
ASIAN COMPLIANCE WITH CITES: PROBLEMS AND PROSPECTS

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INTRODUCTION

At the 1972 plenary session of the United Nations Conference on the Human Environment, the late Prime Minister of India, Indira Gandhi, declared:

One cannot be truly human and civilized unless one looks upon not only all fellow-men but all creation with the eyes of a friend . . . It has been my experience that people who are at cross-purposes with nature are cynical about mankind and ill-at-ease with themselves. Modern man must re-establish an unbroken link with nature and with life.¹

While the evidence suggests that Mrs. Gandhi's native land has heeded her admonition in the area of wildlife trade,² the same cannot be said for many other nations on the Asian continent. This Article seeks to assess the compliance records of Asian nations with the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).³ In addition, this analysis proffers some suggestions on how Asian nations can, and should, improve their implementation of the Treaty. While a comprehensive treatment of the compliance of Asian nations with CITES would discuss international trade in both flora and fauna, this Article focuses only on trade in fauna. This analysis also examines the compliance records of the three most important nations in Asia, from the standpoint of wildlife importation and exportation—Japan, Singapore and Hong Kong, while devoting substantially less attention to several other nations on the Asian continent.

I. ASIAN COMPLIANCE WITH CITES

A. *Overview: The CITES Framework*

The CITES treaty was concluded in the face of a dramatic, and largely uncontrolled increase in the volume of international wildlife trade in the last

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¹ CITES Secretariat, *Report of Secretariat* in PROCEEDINGS OF THE FIFTH MEETING OF THE CONFERENCE OF THE PARTIES at 22 (Apr. 22-May 3, 1985) [hereinafter PROCEEDINGS OF THE FIFTH MEETING].

² See generally Gray-Schofield, *Trends in Wildlife Trade from India to the United States*, TRAFFIC (U.S.A.), 1983.

³ Convention on the International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S., 8249, 993 U.N.T.S. 243, ELR STAT. 40336 [hereinafter CITES].

two decades.⁴ The CITES framework regulates international trade in wild animals and plants through a permit system. Endangered species are listed in one of three appendices. Appendix I is reserved for "all species threatened with extinction which are or may be affected by trade."⁵ Trade in Appendix I species is permitted only where management authorities⁶ in both the prospective exporting and importing states have issued permits. Before a permit will be issued, the management authorities in the respective states must certify that the contemplated transaction "will not be detrimental to the survival of that species."⁷ Additionally, the management authority in the importing state must be satisfied that the "specimen is not to be used for primarily commercial purposes."⁸

Appendix II regulates trade in species that are not currently threatened with extinction but may become so unless trade is strictly controlled.⁹ Most of the requirements for trade in Appendix II species are substantially similar to those for Appendix I; however, an import permit is not required to engage in Appendix II trade, and trade for commercial purposes is permitted subject to the requirement that it "will not be detrimental to the survival of that species."¹⁰

Appendix III of the treaty is reserved for species "which any Party identifie[s] as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade."¹¹ An export permit from the management authority of the exporting state is required for trade in Appendix III species.¹²

⁴ See S. Lyster, *INTERNATIONAL WILDLIFE LAW* 239 (1985); see also Bean, *International Wildlife Conservation*, *AUDOBON WILDLIFE REPORT* 566-67 (1986); *International Trade in Animal Products Threatens Wildlife*, U.S. FISH & WILDLIFE SERVICE (1982).

⁵ CITES, *supra* note 3, art. II (1).

⁶ The CITES framework provides that each party will establish a management authority to oversee the permit process and a scientific authority to assess the effects of prospective transactions. CITES, *supra* note 3, arts. III (2)(a), (3)(a-b), (5)(a); IV (2)(a), (3), (5)(b), (6)(a); IX (1); *Annual Report*, 5 U.S. FISH & WILDLIFE SERVICE (1983).

⁷ CITES, *supra* note 3, art. III (2)(3).

⁸ *Id.*, art. III (3)(c).

⁹ *Id.*, art. II (1)(a).

¹⁰ *Id.*, art. IV (2)(a).

¹¹ *Id.*, art. II (3).

¹² *Id.*, art. V (3). Representatives from CITES parties also convene every two years to review implementation of the Treaty and to revise Appendices I, II and III in light of current information on species. Edmonds, *Guidelines for National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, UCN Environmental Policy and Law Paper, No. 17 (1981).

