

THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES: ENFORCEMENT AND THE LAST UNICORN*

TABLE OF CONTENTS

I.	INTRODUCTION	158
II.	THE CITES TREATY	163
	A. <i>The Regulatory Framework: An International Attempt to Control Wildlife Trade</i>	163
	1. <i>The Correlation Between the CITES Permit System and the Appendices</i>	164
	2. <i>Exemptions to the Regulations</i>	166
	3. <i>The Convention's Enforcement Provisions</i>	167
	4. <i>CITES Secretariat and NGO Participation: How Their Roles Affect CITES</i>	169
	B. <i>The United States' CITES Enforcement</i>	173
	1. <i>The Endangered Species Act</i>	173
	2. <i>The Lacey Act</i>	178
	C. <i>The Ninth Conference of the Parties—November 1994</i>	180
III.	ENFORCEMENT	184
	A. <i>Threats to Enforcement</i>	186
	1. <i>Inadequate National Legislation</i>	187
	2. <i>Ineffective Communication</i>	188
	3. <i>Additional Problems</i>	189
	B. <i>Case Studies</i>	192
	1. <i>The Tiger: Another Addition to the Extinction List?</i>	192
	a. <i>The Decreasing Numbers</i>	192
	b. <i>The Twentieth Century Tiger and Ancient Medicinal Practices</i>	194
	c. <i>India's Response: Operation Tiger</i>	196

* This is one of two papers which received the 1994–1995 *Houston Journal of International Law* Best Article Award.

d. <i>Problems in Russia</i>	197
e. <i>The U.S. Response</i>	197
2. <i>The Rhino: The Last Unicorn?</i>	200
C. <i>A Crime Is a Crime</i>	201
IV. PROPOSALS FOR CHANGE	203
A. <i>The Future of Wildlife Enforcement</i>	203
1. <i>An Enforcement Infrastructure</i>	204
B. <i>Sanctions</i>	205
1. <i>Increased Penalties</i>	205
2. <i>Public Embarrassment and Economic Sanctions</i>	206
C. <i>Education: The Key to Reducing the Demand</i>	207
1. <i>Cultural Differences</i>	208
2. <i>Sustainable Use: The Pros and Cons</i>	210
V. CONCLUSION	212

I. INTRODUCTION

"If future generations are to remember us more with gratitude than sorrow, we must achieve more than just the miracles of technology. We must leave them a glimpse of the world as it was created, not just as it looked when we got through with it."¹

Lyndon B. Johnson

The Earth's seemingly unlimited supply of wildlife is meeting extinction face-to-face at a most uncomfortable rate.² In

1. Letter from John Sawhill to the Editor (June 5, 1994) in *Letters to the Post*, DENVER POST, June 5, 1994, at D2 (President, The National Conservatory, Arlington, Va.).

2. Jason M. Patlis, *Biodiversity, Ecosystems and Species: Where Does the Endangered Species Act Fit In?*, 8 TUL. ENVTL. L.J. 33 (1994), available in WESTLAW, TLNELJ Database, at *4. "[The] normal 'background' extinction rate is about one species per one million species a year[;] [h]uman activity has increased extinction between 1,000 and 10,000 times over this level in the rain forest by reduction in area alone." *Id.* (quoting from EDWARD O. WILSON, *THE DIVERSITY OF LIFE* 280 (1992)). "New data suggest that there may be 30 million or more species in the world of which perhaps twenty percent may be lost by the year 2,000 [sic]. Losses will continue to accelerate thereafter." Rodger Schlickeisen, *Protecting Biodiversity for*

comparison to the five previous extinction episodes, the current episode is "one of the most severe."³ Of course, some wildlife extinction is the result of evolution and its inevitable natural order.⁴ Most extinctions, however, are caused by human activity,⁵ specifically, by the activity of international trade in wildlife. Commercial wildlife trade is an enormously lucrative business, generating as much as five billion dollars annually.⁶ The ever-increasing demand for wildlife and wildlife products is met through a sophisticated system of legal and illegal trade avenues.⁷ As soon as one demand is satisfied, another rises in its place, severely burdening wildlife's ability to recover from evolutionary and man-made constraints on survival. Extinction in any species has effects upon the Earth's ecological system of which no scientist can accurately predict.⁸ The extinction crisis is a genuine problem which absolutely cannot be ignored.

The diversity of life evolved over billions of years.⁹ Biological diversity is necessary for the survival of all life forms on Earth.¹⁰ Human beings have never been able to fully understand the degree of complexity with which all life forms are intertwined.¹¹ Therefore, protection of wildlife is imperative

Future Generations: An Argument for a Constitutional Amendment, 8 TUL. ENVTL. L.J. 181 (1994), available in WESTLAW, TLNELJ Database, at *3-4.

3. Patlis, *supra* note 2, at *4.

4. See generally STEPHEN JAY GOULD, EIGHT LITTLE PIGGIES 46-51 (1993) (discussing evolution as a natural form of extinction in wildlife).

5. See, e.g., Sudhir K. Chopra, *Introduction: The Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 5 B.U. INT'L L.J. 225, 225 (1987) (describing wildlife trade as a lucrative business which has been employed for centuries).

6. See Laura H. Kosloff & Mark C. Trexler, *The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?*, 17 ENVTL. L. REP. 10,222, 10,223 (1987) [hereinafter Kosloff & Trexler, *No Carrot*]. The U.S. market accounts for up to one third of the five billion dollar business. *Id.* at 10,223 n.9 (citing Ginette Hemley, Director, Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC)—U.S.A., in Washington, D.C.).

7. See *id.* at 10,223 (listing examples of commonly traded products, such as African and Asian elephant ivory, orchids, parrots, and rhinoceros).

8. See, e.g., John Grove, *Wild Cargo: The Business of Smuggling Animals*, NAT'L GEOGRAPHIC, Mar. 1981, at 314 (inferring that destruction of one species is the partial destruction of humanity).

9. EDWARD WILSON, THE DIVERSITY OF LIFE 344 (1992).

10. See Schlickeisen, *supra* note 2, at *1, *4.

11. James Dvozdowski, *Saving an Endangered Act: The Case for a Biodiversity Approach to ESA Conservation Efforts*, 45 CASE W. RES. L. REV. 553, 560 (1995) (recognizing that the direct and indirect benefits of biodiversity that flow to humans are not well understood).

because the alternative may have grave consequences.¹² An appropriate conservationists' sentiment is: "To keep every cog and wheel is the first precaution of intelligent tinkering."¹³ The human race must learn to value all life on Earth before it has to live with the reality and consequences of mass extinction.

On March 6, 1973, multiple nations agreed to make a significant international response to the problem of wildlife trade: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).¹⁴ The Preamble to CITES establishes its ideology:

The Contracting States,

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

12. See *id.* at 560 (arguing that preservation of the biodiversity "life-support system" is a compelling justification for preserving as much as possible).

13. ALDO LEOPOLD, *A SAND COUNTY ALMANAC* 190 (1949).

14. The Convention on International Trade in Endangered Species in Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES]. For the legislative history, see the submission to the Senate by Mr. Pell, member of the Committee on Foreign Relations, of the Convention on the International Trade in Endangered Species of Wild Fauna & Flora, S. EXEC. REP. No. 14, 93d Cong., 1st Sess. (1973). For a synopsis on other wildlife conventions and treaties, see GRETA NILSSON, *THE ENDANGERED SPECIES HANDBOOK* 112-13 (1990) (describing treaties concerning migratory species and nature reserves as well as the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the Convention on the Conservation of Migratory Species of Wild Animals, and the International Convention for the Regulation of Whaling). See also Alan H. Schonfeld, *International Trade in Wildlife: How Effective Is The Endangered Treaty?*, 15 CAL. W. INT'L L.J. 111, 118 n.41 (1985) (listing other international conservation agreements).

Convinced of the urgency of taking appropriate measures to this end¹⁵

CITES attempts to protect endangered species from the over-exploitation caused by unregulated international wildlife trade by establishing a compromise between the profitable wildlife business and the disappearing resources.¹⁶ To accomplish this balance, CITES obliges its member parties to control their wildlife imports and exports by self-regulation.¹⁷ In this way, CITES has been described as a "standard instrument of social regulation intended to bring about responsible behavior in situations where it might not have otherwise occurred."¹⁸

The growth in CITES membership from twenty-one to one hundred and twenty-eight nations signifies an increase in international participation and public awareness of the problems of wildlife conservation.¹⁹ Notwithstanding the treaty's overall potential for worldwide species protection, the demand still exists for exotic pets and plants, luxury items, zoological attractions, and ancient oriental medicines.²⁰ Because of per-

15. CITES, *supra* note 14, pmb1.

16. *See id.* art. II.

17. *See id.* art. III.

18. *See* Kosloff & Trexler, *No Carrot*, *supra* note 6, at 10,223. Social regulation includes a body of standards for prescribing responsible behavior, enforcement officers to prevent violations, and sanctions to be applied to violators. *Id.* at 10,223 n.13.

19. As of January 1, 1995, the list of parties is as follows in order of joining CITES: United States of America, Nigeria, Switzerland, Tunisia, Sweden, Cyprus, Ecuador, Chile, Uruguay, Canada, Mauritius, Nepal, Peru, Costa Rica, South Africa, Brazil, Madagascar, Niger, Morocco, Ghana, Papua New Guinea, Germany, Pakistan, Finland, India, Zaire, Norway, Australia, United Kingdom, Iran, Paraguay, Seychelles, Guyana, Denmark, Senegal, Nicaragua, Gambia, Malaysia, Venezuela, Botswana, Egypt, Monaco, France, Panama, Togo, Kenya, Jordan, Indonesia, Sri Lanka, Bahamas, Bolivia, Italy, Guatemala, Tanzania, Liechtenstein, Israel, Japan, Central African Republic, Rwanda, Suriname, Zambia, Portugal, China, Argentina, Liberia, Mozambique, Zimbabwe, Cameroon, Belize, Philippines, Colombia, Guinea, Bangladesh, Austria, Malawi, Sudan, Saint Lucia, Thailand, Congo, Belgium, Algeria, Luxembourg, Trinidad, Benin, Netherlands, Honduras, Hungary, Afghanistan, Somalia, Spain, Singapore, Dominican Republic, El Salvador, Burundi, Saint Vincent, Chad, Gabon, Ethiopia, Malta, New Zealand, Vanuatu, Burkina Faso, Poland, United Arab Emirates, Cuba, Brunei Darussalam, Guinea-Bissau, Namibia, Bulgaria, Mexico, Uganda, Russian Federation, Djibouti, Equatorial Guinea, Estonia, Slovakia, Czech Republic, Greece, Barbados, Republic of Korea, Viet Nam, Saint Kitts & Nevis, Mali, Romania, Erythrea, Sierra Leone. CITES, Secretariat, List of Themes of Sheets, Proceedings of the Ninth Meeting of the Conference of the Parties, at 8 (Nov. 7-18, 1994) [hereinafter Themes].

20. SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 239 (1985). Examples of some

sisting demands, change in endangered species protection is necessary. Perhaps the most important change need not be to CITES itself, but in the attitudes behind these demands. In simple economic terms, if the demand is reduced, the interest in the source of the supply is ultimately reduced, therefore saving thousands of species.²¹ Until demand is reduced, however, this comment proposes that basic and consistent enforcement of wildlife laws and of the CITES treaty is the only method with which to protect wildlife from international trade. CITES is, most importantly, a protectionist treaty over highly endangered species which allows controlled trading of other species.²² Unfortunately, if enforcement is lacking, then the continued trade in wildlife and wildlife products will likely lead to the wholesale destruction of entire groups of species. Therefore, it is important that the CITES member countries implement strong enforcement measures as they establish trading limits and rules.

This comment analyzes the ideology, structure, and operation of the most significant international response to the threat of species extinction, as embodied in the text of CITES. Specific aspects of enforcement will be examined, such as the participation of nongovernmental organizations (NGOs) and the United States' implementation of CITES. In addition, this comment will report on the most recent CITES meeting, the Ninth Conference of the Parties, on November 7-18, 1994, which was held in the United States and attended by delegates representing over 120 countries. An analysis of the CITES enforcement problems will follow with specific focus on the failure of enforcement as it applies to the tiger and rhinoceros. Finally, this comment proposes new solutions for the problem of unregulated wildlife trade while reinforcing old ones in an effort to advocate more preservation and protection of the remaining wildlife from the continued reality of illegal trade. This com-

of the items in high demand in this billion dollar business of wildlife trading are as follows: a South American ocelot fur coat valued at \$40,000, a single orchid or macaw valued at \$5,000, and an ounce of rhino horn equal to or greater than the price of gold. *Id.*

21. *But cf.* Landy, *infra* note 312 (describing how a government ban on ivory failed to reduce demand); and DAVID HARLAND, *KILLING GAME: INTERNATIONAL LAW & THE AFRICAN ELEPHANT* 31-46 (1994) (emphasizing the important limits on an economic approach as it applies to the African Elephant).

22. *See* LYSTER, *supra* note 20, at 240.

ment will attempt to take the first step toward solving the problem by informing the public of the wildlife trade issue and its impact on endangered species.

