leuchtenbergia principis*), Mona boa (*Epicrates monensis*) and Bottle-nosed whale (*Hyperoodon* spp.) were added to Appendix I. The European brown bear (*Ursus arctos*) and the Nile crocodile (*Crocodylus niloticus*) were shifted from Appendix I to Appendix II, and the Giant clam (*Tridacna deras* and *Tridacna gigas*) was newly added to Appendix II. Conversely, the Swift fox (*Vulpes velox hebes*) and Lake sturgeon (*Acipenser fulvescens*) were removed from CITES appendices entirely. 48 Fed. Reg. 45, 259 (1983)(to be codified at 50 C.F.R. § 23).

103. See *supra* note 85 and accompanying text.

104. CITES, *supra* note 14, art. XVII, XI (2).

105. The First Extraordinary Meeting of the Conference of the Parties was held in Bonn, Federal Republic of Germany, on June 22, 1979, to consider adoption of a financial amendment to CITES. Report of the U.S. Delegation to the Fourth Meeting of the Conference of the Parties (1983) (unofficial copy on file at California Western International Law Journal). The Second Extraordinary Meeting of the Conference of the Parties was held in Gaborone, Botswana, on April 30, 1983, to consider an amendment to CITES that would enable regional Economic Integration Organizations such as the European Economic Community (EEC) to accede to CITES. Botswana proceedings, *supra* note 32, Doc. E.2.3. For a discussion of the EEC's adoption of CITES see *infra* note 126.

106. CITES, *supra* note 14, art. XVII(1).



CITES is a highly practical mechanism incorporating a structure designed to deal with a complex international situation. The Convention has taken considerable steps in slowing the trend toward extinction<sup>107</sup> and represents a potential tour de force of international wildlife cooperation. Several problems, however, have continuously obstructed implementation of the Convention, directly minimizing its overall effectiveness thus far.

### III. RECURRING PROBLEMS OF IMPLEMENTATION

Despite its foundational soundness CITES has enjoyed only limited practical success.<sup>108</sup> Some commentators believe that the treaty has done more to promote rather than prevent over-exploitative trade. Some United States wildlife managers, for example, have contended that the need to cooperate with the Convention has been exaggerated, and that the treaty has taken unjustifiable precedence over domestic wildlife concerns.<sup>109</sup> Arguments have been advanced that CITES has over-zealously listed species that are not endangered, much to the detriment of foreign trade and international relations.<sup>110</sup> Representatives of the pet trade and fur industries, tourists and hunters have in good faith criticized the manner in which the treaty has been implemented.<sup>111</sup>

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107. See, e.g., 5 TRAFFIC, 1984 Newsletter No. 4, at 8-10 (U.S. import analysis for 1982, data based on U.S. Imports for Consumption (IM-146), compiled by Bureau of the Census, U.S. Dept. of Commerce); 5 TRAFFIC, 1984 Newsletter No. 3, at 3-11 (comparison of CITES and non-CITES imports for 1982, data based on analysis of USFW 3-177 declaration data supplied under a Freedom of Information Act request); 2 TRAFFIC, 1980 Newsletter No. 3 & 4, at 4-5 (U.S. import analysis for 1978-79, data based on a U.S. Imports for Consumption, Bureau of the Census, U.S. Dept. of Commerce).

108. Address by David Mack, Assistant Director of TRAFFIC (U.S.A.), presented at 1983 American Association of Zoological Parks and Aquariums Conference, Vancouver, Canada (Sept. 20, 1983) [hereinafter cited as Mack Address] (copy on file at California Western International Law Journal); Kaufman, *Preserving Rare Species is an Ironic Success*, N.Y. Times, Mar. 8, 1981, at E20, col. 1.

109. CADIEUX, *supra* note 7, at 172. One United States wildlife manager recently stated that "[d]uring a career spent in wildlife work, I often noticed that when the Department of the Interior and the State Department butted heads in Washington, decisions were automatically awarded to the State Department without hearings. This happened more often than coincidence would allow." *Id.* at 170-171.

110. For example, the arguably unnecessary listing of the American alligator in the mid-1970's severely damaged France's reptile hide industry. Similarly, the controversial listing of the order *Felidae* has limited previously heavy United States trade in bobcat skins to Europe. *Id.* at 171. For an interesting discussion of the litigation that ensued as a result of the listing of the American bobcat see Note, *Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority: The Court as Biologist*, 12 ENVTL L. 773 (1982).

111. Interviews with Richard Parsons, in Washington, D.C. (Dec. 22, 1983; Jan. 3, 5 and 6, 1984). Mr. Parsons was an original negotiator, drafter and administrator of CITES. He was

Although the line drawn is often blurred, criticisms of this nature sometimes reflect a dissatisfaction with the manner in which CITES affects a particular interest group, as opposed to dissatisfaction with its overall effectiveness in protecting endangered species and legitimate wildlife trade.<sup>112</sup> The vast majority of administrators, participants and commentators believe that CITES has made major inroads in curbing over-exploitative trade.<sup>113</sup> Still, there is an almost unanimous consensus even among these advocates that the treaty has not been implemented on a level effective enough to make a substantial difference in the majority of traded species.<sup>114</sup> Significant numbers and varieties of endangered wildlife continue to be traded,<sup>115</sup> and legitimate trade in non-endangered species is often hindered in the process.<sup>116</sup>

The treaty's practical effectiveness has been limited by two major problem areas. First, CITES suffers from inherent weaknesses resulting from provisions that allow major trade exemptions. The major<sup>117</sup> weaknesses are language that eliminates protection for species that are not "readily recognizable,"<sup>118</sup> and exemptions for species that are either "tourist souvenirs"<sup>119</sup> or traded with nations not signatories to the Convention.<sup>120</sup> Second, effective enforcement of

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chief of the effective U.S. Management Authority (the Federal Wildlife Permit Office) from its inception in 1976 until 1983.

112. See, e.g., *supra* note 110.

113. Interview with Michael Bean, Chairman of the Wildlife Program of the Environmental Defense Fund, in Washington, D.C. (Jan. 4, 1984).

114. Interviews with Richard Parsons, *supra* note 111; Michael Bean, *supra* note 113; Linda McMahan, *supra* note 1.

115. Based on 1982 records of the U.S. Bureau of the Census (U.S. Customs), the U.S. 1982 CITES Annual Report, and two requests submitted to USFW by TRAFFIC (U.S.A.) and the National Audubon Society under the Freedom of Information Act, TRAFFIC analysis reveals that "at the very minimum, one million skins and products of apparently illegal origin entered the U.S. in 1982 alone. This figure does not include live animals or other wildlife categories declared in measures of length or by weight." 5 TRAFFIC, 1984 Newsletter No. 3, at 12.

116. It has been suggested that CITES often places an undue and inequitable burden on businesses and consumers. See Meyers & Parsons, *A Look at Wildlife Trade—From Both Sides*, 5 TRAFFIC, 1984 Newsletter No. 5, at 3.

117. CITES actually contains several provisions that weaken the Convention's effectiveness. Article VII contains seven specific exemptions, including provisions relating to specimens either in transit, acquired before the Convention applied, bred in captivity, forming part of travelling zoos or circuses or donated for noncommercial purposes. Additionally, Article XX-III allows parties to enter specific reservations on certain species. See *infra* text accompanying notes 137-59. For a detailed discussion of the issues attending the treaty's reservation clause, see *Reservations Regarding the Reservation Clause*, *supra* note 96.

118. CITES, *supra* note 14, art. I(2)(b).

119. *Id.* art. VII (3).

120. *Id.* art. X.

CITES has been plagued by recurring practical obstacles, notably a lack of efficient communication and adequate deterrence to violations of the Convention.

*A. Inherent Weaknesses—Exemptions from Trade Restrictions*

The original drafts of CITES circulated by the IUCN contained no provisions for tourist souvenir exemptions or trade with nonparties.<sup>121</sup> Similarly, the drafts provided that the trade controls embodied therein would apply to all listed “specimens.” There was no qualification applied to this language. The inclusion of these exemptions and modifiers has significantly weakened the treaty, and it is useful to examine the basis upon which they were originally accepted and the functions they have ultimately served in order to ascertain whether ample justification exists for retaining them today.

Careful analysis suggests that the original rationales for including trade exemptions, viable in 1973, are now of questionable validity. The major factors that originally persuaded the parties to include the exemptions were: (1) the need to attract a large membership, and (2) the fact that their potential for abuse was unknown.<sup>122</sup> The strength of the multilateral agreement attempting to cope with a global problem was fundamentally dependent upon the participation of a sufficient number of the principal actors involved.<sup>123</sup> CITES eventually emerged containing trade exemptions because it was believed that their inclusion was necessary to attract signatories.<sup>124</sup> It appears that this point was well taken, as the Conference originally succeeded in attracting thirty-two signatories in 1973. However, since over half of the international community subsequently ratified CITES (including most of the major importing and exporting nations),<sup>125</sup> an analysis of the present necessity of the exemptions must consider whether the rationale of attracting membership is still appropriate today. The answer depends upon whether the States that

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121. Convention on the Export, Import and Transit of Certain Species of Wild Animals and Plants, Second Revised Draft, art. I (Feb. 1971) [hereinafter cited as Second Revised Draft] (unofficial copy on file with the California Western International Law Journal).

122. See Train, *supra* note 17, at 2.

123. See generally O. SCHACHTER, M. NAWAZ & J. FRIED, TOWARD WIDER ACCEPTANCE OF UN TREATIES (1971).

124. Interviews with Richard Parsons, *supra* note 111.

125. CITES was originally signed in 1973 by 32 nations. By 1980 membership had risen to 56 parties, and as of December, 1984 stands at 87. Most recently the Convention entered into force for the People's Republic of the Congo on May 1, 1983; Belgium on Jan. 1, 1984; Algeria on Feb. 21, 1984; Luxembourg on Mar. 12, 1984; Trinidad and Tobago on Apr. 19, 1984; Benin on May 28, 1984; and the Netherlands on July 18, 1984.

have ratified CITES since 1973 have done so primarily because the treaty contained exemptions that made its trade restrictions convincingly palatable. This may be gleaned by evaluating the present likelihood of parties denouncing the treaty if the exemptions were repealed or significantly modified, which in turn depends upon an analysis of the ecological, economical and political consequences of the exemptions in question.<sup>126</sup>

The analysis is facilitated by the fact that in the ten years since CITES entered into force the parties have had significant opportunity to test their original suppositions.<sup>127</sup> The abuses generated by the

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126. Although some parties would oppose the repealing of certain exemptions, it is doubtful that they would denounce CITES if a majority agreed to take such action. The EEC, for example, agreed that the abuses resulting from the Convention's reservation clause outweighed the benefits derived from the provision. Consequently, the EEC eliminated the reservation provision when it adopted CITES in 1983. 26 U.J. EUR. COMM. (No. L384) 1 (1983). EEC members such as France, Switzerland and Italy, who once had major reservations on several species were forced to accept this decision, but nonetheless continue to implement the Convention. Similarly, it is reasonable to expect that severe limitations on or elimination of this or other exemptions could be adopted by a majority of the Conference. Dissenting parties might eventually recognize that the disadvantages of such action are minimal in comparison to the derived benefit of more efficient overall implementation.