B. Asian Membership in CITES

As of April 1987, eleven Asian nations have become parties to CITES. These are, in order of accession to the treaty: Nepal (1975), India (1976), Malaysia (1978), Indonesia (1979), Sri Lanka (1979), Japan (1980), People's Republic of China (1981), Philippines (1981), Bangladesh (1982), Thailand (1983), and Singapore (1987). As a territory under the sovereignty of Great Britain, a party to CITES, Hong Kong is also subject to the treaty.¹³

C. Japan

Japan is the second largest importer of wildlife and wildlife products in the world. Japanese compliance with CITES provisions is therefore particularly important in the Asian arena.¹⁴ Unfortunately, Japan's implementation of the mandates of CITES has been disheartening. After seven years as a CITES party, Japan's erratic enforcement of the spirit and the letter of the Treaty has led many commentators to question the sincerity of that nation's commitment to the conservation of wildlife.

1. CITES Reservations

Section XIII of CITES permits any party to the Treaty to enter reservations as to "(a) any species included in Appendix I, II or III; or (b) any parts or derivatives specified in relation to a species concluded in Appendix III."¹⁵ A party entering a reservation to a species is treated as a non-party with respect to trade in that species or its parts or derivatives.¹⁶ However, a

¹³ Barring China's withdrawal from CITES, Hong Kong will remain subject to the Treaty when the territory reverts to the sovereignty of that nation in 1997.

¹⁴ *Welcome News From Japan*, 6 TRAFFIC (U.S.A.) No. 5, at 16 (Jan. 1985).

¹⁵ CITES, *supra* note 3, art.X (2)(a)(b). More specifically, reservations may be entered:

(a) When a State deposits its instrument of ratification, acceptance, approval or accession to the treaty;

(b) Within 90 days following the adoption of an amendment to Appendix I or II; or

(c) At any time after a party communicates the listing of a species in Appendix III.

CITES Secretariat, *Report of Secretariat*, Doc. 3.22, in PROCEEDINGS OF THE THIRD MEETING OF THE CONFERENCE OF THE PARTIES at 450 (Feb. 25-Mar. 8, 1981).

¹⁶ CITES, *supra* note 3, at art. XXIII; *see generally* Note, *Enforcement Problems In the Endangered Species Convention: Reservations Regarding the Reservation Clauses*, 14 CORNELL INT'L L.J. 429 (1981). Article X of the Treaty provides that in cases where a Treaty party engages in wildlife trade with a state that is not a party to the Treaty, "comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accept in lieu thereof by any Party." *Id.*

treaty reservation permits a CITES party to engage freely in trade with states who are not parties to the Treaty or with other CITES parties that have also entered a reservation on that species.¹⁷

Japan has entered fourteen reservations on Appendix I species alone, by far the most of any nation that has ratified the Treaty.¹⁸ Reservations on certain species of turtles have been particularly devastating. Turtle-based products often command exorbitant prices in the Japanese marketplace. For example, in 1981 a researcher from the International Union for the Conservation of Nature and Natural Resources found turtle shell eyeglass frames at prices ranging from \$1,600-\$4,140 in the Tokyo marketplace, turtle skin handbags for \$215, and stuffed baby turtles at \$150-\$400 each.¹⁹ To meet the tremendous domestic demand for turtle products, Japan has liberally exercised its reservation rights to import products derived from several endangered species of turtles, including the hawksbill (*Eretmochelys imbricata*), the Olive Ridley (*Lepidochelys olivacea*) and the green (*Chelonia midas*). In recent years, Japan has annually imported more than 70,000 kgs. of tortoise shells, over 160,000 kgs. of turtle skins and more than 20,000 kgs. of turtle leather.²⁰ A substantial portion of this trade has been conducted with Mexico, a nation that has not yet joined CITES.²¹ Over one-half of Mexico's turtle skin exports between 1980 and 1985, primarily derived from Appendix I species, went to Japan.²² Another study found that 90% of the turtle leather imported into Japan also came from Mexico.²³

Because of Japan's reservations and Mexico's refusal to join CITES, this trade in endangered turtles proceeds virtually unregulated, except for Mexico's toothless domestic wildlife trade laws.²⁴ As a consequence, two of

¹⁷ Note, *supra* note 16, at 450-51. *The Report of the Secretariat of the Fifth Meeting of the CITES parties* stated that thirteen parties had reservations on thirty-one Appendix I species. Five parties also have taken reservations on eleven Appendix II taxa. Barzdo & Inskipp, *CITES Conference in Argentina*, 7 TRAFFIC BULL., No. 2, at 1 (June 1985).

¹⁸ *Welcome News from Japan*, *supra* note 14, at 16.

¹⁹ G. NILSSON, *THE ENDANGERED SPECIES HANDBOOK* 62 (1983).

²⁰ *Memorandum to Sea Turtle Conservationists*, TRAFFIC, Feb. 12, 1981, at 2-3 [hereinafter *Memorandum*].

²¹ Mexico was a participant in the CITES Plenipotentiary Conference but has not yet ratified the Convention. 68 DEP'T ST. BULL. 613, 618 (1973); 43 Fed. Reg. 32,800, 32,807 (1978).