II. THE CITES TREATY

CITES was drafted twenty years ago,²³ becoming the first treaty to combine the politics of wildlife trade with the interests of wildlife conservation. CITES has been hailed as one of the most successful international responses to the worldwide threat of wildlife extinction.²⁴ The treaty has evolved into an international confederation of 128 like-minded nations,²⁵ joined together in an effort to protect and promote the sustainability of endangered species. The treaty has two essential goals: first, to reduce the harmful effects of commercial trade on threatened or endangered species of flora or fauna; and second, "to establish a worldwide system for ensuring that trade in other species is conducted on a sustainable basis for the future."²⁶

A. *The Regulatory Framework: An International Attempt to Control Wildlife Trade*

CITES is administered through the United Nations Environmental Programme and is headquartered in Geneva, Switzerland.²⁷ In order to meet its goal of worldwide wildlife trade control, CITES requires government permits for any trade in endangered or threatened wildlife or wildlife products.²⁸ CITES' success depends upon the proper functioning of the permit system as well as the sufficiency of domestic laws and law enforcement by the individual member states.²⁹ It must

23. See LYSTER, *supra* note 20, at 240. CITES was signed on March 3, 1973, but was entered into force on July 1, 1975. *Id.* at 239-40. For a detailed analysis of the treaty, see DAVID FAVRE, INTERNATIONAL TRADE IN ENDANGERED SPECIES (1989).

24. LYSTER, *supra* note 20, at 240.

25. See *supra* note 19.

26. Mollie Beattie, Speech at the CITES Ninth Conference of the Parties (Nov. 7, 1994) (Director, U.S. Fish & Wildlife Service (FWS)) (unpublished transcript on file with the author).

27. U.S. FISH & WILDLIFE SERV., FACTS: CITES AT A GLANCE 1 (Sept. 1994) [hereinafter FWS, GLANCE].

28. See CITES, *supra* note 14, art. II(4) (prohibiting trade in listed species except in compliance with permit system).

29. *Id.* art. II(4) (stating that "[t]he Parties shall not allow trade in specimens

be understood that CITES does not prevent trade by banning indiscriminately all commerce in endangered animals and plants; instead, it offers protection to a species in direct proportion to the present dangers threatening its sustainability.³⁰

1. *The Correlation Between the CITES Permit System and the Appendices*

Permits are granted unilaterally by CITES parties, and accordingly, the act of granting a permit is considered sovereign and not reviewable by any other party.³¹ The permits serve as control mechanisms in monitoring trade³² in species³³ threatened with extinction. Before endangered fauna or flora may cross the borders of any member party, an importer or exporter must first obtain trade permits.³⁴ These permits serve as animal or plant "passports,"³⁵ and apply to specimens

included in Appendices I, II and III except in accordance with the provisions of the present Convention."). Essentially, compliance with the permit requirements determine CITES success. See, e.g., Schonfeld, *supra* note 14, at 118 (concerning the permit requirements and control implementation); Jorge B. Thomsen & Amie Bräutigam, *CITES in the European Economic Community: Who Benefits?*, 5 B.U. INT'L L.J. 269, 272-73 (1987) (describing policy which the European Economic Community established in response to CITES).

30. CITES, *supra* note 14, art. II(2). The full language of art. II(1)-(2) is as follows:

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. 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 subparagraph (a) of this paragraph may be brought under effective control.

Id. art. II(2).

31. The Preamble to CITES asserts that the "peoples and States are and should be the best protectors of their own wild fauna and flora." CITES, *supra* note 14, pmbl.

32. CITES defines "trade" as the "export, re-export, import and introduction from the sea." *Id.* art. I(c).

33. CITES defines "species" as "any species, subspecies, geographically separate population thereof." *Id.* art. I(a).

34. CITES provides that each party shall have a system through which trade specimens pass and therefore may assign entry and exit ports where shipments must be presented for clearance. *Id.* art. VIII(3).

35. The CITES' trading regulations have been referred to as "issuing passports

alive or dead, or to "any readily recognizable part or derivative thereof."³⁶ The permit requirements, however, are not the same for each existing species on Earth. In fact, one of the treaty's most notable aspects is its acknowledgement of the varying degrees of extinction vulnerability which a species may or may not face.³⁷ CITES first three appendices establish a hierarchy of endangered species predicated upon the probability of imminent extinction.³⁸ Likewise, the trade restrictions vary according to the appendix on which the traded species is listed.³⁹

Appendix I lists the species threatened with imminent extinction as those "threatened with extinction which are or may be threatened by trade"⁴⁰ and whose survival may be further jeopardized by international trade.⁴¹ Trade in these species, therefore, is strictly prohibited unless warranted by exceptional circumstances or under certain limited conditions.⁴² For example, before an exporting party may trade an Appendix I species, the party must determine several issues: (1) the import permit must be valid;⁴³ (2) the export must not be "detrimental to the survival of the species,"⁴⁴ (3) the species must not have been obtained in contravention of the exporting country's wildlife protection laws;⁴⁵ and (4) the living specimens must be transported so as to "minimize the risk of injury, damage to health or cruel treatment."⁴⁶ The importing nation has three different conditions to meet when trading in

for animals—dead or alive that pass from one country or another." See Grove, *supra* note 8, at 294. See also Schonfeld, *supra* note 14, at 118 (referring to the *National Geographic's* passport metaphors).

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

37. MICHAEL BEAN, *THE EVOLUTION OF NATIONAL WILDLIFE LAW* 325 (1983).

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

39. *Id.*

40. *Id.* art. II(1).

41. See *id.* As of this writing, Appendix I contained approximately 700 species including: apes, the giant panda, lemurs, cheetahs, tigers, elephants, rhinos, some orchids, and cacti. *Id.* app. I.

42. *Id.* art. III. For example, an export must be deemed as minimizing any risk of injury and as maintaining humane treatment before any permit is granted. CITES, *supra* note 14, art. III(2)(c).

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

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

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

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

Appendix I species:⁴⁷ (1) the species may not be used for commercial purposes;⁴⁸ (2) the importation must not pose any danger to the survival of the species' population in its native habitat;⁴⁹ and (3) the importing party must determine that the recipient is sufficiently able to care for the species.⁵⁰

Appendix II lists some forty thousand species⁵¹ which might become endangered if their trade is not sufficiently controlled and monitored to prevent utilization "incompatible with their survival."⁵² The permit requirements for trade in Appendix II species are similar to those for trade in Appendix I, except that CITES does not require an import permit.⁵³

Appendix III lists species which are not endangered but have been identified by an individual party as requiring international cooperation for adequate regulation.⁵⁴ As with Appendix II specimens, traders need have only export permits.⁵⁵

2. Exemptions to the Regulations

CITES establishes two exemptions allowing certain trades to occur outside the regulatory framework. First, Article VII provides that if a species has been acquired "before the provisions of the present treaty applied to that specimen," then there are no permit requirements.⁵⁶ This provision's purpose is to allow stockholders to trade stocks in existence before the

47. *Id.* art. III(3)-(4).

48. *Id.* art. III(3)(c). An example of a noncommercial use is when highly endangered animals are traded only to zoos attempting to study the animal's reproduction capability. See THOMAS I. INDKIPP & SUE WELLS, INTERNATIONAL TRADE IN WILDLIFE 31 (1979). Scientific researchers will pay high prices for chimpanzees, an Appendix I species. *Id.* Chimpanzees suffer great losses during the difficult and dangerous capturing process. *Id.* Several adult chimpanzees are killed in order to capture and trade the younger one. *Id.* This practice, along with these species' low breeding capabilities has pushed them dangerously close to extinction. See *id.*

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

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

51. *Id.* app. II. Appendix II includes most species of whales and dolphins, birds of paradise, and orchids. *Id.*

52. CITES, *supra* note 16, art. II(2)(a).

53. *Id.* art. IV. See also *Defenders of Wildlife v. Endangered Species Scientific Authority*, 725 F.2d 726, 728 (D.C. Cir. 1984) (holding that without a valid "no detriment" finding, bobcats in Appendix II may not be legally exported until such finding is established).

54. CITES, *supra* note 14, art. II(3).

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

56. *Id.* art. VII(2).

treaty went into force as well as to trade antique specimens.⁵⁷ Essentially, Article VII exempts traders from permit requirements if the species: (1) were acquired before the species' listing on one of the appendices;⁵⁸ (2) are personal or household effects;⁵⁹ (3) are animal specimens bred in captivity;⁶⁰ (4) are noncommercial loans or exchanges between scientific establishments;⁶¹ or (5) are for traveling circuses and exhibitions.⁶²

The second exemption is Article XXIII which allows parties to enter reservations to the listing of a particular species.⁶³ Because there are no limits to the number of reservations a party can make, however, CITES becomes ineffective when a party enters too many reservations.⁶⁴ This practice of making multiple reservations essentially allows the reserving party to conduct unlimited trade in a certain species.⁶⁵

3. *The Convention's Enforcement Provisions*

CITES established a worldwide network to control the trade in endangered species and their products. Each CITES member is responsible for enforcing the treaty's provisions⁶⁶

57. Philippe J. Sands & Albert P. Bedecarré, *CITES: The Role of the Public Interest Non Government Organizations in Ensuring the Effective Enforcement of the Ivory Ban*, 17 ENVTL. AFF. 799, 804 & n.40.

58. CITES, *supra* note 14, art. VII(2).

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

60. *Id.* art. VII(4).

61. *Id.* art. VII(6).

62. *Id.* art. VII(7).

63. *Id.* art. XXIII. By entering a reservation, a State is not a CITES party concerning the particular species. *Id.* art. XXIII(3). A reservation is a "unilateral statement . . . made by a State, when signing [or] ratifying a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties, May 23, 1969, art. 2, 1155 U.N.T.S. 331, 333.

64. See generally CITES, *supra* note 14, art. XXIII (setting no limits on the number of reservations a party may enter); Gwyneth G. Stewart, *Enforcement Problems in the Endangered Species Convention: Reservations Regarding the Reservation Clauses*, 14 CORNELL INT'L L.J. 429 (1981) (describing many enforcement difficulties caused by the CITES reservation provision).

65. Eric McFadden, *Asian Compliance with CITES: Problems and Prospects*, 5 B.U. INT'L L.J. 311, 314 (1987).

66. *Id.* art. VIII(1). Article VIII(1) provides:

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

because CITES is not a self-executing treaty.⁶⁷ The members must cooperate in order to combat sufficiently the trade violations by "organized-traffickers" which CITES seeks to end.⁶⁸ CITES intends for its parties to take appropriate measures when responding to endangered species trade violations.⁶⁹ Considering that the treaty presently has 128 parties,⁷⁰ it is reasonable to expect that each country will enact domestic wildlife laws which vary significantly in scope, content, and effectiveness, according to each country's resources.⁷¹

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

Id.

67. Non self-executing treaties rely upon the parties to enact legislation in order for the international agreements to be enforced, whereas self-executing treaties are enforceable by the mere existence of the agreements themselves. See David Schneebaum, *The Enforcement of Customary Norms of Public International Laws*, 8 BROOK. J. INT'L L. 289, 292 (1982).

68. Illegal trade exists in many forms:

Illegal trade in tiger bones in Asia, the black-market sale of parrots in the United States, the traffic in caiman skins from South America[,] . . . the capture of falcons in Eastern Europe, the printing of false permits in Africa and Asia[,] . . . illegal transport of animals and plants in personal luggage, hidden among heaps of other goods within clothes, . . . the use of sleep-inducing medication for the animals, the fitting out of hiding places within the body of vehicles, and even the declaration of false species. . . . [T]here is even a relationship between drug trafficking and that of CITES specimens.

Themes, *supra* note 19, at 7.

69. See *supra* note 14, art. VIII. When certain measures are taken however, CITES provides for particular requirements. For instance, Article VIII(4) provides:

- 4. Where a living specimen is confiscated . . .
 - (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
 - (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue center or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention

CITES, *supra* note 14, art. VIII(4)(a)-(b).

70. See *supra* note 19.

71. See generally Bill Clark, *Israel, CITES/C&M INT'L MAG.*, Oct./Dec. 1994, at 68 (observing Israel's effective wildlife laws and enforcement system); Chris Wold, *Proposed Listing Criteria for CITES Will Threaten Species*, WILDLIFE L., Summer 1994, at 9 [hereinafter Wold, *Listing Criteria*] (stating that the CITES' guidelines are flexible). But cf. Michael O'Sullivan, *Endangered Species Alert*, HSUS NEWS, Fall 1994, at 16, 16-19 (alerting the public to the issue that Canada has no endangered species laws to "require a federal, provincial, territorial governments to protect

As mentioned previously, each member is required to maintain complete trade records and to report them annually to the Secretariat.⁷² Additional requirements are that each member must establish a Scientific Authority to determine whether trade in a species will affect its survival⁷³ and a Management Authority to grant import and export permits.⁷⁴ By assigning such responsibility to governmental entities, CITES is more likely to have a direct focus; in other words, some countries probably would not have delegated wildlife management authorities without the CITES requirement.⁷⁵

4. *CITES Secretariat and NGO Participation: How Their Roles Affect CITES*

CITES provides for a permanent Secretariat⁷⁶ located in Geneva, Switzerland which generally oversees the entire CITES program. Some of the Secretariat's active administrative responsibilities include: (1) providing the member countries with trade information as well as scientific and technical support;⁷⁷ (2) interfacing among the parties; (3) organizing the biennial conferences;⁷⁸ (4) informing governments and the

endangered species or to prevent the destruction of their habitat").

72. See CITES, *supra* note 14, art. VIII(6)-(7).

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

74. *Id.* art. IX(1)(a).

75. See generally Kosloff & Trexler, *No Carrot*, *supra* note 6, at 10,225 (stating that before CITES, many countries did not have any wildlife legislation in existence; however, "even if implementation of CITES itself in these countries is abysmal, the very fact that some agency has been designated as having that responsibility might, it is argued, be valuable in furthering the long-term goals of conservation").