The EEC's ratification of CITES is simultaneously positive and negative in its effect on wildlife trade. The beneficial aspects of the EEC regulation are that Greece and Ireland have been forced to implement the Convention, although neither of these nations are parties. The regulation also goes beyond CITES by requiring import permits for Appendix II and III species. Furthermore, the regulation prohibits not only the importation of Appendix I specimens for commercial purposes, but also "the display to the public for commercial purposes and the sale, keeping for sale, offering for sale or transporting for sale of such specimens." *Id.* art. 6(1).

These positive considerations, however, are counterbalanced by the EEC's position that the implementation of CITES "must not affect the free movement of products within the Community and must apply only to trade with third countries." *Id.* art. 9(2). The ramifications of this rule raise many issues. For example, an Appendix II species originating in Kenya will require an export permit to be admitted to Italy, but it will not require a permit if it is re-exported from Italy to any EEC member. Moreover, a listed species originating in a Member State will not require any permits to go to any other Member State. If an unscrupulous dealer can find a single Member State where permits are easily obtained, large volumes of listed species may be shipped into that country and then re-exported to other EEC States with impunity. Moreover, the EEC regulation may encourage other groups of countries which allow free trade amongst themselves to take similar action. If even a handful of such groups follow the EEC lead the entire foundation of CITES will be undermined.

127. The United States National Authority, for example, is particularly concerned about high trade volumes of Appendix II species such as pongolins, Caiman crocodiles, Sea turtles and parrots. The United States has officially questioned whether CITES is being adequately implemented as to trade in Appendix II species, and has requested assistance in determining if additional measures should be taken in this area. Such action reflects a basic concern for the overall effectiveness of CITES in controlling trade of potentially threatened species. United States Management Authority, Review and Harmonization of Annual Reports (1984) [hereinafter cited as 1984 Annual Report] (United States Delegation's unofficial copy on file at California Western International Law Journal).

exemptions are no longer speculative as they were when the Convention was adopted over a decade ago. At the request of the Conference the Secretariat recently undertook a study of the nature and extent of the problems of regulating the treaty's trade exemptions.<sup>128</sup> The results of this study were reported by the Secretariat, who noted that an extraordinary divergence of national practice exists regarding the exemptions.<sup>129</sup> The Secretariat cautioned the parties as to the eroding effect the exemptions are having on the Convention's general rules.<sup>130</sup> Moreover, the parties themselves have consistently identified the treaty's exemptions as providing perhaps the most damaging loopholes to effective implementation.<sup>131</sup> Reliable data on the volume of trade by tourists and with nonparties has made what were once vague suspicions now demonstrably real and concrete facts.<sup>132</sup> Examination of the effects of the exemptions is instructive in studying their present viability.

1. *Trade with Nonparties.* One of the most controversial aspects of CITES is the Convention's willingness to allow parties to freely trade wildlife with nonparties.<sup>133</sup> Nonparty trade in wildlife comprises a substantial percentage of the overall global trade of endangered species.<sup>134</sup> Moreover, a high percentage of illegal trade is facilitated by the cooperation, tacit or explicit, of nonparty States.<sup>135</sup> Nations often decline to ratify CITES primarily because their wildlife trade is extensive, and the treaty is viewed as a threat to continued economic benefits.<sup>136</sup> The problem is further complicated by the fact that the number of nonparties is not limited to countries who have not signed the treaty. Parties to CITES may enter trade "reser-

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128. San Jose Proceedings, *supra* note 96, Conf. 2.10.

129. Botswana Proceedings, *supra* note 32, Doc. 4.27.

130. *Id.*

131. See, e.g., San Jose Proceedings, *supra* note 96, Conf. 2.5; New Delhi Proceedings, *supra* note 57, Conf. 3.6; Botswana Proceedings, *supra* note 32, Conf. 4.9.

132. See *supra* note 8.

133. See, e.g., Wasserman, *Washington Wildlife Convention*, 14 J. WORLD TRADE L. 365 (1980).

134. Train, *supra* note 17, at 2. The Wildlife Trade Monitoring Unit estimates that legal trade with nonparties comprises approximately thirty percent of the overall wildlife trade. Botswana Proceedings, *supra* note 32, Doc. 4.18.

135. Nonparties such as Singapore engage in perhaps the largest trade volume of wildlife products. Train, *supra* note 17, at 2; INSKIPP & WELLS, *supra* note 5, at 23-26.

136. This may be inferred by the large volumes of trade in which nonparties generally engage. To illustrate, Singapore is one of the major markets for ivory and rhino horns. Mexico engages in substantial volumes of trade in exotic birds and plants, especially cacti and succulents. Train, *supra* note 17, at 2; INSKIPP & WELLS, *supra* note 5, at 23-26.

vations” on listed species,<sup>137</sup> which has the effect of making a signatory a technical nonparty free of CITES regulations when trading that particular species. Parties entering reservations are also motivated by economics, as the reserved species usually represents a substantial economic resource.<sup>138</sup> Accordingly, trade in reserved species is also generally heavy even though CITES recognizes them as requiring strict protection.

Despite the significant danger that voluminous trade by nonparties (nonsignatories and reserving parties) poses to endangered wildlife, CITES allows parties to trade listed species with nonparty States.<sup>139</sup> Trade with nonparties is conditioned only upon the requirement that “competent authorities” of the nonparty issue “comparable documentation” which “substantially conforms” with CITES permit issuance requirements.<sup>140</sup> The Convention, however, does not define the terms “comparable,” “competent” or “substantially.” As a result, the parties are left with no objective method to judge whether the nonparty has acted in accordance with the purposes of the treaty.

The vagueness of this provision presents significant potential for abuse when parties attempt to ascertain whether a nonparty has “substantially conformed” with CITES permit issuance requirements. As detailed above, several crucial scientific findings must be made before a listed species may be legally traded under CITES.<sup>141</sup> The reliability of a scientific finding determining that trade in a specific species will or will not be detrimental to the survival of their wild population is one of the most important elements of the Conven-

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137. CITES, *supra* note 14, art. XXIII. For example, as of Jan. 1, 1984, France, Japan and Suriname had reserved one or more species of Sea turtles (*Chelonia mydas*, *Eretmochelys imbricata*, *Lepidochelys coriacea*); France, Zambia, Botswana, Zimbabwe, Japan, the Sudan, Thailand and Austria had reserved on one or more species of the Saltwater crocodile (*Crocodylus cataphractus*, *C. niloticus*, *C. porosus*, *C. siamensis*, and *Osteolaemus tetraspis*). All of these species are highly endangered and listed on Appendix I. New Delhi Proceedings, *supra* note 57, Doc. 3.22. See also *Reservations Regarding the Reservation Clause*, *supra* note 96, at 434-46.

138. Notably, the USSR has entered six reservations on Appendix I species. Five of these are on species of whales (*Berardius spp.*, *Hyperoodon spp.*, *Balaenoptera acutorostata*, *B. edeni* and *B. physalus*), animals that represent a major industry in the Soviet Union. Japan, which also relies heavily on the whaling industry, has reserved on six species of whales. Japan's remaining seven reservations are on reptilia such as crocodiles, sea turtles and monitor lizards. Japan's reptile skin and shell industry is also substantial. See *infra* note 156.

139. CITES, *supra* note 14, art. X.

140. *Id.*

141. See *supra* text accompanying notes 56-74.

tion's effectiveness.<sup>142</sup> Erroneous judgments that allow trade when wild populations cannot in fact tolerate such removal render the treaty a futile attempt at wildlife management.<sup>143</sup>

The major weakness of the provision that allows trade with non-party States is that CITES allows Party States to accept nonparty scientific determinations which are critical to the viability of the treaty.<sup>144</sup> Generally, the act of entering a reservation is an expression by a reserving party that its immediate economic interest in the species is paramount.<sup>145</sup> This position may be either expressly stated by the nonparty or implied by its refusal to cooperate by signing the treaty. Since trade with nonparties is conditioned only upon the vague requirement that their scientific determinations "substantially conform" with the Convention's permit provisions, a significant degree of risk attends any acceptance by a party of a nonparty's "scientific findings." This risk is magnified further by virtue of the priority that nonparty's accord their vested short-term economic interests in wildlife trade.

In response to the issues raised by allowing trade with nonparties, the Conference has consistently sought to minimize potential threats to the Convention's goals by tackling the problem in a general manner. Nonparties are strenuously urged to ratify the treaty. Biennial conferences are open to observers who are permitted to participate in the proceedings, and nonparties are encouraged to attend in the hope that they will be persuaded to eventually join the Convention.<sup>146</sup> Parties contemplating entering reservations are urged to avoid doing so, and if they must, are encouraged to limit the use of the practice.<sup>147</sup> The majority of non-reserving parties exert considerable pressure on those who have exercised the option to limit or rescind the use of reservations entirely.<sup>148</sup> Although these general requests are sometimes effective,<sup>149</sup> many States have still declined to

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142. Interview with Art Lazarowitz, USFW Staff Specialist, in Washington D.C. (Jan. 5, 1984).

143. 1984 Annual Report, *supra* note 127.

144. CITES, *supra* note 14, art. X.

145. New Delhi Proceedings, *supra* note 57, Doc.3.22 (Report from the Secretariat on the effects of Reservations).

146. See *supra* note 95 and accompanying text.

147. Botswana Proceedings, *supra* note 32, Conf. 4.24.

148. *Id.* See generally *Reservations Regarding the Reservation Clause*, *supra* note 96.