²² Mast & Brautigam, *Mexico's Sea Turtles: Trade the Major Threat to Their Survival*, 6 TRAFFIC (U.S.A.) No. 4, at 14 (Feb. 1986).

²³ *Memorandum*, *supra* note 20, at 5.

²⁴ A 1982 order issued by the Ministry of Agriculture and Hydraulic Resources prohibited all commercial import and export of live wildlife and wildlife products. Exceptions were established for noncommercial trade under certain circumstances and for wildlife parts from unendangered species. Despite the enactment of this legislation, trade in several endangered species, including turtles, burds, iguanas and

Mexico's most endangered turtle species, the Olive Ridley and the green, are threatened with extinction.²⁵

Japan has also engaged in substantial turtle trade with several nations that are parties to CITES. Much of this trade appears to be illegal exporting of Appendix I species and products for commercial exploitation. Nations conducting such trade with Japan include the Asian states of the Philippines and Indonesia, as well as Ecuador, Kenya, Tanzania, the Seychelles, Pakistan, Nicaragua and Panama.²⁶

Japan's reservation on the saltwater crocodile (*Crododylus porosus*) has also been a significant factor in the threatened extinction of the species.²⁷ Japan is one of the world's largest importers of saltwater crocodile hides.²⁸ While the nation's importation of crocodile products decreased immediately after its accession to CITES, they have soared in more recent years.²⁹ Over-exploitation of the saltwater crocodile has rendered the species "nearly extinct or reduced to small populations throughout its wide range."³⁰

caimans continues virtually unabated. *See Wildlife Trade Strains a Weakening Environment*, 6 TRAFFIC (U.S.A.) No. 4, at 1 (Feb. 1986); *see also* Boucher, *The Wildlife Trade*, 251 ATLANTIC 11, 19 (1983).

²⁵ Note, *International Trade In Wildlife: How Effective Is The Endangered Species Treaty?*, 15 CAL. W. INT'L L.J. 111, 135 n. 157 (1985); *see also* G. NILSSON, *supra* note 19, at 62 (Kemp Ridley and Olive Ridley turtles may be extinct within ten years due to over-exploitation).

²⁶ S. LYSTER, *supra* note 4, at 263, *See also Sea Turtles in Trade*, Center For Env'tl. Educ., at 1 (1983); Jorgenson, *Central American Hawksbills Exploited For Japanese Market*, 6 TRAFFIC (U.S.A.) No. 3, at 12 (Oct. 1985).

²⁷ The species was upgraded from Appendix II to Appendix I at the 1979 CITES proceedings. CITES Secretariat, *Report of Secretariat*, in PROCEEDINGS OF THE SECOND MEETING OF THE CONFERENCE OF THE PARTIES at 70-71 (Mar. 19-30, 1979). The plight of the saltwater crocodile can largely be attributed to the demands of the luxury leather industry in France, Italy, West Germany, Switzerland and Japan. As one commentator observes, the refusal of the governments of these nations to curtail the imports of the species represents "the first time global protection of a highly endangered species [has been] virtually undermined as a result of concerted action by industrial lobbyists in importing countries." Sands, *Luxury at any cost*, NATUROPA, 34/35 at 59 (1980).

²⁸ Note, *supra* note 16, at 439 n. 76.

²⁹ *See* Hemley & Caldwell, *The Crocodile Skin Trade Since 1979*, in SEVENTH WORKING MEETING OF THE IUCN/SSC CROCODILE SPECIALIST GROUP, at 16 (Oct. 21, 1984). Japan's primary supplier for crocodile products has been Paraguay. Japan imported over forty-six kgs. of skins from the nation between 1979 and 1984. *Id.*, at 16.

³⁰ Note, *supra* note 16, at 439; *see also Dollars and Science*, 12 GREENPEACE, at 4 (July/Sept. 1987) (Japanese reservations on sei and fin whales contributing to species' endangered status).

2. Non-Compliance With CITES Provisions

Beyond the debilitating effects that Japan's reservations have had on the viability of CITES, its uneven enforcement of key Treaty provisions has also given rise to serious concern. Japan has been castigated by a number of authorities in recent years for its flouting of CITES mandates. For example, both Prince Philip of the World Wildlife Fund, and the participants in the 1984 CITES seminar for the Asian and Oceanian Region pointed to Japan's loose compliance with CITES enforcement provisions as a major threat to the agreement.³¹

Japanese customs officials have frequently allowed endangered species to be imported from nations that have banned their exportation. For example, Japan is the world's largest importer of raw tortoise shell, primarily from the Hawksbill turtle, an Appendix I species. Over 20% of its imports originate in Panama, a nation that instituted a trade ban on turtle exports in 1980.³²