76. CITES, *supra* note 14, art. XII(1). CITES is one of the few conservation treaties that provides for a permanent Secretariat. Some authorities have deemed the Secretariat's effectiveness as the prominent cause of CITES' success. See, e.g., Conference on the Conservation of Migratory Species of Wild Animals, June 23, 1979, art. IX, 19 I.L.M. 15, 24 (following CITES' example by implementing a permanent Secretariat).

77. See CITES, *supra* note 14, art. VII(2). Estimating trade's impact on wildlife involves many analysis difficulties and therefore there are not any current, concise analyses regarding any progress CITES has made towards international wildlife conservation, despite Article XI(3)'s requirement to do so. See WILLEM WIJNSTEKERS, *THE EVOLUTION OF CITES: A REFERENCE TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES IN FAUNA AND FLORA* 155 (3d ed. 1992).

78. CITES, *supra* note 14, art. XI. CITES requires a regular meeting of the parties at least once every two years. *Id.* art. XI(2). During these meetings, the parties consider and adopt amendments to the appendices, review the treaty's implementation and progress, and recommend improvements for increasing CITES' effectiveness.

public about wildlife trade; and (5) investigating CITES violations and trade threats to wildlife.⁷⁹ The CITES Secretariat also acts as a "clearing-house for information on wildlife trade."⁸⁰ Ultimately, however, the Secretariat's function is "to help the Parties to implement the Convention."⁸¹ The parties are held responsible for keeping detailed records of trade in CITES' species and must report such findings to the Secretariat annually.⁸² These reports are important because they provide detailed trade analyses which have the potential to help the parties formulate amendments to the Appendices.

It must be noted that the Secretariat has no enforcement powers whatsoever.⁸³ The biennial meetings and the Secretariat's trade monitoring, however, assist in compliance to CITES, thus compensating for this lack of power. The Secretariat may assess a party's noncompliance and inform that party, as well as the other parties, of such violations during the biennial conferences. Despite this power, the Secretariat must

Id. art. XI(3). To date, there have been nine meetings, known as the Conferences of the Parties, held in Berne, Switzerland (1976); (1977 special session in Geneva, Switzerland); San Jose, Costa Rica (1979); New Delhi, India (1981); Gaborone, Botswana (1983); Buenos Aires, Argentina (1983); Ottawa, Canada (1987); Lausanne, Switzerland (1989); and Kyoto, Japan (1992). See AMIE BRÄUTIGAM, CITES: A CONSERVATION TOOL 32 (4th ed. 1994). The Ninth conference was recently held in Fort Lauderdale, Florida in the United States on November 7-18, 1994.

79. CITES, *supra* note 14, art. XII.

80. Thomsen & Bräutigam, *supra* note 29, at 271.

81. CITES Secretariat, Report from the Secretariat, Proceedings of the Ninth Meeting of the Conference of the Parties, at 1, U.N./CITES Doc. 9.6 (Nov. 7-18, 1994). The report continues: "The Parties are the only ones responsible for this implementation . . . International co-operation remains essential." *Id.*

82. CITES, *supra* note 14, art. VIII(6)-(7). As of this writing, 45 countries did not submit 1991 and/or 1992 reports as required. CITES Secretariat, Review of Alleged Infractions and Other Problems of Implementation of the Convention, Proceedings of the Ninth Meeting of the Conference of the Parties, at 14-15, U.N./CITES Doc. 9.22 (Nov. 7-18, 1994) [hereinafter Alleged Infractions]. To avoid repetitions of such violations, the Secretariat wrote 11 resolutions ranging from establishing annual report deadlines to the establishing of guidelines on how to prepare the reports. *Id.* at 15-16. See also William C. Burns, *CITES and the Regulation of International Trade in Endangered Species of Flora: A Critical Appraisal*, 8 DICK. J. INT'L L. 203, 213 (1990) [hereinafter Burns, *Critical Appraisal*] (describing the information the reports should include as prescribed by Article VIII of CITES and commenting that such reports often do not meet the required standards); Thomsen & Bräutigam, *supra* note 29, at 232-37 (describing the reporting process as a critical component of CITES).

83. See generally CITES, *supra* note 14, art. XII (finding no enforcement powers delegated to the Secretariat).

finally rely on powers of persuasion to either convince parties to comply or else move the other parties to call for international sanctions.⁸⁴ In summary, the parties are ultimately responsible for policing themselves because CITES "can only plead in polite, international language that certain steps be taken[;] . . . only the States themselves have the power to in fact stop the trade."⁸⁵

The Secretariat may seek assistance from "suitable inter-governmental or nongovernmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora."⁸⁶ This provision allowing for NGOs to participate in CITES implementation is unusual,⁸⁷ especially because the Secretariat may rely entirely on NGO discoveries when making reports and recommendations for change. The treaty's broad, far-reaching provisions, along with the vast number of species it regulates, renders any reporting process an endless, complex, and costly adventure.⁸⁸ Frequently, NGOs lighten the Secretariat's schedule by monitoring trade compliance, providing advice to countries with little or no resources,⁸⁹ publicizing reports on illegal wildlife trade, and performing other similar activities at no cost to CITES.⁹⁰ NGOs often consist of wildlife conservation groups and may also be economic lobby groups.⁹¹

84. For a general description of the Secretariat's lobbying ability, see Kevin D. Hill, *The Convention on International Trade in Endangered Species: 15 Years Later*, 13 LOY. L.A. INT'L & COMP. L.J. 231, 273-74 (1990).

85. See FAVRE, *supra* note 23, at 264.

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

87. See Kosloff & Trexler, *No Carrot*, *supra* note 6, at 10,225.

88. See generally Kathryn S. Fuller et al., *Wildlife Trade Law Implementation in Developing Countries: The Experience in Latin America*, 5 B.U. INT'L L.J. 289, 291-92 (1987) (commenting on how TRAFFIC assists in the necessary record-keeping process).

89. See Thomsen & Bräutigam, *supra* note 29, at 239-40. TRAFFIC discovered that customs officials in several countries were completely indifferent to the fact that several Appendix species were presented for clearance. *Id.* at 239. No questions regarding permits were asked. See *id.*

90. See Laura H. Kosloff & Mark C. Trexler, *The Convention on International Trade in Endangered Species: Enforcement Theory and Practice in the United States*, 5 B.U. INT'L L.J. 327, 335-36 (1987) (describing the vast contributions nongovernmental organizations (NGOs) make to CITES through financial contributions and implementation activities).

91. See Meena Alagappan, *The United States' Enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 10 NW. J. INT'L L. & BUS. 541, 544 (1990) (listing the variety of groups interested in animal

The Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC) is a tremendously successful conservation effort organized by World Wildlife Fund (WWF) and the International Union for the Conservation of Nature and Natural Resources (IUCN).⁹² TRAFFIC runs a wildlife monitoring program which is indispensable and a leader in the fight against illegal wildlife trading.⁹³ This organization is largely responsible for assisting the CITES Secretariat in identifying problem areas and promoting remedial measures.⁹⁴ TRAFFIC has become the "eyes, ears and voice for those concerned about species well being," and it makes up for the Secretariat's inability to monitor "all that is going on around the world."⁹⁵

Even though NGOs do not have the right to vote at the Conference of the Parties,⁹⁶ their participation is an absolute necessity if CITES is to achieve any success.⁹⁷ Without NGO participation, the Secretariat would lack considerable amounts of information regarding wildlife trade and CITES violations

and plant products ranging from zoos to art dealers to researchers).

92. TRAFFIC (U.S.A.), *TIGER TRADE* 1 (Mar. 1994).

93. *Id.*; Karl J. Liwo, *The Continuing Significance of the Convention on International Trade in Endangered Species of Wild Fauna and Flora During the 1990's*, 15 SUFFOLK TRANSNAT'L L.J. 122, 134 n.55 (1991).

94. *See, e.g.*, Fuller, *supra* note 88, at 309 (describing the numerous functions TRAFFIC performs which include public awareness activities, trade monitoring, and statistical analysis regarding trade laws). To date, the World Wildlife Fund (WWF), through TRAFFIC, has spent over nine million dollars on tiger conservation projects. *See* World Wildlife Fund, Inc., *Global Concern Prompts New Action for Tigers*, FOCUS, Jan./Feb. 1995, at 1.

95. FAVRE, *supra* note 23, at 274. *See also Unprecedented Program for Rhinos and Tigers*, FOCUS, Jan./Feb. 1995, at 5 (publication by WWF) (documenting that in 1995 TRAFFIC published the first ever comprehensive report on approximately 100 Chinese factories' production of medicine containing endangered species parts and the worldwide sale of these products to countries, including the United States).

96. CITES, *supra* note 14, art. XI(7). "[T]hese observers shall have the right to participate but not to vote." *Id.*

97. The presence of NGOs certainly facilitates debate. At the Eighth Conference in Kyoto, Japan, there were approximately 13 pro-utilization delegates from NGOs who dealt mainly in animals and their products. *See* Conger Beasley Jr., *Live and Let Die: CITES—How Can We Decide the Fate of the World's Species.*, BUZZWORM: T. ENVTL. J., July/Aug. 1992, at 29, 33, 53, 85. Their presence resulted in many highly contested debates with the preservationist delegates who advocated such issues as the total ivory ban. *Id.* at 53. At the Ninth Conference in Fort Lauderdale, U.S.A. (1994), many NGOs were present including: Greenpeace International, International Exotic Leather Council, International Fur Trade Federation, International Pet Organization, Sierra Club, WWF, and Defenders of Wildlife. *See* Telephone Interview with Ginette Hemley, WWF's Director of International Wildlife Policy (Jan. 18, 1995) [hereinafter Interview with Hemley] (notes on file with the author).

and "would very likely have followed the route of many other international wildlife measures into obscurity."⁹⁸

B. *The United States' CITES Enforcement*

In the United States, policies for governmental management of wildlife emphasize "maintenance and enhancement of quality habitat, a trend accentuated by the rapid development of federal law in the area."⁹⁹ The United States has responded to CITES with a system of complex, highly sophisticated programs which regulate the import and export of wildlife and wildlife products.¹⁰⁰ The United States has taken the lead among the CITES parties in wildlife legislation essentially because of its wealth and resources.¹⁰¹

1. *The Endangered Species Act*

The Supreme Court has referred to the Endangered Species Act (E.S.A.)¹⁰² as the "most comprehensive legislation for preservation of endangered species ever enacted by any nation."¹⁰³ Essentially, this act represents the United States' official CITES implementation.¹⁰⁴ Pursuant to CITES, the U.S. Scientific and Management Authorities were established by presidential order in April 1976.¹⁰⁵ E.S.A. designated the Secretary of the Department of the Interior as the Management and Scientific Authority.¹⁰⁶ The Secretary of Interior implements CITES, while the U.S. Fish and Wildlife Service (FWS),

98. See Kosloff & Trexler, *No Carrot*, *supra* note 6, at 10,226; see also Sands & Bedecarré, *supra* note 57, at 809 (stating that NGOs play an important role in the CITES decision-making process and application).

99. GEORGE COGGINS ET AL., FEDERAL PUBLIC LAND & RESOURCES LAW 782 (3d ed. 1993).

100. The Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (1994).

101. See *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978) (noting that the United States may indeed claim to have one of the most organized CITES implementation programs around the world).

102. 16 U.S.C. §§ 1531-1543.

103. *Tennessee Valley Auth.*, 437 U.S. at 180. For a description and analysis regarding CITES enforcement in Asia, Europe, and Latin America, see McFadden, *supra* note 65; Thomsen & Bräutigam, *supra* note 29, at 269; and Fuller, *supra* note 88, at 289.

104. See CITES, *supra* note 14, pmb1.

105. Endangered Species Convention, 50 C.F.R. § 23 (1994).

106. 16 U.S.C. § 1537(a).

within the Department of the Interior, executes the respective functions of authority.¹⁰⁷

The E.S.A.'s purpose is broadly stated as a pledge by the United States:

to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction . . . [and] to provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species¹⁰⁸

To reiterate the United States' commitment to wildlife preservation, § 1537 permits the President to enter into conservation agreements with other countries, provide assistance in program administration and funding, and conduct enforcement investigations abroad and to appropriate funds for research on the future preservation of endangered species.¹⁰⁹ The E.S.A. is highly controversial and is presently under review by Congress as to how to revise the Act.¹¹⁰ Conservationist advocates view the E.S.A. as the best wildlife legislation in existence, while opponents view it as a restriction on individual rights.¹¹¹ In *Tennessee Valley Authority v. Hill*,¹¹² Chief Justice Burger stated that "examination of the language, history, and structure of the legislation under review here indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities."¹¹³ The opposing view states that

107. *Id.*

108. *Id.* § 1531(a)(4) & (b).

109. *Id.* § 1537.

110. See, e.g., John H. Cushman, Jr., *Conservationists Tug at ESA*, N.Y. TIMES NAT'L, May 28, 1995; "Balanced" Off the Planet, ATLANTA CONST., May, 15, 1995, at A6; Douglas Chadwick, *Laws Passed, Species Lived, Things Changed*, HOU. CHRON., Apr. 24, 1995, at 7B (explaining that the Endangered Species Act (E.S.A.) faces intense challenges as its future is being re-examined); See generally Douglas H. Chadwick, *Dead or Alive: The Endangered Species Act*, NAT'L GEOGRAPHIC, Mar. 1995, at 6 (going into detail regarding the controversy surrounding the E.S.A.'s re-authorization).

111. Kevin W. Grierson, *The Concept of Species and the Endangered Species Act*, 11 VA. ENVTL. L.J. 463, 467 (1992).

112. 437 U.S. 153 (1978).