149. The European Economic Community recently ratified CITES and completely prohibited the use of reservations under Article XXIII. 26 U.J. EUR. COMM. (No. L384) 1 (1983). For a brief outline of the issues surrounding the EEC's adoption of CITES, see *supra* note 126.

ratify CITES, and many parties still retain reservations.<sup>150</sup>

Perhaps the most effective response by the Convention to the problem of trade with nonparties has been the compilation of lists of nonparties which have been officially determined by the Secretariat to meet CITES permit issuance standards.<sup>151</sup> The continuing reliability of these determinations is uncertain, however, as it is difficult to ascertain whether nonparties will consistently meet the same standards. Moreover, parties are not required to respect these lists, but are only urged to do so.<sup>152</sup>

The Convention has also attempted to clarify the wording of the nonparty trade provision and thus provide the parties with a more objective method by which to ascertain whether nonparties have "substantially conformed" with the permit issuance requirements. At the First Meeting of the Conference of the Parties (Berne Proceedings), the United States delegation recommended interpreting the provision allowing trade with nonparties as requiring nonparties to provide documentation "similar" to that acquired by the parties. The Secretariat approved the recommendation and stated that its implementation would avoid abuses of illegal trade by nonparties.<sup>153</sup> However, the Conference has yet to define the term "similar." Thus, the parties are left with another undefined term to work with.

By definition, the purpose of CITES is to prevent *global* over-exploitative wildlife trade.<sup>154</sup> Curbing such trade *between parties* is therefore only the means to achieve the end of preventing it globally. Although abusive trade by nonparties is now recognized as a substantial threat to long-term wildlife management,<sup>155</sup> nonparties are often able to contravene the Convention's purpose with the assistance of Party States. Whether this occurs knowingly or unwittingly is irrelevant; CITES indirectly encourages and actually rewards nonparties for refusing to cooperate in controlling over-exploitation, and often bestows upon them a virtual monopoly in wildlife trade. To illustrate, Mexico, a nonparty, supplied over ninety percent of the turtle leather imported into Japan in 1980.<sup>156</sup> The economic rewards from

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150. As of Jan. 1, 1984, the following parties still retained reservations: Japan (13), Switzerland (9), France (7), USSR (6), Norway (4), Brazil (3), Peru (3), Thailand (3), Suriname (2), Austria (2), Botswana (1), Zimbabwe (1), Zambia (1). CITES Secretariat, Notification to the Parties No. 277, December 15, 1983. *See also supra* notes 137-38.

151. Botswana Proceedings, *supra* note 32, Doc. 4.8.

152. New Delhi Proceedings, *supra* note 57, Conf. 3.8.

153. Berne Proceedings, *supra* note 85, Doc.1.24.

154. CITES, *supra* note 14, preamble.

155. *See supra* notes 134-36.

156. Japan's imports included 160,000 kilograms of turtle skins; 70,846 kilograms of tor-



such a monopoly are an added incentive for nonparties to remain independent of CITES, and the objectives of the treaty are significantly defeated if they are allowed to benefit from their refusal to cooperate in the international arena.<sup>157</sup>

The exemption of the treaty that allows loosely regulated trade with nonparties should be repealed or strongly modified by the Conference. The provisions of CITES that purport to limit the abuse of this exemption are ineffective.<sup>158</sup> There is no objective method by which to ascertain whether a nonparty's authorities are competent to make trade decisions crucial to the survival of various wildlife species. The high volume of trade by nonparties, and the reasonable doubt as to the reliability of their scientific determinations engendered by their refusal to join CITES, makes ascertaining conformity with the treaty doubtful.

Elimination of the nonparty exemption would exert considerable economic pressure on nonparties to ratify CITES and to cooperate in promoting legitimate trade in non-endangered species. Since most of the importing consumer nations are CITES signatories,<sup>159</sup> repealing the nonparty exemption would effectively eliminate the wildlife market for nonparty exports. Nonparties would be forced to trade amongst themselves, and the resulting loss of profits would make such limited trade economically undesirable. Under these circumstances it is reasonable to predict that nonparties would find trade with parties in non-endangered species more advantageous than trade in endangered species limited to other nonparties. This would result in the curbing of abusive trade by nonparties, and would also encourage nonparties to cooperate in wildlife management within the international community.

If the Conference is unwilling to completely prohibit wildlife trade with nonparties, at a minimum CITES should be amended to provide that before trade with a nonparty is allowed, a party's own

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toise shell; and over 20,000 kilograms of turtle leather. *Reservations Regarding the Reservation Clause, supra* note 96, at 444, citing TRAFFIC (USA), Memorandum to Sea Turtle Conservationists 3 (Feb. 12, 1981).

157. Mexico takes between 500,000 to 1,000,000 Olive ridley turtles (*Lepidochelys olivacea*) from the Pacific coast annually, and it has been estimated that as a result the Baja California population of Green sea turtles (*Chelonia mydas*) is currently in danger of extinction. 43 Fed. Reg. 32,800, 32,803-804 (1978). Both species are listed in Appendix I.

158. See *supra* text accompanying notes 139-53.

159. Wildlife consuming nations generally include developed countries such as the United States, Japan and the nations of Western Europe. The United States, for example, is estimated to consume approximately twenty-five percent of all wildlife and wildlife products. Interviews with Linda McMahan, *supra* note 1.

authority must determine that the nonparty has complied with the treaty's safeguards, and not just that the nonparty's documentation conforms. In this way officials representing governments that have demonstrated a concern for CITES objectives will make the necessary scientific determinations, instead of just checking the paperwork issued by governments that may not.

2. *Tourist Souvenir Specimens and Personal Effects.* Another exception to the Convention's general trade restrictions is made in situations where departing or arriving tourists claim listed species as souvenirs or personal effects. The income generated from the sale of tourist souvenir specimens represents a substantial source of revenue for many countries.<sup>160</sup> Parts, products and derivatives of endangered species sold to tourists comprise a high percentage of the overall global wildlife trade.<sup>161</sup> Exotic furs, jewelry and pets are regularly purchased by tourists travelling abroad.<sup>162</sup> Big game hunters on safari kill animals to take home as trophies, and rare live specimens are in high demand by collectors.<sup>163</sup> The intense demand on a limited supply of animals and plants make this market particularly lucrative, and over-exploitation consequently poses a serious threat to wildlife conservation and long term business interests if not closely controlled.<sup>164</sup>

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160. INSKIPP & WELLS, *supra* note 5, at 27.

161. For example, the Sudan limits the commercial export of crocodile hides to European tanners to 60,000 per year, but it allows unlimited killing and stuffing of crocodiles for the tourist trade. It has been estimated that there may be as many as 100,000 in Sudanese souvenir shops at any one time. INSKIPP & WELLS, *supra* note 5, at 20; CADIEUX, *supra* note 7, at 171-172.

162. *See supra* note 5.

163. South Africa grants permits at R 5,000 apiece to kill a single rhinoceros. The government believes that there is actually a surplus of rhinoceri in the Pretoriuskop-Stolznek area of South Africa's Kruger Park. Johannesburg Star, July 17, 1982, at 2, col. 1. It is estimated that "the average big game hunter leaves more than 5,000 American dollars in each African country in which he hunts." CADIEUX, *supra* note 7, at 170. Many developing nations have used this supply of foreign exchange to manage the hunting of species such as the Spotted leopard, which some contend is plentiful in the wild. CITES now lists the leopard on Appendix I, and some have argued that the resulting loss of income from big game hunting has caused several small African nations to stop their anti-poaching efforts entirely. *Id.* at 171. *See generally* New Dehli Proceedings, *supra* note 57, Doc. 3.5 annex 5.

164. For example, in the early 1960's the Mountain gorilla population on the Zaire-Rwanda border was estimated at only 500. By 1980 their numbers were further reduced to approximately 250, primarily as a result of habitat destruction. In recent years, however, gorilla skulls have also been in high demand as souvenirs for tourists. As of 1976 at least sixteen males had been killed for their skulls. In 1978 the dominant male was killed in a troop in which no other males had reached a level of maturity sufficient to keep the group cohesive. As a result the entire troop may perish. INSKIPP & WELLS, *supra* note 5, at 32.

CITES does not allow exemptions for Appendix I specimens claimed as personal effects.<sup>165</sup> The returning tourist must therefore obtain and present valid import and export permits to move Appendix I specimens in and out of a party's territory.<sup>166</sup> In certain circumstances, however, CITES exempts Appendix II and III species from usual import and export restrictions when they are claimed as tourist souvenirs or personal effects.<sup>167</sup> In situations where Appendix II specimens were not taken from the wild and are claimed as personal effects, they can be imported without the requirement of an export permit.<sup>168</sup> In situations where Appendix II specimens were taken from the wild (such as occurs in hunting), they can also be imported without a permit, unless the exporting State specifically requires an export permit for that species.<sup>169</sup> Most exporting countries do not require export permits for Appendix II species claimed as personal items.<sup>170</sup> As a result, such specimens move freely between parties without any trade restrictions. The exemption thereby prevents parties from exercising any control over the potential danger presented by uncurtailed tourist trade.

The problem is further intensified by the Convention's failure to define the term "personal effect" or "tourist souvenir specimen."<sup>171</sup> The terms are, at the very least, impliedly representative of specimens distinguishable from items destined for commercial sale. In practice, the distinction is based on the volume of the items sought to be imported or exported. Generally speaking, the larger the shipment the more likely customs inspectors will consider it destined for commercial sale as opposed to classifying it as a tourist souvenir.<sup>172</sup> Nevertheless, the failure to define these terms creates an enormous

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165. CITES, *supra* note 14, art. VII (3)(a).

166. The problems associated with Appendix I tourist souvenirs specimens are enforcement related. Consequently, the Conference's efforts at curbing tourist trade of Appendix I specimens have been directed at increasing effective implementation of Article III, as opposed to modifying its language. For example, at the Botswana Proceedings the Conference urged all parties to "vigorously control" trade in Appendix I specimens, whether or not they are claimed as personal effects. Botswana Proceedings, *supra* note 32, Conf. 4.12.

167. CITES, *supra* note 14, art. VII (3)(b)(i-iii).

168. *Id.* art. VII (3)(b).

169. *Id.* art. VII (3)(c).

170. Botswana Proceedings, *supra* note 32, Conf. 4.12. For example, Morocco theoretically prohibits all commercial wildlife trade. Nevertheless, in practice customs authorities rarely prohibit tourists or pseudo-tourists from exporting specimens. This is particularly true in the case of falcons, which are regularly sought in Morocco from citizens of the Federal Republic of Germany. New Delhi Proceedings, *supra* note 57, Doc. 3.5 annex 5.

171. Botswana Proceedings, *supra* note 32, Conf. 4.12.

172. San Jose Proceedings, *supra* note 96, Doc. 2.18.2.

grey area, and often allows exemptions in situations where it is doubtful the parties intended one to exist.