A similar situation exists in terms of Japan's importation of raw ivory. To help meet the nation's burgeoning annual demand of over 400 tons, Japan has been importing ivory derived from Burmese elephants, despite a ban on such trade by Burma.³³ To circumvent this ban, Japan has imported the ivory from Burundi traders who receive smuggled shipments of Burmese ivory from Zaire and Tanzania.³⁴ Under CITES, the re-exportation of a wildlife specimen requires "the prior grant and presentation of a re-export certificate."³⁵ Documentary requirements for re-export certificates include: 1) the original country of origin of the specimen; and 2) the export permit numbers from the document that originally accompanied the specimen when it was shipped into the country of re-export.³⁶ Japan has frequently contravened this provision by accepting re-export certificates that either completely omit this information or provide information that is highly suspect.³⁷ Japan has also accepted illegally "laundered" shipments from Singapore, facilitating the contraband trade of endangered crocodile species that were originally exported illegally from Bangladesh, India, and Malaysia.³⁸ Japan

³¹ *Welcome News From Japan*, *supra* note 14, at 16.

³² *Japan is world's largest consumer of tortoiseshell*, 20 ORYX No. 2, at 118 (Apr. 1986).

³³ *Id. Tightening Controls on the Ivory Trade in Japan*, 19 ORYX No. 2, at 3 (Jan. 1985).

³⁴ *Id.*

³⁵ CITES, *supra* note 3, at arts. III,(4)(a); IV,(5); V,(4).

³⁶ Roscoe & Holloway, *Curbing the Skin Trade*, 104 FAR EAST ECON. REV., at 104 (Feb. 19, 1987).

³⁷ *Id.*

³⁸ *Id.*; Tom Milliken, Director of TRAFFIC, points to the Japanese government's half-hearted efforts to implement CITES as a major reason that such trade continues unabated.

in recent years has also annually exported more than one hundred million tons of "laundered" ivory to Hong Kong, also without proper documentation.³⁹ Open commercial sales in the Japanese marketplace of Appendix I species, such as snow leopards, further demonstrate the laxity of the nation's enforcement efforts.⁴⁰

There is some evidence that Japan's attitudes toward international wildlife trade may be changing. In March 1987, Japan's Environment Agency announced that it will establish a Wildlife Division which will be responsible, *inter alia*, for improving the nation's compliance with CITES.⁴¹ However, the viability of the new agency will be dependent on the political will of the nation to make a sincere commitment to the enforcement of CITES provisions. Past promises by Japan to improve compliance with the Treaty have proven to be largely hollow.⁴²

D. Singapore

CITES parties must have breathed a collective sigh of relief when Singapore became the 94th party to the Treaty on November 30, 1986.⁴³ In addition to its questionable wildlife trade with Japan,⁴⁴ Singapore has traditionally been the principal supplier of saltwater crocodile hides, an Appendix I species, to Western Europe. CITES conferees at the Third Meeting of the Conference of the Parties in 1981 concluded that these hides were probably illegally imported into Singapore from other countries, and then re-exported to Europe.⁴⁵

Additionally, large quantities of ivory, illegally shipped out of several African nations, found their way to Singapore in recent years, leading the CITES Secretariat to appeal to Treaty parties to prohibit trade in ivory shipped through that nation.⁴⁶

³⁹ *Tightening Controls on the Ivory Trade*, *supra* note 33 at 3.

⁴⁰ G. NILSSON, *supra* note 19, at 54; *see also A Lizard For All Seasons*, 6 TRAFFIC BULL. No. 4, at 19 (Jan. 1985); *Lizard in Advertisement Creates Demand*, 19 ORYX No. 2, at 40 (Jan. 1985).

⁴¹ *See Japan's New Efforts for Wildlife*, 21 ORYX No. 2, at 119 (Apr. 1987).

⁴² *See, e.g., Roscoe & Holloway*, *supra* note 36, at 104 (Japanese pledge to tighten customs clearance procedures to meet CITES procedures not supported by substantive changes in policy); *Yet More Moves to Control Japan's Ivory Imports*, 19 ORYX No. 3, at 130 (July 1985).

⁴³ *Singapore Becomes 94th Party To CITES*, 7 TRAFFIC (U.S.A.) No. 2 & 3, at 33 (Feb. 1987).

⁴⁴ *See supra* note 36 and accompanying text.

⁴⁵ CITES Secretariat, *Report of Secretariat*, Doc. 3.22, in PROCEEDINGS OF THE THIRD MEETING OF THE CONFERENCE OF THE PARTIES, at 9 (Feb. 25, 1981).