113. *Id.* at 174; see also Grierson, *supra* note 111, at 478. For a brief summary on the *Tennessee Valley Authority* case and the "snail darter," see DAVID S. FAVRE & MURRAY LORING, ANIMAL LAW 225-26 (1983). On June 29, 1995, the Supreme Court

such a construction is absurd and nothing more than "an extreme example of a literalist construction."¹¹⁴ The E.S.A.'s most far-reaching and powerful provision is § 1536 which directs all federal agencies to initially consult with the Secretary of Interior to ensure that any federal actions are "not likely to jeopardize" any threatened or endangered species.¹¹⁵

Section 1533 outlines the procedures for listing species as endangered or threatened.¹¹⁶ When determining whether a species is in danger, the Secretary must employ the best scientific data available and must consider several factors: habitat destruction or modification, species over-utilization, disease or predation, inadequate existing regulations, or other natural or man-made factors.¹¹⁷ Habitat maintenance is absolutely vital to wildlife conservation.¹¹⁸ Consequently, there are specific

decided another important E.S.A. case. *Babbit v. Sweet Home*, No. 94-859, slip op. (U.S. Jun. 29, 1995) (adopting the view of scientists nationwide in believing that habitat protection is absolutely necessary for the conservation of endangered and threatened species, and therefore, the definition of "harm" includes habitat modification).

114. *Tennessee Valley Auth.*, 437 U.S. at 202.

115. The E.S.A. provides:

Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical"

16 U.S.C. § 1536(a)(2).

116. 16 U.S.C. § 1533. The terms "threatened" and "endangered" were intended by Congress to have distinct meanings. "Threatened" is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Id.* § 1532(20). "Endangered" is "any species which is in danger of extinction throughout all or a significant portion of its range." *Id.* § 1532(6).

117. 16 U.S.C. § 1533(a). Section 1533(a)(1)(E) provides the Secretary with the catchall, "natural or manmade factors," which is necessary because there are so many complex and often misunderstood factors which jeopardize nature. *Id.* § 1533(a)(1)(E). For instance, eagles are often electrocuted when perching on power lines. Another unexpected threat to wildlife concerns hatching sea turtles in Florida which are "lured into the cities because they mistake the reflected city lights for the starlit sky over the ocean." See U.S. Fish & Wildlife Serv., General Information, BIOLOGUE SERIES, 1994, at 1, 1.

118. See *Endangered Species: Hearings on H.R. 37 and H.R. 1461 Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marines and Fisheries*, 93d. Cong., 1st Sess. 241 (1973) (taking into account habitat maintenance and its necessity).

provisions in the E.S.A. which are based upon this notion of maintaining species survival through habitat protection.¹¹⁹ E.S.A., alone, will never prevent all animal and plant extinction, but it will at least reduce wildlife exploitation by outlawing any listed species' importation, exportation, sale, or transportation in violation of CITES.¹²⁰ This condemnation makes no distinction between foreign or native species,¹²¹ thus adding another reason to describe the E.S.A. as an innovative piece of legislation that has become the "pit bull" of environmental statutes.¹²² Importers or exporters are strictly liable for any violations unless they can demonstrate a good faith belief that he was protecting himself or his family from an endangered or threatened species.¹²³ Specifically, the statute provides that "[a]ny person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates any provision of this chapter . . . may be assessed a penalty."¹²⁴ The punishment for any violation is a misdemeanor, with more harsh penalties for violations involving endangered as opposed to threatened spe-

119. *Id.*

120. 16 U.S.C. § 1538. As an interesting side-note, E.S.A. is an example to other member countries that a nation deeply involved in animal importation can reasonably establish strict regulation laws. For example, the United States imports approximately 18,000 live primates annually, usually for research, thus establishing itself as the largest primate importer in the world. See Valerie Karno, *Protection of Endangered Gorillas and Chimpanzees in International Trade: Can CITES help?*, 14 HASTINGS INT'L & COMP. L. REV. 989, 997 (1991). E.S.A.'s endangered species list overlaps with CITES' list, but also contains some very distinct species not protected under CITES. *Id.* at 998.

121. See *Defenders of Wildlife v. Lujan*, 911 F.2d 117 (8th Cir. 1990), cert. granted, 500 U.S. 915 (1991). This decision held that E.S.A. applies to actions by federal government agencies in foreign countries, therefore implying that actions also apply to violations involving foreign species. *Id.* See also George D. Lozano, *Defenders of Wildlife v. Hodel: Protection of Endangered Species in Foreign Nations Under ESA of 1973*, 2 GEO. INT'L ENVTL. L. REV. 209 (1989) (describing how E.S.A. applies outside the United States).

122. See COGGINS, *supra* note 99, at 790.

123. 16 U.S.C. § 1540(a)(3) & (b)(3) (civil penalties and criminal violations, respectively). For the legislative history on strict liability, see *Newell v. Baldrige*, 548 F. Supp. 39, 43 (W.D. Wa. 1982) (quoting H. Conf. Rep. No. 95-1804, 95th Cong., 2d Sess. 26 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9493, "The amendment reduces the strict liability penalty for others than importers and exporters to \$500 . . . and subjects importers and exporters of fish and wildlife and plants to strict liability penalties of up to \$10,000 . . .").

124. 16 U.S.C. § 1540(a)(1). See also *id.* § 1540(b)(1) (providing for the equivalent penalty when a criminal violation is involved).

cies.¹²⁵ Forfeiture proceedings may be instituted by the Department of the Interior, provided, however, that the property is not deemed to have a value higher than one hundred thousand dollars.¹²⁶ In forfeiture cases, no intent element is necessary.¹²⁷ However, whenever any penalty is assessed, the notice and opportunity to be heard requirement pursuant to the Administrative Procedure Act must be made available.¹²⁸ Anything used in connection with the violation can be confiscated, including anything from the actual wildlife to guns and vehicles.¹²⁹ Other penalties against a wildlife trade violator include administrative sanctions usually in the form of a trade license, lease, or permit revocation.¹³⁰ The Secretary may also suspend or even cancel any federal fishing or hunting license.¹³¹

Without a doubt, E.S.A. is a statute applauded by some and deplored by others, but endangered species protection is being addressed and will continue to develop as new implementation strategies are produced.¹³² Unfortunately, there is no legislation to prevent a species from becoming endangered or threatened; the E.S.A. only comes into play "after the spe-

125. *Id.* § 1540(b)(1).

126. 50 C.F.R. § 12.23 (1994) (animals); 7 C.F.R. § 356(4) (1994) (plants). The E.S.A. defines the items that are subject to forfeiture: All fish or wildlife or plants taken, possessed, sold, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States. 16 U.S.C. § 1540(e)(4)(A). *See, e.g.,* United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare, 636 F. Supp. 1281 (S.D. Fla. 1986) (demonstrating forfeiture of Appendix II specimens with unofficial permits and showing that the proceedings were in rem because the property, the hides themselves, was deemed the offender).

127. 16 U.S.C. § 1540(e)(4)(A) & (B).

128. *Id.* § 1540(a)(1); Administrative Procedure Act, 5 U.S.C. § 554 (1994).

129. 16 U.S.C. § 1540(a)(1).

130. *Id.* § 1540(b)(2).

131. Section 1540(b)(2) continues, "The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section." *Id.*

132. On January 13, 1995, the U.S. FWS began its plan to restore the Appendix I Gray Wolf to the American Rockies. *Wolves Move Step Closer to Release at Yellowstone*, HOU. POST, Jan. 13, 1995, at A1. *See also* Joel Bourne, *Hyde County's Wolf War*, DEFENDERS, Spring 1995, at 10-17 (describing the intense controversy surrounding the wolf restoration program). For a history of the wolf reintroduction program for Yellowstone, beginning with the initial environmental impact statement, see Hank Fischer, *Wolves for Yellowstone*, DEFENDERS, Summer 1993, at 12-17.

cies is in dire straits."¹³³ Despite its downfalls, a strong E.S.A. is essential if wildlife is to be protected at all. To ensure this constant protection, the United States, like all CITES members, is obligated by CITES to implement the treaty.¹³⁴

2. *The Lacey Act*

Enacted in 1900, the Lacey Act¹³⁵ has been referred to as the forerunner of endangered species law and as the "cornerstone of federal efforts to conserve wildlife through the regulation of commerce."¹³⁶ Through the Lacey Act, U.S. authorities are permitted to enforce other countries' wildlife¹³⁷ laws by making it a federal law violation for anyone to import¹³⁸ or to export animals taken,¹³⁹ owned, transported, or sold in

133. George C. Coggins, *An Ivory Tower Perspective on Endangered Species Act*, NAT. RESOURCES & ENV'T, Summer 1993, at 58. For a thorough overview concerning the advantages and disadvantages, as well as proposals for change, see Carlo A. Balistrieri, *CITES: The ESA and International Trade*, NAT. RESOURCES & ENV'T, Summer 1993, at 33; Michelle Desiderio, *The ESA: Facing Hard Truths and Advocating Responsible Reform*, NAT. RESOURCES & ENV'T, Summer 1993, at 37; Deborah L. Freeman, *Reinitiation of ESA § 7 Consultations Over Existing Projects*, NAT. RESOURCES & ENV'T, Summer 1993, at 17; William Robert Irvin, *The Endangered Species Act: Keeping Every Cog and Wheel*, NAT. RESOURCES & ENV'T, Summer 1993, at 36; Steven P. Charles et al., *The Unsettled Law of ESA Takings*, NAT. RESOURCES & ENV'T, Summer 1993, at 10; J.B. Ruhl, *Section 4 of the ESA—The Cornerstone of the Species Protection Law*, NAT. RESOURCES & ENV'T, Summer 1993, at 26; William H. Satterfield et al., *Who's Afraid of the Big Bad Beach Mouse?*, NAT. RESOURCES & ENV'T, Summer 1993, at 13; Eileen Sobock, *Enforcement of the Endangered Species Act*, NAT. RESOURCES & ENV'T, Summer 1993, at 30; Robert D. Thornton, *The Search for a Conservation Planning Paradigm: Section 10 of the ESA*, NAT. RESOURCES & ENV'T, Summer 1993, at 21.

134. See *supra* note 66 and accompanying text.

135. The Lacey Act Amendments of 1981, 16 U.S.C. §§ 3371-3378 (1994).

136. See BEAN, *supra* note 37, at 105 n.1.

137. The Lacey Act defines "wildlife" as "any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian . . . whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof." 16 U.S.C. § 3371(a).

138. According to S. REP. NO. 123, 97th Cong., 1st Sess. 2, at 5, *reprinted in* 1981 U.S.C.C.A.N. 1748, 1752, "import" has the same meaning in the Lacey Act as it does under E.S.A. The E.S.A. defines "import" as:

to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

16 U.S.C. § 1532(a).

139. The 1981 Amendments expanded the Lacey Act's scope to include plants as well as animals. 16 U.S.C. § 3372(a)(1). See also BEAN, *supra* note 37, at 113 (de-

violation of the laws in any state, Indian tribe, foreign country, or in violation of any treaty.¹⁴⁰

The Lacey Act's punishment scheme is more harsh than E.S.A.'s because its violations constitute a felony as opposed to a misdemeanor.¹⁴¹ As with E.S.A., strict liability is imposed, and therefore, the offender need not have been aware of the Act's existence.¹⁴² The Lacey Act's forfeiture proceedings are also similar to E.S.A.'s proceedings.¹⁴³ An important limitation on the Act's utilization is the requirement that there be a valid state or foreign law in existence before the Act can restrict wildlife trade.¹⁴⁴ However, the Lacey Act represents the federal government's first significant attempt at wildlife conservation.¹⁴⁵

Unfortunately, as with E.S.A., the courts are sometimes too lenient when faced with wildlife violations.¹⁴⁶ For example, in *Rittenberry v. U.S. FWS*,¹⁴⁷ a tourist entering the United States with a polar bear and gray wolf skin rug did not have the mandatory permits and was assessed a \$200 fine.¹⁴⁸ The Appeals Board, however, ignored E.S.A.'s conservative intention and reduced the penalty to a mere two dollars.¹⁴⁹ In *United States v. Marines Lines*,¹⁵⁰ eighty wild animals traveling from East Africa to New York were confined to cages on the ship's open deck where the animals were subjected to

scribing other amendments to the Act).

140. 16 U.S.C. § 3372(a). For examples regarding the Lacey Act's reception in the courtroom, see *United States v. Wulff*, 758 F.2d 1121 (6th Cir. 1985) (stating that the Bird Migratory Act's felony provision lacked the scienter element requirement in order to acquire a conviction which violates due process). *But cf.* *United States v. Doyle*, 786 F.2d 1440 (9th Cir. 1986) (stating that Montana law upon which Lacey Act based its conviction was not unconstitutionally vague).

141. See Omnibus Crime Control Act, Pub. L. No. 98-473, 98 Stat. 1987 (1984), amended by Pub. L. No. 99-217, 99 Stat. 1728 (1986) (codified throughout sections 18 U.S.C.) (showing congressional action which increased the fines for all crimes).

142. See S. REP. NO. 123, *supra* note 138, reprinted in 1981 U.S.C.C.A.N. at 1750; The Lacey Act Amendments of 1981, 16 U.S.C. § 3372(b) (1994).

143. 50 C.F.R. §12.23 (1994); 16 U.S.C. § 3371; 16 U.S.C. § 1531.

144. See Michael Palmer, *Endangered Species Protection: A History of Congressional Action*, 4 ENVTL. AFF. 255, 264 (1975).

145. 16 U.S.C. § 3371.