Customs officials, for example, frequently observe the same tourists or "pseudo-tourists" regularly crossing the border with Appendix II specimens claimed as personal items.<sup>173</sup> Tourists are not legally limited by the treaty as to the number of items they may freely claim as exempt from restrictions under the souvenir clause. Although officials may suspect that many Appendix II specimens claimed as tourist souvenirs are being imported for commercial rather than personal purposes, the Convention provides no guidelines for allowing officials to challenge alleged violations perpetrated via this exemption. Furthermore, trade records of specimens claimed as personal effects are not required by CITES.<sup>174</sup> Consequently there is often no method available to ascertain the degree to which trade in specimens claimed as tourist souvenirs threatens the survival of Appendix II species.<sup>175</sup> If trade in tourists items is in fact causing serious damage to a particular species, the parties have no formal evidence upon which a convincing case may be established. Failure to define the term personal effect and thereby limit its parameters, may allow further abuse of a trade exemption which already represents a major loophole in CITES.

Aware of these problems, but under heavy pressure by many States to retain the status quo, the Conference has consistently sought to minimize the problems presented by trade of tourist souvenirs and pets without eliminating the provision. For example, at the Fourth Meeting of the Conference of the Parties (Botswana Proceedings) the Conference recommended limiting the use of the personal effects exemption by not applying the term "tourist souvenir" to live specimens.<sup>176</sup> Although the recommendation would still permit the unfettered use of the exemption for wildlife products, it would eliminate the over-exploitative tourist trade of live specimens of Appendix II species. Birds, reptiles and plants, the categories of living wildlife most often sought and moved by tourists, would be protected from

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173. Telephone interview with Marvin Jones, Chief Registrar of the San Diego Zoo, in San Diego, CA (Sept. 29, 1983).

174. CITES, *supra* note 14, art. VIII (6)(b).

175. Interviews with Linda McMahan, *supra* note 1.

176. Botswana Proceedings, *supra* note 32, Conf. 4.12. Another example of the devastating effect tourist trade can have on a precarious population of certain species occurred in 1980, when a substantial part of the remaining population of the Green sea snail entered the United Kingdom on a necklace strung around the neck of a returning British tourist. Botswana Proceedings, *supra* note 32, Doc. 4.24.

abuse by the use of the personal effects exemption.<sup>177</sup>

Ironically, the parties at the Botswana Proceedings also recommended broadening the "tourist souvenir" exemption in certain circumstances. The language of CITES allows the personal effects exemption to be applied only when the owner is entering his State of usual residence.<sup>178</sup> The Conference, however, recommended that persons in possession of Appendix II specimens covered by an export permit be afforded the exemption for personal effects when entering States *other* than their State of usual residence.<sup>179</sup> In practical effect, this allows tourists to move souvenir items across a multiplicity of international borders. The Conference modified this expansion, however, by allowing the new exemption only in situations where an export permit has been issued by the exporting country.<sup>180</sup> Thus, the Conference hoped to guarantee that Appendix II specimens will not be over-exploited through tourist trade by requiring the exporting country to determine that removal will not be detrimental to the species' survival.<sup>181</sup> Nevertheless, both recommendations indicate an unwillingness on behalf of the parties to dispense entirely with the tourist souvenir exemption. Although the limitation on live specimens claimed as personal effects represents a significant compromise, the economic value of tourist trade to exporting nations<sup>182</sup> has made the Conference unwilling to repeal the exemption despite the concern many parties have expressed over the tourist trade.

Regardless of the deadlock on this issue, the general consensus of the parties is that heavy trade reported in Appendix II specimens is of paramount concern.<sup>183</sup> Accordingly, the tourists souvenir exemption that allows Appendix II trade should be closely scrutinized, and any relaxing of what limits are presently placed on tourist trade should be avoided. In keeping with the present attempt to tighten CITES controls, any indication of a willingness to allow further expansion of a provision that already allows abuse of wildlife populations should be discouraged.

Although Appendix I specimens claimed as personal effects are not exempted from CITES trade restrictions,<sup>184</sup> additional measures

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177. *Id.*

178. CITES, *supra* note 14, art. VII (3)(b)(ii).

179. Botswana Proceedings, *supra* note 32, Conf. 4.12.

180. *Id.*

181. *See* CITES, *supra* note 14, art. IV.

182. *See supra* note 5.

183. *See, e.g.*, 1984 Annual Report, *supra* note 127.

184. CITES, *supra* note 14, art. VII (3)(a).

must be taken to insure that they are adequately protected. Confiscation of Appendix I specimens when a tourist returns home may provide a disincentive to purchase wildlife products in the future.<sup>185</sup> However, as long as tourists purchase endangered wildlife items at all the exporters have an incentive to remove such species from their habitats. The trader does not care whether the item he sold a tourist eventually sits on the customer's coffee table or in a USFW warehouse. The main focus of preventing wildlife exploitation is therefore one of preventing the original removal from the wild,<sup>186</sup> which will only occur if the market for such products sharply declines. If endangered wildlife cannot be sold because tourists refuse to buy products they know cannot be legally imported, traders will find the business untenable. Tourists must therefore be made aware of CITES restrictions before they purchase wildlife abroad, and not merely when they are returning home after having monetarily rewarded the exporter.

Educating the public of CITES restrictions and domestic wildlife laws is of primary importance. Prominent exhibits displaying illegal wildlife products and explaining trade restrictions, such as those currently in use at the Los Angeles and San Francisco International Airports, should be employed at all major international airports.<sup>187</sup> Sufficient supplies of confiscated products make this endeavor highly practical.<sup>188</sup>

3. "*Readily Recognizable Specimens.*" The language of CITES contains a linguistic loophole that exempts wildlife from the treaty's safeguards if it is too difficult for a party to identify a specimen as a listed species.<sup>189</sup> The treaty regulates the trade of "specimens" of species listed in the treaty's appendices. Specimen is defined by the Convention as "any readily recognizable part or derivative of a plant

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185. See *infra* note 269.

186. The issue has been raised that perhaps some parties have lost sight of this postulate, and are concentrating instead on the easier task of confiscating products imported into their countries. The argument has been advanced that the United States, for example, should focus its efforts to implement CITES more heavily on effecting changes on the international level. This would involve more attention devoted towards preventing the removal of threatened species from the wild, and less on after the fact apprehension of the consumer. Interviews with Richard Parsons, *supra* note 111.

187. Botswana Proceedings, *supra* note 32, Doc. 4.8.10.1.

188. See *infra* notes 224-25 and accompanying text.

189. The original drafts of the Convention provided that trade regulations would apply to "any specimen." The final draft of CITES, however, contained the qualified "any readily recognizable" specimen. See Second Revised Draft, *supra* note 121.

or animal.”<sup>190</sup> The term readily recognizable, however, is not defined by the Convention and is therefore subject to each party’s judgment.<sup>191</sup> Consequently, an exporting country whose national authority cannot or does not wish to recognize a specimen as a listed species is not bound by the treaty’s regulations regarding trade of that specimen.<sup>192</sup> The most important problem that this anomaly presents is that it puts the Convention in the position of implicitly tolerating the inadequacy of a party’s technical identification skills. Furthermore, it provides parties with a justification for trading a species it may not have wanted listed without requiring the party to go through the formalities of entering a reservation, the use of which often has political consequences.<sup>193</sup>

The individual ability of each party to accurately identify specimens of listed species is crucial to effective enforcement of CITES.<sup>194</sup> The majority of wildlife trade today consists of trade in parts and derivatives of species as opposed to live specimens.<sup>195</sup> Although it is often very difficult to identify live specimens, identification of parts and derivatives can sometimes be almost impossible even for a trained zoologist or botanist.<sup>196</sup> If customs officials do not readily recognize a specimen presented for shipment as a protected species, the specimen may be exported without a permit. Appendix I species may be traded for commercial purposes, and Appendix II and III species may be shipped without guarantee that the export of the specimen will not be detrimental to the species’ wild population. Nevertheless, this trade is legal under a strict construction of the language of the treaty.<sup>197</sup>

An example of this problem is illustrated by trade of the Saltwater crocodile and the American alligator. The Saltwater crocodile is currently one of the most highly endangered species of ani-

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190. See *supra* note 51.

191. Botswana Proceedings, *supra* note 32, Conf. 4.8.

192. CITES, *supra* note 14, aris. I (b)(2); II (1-3); III (1); IV (1); V (1).

193. See *Reservations Regarding the Reservation Clause*, *supra* note 96, at 454.

194. Interview with Tom Striegler, Special Agent in Charge of Branch Investigations, USFW Division of Law Enforcement, in Washington, D.C. (Jan. 6, 1984).

195. The Convention defines specimen as “any animal, whether dead or alive, and any readily recognizable part or derivative thereof.” CITES, *supra* note 14, art. I (b). Examples of “parts” include such items as tanned skins, elephant or walrus ivory, and eagle feathers. “Derivatives” include items such as whale oil, jewelry made from turtle shells or bear claws, fur coats and snakeskin shoes. See also INSKIP & WELLS, *supra* note 5, at 27.

196. CADIEUX, *supra* note 7, at 170.

197. See CITES, *supra* note 14, arts I (b)(2); II (1-3); III (1); IV (1); V (1).

mals.<sup>198</sup> The American alligator, on the other hand, is abundant in the southeastern portion of the United States and is not a listed species.<sup>199</sup> Once a reptile's hide is salted, tanned and processed into ultra chic handbags and shoes, it is difficult to tell whether the item originated from a crocodile or an alligator.<sup>200</sup> If a product cannot be recognized as originating from a crocodile, then CITES regulations do not apply. The item is allowed into trade, and if it did originate from the listed species the inability or refusal to identify it as such produces results clearly in contravention of the purpose of the treaty.

A more complex and particularly damaging aspect of the "readily recognizable" loophole occurs when traded specimens are deemed readily recognizable by one party but not by another.<sup>201</sup> If the exporting country does not consider the specimen readily recognizable it will arrive at the State of importation unaccompanied by CITES permits, offered as a shipment technically outside of the Convention's scope. The importing country, however, may recognize the specimen as a listed species. Narrowly construed CITES allows the importing country to waive the permits required for admission even though it recognizes the specimen as protected.<sup>202</sup> This interpretation is commonly relied upon, and particularly frustrates the purpose of CITES since a party may circumvent trade regulations by relying on this provision. Furthermore, despite even good faith attempts at compliance by the exporting country, a species may not receive the required protection simply because the exporting party is less skilled in the identification process than the importing party.