⁴⁶ *Appeal to Prohibit Ivory Trade with Singapore*, 6 TRAFFIC (U.S.A.), at 19 (Jan. 1985). For a detailed analysis of Singapore's role as a conduit for illegal wildlife shipments from Africa, Australia and Asia to North America, Europe and Japan, *see*

While Singapore's recent accession to CITES is cause for hope, effective compliance with the Treaty will require a substantial financial commitment to train customs inspectors and other authorities in the nation to enforce the Treaty's mandates. In addition, Singapore has not yet demonstrated that it has the requisite political will to choke off the lucrative importation and re-exportation of wildlife products. For example, in response to pressure by reptile skin traders in Singapore and Japan, Singapore entered a number of reservations upon its accession to the Treaty.⁴⁷ These include reservations for two heavily-traded Appendix II species, the spectacled caiman (*Caiman crocodylus*) and the New Guinea crocodile (*Crocodylus novaeguineae*) and the highly-threatened saltwater crocodile.⁴⁸ Over-utilization of the CITES reservations provision may further threaten the continued viability of these species.

E. Hong Kong

Hong Kong is the largest importer of raw ivory in the world.⁴⁹ Evidence suggests that a substantial portion of Hong Kong's ivory importation is conducted illegally.⁵⁰ Hong Kong customs officials frequently accept import documents for ivory shipments that either totally fail to specify the country of origin, or that state that the shipment has been illegally "laundered" from an African nation through another country.⁵¹ Since 1982, Hong Kong authorities have accepted massive ivory shipments from Japan despite good evidence that the ivory had been originally obtained illegally in Central African nations.⁵²

Hong Kong's participation in this illegal trade is a substantial contributing factor to the endangered status of most of Africa's elephant species.⁵³ However, it should be noted that there have been some encouraging developments in the last year. Recent reports indicate that Hong Kong, as well as Japan, have tightened their documentation requirements to comply with the recent establishment of an ivory quota by the parties to CITES. Customs

Note, *Regulation of International Trade In Endangered Wildlife*, 1 B.U. INT'L L.J. 249, 261 (1982); T. INSKIPP & S. WELLS, *INTERNATIONAL TRADE IN WILDLIFE* 24 (1979).

⁴⁷ *Singapore Becomes 94th Party To CITES*, *supra* note 43, at 22; *Singapore Joins CITES*, 21 ORYX No. 2, at 114 (Apr. 1987).

⁴⁸ *Id.*

⁴⁹ *Tightening Controls on the Ivory Trade in Japan*, *supra* note 33, at 3.

⁵⁰ *Id.*

⁵¹ *Id.* at 13.

⁵² *Tightening Controls on the Ivory Trade in Japan*, *supra* note 33, at 3.

⁵³ See generally Jacking, *Elephants and Rhinos in Africa*, 14 IUCN BULL. No. 1-3, at 8 (Jan.-Mar. 1983); *More Than A Million Elephants—But They Face Extinction*, 15 ORYX No. 1, at 321 (1980).

officials in both nations have turned back ivory shipments that lack requisite permits and identification markings.⁵⁴

Hong Kong has also been accused of accepting laundered shipments of rhinoceros horn, a product in high demand for medicinal purposes in Hong Kong and other Eastern Asian nations.⁵⁵ Hong Kong officials are frequently bribed to accept inadequate or fabricated import and export certificates.⁵⁶ Hong Kong's erratic compliance with CITES mechanisms to protect rhinoceros species is particularly distressing. The world's supply of black and white rhinoceroses, both Appendix I species, has plummeted in recent years.⁵⁷ One analyst has glumly projected that "at the present level of trade rhinoceroses will be virtually eliminated within 10 years."⁵⁸

E. *Other Asian Nations' Compliance With CITES*

Other important importers and exporters of wildlife species and products in Asia include India and China. India has made great progress in recent years in effectively implementing CITES. While historically one of the principal carving centers for elephant ivory worldwide,⁵⁹ India in the last decade has effectively utilized national legislation and training of customs authorities to comply with CITES requirements. As one commentator recently noted:

India has virtually eliminated the importation of ivory from Asian elephants for commercial exploitation, a practice forbidden under CITES for this Appendix I species. Additionally, India is in substantial compliance with the limits set on trade in several species of African elephants by the parties to CITES. Indian customs officials have become particularly adept at recognizing suspicious import documents

⁵⁴ *Ivory Quotas Reduce Poaching of Elephants*, N.Y. Times, May 27, 1986, at C4, col. 5. For an overview of the CITES quota system for ivory products, see *Report of Secretariat*, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 1, at 403-04.

⁵⁵ Interview with William Burns, Director, Pacific Center For International Studies, Mar. 12, 1987 [hereinafter Interview] (*on file at the Boston University International Law Journal*); Martin, *The Rhino: Problems and Prospects*, 14 IUCN BULL. No. 1-3, at 7 (Jan.-Mar. 1983).

⁵⁶ Interview, *supra* note 55 at 12.

⁵⁷ See *Poachers and Protectors Wage War Over Rhinos*, N.Y. Times, May 6, 1986, at C3, col. 3; *Boxing the Rhino Trade*, 16 IUCN BULL., No. 10-12, at 106 (Oct.-Dec. 1985).