146. See Alagappan, *supra* note 91, at 550-65 (elaborating on general administrative obstacles to the E.S.A.).

147. 2 O.R.W. 2089 (1980)

148. Alagappan, *supra* note 91, at 554.

149. *Id.*

150. 334 F. Supp. 84 (S.D.N.Y. 1971).

harsh weather conditions.¹⁵¹ Many of them died before arriving at their destination while others died shortly thereafter.¹⁵² Despite the fact that the Lacey Act prohibits any individual from prima facie causing or allowing wildlife to be transported in an inhumane or unhealthful manner, the court held that this incident did not violate the Act.¹⁵³

The E.S.A. and the Lacey Act have resulted in stopping many smuggling incidents because of the intensive training the customs inspectors undergo to improve their ability to recognize violations.¹⁵⁴ This success can be measured in the one million dollars' worth of illegal products seized annually.¹⁵⁵ This success is accomplished despite the fact that customs' offices nationwide are often understaffed and stationed at only nine ports.¹⁵⁶ In conclusion, it is indisputable that the United States has the necessary laws with which to adequately implement CITES.¹⁵⁷ As suggested in section IV of this comment, measures to decrease the high demand for wildlife, such as education,¹⁵⁸ must also be established in addition to these laws. Otherwise, wildlife smuggling and violations will continue, regardless of how many laws are written to prevent such activities.

C. *The Ninth Conference of the Parties—November 1994*

The Ninth Conference of the Parties was held in Florida, and as expected, there were tensions between the "consuming countries like the United States and Japan and the 'range states' that are home to many of the imperiled species like tigers and rhinoceroses."¹⁵⁹ This particular conference has

151. *Id.* at 85.

152. *Id.*

153. *Id.* at 87–89.

154. See Karno, *supra* note 120, at 999.

155. *Id.*

156. *Id.* (stating the U.S. employs only 55 wildlife inspectors). CITES Article VIII(3) provides that members may establish clearance ports to help deter smuggling. CITES, *supra* note 14, art. VIII(3). See also, Grove, *supra* note 8, at 294–96 (stating that species importation has decreased).

157. See The Lacey Act Amendments of 1981, 16 U.S.C. §§ 3371–3378 (1994); Endangered Species Act of 1973, 16 U.S.C. § 1540 (1994); Karno, *supra* note 120, at 999.

158. See, e.g., Burns, *Critical Appraisal*, *supra* note 82, at 222–23.

159. Tom Kenworthy, *Endangered Species Meeting Confronts Contentious Issues*, WASH. POST, Jan. 11, 1995, at A2 [hereinafter Kenworthy, *Endangered Species*]. For

been appropriately characterized as "CITES 1994: A Storm of Controversy."¹⁶⁰ The issues central to the conference concerned improving enforcement measures and reviewing the listing criteria. The latter issue was the most controversial, addressing the call for a review of the Berne Listing Criteria used to enumerate species in the Appendices.¹⁶¹

a condensed outline of the conference's results, see Letter from Ken Stansell, Acting Chief of the U.S. FWS, to CITES Coordinator (Dec. 1994) [hereinafter Letter from Stansell] (on file with author).

Elizabeth Dowdeswell, the Executive Director of the United Nations Environment Programme, gave a welcoming speech at the Ninth Conference of the Parties. Ms. Dowdeswell generally addressed the upcoming issues, as well as the importance of successful implementation, biodiversity conservation, and sincere commitment to the treaty from the members. See Elizabeth Dowdeswell, Speech at the Ninth Meeting of the Conference of the Parties on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Nov. 7, 1994) (Executive Director of the United Nations Environment Programme) (transcript on file with the author).

160. Adam M. Roberts & Clifford J. Wood, *CITES 1994: A Storm of Controversy*, SCIENTISTS CTR. FOR ANIMAL WELFARE NEWSLETTER, Spring 1995, at 10-13. Mr. Roberts and Mr. Wood attended the 1994 conference as representatives of the Animal Welfare Institute and the Environmental Investigation Agency, respectively. The Animal Welfare Institute is a nonprofit organization founded in 1951 which works on numerous issues: the humane treatment of laboratory animals, the banning of steel-jaw traps, the prevention of trade in wild-caught exotic birds, the preservation of endangered species, and the reform of cruel treatment of food animals. Interview with Adam M. Roberts, Research Associate for the Animal Welfare Institute in Washington, D.C. (August 15, 1995). In many respects, the conference was deemed to be a success, such as the debate over the listing criteria issue, explained *infra*. At the closing of the conference, several participants, Mr. Roberts included, acknowledged that the meeting was "first and foremost, a trade conference, rather than a conservation conference." *Id.*

161. See Bobbie Jo Kelso, *Ninth Meeting of the Conference of the Parties to CITES*, 15:2 TRAFFIC BULL. 63, 68 (1995). See also Hill, *supra* note 84, at 240 n.59 (explaining the listing and delisting procedures). But cf. David S. Favre, *Tension Points Within the Language of the CITES Treaty*, 5 B.U. INT'L L.J. 247, 249-57 (explaining the criticisms of the Berne Criteria). The Berne Criteria generally outlined the procedures for approving amendments to the Appendices I and II. *Id.* Data regarding the species' population, habitat, trade effects, and other such factors could be used to determine whether a species should gain Appendix I protection in order to prevent its extinction. See *CITES Comes to Florida*, HSUS NEWS, Fall 1993, at 13. Because the difficulties involved in assessing the potential trade effects on a species are too unreasonably complex to define, precise biological data outlining a species' survival status were not required under the Berne Criteria. *Id.* The Berne Criteria was necessary in order to extend protection to a species whose exact survival status was unknown due to a lack of knowledge concerning its life history or due to a country's lack of technological or financial means in obtaining such information. *Id.* at 13-14.

The proposed new criteria's goal was to develop a more objective, scientific method which would be simple to apply.¹⁶² However, the proposal was met with sharp criticism from numerous NGOs as well as the U.S. FWS, attacking the proposal as contrary to the "text and spirit of CITES."¹⁶³ The new criteria were viewed as too complex and as having too many arbitrary numerical standards to meet.¹⁶⁴ For instance, in order for a species to qualify for Appendix I protection, it proposed that fewer than 5000 mature members must exist.¹⁶⁵ This number was to be applied to every life form ranging from orchids to trees and from fish to mammals, regardless of the extreme distinctions in life histories among the species.¹⁶⁶ Opponents argued that the new criteria would, in effect, lower the protection for many endangered species, whose actual numbers are impossible to ascertain, by removing them from Appendix I to Appendix II protection.¹⁶⁷ Another criticism focused on the fact that a species could be removed from Appendix I without the requisite showing of scientific evidence that such a movement would not be detrimental to the species.¹⁶⁸ Ultimately, the Berne Criteria was replaced with a resolution that did not focus on the highly statistical "one-size fits all numerical system."¹⁶⁹ The new criteria, supported by the United States, adopt scientifically-based reasons for amending the Appendices, while de-emphasizing the numerical standards by removing them from any mandatory requirements.¹⁷⁰

162. See generally CITES Secretariat, *New Criteria for Amending Appendices I & II*, Proceedings of the Ninth Meeting, at 12-15, U.N./CITES Doc. 9.41 (Nov. 7-18, 1994) (considering monitoring of effectiveness and repealing certain resolutions).

163. Wold, *Listing Criteria*, *supra* note 71, at 9. For another view on the proposed new criteria and the potential results, see *The Future of Conservation, Interviews*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 6 (interviewing Marshall Jones, the CITES Management Authority in the U.S. FWS, Izgrev Topkov, the CITES Secretary General, and Lawrence Mason, the U.S. FWS Assistant Director for International Affairs).

164. See CHRIS WOLD, HUMANE SOCIETY OF THE UNITED STATES, *THE NEW LISTING CRITERIA PROPOSED BY THE STANDING COMMITTEE VIOLATES CITES & ARE INCONSISTENT WITH THE THEORY OF SUSTAINABLE USE 1* (1994); *Ten Reasons to Oppose the New Listing Criteria*, ECO CITES '94, Oct. 11, 1994, at 1.

165. See Roberts & Wood, *supra* note 160, at 11.

166. *Id.*

167. See *id.*

168. *Id.*

169. Kenworthy, *Endangered Species*, *supra* note 159, at A2.

170. See *CITES Parties Meet in Florida*, CONSERVATION DIG. Dec./Jan. 1994/1995,

The second major topic at the 1994 Conference focused on improving the insufficient enforcement measures employed by many parties. Despite the consensus that strong enforcement is the answer to CITES' success, many governments simply fail to develop any such enforcement measures to fight illegal trade.¹⁷¹ Regrettably, the Conference closed with nothing more than recommendations to the Secretariat concerning methods to strengthen and support law enforcement.¹⁷² Unfortunately, resources everywhere for increased enforcement measures, such as for the appointment of additional law officers, are nearly negligible.¹⁷³

The proposal to increase effective implementation stated that, by the Tenth Conference of the Parties,¹⁷⁴ the parties will have national legislation in effect.¹⁷⁵ The proposal was not approved until its language was reduced to stating that by the Tenth Conference, legislation should be "initiated."¹⁷⁶

The issue concerning tiger and rhino conservation measures resulted in recommendations rather than requirements to reduce the flourishing illegal trade in these animals.¹⁷⁷ The

at 1-2 (presenting a summary of the essential issues at CITES) The CONSERVATION DIGEST supports the concept of sustainable use of natural resources including the wildlife resource.

171. Examples of recent violations include: smuggling parrots into North America, claiming wild falcons as captive-bred, accepting false permits, forging the Secretariat's signature on "official" CITES letterhead paper, and stuffing live boas with cocaine. See John Gavitt, *The Ways of the Law*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 79, 79-81.

172. Telephone Interview with Suzy Sanders, Program Associate of International Wildlife Trade Program, Defenders of Wildlife (Nov. 30, 1994, & Jan. 20, 1995) (Ms. Sanders now works with the U.S. Humane Society) [hereinafter Interview with Sanders] (notes on file with the author). Ms. Sanders attended the Ninth Conference as Defenders of Wildlife's delegate.

Ginette Hemley, Director of Policy for WWF, is quoted as saying that "we need real results, some real decisions from the countries attending this meeting. It takes political will to make CITES work and stop illegal trade." Marla Crone, *Global Wildlife Summit Under Way*, L.A. TIMES, Nov. 7, 1994, at A18.

173. See Roberts & Wood, *supra* note 160, at 12. Secretary Babbitt stated, ". . . [T]he black market today makes a mockery of governmental efforts at enforcement. CITES will fail if we fail to enforce it." *Id.* (emphasis in original). The quotation was made in reference to the general need for more enforcement and hence more enforcement officers. See *id.*

174. The Tenth Conference will be held in Zimbabwe in 1997. *Id.* at 11.

175. CITES Secretariat, National Laws for Implementation of the Convention, Proceedings of the Ninth Meeting of the Conference of the Parties, at 7, U.N./CITES Doc. 9.24 (Nov. 7-18, 1994) [hereinafter National Laws].

176. See Interview with Sanders, *supra* note 172.

177. *Id.*; Telephone Interview with Kathryn S. Fuller, President of WWF (Jan. 10,

recommendations included: (1) adequate legislation implementation; (2) law enforcement cooperation; (3) strategic innovations for replacing items made with tiger and rhino parts; (4) funding for conservation plans; and (5) educational programs aimed at reducing the demand.¹⁷⁸

The Conference ended with both sides of the conservation issue making concessions.¹⁷⁹ The true test of the Conference's outcome has yet to be experienced,¹⁸⁰ NGOs and the parties can only speculate as to the resolutions' ultimate effects on wildlife and trade as a whole.¹⁸¹

III. ENFORCEMENT

The CITES Preamble embodies the belief that wildlife is to be preserved for its intrinsic, aesthetic qualities and that the duty to protect lies with the national governments and peoples as a whole.¹⁸² Ideally, the 128 parties,¹⁸³ along with their

1995) [hereinafter Interview with Fuller] (notes on file with the author).

178. Interview with Sanders, *supra* note 172.

179. *Id.*; Interview with Fuller, *supra* note 177; Telephone Interview with John Aquilino, Washington-based free lance writer, Zimbabwe's Delegate at the Ninth Conference of the Parties (Jan. 5, 1995) [hereinafter Interview with Aquilino] (notes on file with the author). Ms. Sanders criticized CITES for failing to develop any international enforcement schemes which would have ensured the treaty's implementation. Interview with Sanders, *supra* note 172.

Other issues revolved around a secret ballot proposal, and rhino and tiger conservation. The secret ballot proposal apparently grabbed the attention of the United States and many American-based NGOs because it suggested making a more simple procedure available for calling for a secret ballot. *See id.* However, the open ballot's purpose, which is a basic democratic principle for holding representatives accountable for their votes, was not enough to prevent the proposal's approval.

180. The North American Box Turtle earned Appendix II status as a result of the inhumane transportation conditions which ultimately result in the death of the majority of the turtles. *See* Larry Keller, *Conference Sets Rules on Turtles*, SUN-SENTINEL (Fort Lauderdale), Nov. 18, 1994, at 28. Following the Conference, permits are now mandatory when trading in box turtles, which are mainly exported from the Florida coast. *Id.* Only time will tell whether the permits reduce the unreasonable conditions to which the turtles are subjected.

181. Telephone Interview with William Snape, III, Defenders of Wildlife Legal Director (Nov. 18, 1994) (notes on file with the author). Mr. Snape stressed that without a strong enforcement scheme, "CITES' ability to prevent illegal trade in wildlife will be undermined." For the index of Resolutions adopted at the most recent conference, see U.S. FISH & WILDLIFE SERV., CITES UPDATE #33 (Mar. 1995). For a list of every adopted resolution from all of the previous eight conferences, see BRÄUTIGAM, *supra* note 78, at 35-43.