The Conference has recommended various proposals to correct abuses arising from the "readily recognizable" loophole.<sup>203</sup> The most significant of these suggestions have been focused on addressing the general problem of specimen identification. The compilation of a uniform identification manual was delegated to a working committee at the Second Meeting of the Conference of the Parties (San Jose Proceedings) in 1979.<sup>204</sup> The Committee has yet to complete the

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198. CITES, *supra* note 14, Appendix I; 4 TRAFFIC, 1982 Newsletter No. 2, at 1. *See also Reservations Regarding the Reservation Clause, supra* note 96, at 439-43.

199. *See* CITES, *supra* note 14, Appendix I, II & III.

200. CADIEUX, *supra* note 7, at 170.

201. Botswana Proceedings, *supra* note 32, Conf. 4.8.

202. *Id.*

203. *See, e.g.*, Botswana Proceedings, *supra* note 32, Conf. 4.8, Doc. 4.21 annex 1; New Delhi Proceedings, *supra* note 57, Conf. 3.18, Doc. 3.5 annex 4; San Jose Proceedings, *supra* note 96, Conf. 2.4; Berne Proceedings, *supra* note 85, Doc. 1.19.

204. San Jose Proceedings, *supra* note 96, Conf. 2.4.



manual,<sup>205</sup> due primarily to its complexity and increasing cost.<sup>206</sup>

At the Botswana Proceedings the parties also addressed the issue of importation of parts and derivatives that have been deemed unrecognizable by the exporting country but are identified by the importing party as a listed species.<sup>207</sup> The Conference recognized that the practice by importing parties of waiving export requirements based upon the readily recognizable loophole represents a significant weakness of the treaty.<sup>208</sup> Several proposals were made by various parties to correct this problem.<sup>209</sup> The United Kingdom recommended that specimens deemed unrecognizable by an exporting country should be treated as if that party had taken a reservation on the species.<sup>210</sup> Under this interpretation the exporting country would be treated as a nonparty regarding trade of the unrecognizable species,<sup>211</sup> and could thereby legally conduct trade in those specimens with other nonparties and with parties as long as the remaining requirements of the treaty were satisfied.<sup>212</sup>

The United States delegation objected to this proposal, noting that it would allow a party to enter a reservation without complying with the formal procedures necessary to take such a serious action.<sup>213</sup> It was pointed out that the proposal would in essence encourage exporting parties to adopt rigid lists of parts and derivatives that it deemed recognizable.<sup>214</sup> Species not listed on a party's "recognizable list" would thereby automatically become exempt from CITES trade restrictions, and would officially lose the protection of the treaty. This, it was argued, would release parties from the responsibility of attempting to identify specimens difficult to recognize, and would thereby result in much less effort devoted to the identification prob-

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205. At the Botswana Proceedings in 1983, the Parties decided to extend the still uncompleted mandate of the Identification Manual Committee to the Fifth Meeting of the Conference of Parties in April 1985. The Conference invited parties to submit, in consultation with the Committee, appropriate contributions to further the completion of the identification manual. Botswana Proceedings, *supra* note 32, Conf. 4.19.

206. *Id.*

207. *Id.* Conf. 4.8.

208. *Id.* Doc. 4.21.

209. *See, e.g.,* New Delhi Proceedings, *supra* note 57, Doc. 3.30.1.

210. *Id.* *See also* Botswana Proceedings, *supra* note 32, Doc. 4.21 annex. *See supra* text accompanying note 137.

211. Botswana Proceedings, *supra* note 32, Doc. 4.21 annex.

212. *Id.*

213. Interview with Art Lazarowitz, *supra* note 142. *See also* CITES, *supra* note 14, art. XXIII.

214. This proposal would sanction the use of qualified sub-lists of CITES appendices. Interview with Art Lazarowitz, *supra* note 142.

lem in general.<sup>215</sup>

The United Kingdom proposal was defeated and in the alternative the Conference urged that importing parties no longer grant waivers based upon an exporting party's determination that certain specimens are unrecognizable.<sup>216</sup> The Conference explicitly interpreted the treaty to provide that when an importing party recognizes a listed species it has the right to refuse entry unless a valid export permit is presented,<sup>217</sup> regardless of the exporting party's determination.

Although this resolution offers some protection by providing concerned importing parties with a legal basis for refusing entry where exporting parties have been unable or unwilling to recognize and thereby protect listed species, it confronts the overall identification problem in an indirect manner. By focusing on the symptoms of identification problems the resolution is only effective in situations where the importing party has sufficiently superior technical skill and is also willing to adhere to the resolution's strict interpretation of the treaty's language and return the specimens to the exporting nation.<sup>218</sup> If the importing country does not have both this expertise and determination, the resolution as it stands is functionally useless because it does not otherwise impose any additional obligation upon either importing or exporting States.<sup>219</sup> It could be buttressed, however, by establishing a presumption that would require treating a species as listed where there was a reasonable doubt on behalf of any party. This concept has already been adopted in the United States. The Endangered Species Act (ESA) provides that "a species may be listed as endangered when they so closely resemble in appearance an endangered species that enforcement personnel would have substantial difficulties differentiating them."<sup>220</sup> Although this procedure has been a subject of heated debate when proposed for CITES appendices, the distinction here is that the presumption would not apply to listing a species, but to identifying species already listed.<sup>221</sup> Such an alternative seems a reasonable compromise between the United

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215. *Id.*

216. Botswana Proceedings, *supra* note 32, Conf. 4.8.

217. *Id.*

218. In such a case the exporting State will be given a clear message to increase its identification skills. It will be less inclined to trade questionable species without first making the necessary determinations, and if appropriate, issuing an export permit.

219. See Botswana Proceedings, *supra* note 32, Conf. 4.8.

220. 16 U.S.C.A. 1533(e)(A).

221. See Botswana Proceedings, *supra* note 32, Conf. 4.8; New Delhi Proceedings, *supra* note 57, Doc. 3.30.1.

States' workable regulation under the ESA and the Convention's resolution attempting to rectify the problem.

The loophole created by the application of CITES to only readily recognizable specimens is perhaps linguistically and practically unavoidable.<sup>222</sup> Clearly parties cannot apply the treaty to specimens that cannot be recognized. Nevertheless, it does not follow that action cannot be taken to reduce the abuses resulting from the wording of this clause. The more direct approach of tackling the general problem of identification skills addresses the issue at its core. To help aid in increasing a party's identification skills the identification manual being prepared by the Identification Manual Committee<sup>223</sup> should be supplemented with samples of wildlife products. These samples could be readily supplied from stocks that have been confiscated by parties enforcing CITES. More than enough material is presently available to distribute a wide variety of samples to all parties.<sup>224</sup> In the United States, for example, high volumes of confiscated wildlife products occupy government storerooms and warehouses.<sup>225</sup> The problem of storage could be solved by distributing these items to domestic and foreign officials responsible for inspecting wildlife shipments. Moreover, the Conference should consider establishing a committee composed of identification experts responsible for traveling to Party States to train and assist national authorities in identification procedures.<sup>226</sup> Once initial contact was made, parties would be able to rely on their own personnel for training programs.

Despite the significance of the Convention's inherent weaknesses, authorities and commentators nevertheless agree that CITES is a fundamentally sound and workable mechanism.<sup>227</sup> Effective im-

222. See *supra* text accompanying notes 189-202.

223. See San Jose Proceedings, *supra* note 96, Conf. 2.4.

224. *Id.* The United States and Canada already cooperate in exchanging wildlife samples for identification purposes. The United States has also extended a general offer to supply samples to other parties, some of whom have accepted the proffer. Interview with Tom Striegler, *supra* note 194.

225. For example, the USFW suite at Los Angeles International Airport is filled to capacity with confiscated wildlife products. In 1981 the collection had grown so huge and cumbersome that the government was forced to dispose of over five million dollars worth of illegal goods. Jones, 'Garage Sale' To Offer Some Rare Buys, L.A. Times, Nov. 8, 1981, at 1, col.1.

226. The Conference has already established a Technical Committee to assist parties who are unable to unilaterally determine and regulate levels of trade of Appendix II specimens that allows "the maintenance of those species throughout their ranges at levels consistent with their roles in the ecosystems in which they occur." Botswana Proceedings, *supra* note 32, Conf. 4.7.

227. Interviews with Linda McMahan, *supra* note 1; Richard Parsons, *supra* note 111; Michael Bean, *supra* note 113; Art Lazarowitz, *supra* note 142; Tom Striegler, *supra* note 194.

plementation, however, has been severely undermined by the treaty's major problem area: poor and inconsistent enforcement by Party States. Unless corrective measures in this area are successful, modification of the treaty's trade exemptions<sup>228</sup> will at best result in marginal improvements. It is with an understanding of this gestalt that the Conference today focuses its primary efforts on attaining greater and more consistent enforcement of CITES.<sup>229</sup>

### *B. Inefficient Enforcement*

Prior to 1975 the international trade in endangered species was conducted legally in open commerce. Today CITES either prohibits or significantly restricts such trade in over half the nations of the world. Consequently, a substantial shift in wildlife trade patterns and procedures has emerged since CITES entered into force.<sup>230</sup> Those who continue to trade in endangered wildlife do so either by smuggling or by purporting to conduct legal trade.<sup>231</sup> Trading under the guise of legality is accomplished primarily by laundering CITES documentation.<sup>232</sup> Currently over one-third of the total international wildlife trade is illegal, that is, in violation of CITES or domestic law.<sup>233</sup> Over one-third of the illegal trade is perpetrated by laundering.<sup>234</sup> Thus, the business is "not just a cloak and dagger operation anymore. It's becoming a complex paper chase."<sup>235</sup> In the attempt to keep up with increasingly sophisticated illegal operations, the parties have been plagued by inefficient communication both between themselves and within their own domestic infrastructures, and by a lack of consistently effective deterrence via domestic laws and sanctions.

1. *Ineffective Communication.* Confusion regarding import and export permits is a major symptom of inefficient communication between and within the parties. In 1980 the Technical Expert Committee established to assist parties examined documentation from a sampling of thirty-five countries and found over half to be invalid.<sup>236</sup>

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228. See *supra* text accompanying notes 122-226.

229. Train, *supra* note 17.

230. Hanley, *supra* note 4.

231. *Id.*

232. See *infra* text accompanying notes 313-19.

233. Hanley, *supra* note 4.

234. Laundering is the "concealing of, or disguising of source . . . as by channelling through an intermediary." WEBSTER'S, *supra* note 10, at 1278.