⁵⁸ *Action to Save Africa's Rhinos*, 11 IUCN BULL., No. 1 & 2, at 7 (Jan./Feb. 1980). For Singapore's involvement in the importation of Appendix I turtle species for food and medicinal purposes, including the *Trionyx gangeticus*, *T. hurum* and *Lissemys punctata*, see *Bangladesh turtle exports*, 19 ORYX No. 2, at 113 (Apr. 1985).

⁵⁹ Gray-Schofield, *supra* note 2, at 4.

and have been particularly diligent in conducting further investigations in such circumstances.⁶⁰

India has also established a substantial public education program to enhance understanding of the importance of protecting wildlife species and complying with CITES.⁶¹

Recent evidence, however, also suggests that some indigenous species of Indian fauna listed in Appendix I or Appendix II of CITES, including several species of Indian reptiles and snakes, continue to be smuggled out of the country and into other CITES nations with fabricated documents.⁶² As is true in many nations that adhere to CITES, enforcement efforts place a terrible strain on India's economic resources.

China has also made substantial progress in recent years in stemming the tide of illegal exports of Appendix I birds and lizards.⁶³ However, a massive increase of wildlife exports to Japan in recent years, much of which is untraceable because of poor record-keeping, has given cause for concern in the international community.⁶⁴ Moreover, the demand for rhinoceros horns for medicinal purposes continues unabated in many Chinese provinces.⁶⁵ China also continues to accept rhinoceros shipments that are accompanied by patently fabricated documentation.⁶⁶

II. THE FUTURE OF CITES IN ASIA

As the foregoing analysis indicates, the CITES Treaty has been disregarded by several of the primary wildlife importers and exporters in Asia. The substantial volume of trade conducted by Asian nations in Appendix I and Appendix II species necessitates far stricter adherence to CITES mandates in the future. There are several ways in which Asian compliance with CITES could be improved.

A. *Reservation Clauses*

In a discussion of the probable motives of the drafters of the CITES Treaty for including a reservation clause, one commentator recently concluded:

First, the IUCN may have incorporated the reservation clauses in an effort to induce more participation in the Convention. With so many

⁶⁰ Interview, *supra* note 55.

⁶¹ See, e.g., *Scrolls For Turtle*, 20 ORYX No. 1, at 258 (Feb. 1986).

⁶² Gray-Schofield, *supra* note 2, at 3; see generally *India Further Tightens Snake Trade*, 19 ORYX No. 1, at 40 (Jan. 1985).

⁶³ Interview, *supra* note 55, at 10.

⁶⁴ See, e.g., *China Exporting More Wildlife to Japan*, 17 ORYX No. 2, at 16 (Apr. 1983).

⁶⁵ *Id.*

⁶⁶ *Id.*

parties, dissension over the listing and the status of protected species would be inevitable Second, the drafters recognized the existence of legitimate trading interests in wildlife. The reservation clauses encourage greater participation by allowing states to demonstrate general support for protecting endangered wildlife while protecting their own economic interests Finally, the drafters probably envisioned only occasional use of the clauses.⁶⁷

While the incorporation of a reservation clause in the CITES framework may serve the salutary objective of increasing participation in the treaty, the Asian experience with the clause demonstrates the devastating effects the reservations may have on acutely endangered species.⁶⁸ Further, Japan's decision to hold fourteen reservations on Appendix I species alone indicates that the framers of the clause may have been naive in their assumption that the reservations would be used only sparingly.

One analyst presented three proposals to reduce the damaging aspects of the reservation clauses. These are:

- 1) to limit the number of reservations that a state can enter to no more than five;
- 2) limiting the reservation's duration, with an eventual phaseout of the reservation; and
- 3) to provide for periodic review of all reservations at the parties' biennial conference.⁶⁹

All of these suggestions have merit and should be considered by CITES participants. While this Article has only addressed the adverse consequences of reservations in the Asian context, several other commentators have argued that this problem is universal.⁷⁰ Given the devastating effects that the reservations clause in CITES has had on endangered species, the parties should strongly consider amending the Treaty's reservation clause to permit the entrance of a reservation only in those cases where the species or product in question "substantially contributes" to the economic well-being of a nation, defined in terms of indices such as employment or trade revenue. This measure would obviate the use of reservations to preserve trade in luxury items, such as fur coats and stuffed animals, that arguably benefit only very few while impairing the continued existence of endangered species. Parties wishing to enter such reservations would be required to present their proposals, including supporting documentation, for consideration by the CITES parties at their biennial conferences. This is the procedure

⁶⁷ Note, *supra* note 16, at 436-47.

⁶⁸ See *supra* notes 4-63 and accompanying text.

⁶⁹ Note, *supra* note 16, at 446-47.