182. *See* CITES, *supra* note 14, pmb1.

183. *See supra* note 19.

distinct political ideologies and resources, should likewise endeavor to preserve wildlife simply for wildlife's sake. Realistically, each member state has its own reasons or motivations for wanting to participate in one of the world's most important wildlife treaties. Regardless of the varied political and ideological interests stimulating membership, the treaty's underlying theme of wildlife conservation must be met by the parties to the treaty. Fortunately for the parties, CITES is not an overly rigid agreement opposed to innovative quests for wildlife preservation and trade control.

This comment contends that the substantial increase in CITES membership over the years indicates a significant international movement towards conservation.¹⁸⁴ The simple act of joining CITES, however, is insufficient compared to demonstrating an actual intent to preserve. Without genuine attempts at enforcement, demonstrated by enacting and administering strong legislation at the national level, the philosophy behind CITES is nothing more than meaningless words.¹⁸⁵ The parties' careful negotiations need not go to waste; in fact, wildlife trade cooperation with wildlife preservation is not an unattainable ideal. Successful cooperation can be achieved once the international community acknowledges CITES' downfalls, appreciates its strengths, and proceeds towards meaningful wildlife protection.

While wildlife such as spotted cats have definitely been rescued by CITES from impending extinction,¹⁸⁶ other endangered species continue to be smuggled and killed on a seemingly uncontrollable scale.¹⁸⁷ The profits from such illegal activity are reaped by the organized smuggler and occasionally by "the rare recipient of an animal that has survived."¹⁸⁸ Illegal trade is not part of the equation when it comes to attaining coexistence between conservation and consumer trade.

184. See *supra* text accompanying note 19.

185. See generally Fuller, *supra* note 88, at 292-309 (outlining Latin America's wildlife laws and concluding that wildlife laws are useless without the countries' commitment).

186. See *The Jaguar*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 96, 96 (attributing the jaguar's survival to national laws and CITES' Appendix I protection). *But cf.* Hill, *supra* note 84, at 276 (contending that CITES failed to protect the African Elephant from exploitation).

187. See Gavitt, *supra* note 171, at 79-80.

188. Karno, *supra* note 120, at 1014.

CITES, with its large membership, on the other hand, is the best potential first step in this movement. CITES is a dynamic agreement which incorporates a fundamentally reasonable and workable mechanism and which has an international audience. However, CITES is also an agreement which has been significantly weakened by the treaty's foremost problem area: ineffective or nonexistent enforcement by the parties.¹⁸⁹ Unless the treaty itself or the parties take significant and direct corrective measures, any treaty modification will result in nonbinding recommendations which depend on the members' good faith and self-motivation for enforcement.

A. *Threats to Enforcement*

International agreements generally face inherent enforcement and compliance obstacles, especially when the agreement has as many members as CITES.¹⁹⁰ Each member's respective political and economic pressures pose threats to effective compliance with the treaty. Most parties, as well as the Secretariat, generally agree on the inherent problems in CITES. The most important problems concern insufficient national legislation by the individual members.¹⁹¹ Intensifying this problem are a variety of inadequacies ranging from ineffective communication among the parties to understaffed, untrained personnel. Each problem has a domino-effect upon the universal effectiveness of CITES in its crusade for wildlife preservation.

189. See John B. Heppes & Eric J. McFadden, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage*, 5 B.U. INT'L L.J. 229, 240 (1987) (stating that CITES' regulatory framework is the potential solution to eliminating illegal trade, but that CITES is useless without working enforcement laws).

190. Enforcement problems are not an uncommon phenomenon in international agreements, see RICHARD FISHER, *IMPROVING COMPLIANCE WITH INTERNATIONAL LAW* 12-13 (1981) (asserting that while there is a routine compliance with international agreements, "there is a good deal of noncompliance" as well). Fisher's book posits suggestions for increasing compliance with international agreements.

191. At the Ninth Conference of the Parties in November 1994, the Secretariat announced that 27 parties out of the 81 surveyed had legislation which was severely inadequate in implementing CITES. See National Laws, *supra* note 175, at 3. Only 15 members met CITES implementation requirements. *Id.* at 2.

1. Inadequate National Legislation

Article VIII states 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."¹⁹² Recently, in the Ninth Conference of the Parties, the Secretariat reiterated that CITES is useless without a collective effort by the parties to comply: "[W]hen measures are not taken . . . the effectiveness of [CITES] is seriously undermined."¹⁹³ The Secretariat recognized that national legislation was improving but not enough to reduce illegal trade significantly.¹⁹⁴ Overall, the parties have recognized that Article VIII has been inadequately followed,¹⁹⁵ but it was not until recently that the parties were confronted with the actual, documented degree of inadequate implementation. An unprecedented report commissioned by WWF and carried out by TRAFFIC in October 1994 outlined the most significant problems facing CITES and exactly where they occurred.¹⁹⁶ For the first time in CITES history, the parties were faced with an intense analysis demonstrating the specific problems occurring in specific areas.¹⁹⁷ As discussed previously, the parties are entrusted with the sole authority to enforce CITES.¹⁹⁸ Such authority is

192. CITES, *supra* note 14, art. VIII(1). Such measures include penalties for illegal trade. *Id.* art. VIII(1)(a).

193. See *Alleged Infractions*, *supra* note 82, at 1; CITES Secretariat, Implementation of the Convention Within the European Union, Proceedings of the Ninth Meeting of the Conference of the Parties, at 4-5, U.N./CITES Doc. 9.23 (Nov. 7-18 1994) [hereinafter E.U. Implementation] (stating, among other reasons, that inadequate national legislation and insufficient coordination between Member States are responsible for the ineffectiveness of CITES in the European Community).

194. See *Alleged Infractions*, *supra* note 82, at 3.

195. Interview with Hemley, *supra* note 97.

196. *Id.*; WORLD WILDLIFE FEDERATION, POSITION STATEMENT: NINTH MEETING OF THE CONFERENCE OF THE PARTIES TO CITES 2 (1994) [hereinafter WWF POSITION STATEMENT].

197. Indonesia received a low rating regarding its wildlife laws in comparison to the other countries' laws. National Laws, *supra* note 175, at 5-6 (listing Indonesia in a table of 81 surveyed countries as one of 27 countries with woefully inadequate legislation to implement CITES). Indonesia responded with complaints that it did not deserve such a low rating, but it never offered any evidence to demonstrate otherwise. Interview with Hemley, *supra* note 97.

198. See CITES, *supra* note 14, art. VIII ("The parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in violation thereof.").

voluntary and, therefore, any laws the parties enact ultimately determine CITES' effectiveness.¹⁹⁹ Furthermore, common sense asserts that if those responsible for a treaty's implementation fail to act with sufficient measures, then the treaty will essentially represent nothing more than empty words on paper. Hence, effective national legislation is "fundamental to good enforcement."²⁰⁰

2. Ineffective Communication

Ineffective communication among the parties regarding each other's national laws causes additional problems in CITES.²⁰¹ Each country has its own set of laws which often vary drastically from any of the other members' laws, thus causing inconsistencies.²⁰² Without some degree of uniformity, countries and their wildlife officials are unable to distinguish between procedural compliance and illegal circumvention.²⁰³ When the parties' national laws lack harmony, violations are a natural consequence.²⁰⁴ For example, illegal trade in one country may face severe consequences if discovered, while in another country, the penalties for the same activity may be practically nonexistent. Subsequently, illegal trade shifts and continues to thrive in the less punitive forum.²⁰⁵ Unfortunately, Article VIII of CITES does not present any specific guidelines concerning the methods with which to implement the treaty other than requiring that "[t]he Parties shall take ap-

199. See Ursula Wasserman, *Washington Wildlife Convention*, 14 J. WORLD TRADE L. 362, 366 (1980) ("[E]nforcement of CITES [is] entirely a matter for national authorities.").

200. WWF POSITION STATEMENT, *supra* note 196, at 3.

201. See Schonfeld, *supra* note 14, at 152 n.281 (quoting in an interview with Don Carr, Chief of Wildlife Section of the Department of Justice in 1984, as stating that ineffective communication leads to ineffective deterrence to illegal trade activity).

202. See, e.g., *id.* at 147 (demonstrating a particular example of permit nonuniformity which could lead to significant shipment violations).

203. *Id.*

204. *Id.* at 156.

205. *Id.* See also Liwo, *supra* note 93 at 147-48. The parties have different permit styles, and therefore customs officials are unable to differentiate between forged or valid permits. *Id.* The author suggests a uniform CITES permit document printed on watermarked paper. *Id.* This proposal has the potential to reduce obvious violations resulting from invalid permits, but as of this writing, no such uniform permit document has been produced by CITES.

propriate measures.²⁰⁶ In order to monitor the degree of compliance among the parties, however, the Secretariat requires that the parties submit accurate and detailed reports about international wildlife transactions.²⁰⁷ The annual reports would help determine weaknesses in CITES implementation as well as misinterpretation problems among the parties.²⁰⁸ Several CITES conferences have discussed the recurring problems associated with inadequate reports from the members, and at the most recent meeting, the same issue was raised once again.²⁰⁹ In conclusion, lack of communication regarding domestic laws and noncompliance with the reporting requirements are additional falling dominoes reducing CITES overall effectiveness.

3. *Additional Problems*

Reservation clauses allowing a party to oppose and, in turn, avoid protection of a particular species continue to be highly controversial in CITES' implementation.²¹⁰ Basically, CITES allows for a member to reserve the right *not* to extend protection to a listed species.²¹¹ A party's ability to continue trading with a non-party or with a party who entered a similar reservation has been viewed by some as a primary threat to international wildlife preservation.²¹² Trade between parties and non-parties constitutes an estimated thirty percent of all endangered species trade worldwide.²¹³ Opponents of the res-

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

207. See Schonfeld, *supra* note 14, at 152.

208. *Id.*

209. See *Alleged Infractions*, *supra* note 82, at 14-15, 19 ("It is very difficult for proper action to be taken by enforcement officials when Parties provide insufficient or only general information.").

210. See Interview with Sanders, *supra* note 172.

211. CITES, *supra* note 14, arts. XV(3), XVI(2), XXIII (outlining the three ways by which a member may place a reservation against a species).

212. See Stewart, *supra* note 64, at 438. This comment presents a detailed analysis concerning the inherent problems with the reservation clauses and demonstrates how these problems effect wildlife, specifically, the saltwater crocodile and sea turtle.

213. See Liwo, *supra* note 93, at 139 (citing CITES Secretariat, Report of the Secretariat, Proceedings of the Fourth Meeting of the Conference of the Parties, U.N./CITES Doc. 4.18 (Apr. 19-30, 1983)). This percentage is pure speculation because the requisite statistics necessary to produce a more specific estimate are lacking in the annual reports. *Id.* at 139 n.77. This is an example of one of the problems associated with inadequate reports from the parties.

ervation clauses argue that the procedures for conducting trade with a nonparty or with another reserving party²¹⁴ are vague enough to invite violation²¹⁵ and therefore, the reservations tend to go against the CITES' purpose of trade control and wildlife preservation. On the other hand, because one of CITES' goals is to control rather than eliminate trade in endangered species, the treaty, by permitting reservations, recognizes the existence of "legitimate trading interests in wildlife."²¹⁶ Reservation clauses, in this sense, are arguably necessary to a country whose existence depends largely upon trade in protected species.²¹⁷ Without the flexibility in CITES and the recognition that each member country has to deal with distinct political and economic circumstances, CITES might not have attracted such a worldwide audience.²¹⁸ Reservation clauses have a significant potential for abuse by the parties with no legitimate trade interests other than the desire to exploit wildlife for profit. The Secretariat has acknowledged this potential for abuse and has recommended that a reserving country extend a certain level of protection towards the Appendix I species for which the country has entered a reservation.²¹⁹

Other inherent problems to CITES' implementation and enforcement result from a general lack of resources in some countries.²²⁰ Without the resources, many parties face not on-

214. See *supra* text accompanying notes 63-65 (concerning the reservation status).

215. See Schonfeld, *supra* note 14, at 132.

216. See *id.* at 129 (describing the two main factors persuading the inclusion of the reservation clauses in CITES).

217. See Stewart, *supra* note 64, at 436-37.

218. See *id.* But cf. Interview with Sanders, *supra* note 172 (stating that reservations are contrary to the best interests of the species concerned and the reserving state); Schonfeld, *supra* note 14, at 129-60 (analyzing whether or not the "attracting membership" factor still applies, especially since the parties have admitted that the reservations hinder effective CITES implementation).

219. See Alleged Infractions, *supra* note 82, at 19. The Secretariat recommended that when a party makes a reservation to the listing of a species in Appendix I, that particular party should minimally afford Appendix II protection to the wildlife in question. *Id.* Otherwise, "a reserving Party serves as an avenue for illegal trade from countries that have not entered a similar reservation. Such trade may continue for several years without ever being discovered." *Id.* at 19. But cf. Thomsen & Bräutigam, *supra* note 29, at 275 (showing European promotion of uniform protection in the European Economic Community by requiring members within the Community to withdraw any and all CITES reservations).

220. See, e.g., *FWS Wildlife Inspection Program Weaknesses Described in GAO Report*, 10 Reg., Economics & Law (BNA) A20-21 (Jan. 17, 1995) (blaming compliance

ly understaffed customs services but also insufficient training.²²¹ There is a definite connection between manpower shortages and the corresponding increase in smuggling activities.²²² For example, if the wildlife inspection staff is limited, it is physically impossible for the staff members to inspect the multitude of wildlife shipments that are transported annually.²²³ Therefore, there is a comparable nexus between the lack of training and increase in smuggling rates.²²⁴

National laws do not automatically ensure compliance; illegal activities will probably always exist in every societal avenue. However, the purpose behind laws is not to reach the impossible goal of complete crime eradication, but to at least reduce the overall frequency of crime.²²⁵ CITES, likewise, can only attain its purpose if the parties implement strong national legislation and then proceed to enforce those laws with effective communication, uniformity, and strong, internal enforce-

problems on limited inspection staff's ability to monitor all shipments). For the report, see *infra* note 222.