235. Tonfexsis, *supra* note 1 (statement of Linda McMahan, Director of TRAFFIC-USA).

236. Wasserman, *supra* note 133, at 365. See also *supra* note 226.

Although CITES requires that an export permit contain the information specified in the example set forth in the Convention text,<sup>237</sup> it does not require the use of that model.<sup>238</sup> Parties use a wide variety of permits and often change the type of form they issue.<sup>239</sup> As a result of this fluctuation one party frequently does not know what permits are being used by another. The situation is further complicated by the fact that many parties frequently change the personnel responsible for authenticating permits issued.<sup>240</sup> Moreover, it is not uncommon in many countries for the entire office of a party's national authority to be transferred to another division of the government, which results in a constant changing of officials authorized to grant and issue permits.<sup>241</sup> All of these factors combine to create a situation in which customs officials often have no method by which to determine whether permits presented with shipments of listed species are genuine or forgeries.<sup>242</sup> Consequently, many shipments of endangered wildlife are allowed entry based upon forged documentation.<sup>243</sup>

An example of the difficulties presented by permit non-uniformity was graphically illustrated when Bolivia announced that as of January 1983 it would use a CITES permit form printed in Switzerland and modeled upon the example set forth in the treaty.<sup>244</sup> The new head of the Bolivian Management Authority, however, stated that 150 permits of the old format used prior to the new CITES version had "disappeared."<sup>245</sup> The Secretariat promptly informed the parties to reject any old format Bolivian permits issued after November 23, 1983.<sup>246</sup> Unless this information was effectively disseminated to all national authorities and enforcement agencies operating under their auspices, substantial illegal trade could have resulted. Since one shipment of rare species can represent thousands of animals or plants and millions of dollars,<sup>247</sup> the impact of 150 forged permits is significant.

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237. CITES, *supra* note 14, art. VI (2).

238. See New Delhi Proceedings, *supra* note 57, Conf. 3.6(c).

239. See Botswana Proceedings, *supra* note 32, Conf. 4.9.

240. Interviews with Richard Parsons, *supra* note 111.

241. Canada, for example, has over 100 officials representing thirteen governmental agencies authorized to sign permits. Berne Proceedings, *supra* note 85, Doc. 1.25.5.

242. Interview with Tom Striegler, *supra* note 194.

243. The process of verifying the authenticity of permits and signatures is further complicated by the language barrier. The eighty-seven parties of CITES represent a multiplicity of languages.

244. Botswana Proceedings, *supra* note 32, at Doc. 4.8.12.2.

245. *Id.*

246. 5 TRAFFIC, 1983 Newsletter No. 1, at 10.

247. Hanley, *supra* note 4.

The Conference has adopted various resolutions in an attempt to rectify the abuses resulting from permit non-uniformity. The parties have been urged to adopt the contents and format of their export permits to the standard CITES model,<sup>248</sup> and to print permits in at least one of the working languages of the Convention.<sup>249</sup> Since the benefits of adopting one uniform export permit to be used by all parties have long been recognized, the procedure should be formally mandated.<sup>250</sup> A "CITES Directory" containing relevant information on all management and scientific authorities has been issued to the parties, and is updated as new notifications are forwarded to the Secretariat.<sup>251</sup> It remains to be seen whether these measures will be sufficient to correct the problem.

Communication difficulties caused by parties' internal bureaucracies also diminish effective enforcement. This is often primarily the result of complex governmental infrastructures established to implement CITES. Many parties lack a clear division of authority over the Convention's management. Often a party's intra-governmental hierarchy provides for separate branches designed to handle various aspects of CITES implementation.<sup>252</sup> These branches are frequently disassociated to the degree that authorities are unable to respond in a coordinated fashion to problems that arise in the area of treaty enforcement.<sup>253</sup>

In the United States, for example, CITES is handled by a maze of different agencies. The management and scientific authorities are controlled by separate offices.<sup>254</sup> The Office of Scientific Authority of

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248. New Dehli Proceedings, *supra* note 57, Conf. 3.6. Model export permits are contained in Appendix IV.

249. *Id.* The working languages of CITES are English, French and Spanish.

250. New Dehli Proceedings, *supra* note 57, Conf. 3.6. Compare CITES with Hague Conference on International Law, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (requiring use of standardized form for personal service of process abroad).

251. Botswana Proceedings, *supra* note 32, Doc. 4.8.

252. In Paraguay, for example, the Ministry of Agriculture is generally responsible for CITES. The National Forest Service is the division within the Ministry of Agriculture which implements the Convention, although a different department issues permits. The Ministries of Defense and of the Treasury also issue permits, despite the fact that these departments have no scientific expertise. New Dehli Proceedings, *supra* note 57, Doc. 3.5 annex.

253. *Id.* The Bolivian National Authority is greatly hampered in implementing CITES due to a lack of efficient infrastructure. The Forestry Development Center, a division of the Ministry of Agriculture, is generally responsible for issuing CITES permits. However, all staff members of the Center have forestry backgrounds, and the lack of trained zoologists makes compliance with CITES extremely difficult at best. Identification control is practically nonexistent, as species are only known by their common names. Moreover, the Ministry of Industry and Commerce may also grant permits. *Id.*

254. 50 C.F.R. § 23.

the United States Fish and Wildlife Department (USFW), for example, after reaching a decision to modify a species trade status, must notify the USFW Branch of Permits, a division of the United States Management Authority.<sup>255</sup> The decision is then relayed to the USFW Division of Law Enforcement. The mandate must then sift down through seven regional USFW law enforcement offices located throughout the country.<sup>256</sup> These offices must then notify their agents in the field. This entire process often takes a considerable amount of time. Moreover, substantial discretion is exercised by these offices on what information of the bulk of data received is passed on to individual agents. The accuracy of the relayed information is often unavoidably diluted in the dissemination process.<sup>257</sup>

USFW agents and customs inspectors also exercise considerable discretion in enforcing CITES, since they actually check permits and inspect shipments of wildlife.<sup>258</sup> Customs line inspectors presented with wildlife are required to detain the shipment until a USFW agent can arrive to carry out the necessary inspection procedures. For example, Customs inspectors at San Ysidro, California, (immediately north of the United States-Mexican border) must detain wildlife shipments until an agent can arrive from the nearest USFW office in Los Angeles, over 150 miles away. The number of agents available is extremely limited in comparison to the territory and ports that must be covered.<sup>259</sup> Moreover, large numbers of wildlife parts and derivatives are imported without detection due to the inability of Customs inspectors to realize that certain items are in fact wildlife products.<sup>260</sup> For example, fur coats and jewelry often escape notice due to the commonplace nature of such items. The problem is further intensified by the fact that there is substantial pressure on Customs to process shipments quickly, as unduly delayed shipments adversely affect the commerce of the United States. A conflict therefore arises when USFW agents are unable to respond to the multitude of inspection requests as quickly as might be desired.

To add to the complexity, USFW agents are responsible for en-

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255. *Id.*

256. See 7 ENDANGERED SPECIES TECHNICAL BULLETIN 2 (1983).

257. Interviews with Richard Parsons, *supra* note 111.

258. For example, in 1983 approximately 55,000 wildlife imports were declared. Of these, approximately 15,000 were physically inspected. The remaining imports were cleared on the basis of paperwork alone. Interview with Tom Striegler, *supra* note 194.

259. There are presently 6,400 Customs agents and thirty-five USFW inspectors employed in the United States. *Id.*

260. Interviews with Richard Parsons, *supra* note 111.

forcing a staggering number of wildlife regulations, only one of which is CITES.<sup>261</sup> These include the Endangered Species Act,<sup>262</sup> the Migratory Bird Treaty Act,<sup>263</sup> the Lacey Act<sup>264</sup> and violations on federal and Indian land.<sup>265</sup> Moreover, Customs is responsible for enforcing a huge volume of tariff regulations, within which wildlife is not a designated category. Congress has also provided that Customs must administer over fifty laws that have nothing to do with duties. In light of the degree of discretion exercised by line inspectors and agents, it is crucial that these officials are kept current on pertinent information relevant to the enforcement of the treaty. The bureaucratic system, however, is often directly responsible for preventing this from occurring.

Examples of information breakdown problems in the United States caused by the bureaucratic system are numerous. Agents in the field are often unaware of updates on CITES issues contained in the Federal Register.<sup>266</sup> One or two of the Regional offices have reportedly taken the position that on operational issues (such as what goods to seize) their individual discretion allows them to dismiss directions from the head offices in Washington, D.C.<sup>267</sup> In addition, interagency distrust is often the cause of substantial delays in processing shipments of wildlife.<sup>268</sup> American citizens returning home frequently get erroneous information from United States embassies on what wildlife products they can legally import, and upon arriving at customs their goods are often confiscated despite their good faith attempts to comply with the law.<sup>269</sup>

Lack of a sufficient quantity of qualified wildlife agents is by no means a problem exclusive to the United States.<sup>270</sup> When inspectors

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261. Interview with Tom Striegler, *supra* note 194.

262. Endangered Species Act, 16 U.S.C.A. §§ 1531-1543 (1973 & Supp. III 1979).

263. Migratory Bird Treaty Act of 1918, ch. 128, 40 Stat. 755 (codified as amended at 16 U.S.C. §§ 703-711 (1976)).

264. 16 U.S.C.A. §§ 3371-3378.

265. See also *supra* note 25 and legislation contained therein.

266. Interviews with Richard Parsons, *supra* note 111.

267. *Id.*

268. *Id.*

269. *Id.* One case, for example, involved a United States citizen who while travelling abroad contacted her embassy as to the legality of importing a \$20,000 necklace made from rare turtle shell. After being informed that the importation would not violate any regulations, she was quite surprised when the necklace was confiscated by United States Customs as a violation of CITES. Cf. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947) (erroneous advice given by government employee not binding on government); Schweiker v. Hansom, 450 U.S. 785 (1981) (same).