⁷⁰ See, e.g., S. LYSTER, *supra* note 4, at 262-64; Note, *supra* note 16, at 454.

that is currently utilized in cases where a nation wishes to downgrade a species from Appendix I to Appendix II.⁷¹

B. *More Effective Enforcement of CITES Provisions*

As indicated previously, Asian nations such as Japan, Singapore and Hong Kong have often intentionally or negligently allowed the importation of illegal wildlife specimens and products. Several measures must be taken to enhance enforcement of CITES mandates.

1. Improved Training Of Customs Inspectors

Customs officials in Asian nations must receive improved training in identification of species and in the implementation of CITES provisions. In many Asian countries, customs officers are poorly trained and as a consequence, rely excessively on documentation supplied by importers and exporters.⁷² Diligent and well-trained customs inspectors are an integral component of any effort to effectively regulate international trade in wildlife species.

It is especially important that inspectors be trained to be on the alert for laundered shipments of wildlife specimens. In cases where import documents indicate that a species or product has been shipped from a nation in which the species or product is not indigenous, further investigation should be mandated. In many cases such an investigation will reveal that the species or product has been smuggled out of one nation illegally and then exported from another with fabricated or incomplete documents. It has been estimated that currently one-third of all wildlife trade is illegal, and over one-third of this illegal trade is perpetrated by "laundering."⁷³ As demonstrated earlier in this paper, laundering of wildlife exports is a pervasive practice in Asia that denudes the effectiveness of CITES.⁷⁴

2. Increased Penalties For Violation of CITES

The economic incentives to engage in illegal wildlife trade are tremendous. Dr. Arnd Wunschmann, Director of Munich's Hellabrunn Zoo, states that "illegal trade in furs, trophies and protected animals now has a higher profit margin than drug traffic."⁷⁵ Overall, the illegal wildlife trade network gener-

⁷¹ See, e.g., *Report of the Secretariat*, in PROCEEDINGS OF THE FIFTH MEETING *supra* note 1, at 544-54.

⁷² See, e.g., Roet & Milliken, *The Japanese Psittacine Trade, 1981-1982*, Special Report of TRAFFIC (Japan), at 19 (July 1985).

⁷³ Hanley, *Illegal Trade in Wildlife Threatens Many Species*, Hartford Courant, July 25, 1983, at A7, col. 1.

⁷⁴ See *supra* Section II C and accompanying notes.

⁷⁵ Sand, *Stop This Shameful Traffic I*, NATUROPA No. 34/35, at 57 (1980); see also Grove, *Wild Cargo: The Business of Smuggling Animals*, 159 NATIONAL GEO.,

ates more than one-half billion dollars in revenue each year.⁷⁶ Article VIII of CITES provides that “[t]he Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof,” including the use of penalties for trade or possession of such specimens.⁷⁷ However, the Treaty does not specify what these penalties should be. In many Asian nations, the penalties imposed for illegal wildlife trafficking are woefully inadequate and thus can in no way serve as a deterrent against such activities. For example, while Hong Kong has made more than 300 prosecutions under its Animals and Plants Ordinance, the highest penalty it has levied is a \$1000 fine, the maximum allowed under the statute.⁷⁸ CITES nations in general have eschewed the use of prison sentences to reduce illegal wildlife trade, even in the most egregious of cases.⁷⁹

In several nations, the establishment of stiffer sentences, including the possibility of imprisonment, have reduced illegal wildlife trade. For example, in the 1970s, Nepal faced the imminent extinction of its rhinoceros population because of the activities of traders who conducted lucrative illegal ivory trade with India. In response, the Nepalese government enacted legislation that provided for prison terms of up to five years and substantial fines for such activities. The new law has virtually eliminated the rhinoceros trade network in Nepal.⁸⁰ Similarly, in the United States, the establishment of heavier sentences for violation of domestic laws that implement CITES has resulted in a substantial number of prison sentences ranging from six months to five years for offenders.⁸¹

3. Sanctions Against Nations Violating CITES

If efforts by the CITES Secretariat and CITES parties are not successful in inducing Asian nations to improve their compliance with the Treaty, the use of economic sanctions should be seriously considered. Sanctions have been used effectively in the past to induce cooperation by Asian countries.

at 287 (Mar. 1981). Profit margins for illegal wildlife trade can range from 300-400 percent. Note, *supra* note 25, at 111 n.4.

⁷⁶ Note, *supra* note 25, at 111; see also Note, *Wildlife In The Third World: Current Efforts To Integrate Conservation With Development*, 5 B.C. THIRD WORLD L.J. 83, 94 (1984).

⁷⁷ CITES, *supra* note 3, art. VIII.

⁷⁸ S. LYSTER, *supra* note 4, at 264-65.

⁷⁹ Note, *supra* note 46, at 265. Even in those rare cases where prison sentences have been meted out they have often been “derisory in proportion to the profits made.” Sand, *supra* note 75, at 58.