221. See, e.g., Liwo, *supra* note 93, at 149 (explaining how numerous illegal shipments pass through customs undetected because of a manpower shortage as well as inadequate expertise); See Jeffrey Vail, *Halting the Elephant Trade: A True Test for International Law*, 9 WIS. INT'L L.J., 227, 248-49 (1990) (concluding that the limited resources to hire officials and to therefore control wildlife trade results in high wildlife exploitation in many African countries, particularly in Tanzania with its valuable elephant population).

222. As of December 1994, the United States, the world's largest wildlife consumer, has only 74 U.S. FWS inspectors. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTORS: WILDLIFE PROTECTION, FWS' INSPECTION PROGRAM NEEDS STRENGTHENING 2 (Dec. 1994). The report acknowledges that manpower shortages results in extensive wildlife smuggling. *Id.*

223. See *id.*

224. See Heppes & McFadden, *supra* note 189, at 238-39 (showing how manpower shortages in Argentine and inadequate training in Bolivia result in the continuing illicit trade in wildlife). A WWF study revealed that over 60,000 birds, including parakeets, parrots, macaws, and cockatoos, may illegally enter the United States every year. *Id.* at 237. The prominent cause centered on the U.S. FWS's understaffed offices which could not inspect the actual shipments as well as the required trade paperwork. *Id.* at 238. Inspecting the paperwork was performed in lieu of shipment inspection. *Id.* "If FWS does not physically inspect the birds, they will not pick up on the illicit importation," especially when the violators were aware that paperwork inspection often replaced shipment inspection; therefore, the paperwork usually appeared to be valid, while the shipments were not. *Id.* (quoting DuBreuil, *The Problems of Implementation of International, National, and State Laws as They Relate to Wildlife in General and More Specifically Their Use in Oriental Medicine* (1986) (unpublished manuscript on file at *Boston University International Law Journal*)).

225. See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 4-5 (1987).

ment. Presently, though, CITES compliance and enforcement is lacking in the above mentioned methods, and therefore, illegal trade and destructive wildlife exploitation flourish.

B. Case Studies

CITES is a treaty with a theoretical foundation that for the first time "used the levers of trade in the interests of conservation."²²⁶ In simple terms, CITES' primary goal is to protect endangered species from extinction while its secondary goal is to permit endangered species trade in a sustainable manner.²²⁷ CITES is an international tool for conservation and trade, yet endangered species exploitation continues to prevail over the intrinsic value CITES has attempted to place on wildlife. Each year, an estimated five thousand species become extinct, thus meeting the most final of fates.²²⁸ The following two case studies illustrate this persistent struggle while CITES attempts to prevent wildlife abuse and waste, as well as to promote sustainable trade. This principle of caution strives to move towards a more universal conservationist stance which will ideally put an end to the pessimistic situations facing both the tiger and the rhinoceros.²²⁹

1. *The Tiger: Another Addition to the Extinction List?*

a. *The Decreasing Numbers*

The majestic tiger can be described as "fearless and imposing, [and] so beautiful and perfectly proportioned that some call it a work of living sculpture."²³⁰ In some countries, such

226. Dowdeswell, *supra* note 159.

227. Marshall Jones, *Incorporating Species into CITES Is Not Enough*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 11, 11.

228. Izgrev Topkov, *Sustainable Use Is the Key*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 16, 16. It is important to note that scientists have been unable to determine the actual number of remaining species in existence. Preservationists favor focusing on the numbers lost to extinction as opposed to the numbers remaining. *Id.* at 17.

229. Bills providing for the rhinoceros and tiger conservation have been presented to the U.S. Senate and House of Representatives. The legislation called for, *inter alia*, the establishment of a Rhino and Tiger Fund, and sanctions against violating countries. S. 1925, 103d Cong., 2d Sess. §§ 3(2), 7 (1994); H.R. 3987, 103d Cong., 2d Sess. (1994); *Hearing Concerning H.R. 3987, The Rhinoceros and Tiger Conservation Act*, 103d Cong., 2d Sess. (1994) (hearing by Representative Jack Fields, Ranking Republican Member at the Subcommittee on Environment and Natural Resources).

230. Peter Jackson, *The Tiger on the Brink of Extinction*, CITES/C&M INT'L

as India, the tiger has been both "worshipped and feared for millennia;"²³¹ yet despite this mythical reverence, three tiger species occupy permanent positions on the extinct wildlife register,²³² the remaining five species may travel down the same road in as little as ten years, much sooner than once anticipated.²³³ During this century alone, the world's entire tiger population has been reduced by nearly ninety-five percent.²³⁴ Habitat loss, persecution campaigns based on the fear of attacks on humans, and poaching have all contributed to the drastic decline in the tiger's survival over the decades.²³⁵ This immediate threat to survival has been dubbed as the "tiger crisis" by some authorities,²³⁶ while others have referred to the event as evolutionary: "the tiger has finally run afoul of mankind, an evolutionary classmate that has proved to be an even more resourceful killer."²³⁷ Whichever view is preferred, it is clear that illegal hunting activities for the tiger's body parts is the latest and seemingly uncontrollable force behind the tiger's decline.²³⁸ China and Taiwan, despite their strong political rivalry, have joined together to become the bustling center of the illicit trade.²³⁹

MAG., Oct./Dec. 1994, at 24, 29.

231. John F. Burns, *Medicinal Potions May Doom Tiger to Extinction*, N.Y. TIMES, Mar. 15, 1994, at C1 [hereinafter Burns, *Potions*].

232. These three species, the Bali Tiger, the Caspian Tiger, and the Japan Tiger, met extinction during the last sixty years. U.S. Fish & Wildlife Serv., *Tiger, panthera tigris*, BIOLOGUE SERIES, 1994, at 1, 1.

233. See *id.*

234. See *id.* at 2. The five remaining tiger species are: the Siberian Tiger with an estimated 150-200 remaining; the South China Tiger with less than 50 remaining; the Indian or Bengal Tiger with approximately 4,500 remaining; the Indo-Chinese Tiger with 800-1200 remaining; and the Sumatran Tiger with up to 400 remaining. See TRAFFIC (USA), *supra* note 92, at 1. In sum, as of 1994, there are around 5000 wild tigers in existence throughout the world, whereas there existed over 100,000 at the century's beginning. *Id.* See also Burns, *Potions*, *supra* note 231, at C1 (focusing on the impact India's economy will face without its tourist-attraction tiger population).

235. See TRAFFIC (U.S.A.), *supra* note 92, at 1.

236. See Burns, *Potions*, *supra* note 231, at C1.

237. See Eugene Linden Nagarhole, *Tigers on the Brink*, TIME, Mar. 28, 1994, at 51.

238. Circuses and zoos usually trade in captive-bred tigers, thus engaging in such trade that is legal under CITES. See, e.g., Amie Klanke, *Houston Zoo Greets Endangered Cheetahs*, HOU. POST, Jan. 11, 1995, at A19.

239. See *infra* note 270.

Adhering to its wildlife preservation and trade control themes, CITES has responded to the tiger crisis by implementing an absolute ban on the trade of tigers and tiger parts by placing them in Appendix I.²⁴⁰ Unfortunately, this international trade ban has failed and continues to fail; the proof is in the unrelenting demand for tiger parts and in the documented observations of the demands being met.²⁴¹ The Ninth Conference of the Parties in 1994 clearly acknowledged the thriving increase in illegal trade despite the efforts to thwart such business.²⁴² Instead of responding with enforcement measures, the meeting adopted a resolution which advocated enacting national legislation and recommended developing an educational program aimed at eliminating such trade.²⁴³ In one aspect, the resolution is a realization that the solution ultimately rests with the parties, and that educational programs and national enforcement may not be more effective than a strongly worded CITES provision. On the other hand, the resolution represents nothing more than a plea for compliance. Perhaps the Secretariat's power of persuasion will prevail in the end.

b. The Twentieth Century Tiger and Ancient Medicinal Practices

Traditional Chinese medicine employs tiger bones and other parts for their alleged medicinal qualities in relieving such problems as rheumatic pain, sexual inability, and many other physical and mental complaints.²⁴⁴ Such pharmaceutical attributes are embedded in cultural beliefs and are without any scientific basis.²⁴⁵ The belief that tiger products cure ail-

240. See CITES, *supra* note 14, app. I.

241. See, e.g., *BBC World News Overnight* (WAMU-FM radio broadcast, Nov. 7, 1994) (discussing the largest ever seizure of animal skins, including tiger skins, despite legislation prohibiting such activity) (transcript on file with the author); PETER JACKSON & ELIZABETH KEMF, WWF-WORLD WILDLIFE FUND FOR NATURE, WANTED ALIVE! TIGERS IN THE WILD 7 (1994) (documenting examples of illegal tiger bone medicinal imports and indications that supplies were running low).

242. Interview with Sanders, *supra* note 172.

243. See Letter from Ken Stansell, *supra* note 159; John H. Cushman, Jr. *Tigers, Elephants and Sharks Gain at Conservation Conference*, N.Y. TIMES INT'L, Nov. 20, 1994 (quoting Suzy Sanders as criticizing resolutions as "hollow victories").

244. See Burns, *Potions*, *supra* note 231, at C2; Wang Song & Houji Lu, *The Tiger: An Endangered King. China*, CITES/C&M INT'S MAG., Oct./Dec. 1994, at 34, 34.

245. See Burns, *Potions*, *supra* note 231, at C2. Apparently, the belief is that the

ments, whether scientifically documented, is an expensive one which promotes the trade and perpetuates the myth. Tiger bone, for example, sells for as much as \$500 per pound, whereas an entire tiger can fetch as much as \$65,000 on the black market.²⁴⁶ These cultural beliefs are most prevalent in Asian countries, which are ill-equipped to present any significant threat to the smugglers of tiger products.²⁴⁷ China, Taiwan, and South Korea have all declared absolute bans on the tiger bone trade within the last two years. If law enforcement remains weak against such a dominating force, these bans will obviously not offer any lasting hope for tiger survival. For instance, in 1989 Taiwan enacted the Wildlife Conservation Law which clearly prohibited any trade, activity, or ownership of any animal on the conservation list.²⁴⁸ Six years following this enactment, Taiwan's illegal trade continues to be a flourishing enterprise.²⁴⁹ Hence, Taiwan's intense involvement in the illegal tiger trade demonstrates that its law only protects the proverbial "paper tiger."²⁵⁰ In summary, continued complacency, whether intentional or not, does absolutely nothing for the tiger, especially not for the South China Tiger whose numbers have become so scarce that its chances for survival are virtually nonexistent.²⁵¹

tiger's innate qualities as a powerful predator and, ironically as a survivor, would be transferred to anyone who consumes certain tiger parts. For instance, the whiskers are ingested as a substance to develop courage. See *TRAFFIC (U.S.A.)*, *supra* note 92. The tiger genitalia are ingested to increase sexual stamina. See Nagarhole, *supra* note 237, at 47. This latter power transfer stems from the fact that the male tiger can successfully mate several times an hour with a female in heat. *Id.*

246. EARTH ISLAND INST., TAIWAN: BLACK HOLE FOR ENDANGERED SPECIES 3 (no date) [hereinafter EARTH ISLAND INST.] (Taiwan Boycott - Tiger Background Information and Position Paper) (manuscript on file with author).

247. These Asian countries include China, Korea, Taiwan, and Thailand. See *TRAFFIC*, *supra* note 92. The market demand, though, is not limited to the Asian countries; obtaining "tiger medicine" is relatively easy in the United States in areas such as in N.Y.'s Chinatown. See *Earth Network* (TBS television broadcast, Oct. 22, 1994); Stacy Mosher, *Official Link in Tiger Trade*, HONG KONG EASTERN EXPRESS, Apr. 10, 1994; Jackson, *supra* note 230, at 7.

248. See EARTH ISLAND INST., *supra* note 246, at 8. The law states: "any animal on the conservation list may not be disturbed, abused, hunted, captured, traded, exchanged, illegally owned, killed, or processed unless in special circumstances." *Id.*

249. See *id.*

250. *Id.*

251. There are less than 50 South China Tigers remaining. See *TRAFFIC (U.S.A.)*, *supra* note 92, at 1.

Recent developments within the international community, such as the U.S. sanction against Taiwan, may offer a more optimistic outcome for the majestic tiger.²⁵² Historically, the tiger has played a consistent part in Asian traditions, cultures, and mythologies,²⁵³ but unless critical measures are adopted, not only by the Asian people, but also by the other consuming countries, the tiger's extinction will only be postponed.

c. India's Response: Operation Tiger

Two-thirds of the world's tiger population inhabit India, thus establishing India as the focal point for attaining any potential tiger stabilization.²⁵⁴ Operation Tiger was developed in 1972 in response to dramatic increases in tiger poaching and concomitant reductions in the tiger population.²⁵⁵ Initially, the conservation efforts appeared to work and the tiger reserves appeared to be shielding the tigers from the poacher's snare.²⁵⁶ Twenty years later, however, the story changed: conservation management got lazy, community development increased, and tiger habitat was destroyed, all of which resulted in another dramatic decline in the tiger population.²⁵⁷ India only recently agreed to join forces with the United States in an effort to avoid tiger extinction after it realized that a major

252. The United States implemented an unprecedented trade sanction against Taiwan due to its flagrant illegal trade activity. See Tom Kenworthy, *President Imposes Sanctions on Taiwan*, WASH. POST, Apr. 12, 1994, at C1 [hereinafter Kenworthy, *President Imposes*]. Korea also recently declared in March 1995, that sales in tiger parts will be banned. See JACKSON & KEMP, *supra* note 241, at 1; Jeffrey Parker, *North Korea's Tourist Industry*, Reuters World Rep., May 8, 1995 (announcing that capitalist South Korea formally outlawed the sale of tiger products).