270. Another example of the scope of the difficulties encountered as a result of limited



are not well informed, preposterous situations can occur. For example, a party was recently presented with a shipment of wild penguins for import.<sup>271</sup> The export permit listed the birds as originating in Paraguay, a landlocked country in South America with a tropical climate. It is well known that penguins are marine animals generally indigenous to the polar regions. Nevertheless, inspectors allowed the birds entrance despite the "obvious" invalidity of the export permit.<sup>272</sup>

Although the complex internal bureaucracy that often accompanies the implementation of CITES usually cannot be avoided, steps can be taken to minimize the adverse effects of such systems. For example, USFW has recently installed a computer system into its offices and regional branches.<sup>273</sup> All designated points of entry for wildlife shipments should also utilize this system. In this way current lists of the Appendix status of listed species and updates on parties' acting national authorities and wildlife laws can be maintained.<sup>274</sup> Adequate funding by Congress and approval of the executive branch is obviously critical in solving many of these problems.<sup>275</sup>

Domestic internal bureaucracy can also cause communication problems on the international level. CITES provides that the Secretariat shall act as a switchboard in relaying information between the parties. In theory, national authorities communicating through the Secretariat are to work together unfettered by customary diplomatic channels.<sup>276</sup> Many countries, however, are unwilling to forego the traditional dictates of international custom and diplomacy.<sup>277</sup> This

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manpower is Zambia's attempt to control rhinoceros and elephant poaching in the Luangwa Valley Game Reserve. The bush in and around the Reserve extends for 20,000 square miles, and the park itself covers 6,500 square miles. Zambia's Save the Rhino Trust Fund is able to provide twenty-two game wardens to cover this entire area. In practice, however, patrols are limited to key areas in the southern portion of the park (120 square miles) while the entire northern sector goes unpatrolled. Poachers, who account for two-thirds of all rhinoceros deaths in the park, are nevertheless still able to operate even in the heavily guarded southern zone. Of the seventy rhinoceri in the southern section, three of the five that have recently died were killed by poachers. Cowell, *On Foot Patrol in Rhinoceros Country*, N.Y. Times, Sept. 5, 1983, at 2, col. 1.

271. The Jackass penguin and Blackfooted cape penguin (*Spheniscus demersus*) are currently listed in Appendix II. The Humboldt penguin (*S. humboldti*) is currently listed in Appendix I.

272. Train, *supra* note 17.

273. Interview with Tom Striegler, *supra* note 194.

274. *Id.*

275. *Id.*

276. Sand, *supra* note 1.

277. Interviews with Linda McMahan, *supra* note 1.

preference for customary over positive international law renders the Secretariat's function as an immediate communication source a nullity.

To facilitate communication the parties are required to keep national trade records on listed species and to submit annual and biennial reports to the Secretariat.<sup>278</sup> These records and reports are critical as they provide the Secretariat with sufficient data to discern (1) weaknesses in CITES implementation processes, and (2) discrepancies in interpretation among the parties. Recently the Secretariat expressed great concern over the fact that less than one-third of the parties had submitted their annual reports within the time specified.<sup>279</sup> These omissions are debilitating and the matter should be addressed by the parties at the next Biennial Conference.

The effectiveness of CITES implementation is additionally hampered by inefficient communication between parties as to their domestic wildlife laws.<sup>280</sup> When parties are not familiar with each other's wildlife regulations it is often impossible to enforce the laws and provide sufficient deterrence to illegal trade.<sup>281</sup> Even knowledge of general trade bans can somehow escape acquisition by customs inspectors. For example, many countries continue to accept wildlife listed as originating in Brazil, despite the fact that Brazil has had a total ban on all wildlife export since 1967.<sup>282</sup>

In the United States, the primary legislation under which illegal wildlife trade is enforced is the Lacey Act.<sup>283</sup> In 1981 Congress significantly expanded both the scope and effect of the Lacey Act, which now makes it a felony to violate any state, national or foreign wildlife law.<sup>284</sup> Most prosecutions of CITES violations in the United States

278. CITES, *supra* note 14, art. VIII(7).

279. Botswana Proceedings, *supra* note 32, Doc. 4.8.8.4.

280. Fuller, *United States Enforcement of Wild Animal Import and Export Control*, 5 TRAFFIC, 1983 Newsletter No. 1, at 8.

281. Interview with Don Carr, Chief of Wildlife Section, Land and Natural Resources Division, United States Department of Justice, in Washington, D.C. (Jan. 6, 1984).

282. Law on the Protection of Fauna, LEI NO. 5197, DIARIO OFICIAL 19670105 (Jan. 3, 1967) *cited in* New Delhi Proceedings, *supra* note 57, Doc. 3.18 (ET-9). *See also* Train, *supra* note 17, at 6.

283. 16 U.S.C.A. §§ 3371-3378.

284. The Lacey Act provides, in pertinent part,

- (1) Any person who—  
 (A) knowingly imports or exports any fish or wildlife or plant in violation of any provision of this chapter . . . , or  
 (B) violates any provision of this chapter . . . by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350, knowing that the fish or wildlife or plants were taken, possessed, transported, or

are carried out under the Lacey Act.<sup>285</sup> However, widespread ignorance of foreign wildlife law makes convictions under the Lacey Act difficult.<sup>286</sup> Not only is it difficult for the Justice Department to know which foreign laws, if any, are being violated, but proof of the laws required for convictions in United States courts is often inaccessible.<sup>287</sup> One recent case, for example, resulted in reversal of a conviction on appeal because of the government's inability to prove the existence of the foreign law allegedly violated.<sup>288</sup>

In cases where foreign governments are cooperative in supplying proof of their law, successful Lacey Act prosecutions are occurring. For example, USFW recently seized two shipments containing 100 Blackpalm cockatoos at the port of Miami.<sup>289</sup> These specimens can be purchased in Singapore for \$600 apiece, and sell for \$10,000 to \$20,000 apiece in the United States.<sup>290</sup> The export permits listed the birds as originating in Indonesia.<sup>291</sup> The Justice Department, however, was able to secure affidavits from Indonesian Officials testifying that Indonesia has not allowed the export of these birds for many years.<sup>292</sup> This testimony provided sufficient documentation for the forfeiture of the shipments.<sup>293</sup>

The World Wildlife Fund recently sponsored a study of South American wildlife laws.<sup>294</sup> This research should be extended to include the wildlife laws of all nations, so that eventually Party States will have access to the trade restrictions which exist in all parts of the

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sold in violation of, or in any manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. . . .

§ 3373(d)(1).

285. Interview with Don Carr, *supra* note 281.

286. *Id.*

287. The Lacey Act now contains a strict liability provision for forfeiture of wildlife products taken in violation of foreign law that would require only proof of the existence of the law claimed as violated. 16 U.S.C.A. § 3374(a)(1).

288. U.S. v. 53 Eclectus Parrots, 685 F.2d 1131 (1st Cir. 1982).

289. U.S. v. 100 Blackpalm Cockatoos, Civ. No. 83-2679 JLK (S.D. Fla. 1983).

290. Interview with Don Carr, *supra* note 281.

291. *Id.*

292. *Id.*

293. *Id.* 16 U.S.C.A. § 3374 (a)(1) provides, in pertinent part,

All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title . . . or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability required for civil penalty assessment included in section 3373 of this title.

294. See K. FULLER & B. SWIFT, LATIN AMERICAN WILDLIFE TRADE LAWS (1984).

world.<sup>295</sup> Additionally, once the parties have catalogued the foreign laws in force, weaknesses in certain areas will become apparent, and harmonization of foreign law will be easier to achieve.<sup>296</sup> For example, one area demonstrably in need of harmonization is the legal procedure for confiscation and return of illegal shipments of wildlife.<sup>297</sup> Many countries still allow those who illegally trade in endangered species to receive pecuniary gain from disposal of seized shipments. Parties could further CITES goals by attaining a harmony of law that uniformly places the financial burden of confiscation and return on the dealer of the illegally traded wildlife.<sup>298</sup>

2. *Ineffective Deterrence to Illegal Trade.* The second major enforcement problem associated with CITES is the lack of effective deterrence to violations of the Convention. In light of the high profit potential of illegal wildlife trade there must be adequate deterrence to ensure that the risk of capture outweighs the benefit of undetected violation. Although many parties are making substantial numbers of confiscations, the penalties imposed for illegal transport of wildlife "are often woefully inadequate to offset the calculated risk the offenders are taking."<sup>299</sup> The specific problems associated with penal and monetary sanctions, confiscation and return of illegal shipments, and lack of international harmony of wildlife trade laws create substantial obstacles to preventing over-exploitative wildlife trade.

The present penal and monetary sanctions imposed in most countries for CITES violations are clearly inadequate.<sup>300</sup> For example, in 1979 the Hong Kong Fur Factory Ltd. was fined for illegally importing 319 cheetah skins (an Appendix I species) from Ethiopia into Hong Kong. The consignment was valued at approximately \$44,000, but the total fine amounted to only \$1,500.<sup>301</sup> Prison sentences are rare, and sometimes even those rendered "have been described as derisory in proportion to the profits made."<sup>302</sup> For ex-

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295. In the United States, for example, prosecutions under the Lacey Act would be greatly facilitated if this information was available. Interview with Don Carr, *supra* note 281.

296. See, e.g., *infra* text accompanying notes 312-19.

297. See *infra* text accompanying notes 320-22.

298. *Id.*

299. Sand, *supra* note 1, at 58.

300. Although the USFW successfully prosecuted sixty-five violators who were fined a total of \$156,000 in "Operation Snakescam," the profits these defendants stood to gain must be considered when analyzing the deterrent effect of such convictions and sanctions. See COUNCIL ON ENVIRONMENTAL QUALITY, THIRTEENTH ANNUAL REPORT 169 (1982).

301. INSKIPP & WELLS, *supra* note 5, at 26.

302. Sand, *supra* note 1, at 58.

ample, in 1978 an eight month prison sentence and a \$87,500 fine was imposed for the illegal export of 2,500 American alligator skins to France. The confiscated hides were valued at one million dollars. Although the skins were worth approximately \$400 each, the fine was only \$35 each.<sup>303</sup>

In a few more flagrant cases this trend is being reversed.<sup>304</sup> In *U.S. v. Molt*, the Third Circuit Court of Appeals upheld a prison sentence of one year for conspiracy to smuggle twelve Radiated tortoises from Madagascar.<sup>305</sup> Another series of prosecutions involving several hundred endangered birds resulted in prison sentences totaling eight years against one defendant.<sup>306</sup> Another defendant was sentenced to one year for smuggling a single Loggerhead turtle.<sup>307</sup> These stricter sanctions, however, are the exception rather than the rule, and their deterrent effect is therefore questionable.<sup>308</sup>

There is also some question as to the sufficiency of attention USFW is devoting to international wildlife cases brought under the Lacey Act. Since 1980 USFW has concentrated its attention almost exclusively on domestic wildlife cases.<sup>309</sup> To date, USFW has failed to take the necessary administrative steps to insure successful implementation of the Lacey Act.<sup>310</sup> New regulations have not been drafted to implement the 1981 amendments, and the designated ports

303. INSKIPP & WELLS, *supra* note 5, at 27.

304. Fried, *Endangered Breeds: Curbing the Market*, N.Y. Times, June 26, 1982, at 52, col. 2.

305. *U.S. v. Molt*, 599 F.2d 1217 (3d Cir. 1979).

306. *U.S. v. LaBlue*, (C.D. Ca. 1980).

307. *U.S. v. Meyers*, (S.D. Tex. 1980).