⁸⁰ Martin, *Religion, Royalty and Rhino Conservation in Nepal*, 19 ORYX No. 2, at 13-14 (Jan. 1985).

⁸¹ See S. LYSTER, *supra* note 4, at 265; *Busted: America's Snake Smugglers*, NEW SCI., 332-33 (Aug. 1981).

For example, in September 1986, the United States banned the import of all wildlife products from Singapore, citing the State's failure "to provide authenticating documents or supporting information for wildlife shipments alleged to be captive-bred or re-exported from Singapore."⁸² Facing the loss of a major market for its wildlife products, Singapore became a member of CITES on November 30, 1986.⁸³

In January of 1986, the CITES Secretariat requested that parties refrain from trading with the Portuguese territory of Macau. Despite admonitions from the Secretariat, Macau had refused to desist from trade in rhinoceros horn, musk and African elephant ivory without the requisite documentation required by CITES.⁸⁴ In May 1986, the Secretariat was able to rescind the ban because of the territory's implementation of stricter regulations and documentation procedures.⁸⁵

While in an ideal world nations would simply comply with the provisions of the Treaty out of a sense of responsibility to the international community, historical evidence belies this assumption. The selective use of sanctions by CITES parties should be used in those situations where less coercive alternatives have failed.

4. Education Programs

Finally, Asian parties to CITES should implement citizen education programs to enhance appreciation of wildlife and to emphasize the importance of preserving wildlife species. Perhaps the most important aspect of enforcement, still largely neglected, is "public information as a means to induce voluntary compliance."⁸⁶ Recent studies have demonstrated that wildlife education substantially increases public support for conservation and protection programs.⁸⁷

Wildlife products in Asia traditionally have been used as medicines. For example, the rhinoceros horn is used as a fever-reduction agent in China,

⁸² Roscoe & Holloway, *supra* note 36, at 104. The ban was later amended to permit the importation of ornamental fish not listed in the CITES appendices into the United States. *Singapore Becomes 94th Party to CITES*, *supra* note 43, at 33.

⁸³ *Singapore Becomes 94th Party To CITES*, *supra* note 43, at 33.

⁸⁴ *Secretariat Urges Parties to Halt Trade with Macau*, 7 TRAFFIC (U.S.A.) No. 1, at 13 (June 1986). As a territory of Portugal, a CITES member, Macau is subject to the Treaty.

⁸⁵ *Secretariat Rescinds Macau Ban*, 7 TRAFFIC (U.S.A.) Nos. 2 & 3, at 34-35 (Feb. 1987).

⁸⁶ Sand, *supra* note 75, at 58; see also *IUCN and Education: Laying The Foundation For Sustainable Development*, 17 IUCN BULL. No. 10-12, at 112-13 (Oct.-Dec. 1986); P. EHRLICH & A. EHRLICH, *EXTINCTION* 198 (1981).

⁸⁷ See Harcourt, Pennington & Weber, *Public Attitudes to Wildlife and Conservation in the Third World*, 20 ORXY No. 3, at 153 (July 1986).

India, and Hong Kong.⁸⁸ Several nations in Asia have successfully encouraged doctors to prescribe alternatives. For example, in Japan the government sent letters to pharmacists requesting that they promote alternatives to medicines that contain rhinoceros horn. This action has contributed to a reduction in demand for rhinoceros horn in that country.⁸⁹ In South Korea, pressure on the doctors' association induced them to prescribe medicines containing the more plentiful buffalo horn as a substitute for rhinoceros horn.⁹⁰ Programs such as these should be expanded to other nations in Asia and should seek to reach doctors both in urban centers and in rural areas where the use of traditional medicines is more pervasive.

IV. CONCLUSION

The Convention on International Trade in Endangered Species of Wild Flora and Fauna has been hailed as "perhaps the most successful of all international treaties concerned with the conservation of wildlife."⁹¹ However, on the Asian continent the compliance records of several of the world's most important actors in international wildlife trade remains uneven. Many of these nations have not looked on wildlife with "the eyes of a friend," as Mrs. Gandhi has suggested, but rather with the eyes of a plunderer. In our increasingly fragile ecosystem the need to implement effective programs of wildlife conservation and protection cannot be underestimated. The eyes of the world must now turn to Asia to do its part in protecting one of mankind's most precious resources.

⁸⁸ *Demand For Rhino Horn Falls*, 14 IUCN BULL., No. 4-6, at 36 (Apr.-June 1983); Martin, *The Rhino: Problems and Prospects*, 14 IUCN BULL., No. 1-3, at 7 (Jan.-Mar. 1983).

⁸⁹ *Demand For Rhino Horn Falls*, *supra* note 88, at 36.

⁹⁰ Martin, *Halting The Rhino Trade*, 17 IUCN BULL., No. 7-8, at 100 (July & August 1986).

⁹¹ S. LYSTER, *supra* note 4, at 240.