308. The United States Department of Justice estimates that in recent months there have been approximately six major international wildlife cases prosecuted. Interview with David Carr, *supra* note 281. Prosecutions for violations of wildlife laws are still claimed to be inadequate. For example, The Department of the Interior recently came under direct attack by United States District Court Judge Miles W. Lord for failure to prosecute "persons who illegally kill an estimated 250 wolves each year in Minnesota." Judge Lord criticized the agency's inaction in this regard as actually encouraging the destruction of the approximately 1,200 Eastern timber wolves left in the lower forty-eight states. Earley, *Federal Judge Defends Timber Wolf*, Wash. Post, Jan. 7, 1984, at A4, col. 1.

California and thirty-five other states have enacted legislation that is in some respects tougher and more extensive than CITES or the ESA. The United States Supreme Court recently upheld the right of states to embargo species not listed by CITES or the ESA. *H.J. Justin & Sons v. Dukemejian*, 104 S. Ct. 91 (1983). For an interesting discussion of this issue, see Note, *Federal Preemption of State Commerce Bans Under the Endangered Species Act*, 34 STAN. L. REV. 323 (1982).

309. Letter from Russell Train, President of World Wildlife Fund, to the Honorable William Clark, Secretary of the Interior (Dec. 7, 1983) (unofficial copy on file at California Western International Law Journal).

310. *Id.*

have not been provided with seizure or refusal standards.<sup>311</sup>

The lack of harmonization of domestic laws is another reason deterrence against CITES regulations is lacking. Where some parties adopt laws sufficient to provide a deterrent effect and exhibit a willingness to enforce them, illegal trade is often shifted to countries where the laws and enforcement are not as strong. Since the problem of over-exploitative wildlife trade is a global one that requires an international effort, successful implementation of CITES and a reduction of the illegal market cannot be achieved unless domestic wildlife laws are harmonized.

Non-harmonization of foreign law is directly responsible for permit laundering and illegal re-export of wildlife, two of the most significant problems facing implementation of the treaty.<sup>312</sup> Re-export occurs when wildlife is smuggled from a country which prohibits its trade into another country where it is not prohibited or where "paper regulations" are not strenuously enforced.<sup>313</sup> Laundering occurs when CITES permits are altered to make this situation appear legitimate. To illustrate, prior to 1974 Peru and Columbia provided over ninety percent of all neotropical primates to the United States.<sup>314</sup> By 1974 both of these countries entirely banned primate trade. Panama, which had never previously exported primates to the United States, soon began exporting several hundred specimens a year, over half of which were species not native to Panama.<sup>315</sup> The animals were smuggled out of Columbia, a country which had enacted prohibiting legislation, to Panama, which freely allowed their export. Fraudulent export permits listed the animals as originating in Panama. The effect of the laws of Columbia and Peru, therefore, was greatly minimized because of the absence of restrictions in Panama. It was not until the Panamanian government harmonized its export laws with Columbia and Peru and prohibited export of primates that exploita-

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311. *Id.*

312. *Id.* See also Mack Address, *supra* note 108; Train, *supra* note 17.

313. The Sudan, for example, has a population of fewer than 100 Northern white rhinoceri, but nevertheless annually exports scores of horns. These horns are smuggled into the Sudan and then re-exported with documentation claiming that the specimens were obtained from Sudanese rhinoceri. See INNSKIPP & WELLS, *supra* note 5, at 23-24.

The prevalence of illegal laundering of elephant ivory is graphically illustrated by Burundi, which "exported over 160,000 kilograms of ivory to Hong Kong and Japan in 1979 and 1980 combined. This represents about 10,000 elephants." Burundi has no elephant populations. Mack Address, *supra* note 108.

314. Mack Address, *supra* note 108.

315. *Id.*

tive trade of these species was substantially curtailed.<sup>316</sup>

Today only Bolivia remains a major exporter of wildlife from South America.<sup>317</sup> Many of the shipments leaving Bolivia contain species that are not native to that country, but are smuggled into Bolivia and then re-exported via the laundering of CITES documentation. For example, Bolivia's Hyacinth macaw population is known to be approximately 500 birds. Nevertheless, Bolivia exported over 800 Hyacinth macaws to the United States in 1982.<sup>318</sup> Wildlife such as this is routinely smuggled across Brazil's immense Amazon border and then re-exported from Bolivia.<sup>319</sup> Until Bolivia's wildlife laws and enforcement measures are harmonized with those of the other South American countries, over-exploitative wildlife exporting will continue to take place in that region of the world.

Confiscation of wildlife products traded in violation of domestic law or CITES requirements also provides a deterrent effect. Once specimens are confiscated, however, returning them to their native country can create difficulties. This procedure is provided for by CITES,<sup>320</sup> but the practicalities of the expense involved present significant problems. For example, Malaysian authorities recently confiscated two live Asian elephants destined for Japan.<sup>321</sup> The animals had been illegally exported from Thailand and were returned there at Thailand's expense.<sup>322</sup> Many countries do not have the funds to handle such costly expenditures, and as confiscations increase the problem is accentuated.

In an attempt to rectify this situation and place the burden of meeting the cost of confiscation and return where it belongs, the Conference at the Botswana Proceedings adopted a resolution providing that "parties having not already done so make legislative provisions to require that the guilty exporter and carrier meet the costs of confiscation, cost, and return to the state of export."<sup>323</sup> The resolution also called for parties to take steps to ensure that traders guilty of Convention violations would not receive financial gain from the disposal of confiscated specimens.<sup>324</sup> This suggests that instead of re-

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316. *Id.*

317. *Id.*

318. *Id.*

319. Hoge, *Poachers Imperiling Wildlife in Brazil*, N.Y. Times, Nov. 15, 1981, at 3, col. 1.

320. CITES, *supra* note 14, art. VIII.

321. INSKIPP & WELLS, *supra* note 5, at 20.

322. *Id.*

323. Botswana Proceedings, *supra* note 32, Conf. 4.18.

324. *Id.*

quiring traders to bear the costs of their violations, many parties have actually allowed dealers in illegal wildlife cargo to receive pecuniary gain from their contraband even after being caught. Disparities such as this are a signal that the parties must step up efforts to troubleshoot this and other hidden inconsistencies.

#### IV. CONCLUSION

International trade in endangered species represents a major threat to their ultimate survival.<sup>325</sup> Somewhat ironically, this illegal trade also poses perhaps the single largest threat to legitimate trade of non-endangered species, since defensive reaction to over-exploitation restricts the overall international movement of all wildlife products.<sup>326</sup> Over a decade ago CITES was established to protect the interests of both conservationists and nations which depend upon wildlife exports as a major source of revenue.<sup>327</sup> The Convention has enabled the international community to make substantial progress in this regard,<sup>328</sup> although success has been limited.<sup>329</sup>

The major internal weakness of CITES as an international trade and conservation mechanism is that it allows substantial trade exemptions despite the fact that these exemptions compound the problems that the Convention attempts to solve.<sup>330</sup> Allowance for trade with non-parties,<sup>331</sup> as well as exemptions for specimens claimed as tourist souvenirs<sup>332</sup> or specimens too difficult to identify<sup>333</sup> might have been originally necessary to attract signatories, and were arguably justifiable since their negative effects were unknown. Today, however, reliable data indicate that these provisions permit significant over-exploitation to continue. The cautious steps that the Parties have taken to correct these abuses suggest that they may be unwilling to substantially alter the Convention's loopholes and ambiguities, but their general conscientiousness and recognition of the impact of such weaknesses promises that this remains an open question.

The most critical problems encountered in implementing CITES, however, are not traceable to the treaty itself, but to the at-

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325. See *supra* notes 1-13 and accompanying text.

326. See *supra* text accompanying notes 22-32.

327. See *supra* text accompanying notes 33-41.

328. See *supra* note 107.

329. See *supra* note 115.

330. See *supra* text accompanying notes 121-229.

331. See *supra* text accompanying notes 133-59.

332. See *supra* text accompanying notes 160-88.

333. See *supra* text accompanying notes 189-229.



tempts to enforce its provisions.<sup>334</sup> The lack of effective communication between and within parties on such important matters as permits, identification procedures and foreign laws are unfortunately debilitating,<sup>335</sup> and insufficient deterrence through domestic laws makes curbing illegal trade particularly onerous.<sup>336</sup> Although many States are strengthening sanctions for violations of CITES, international harmonization of domestic wildlife law is necessary to make individual efforts effective on the global scale.

To their credit the parties to the Convention have consistently identified the major weaknesses hampering effective implementation and enforcement of CITES.<sup>337</sup> In most instances practical solutions have been recommended by the parties and accepted by the Convention at the biennial meetings of the Conference. These resolutions, however, are recommendations only and are not formally accepted as binding agreements.<sup>338</sup> The noncommittal nature of the resolutions seriously weakens the force of the solutions they offer. On a practical level, formally adopting the resolutions as legally binding provisions of the treaty is a realistic option. Since the parties have in most cases exhibited a good faith attempt to follow the resolutions, the willingness to achieve the goals expressed therein has already been manifested.<sup>339</sup> Uniform commitment would only solidify this resolve and prompt vacillating parties to conform.<sup>340</sup> An extraordinary meeting of parties should be convened<sup>341</sup> to allow the parties the opportunity to amend the Convention text to incorporate and thereby mandate those resolutions applicable to present problems that have been previously adopted on a non-obligatory basis.

CITES offers a practical mechanism by which a complex and difficult international problem can be alleviated. The obstacles preventing more efficient implementation of the treaty are substantial, yet they are not insurmountable. It is for this reason, and in

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334. See *supra* text accompanying notes 230-324.

335. See *supra* text accompanying notes 236-98.

336. See *supra* text accompanying notes 299-324.

337. See *supra* text accompanying notes 147-53, 176-82, 203-17, 248-51, 323-24.

338. See *supra* text accompanying notes 94-98.

339. *Id.*

340. Vacillation of parties over effective implementation of both CITES provisions and Conference resolutions may be inferred from the often repetitive nature of Conference resolutions themselves. Moreover, frequently Conference Resolutions simply reiterate the treaty's text, and urge the parties to respect or conform to its provisions. See, e.g., New Dehli Proceedings, *supra* note 57, Conf. 3.6 (urging parties to comply with Conference Resolution 2.12); Botswana Proceedings, *supra* note 32, Conf. 4.12 (urging parties to comply with Article III regarding tourist souvenir specimens).

341. See *supra* text accompanying notes 104-08.

light of the Convention's achievements thus far, that CITES represents an unprecedented effort of international cooperation which may eventually claim the honored distinction of realizing its difficult and elusive goal.

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