253. See Jackson, *supra* note 230, at 26.

254. See Burns, *Potions*, *supra* note 231, at C1.

255. See JACKSON & KEMP, *supra* note 241, at 4.

256. *Id.* at 5.

257. *Id.* at 6.

tourist attraction would disappear unless it did so.²⁵⁸ Only time will tell whether such a partnership will be effective.²⁵⁹

d. Problems in Russia

Presently, Russia is facing stressful economic conditions, rendering the Siberian Tiger a valuable commercial export.²⁶⁰ According to a 1994 study, approximately 200 tigers remain in Russia with a loss of roughly thirty tigers to poaching each year.²⁶¹ Despite conservation efforts in Russia, many of which are headed by WWF, the prospect of any poaching eradication is bleak. In addition to poaching, the Siberian Tiger is also being destroyed as its habitat is lost to the Russian timber industry.²⁶² Tigers require up to 620 square miles of territory in order to survive.²⁶³ Unfortunately, as the Russian people become more and more economically stressed, the tiger becomes a valuable commodity. Russia's economic predicament is too pressing on the country for there to be any appreciable changes forthcoming. Hence, "wildlife conservation has become a luxury in many people's minds."²⁶⁴

e. The U.S. Response

On April 11, 1994, the United States announced an unprecedented trade sanction against Taiwan to confront Taiwan's continued CITES violations.²⁶⁵ The U.S. announce-

258. See Burns, *Potions*, *supra* note 231, at C1. In March 1994, India hosted the multinational Global Tiger Forum to address methods to protect the tiger. *Id.* Unfortunately, China, North Korea, and the Lao People's Democratic Republic, three out of the fourteen "tiger range states," were not present at the Forum. See JACKSON & KEMF, *supra* note 241, at 6. See also Jackson, *supra* note 230, at 31-32 (listing the forum's agenda ranging from providing funding for conservation to promoting cooperation among the countries); G.K. Singh, *More Than 500 Tigers "Vanish" Over Four Years*, THE PIONEER (New Delhi), Mar. 3, 1994 (describing the Tiger Project launched in 1989-90 in order to increase the severely depleted tiger population). Presently, it is too early to assess the Forum's impact on the tiger population.

259. See generally Michael Ray Taylor, *The Age of Ecotourism*, WILDLIFE CONSERVATION, Mar./Apr. 1994, at 11, 14-18 (discussing an account of the business of ecotourism as a means of protecting wildlife).

260. Sergei Tveritinov, *Russia*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 38.

261. *Id.*; see JACKSON & KEMF, *supra* note 241, at 10.

262. Kevin Schafer & Martha Hill, *The Logger & the Tiger*, WILDLIFE CONSERVATION, May/June 1993, at 22, 24.

263. *Id.* at 24.

264. *Id.* at 26.

265. See Kenworthy, *President Imposes*, *supra* note 252, at C1. Taiwan is not a

ment was unprecedented in that it was a "political and symbolic reprimand" responding to an international plea for action.²⁶⁶ President Clinton's authority to direct an embargo against wildlife imports from Taiwan²⁶⁷ is granted under the Pelly Amendment to the Fisherman's Protective Act of 1967.²⁶⁸ The sanction was not imposed, however, without prior warnings from the United States to Taiwan and also to China.²⁶⁹ Initial admonishments suggested that unless Taiwan and China²⁷⁰ significantly reduce their participation in illegal trade in tiger and rhino parts, thus manifesting their commitment to CITES and endangered species protection, the United

CITES party because of ineligibility. See *infra* note 270. However, to demonstrate good will and a desire to work with the international community, Taiwan has agreed to abide by CITES' provisions regardless of its status. See ISLAND OF DIVERSITY-NATURE CONSERVATION IN TAIWAN 15 (1992); Keith Highley & Suzie Chang Highley, *Bear Farming and Trade in China & Taiwan*, U.S. Humane Society, HSUS/HSI, at 33 (Nov. 1994).

266. G.K. Singh, *Wildlife Trade Sanction Looms Over China*, THE PIONEER (New Delhi), Mar. 4, 1994. Taiwan felt that the boycott was implemented in error, and defended itself by declaring its wildlife legislation adequate enough to protect the tiger and rhinoceros. See, e.g., Kenworthy, *President Imposes*, *supra* note 252, at C1 (quoting Taiwan officials as declaring the boycott as "deeply regrettable"); James Gerstenzang, *U.S. Will Impose Trade Sanctions Against Taiwan*, L.A. TIMES, Apr. 12, 1994, at A7 (calling the penalty a first ever sanction aimed at protecting endangered species); David Briscoe, *Clinton Orders Sanctions on Taiwan for Animal-Parts Traffic*, PHIL. INQUIRER, Apr. 12, 1994, at A5 (announcing the unprecedented sanction as stated in President Clinton's letter to House Speaker, Thomas Foley).

267. In issuing the embargo against Taiwan, the United States demonstrated to Taiwan, as well as to the entire international community, that wildlife protection and control of trade in wildlife and wildlife products is an international responsibility.

268. 22 U.S.C. § 8(b) (1978); 59 Fed. Reg. 22,043 (1994) (notifying the public of the Presidential determination to prohibit importation of wildlife from Taiwan). See also Letter from President William Clinton to Thomas Foley, Speaker of the House of Representatives, (Apr. 11, 1994), at 3 (on file with the author) (presenting the President's announcement and the reasons behind such sanctions against Taiwan) [hereinafter Letter from President Clinton].

269. Gerstenzang, *supra* note 266, at A7.

270. China is a CITES party, but Taiwan will never become one. Edward R. Ricciuti, *Rhinos at Risk*, WILDLIFE CONSERVATION, Sept./Oct. 1993, at 22, 28. The People's Republic of China (PRC) controls Taiwan, while Taiwan maintains its own separate and legitimate government. This "two Chinas" issue culminated after the PRC threatened to refuse to participate in the United Nations if Taiwan was permitted to join as an individual entity; hence, Taiwan lacks United Nations representation. In conclusion, because CITES is a United Nations treaty, a country must be a United Nations party to be allowed to acquiesce to CITES. Therefore, because Taiwan lacks United Nations membership, it is ineligible to join CITES. Highley & Highley, *supra* note 265, at 3.

States would impose trade sanctions.²⁷¹ Thereafter, the United States followed through with its threat, publicly declaring the U.S. commitment towards solving the international problem of tiger and rhino exploitation.²⁷² Taiwanese authorities did not appreciate being singled out as the "global culprit behind the demise of the world's tigers and rhinos."²⁷³ During the summer of 1995, the Department of the Interior, after performing an analysis of Taiwan's recent efforts against local poaching problems, lifted the U.S. ban against Taiwan.²⁷⁴

271. See Letter from President Clinton, *supra* note 268, at 1.

272. *Id.* The fact that China escaped sanctions was criticized by some as a political move. See Robert Evans, *China Set to Avoid Sanction Over Tiger Trade*, Reuters, Mar. 24, 1994, available in LEXIS, News Library, WIRES File, at *1. Another reason China avoided an embargo is that such a unilateral action by the United States would inevitably be challenged under GATT by China, one of its parties, as being unfairly trade-restrictive. See Adam M. Roberts, *Everything You Are Afraid to Know About GATT But Need to Ask*, AV MAG., Oct. 1994, at 6.

Several other countries may follow the United States' example in the near future, provided that they stand behind the threats made against Yemen, South Korea, China, and Taiwan. See U.S. Fish and Wildlife Serv., *Rhinoceros*, BIOLOGUE SERIES, 1994, at 1, 2.

273. Steven Galster & Samuel LaBudde, *Crime Against Nature*, THE ENDANGERED SPECIES PROJECT 21 (1994). See also *Taiwan Protests U.S. Ban on Exports*, WASH. POST, Apr. 13, 1994, at A21 (expressing the view that U.S. action against Taiwan was unjust); *Taiwan: Government Reacts to Selective Targeting by U.S. Rhino Lovers*, China Econ. News Serv., Apr. 13, 1994 [hereinafter *Government Reacts*] (stating that the "selective targeting" of the Republic of China for sanctions is "not fair" . . .); Beverly Chau, *U.S. Embargo on Taipei Under Fire*, S. CHINA MORN. POST (Hong Kong), Apr. 9, 1994, at 8 (complaining that the embargo should also apply to China).

274. Other than a press release, no official announcement has been made regarding the lift. See Michael McCurry, *President Lifts Trade Sanctions Against Taiwan; Welcomes Major Steps Taken to Protect Endangered Species*, Statement by the White House Press Secretary (June 30, 1995). See also Department of Interior, *Evaluation of Criteria: Assessment of U.S. Experts Group* (June 30, 1995) (concerning the criteria Taiwan was to meet before the boycott was lifted) (evaluation on file with author); See also Steven Greenhouse, *U.S. Lifting Trade Penalties on Taiwan*, N.Y. TIMES, July 1, 1995, § 1, at 4 (declaring the lifting of the trade sanctions against Taiwan).

2. *The Rhino: The Last Unicorn?*

There are five rhinoceros (rhino) species: three in Asia and two in Africa.²⁷⁵ This hard-nosed animal is an Appendix I species, yet poaching continues to reduce the total population of 11,000 animals, with only one fifth remaining in Asia.²⁷⁶ The primary threat to the rhino's existence is the poaching done specifically for its horn for purposes of traditional oriental medicine and for ceremonial dagger handles carved in the Middle East.²⁷⁷ As with tiger bone, traditional Asian medicine includes the belief that the rhino horn cures numerous ailments.²⁷⁸ It has been estimated that Chinese pharmacies use more than 1400 pounds of rhino horn annually.²⁷⁹ A two pound rhino horn brings in as much as \$45,000.²⁸⁰ Based on this fact, there is little doubt as to why rhinos are a smuggler's dream.²⁸¹

Regardless of the rhino horn's medicinal value, China and South Korea, as CITES parties, have committed to end their participation in such trade, and to otherwise "play by the same rules as other countries."²⁸² Despite this international decla-

275. The Indian species are the Great Indian Rhinoceros—the Rhinoceros "Unicornis," the Javan Rhinoceros, and Sumatran Rhinoceros. The African species are the Black Rhinoceros and the White Rhinoceros. See CITES Secretariat, Trade in Rhinoceros Specimens, Proceedings of the Ninth Meeting of the Conference of the Parties, at 1, U.N./CITES Doc. 9.28 (Nov. 7–18, 1994) [hereinafter Rhinoceros Specimens].

276. *Id.* The White Rhino's population in South Africa has been increasing and, therefore, legal sport-hunting is permitted within certain restrictions. *Id.* CITES acknowledges that not all sub-species are endangered and that proposing a total trade ban in some instances is not reasonable. See *id.* The Asian rhino horn, as opposed to the African rhino horn, is considered to be a more "potent" medicine which explains why the Asian rhino population is dangerously low. *Id.* at 1; Alan R. Rabinowitz, *On the Horns of a Dilemma*, WILDLIFE CONSERVATION, Sept./Oct. 1994, at 32, 39.

277. *The Rhinoceros*, CITES/C&M INT'L MAG., Oct./Dec. 1994, at 2.

278. See Rhinoceros Specimens, *supra* note 275, at 1.

279. John Ward Anderson, *Poacher's Felling World's Tigers, Rhinos*, WASH. POST, Nov. 24, 1994, at A1.

280. *Id.* at A18.

281. See Bob Drogin, *Zimbabwe Is Losing Rhino War*, L.A. TIMES, Sept. 22, 1994, at A1 (tracing the mark-up cost as the rhino horn is smuggled from one area to another).

282. See Ricciuti, *supra* note 270, at 28. Yemen, a hotbed of illegal rhino trade, is not a CITES party. *Id.* Nevertheless, it has agreed to adhere to CITES. *Id.* This is an example of the treaty's scale of influence over the actions of nonparties.

ration, these CITES parties have failed to demonstrate the responsibility required from them. Consequently, one of the main topics at the Ninth Conference of the Parties concerned the rhino trade predicament. As with the tiger, however, the rhino resolution consisted of nonbinding recommendations that countries simply increase law enforcement, eliminate consumption, and raise money to fund conservation programs.²⁸³

The 1994 CITES response to the tiger's and the rhino's desperate situations signifies an important philosophy not uncommon to governments, conservation groups, and NGO's alike: without the international community's utter dedication and assault against the sources of illegal wildlife trade and *not* against the symptoms of wildlife endangerment, CITES will cease to function. At the Ninth Conference of the Parties, it was evident that CITES succumbed to this lingering reality and simply resolved to plead with the parties to act, as opposed to adding mandates to the treaty. As history has demonstrated, however, strong words are not enough to protect wildlife, like the rhino, otherwise known as the last unicorn on earth.²⁸⁴

C. *A Crime Is a Crime*

A crime is a crime whether it involves the organized smuggling of drugs or wildlife. Many people are surprised to learn that based upon the volume and monetary value involved in smuggling wildlife and wildlife products, the illegal wildlife trade is as big and as dangerous as drug smuggling.²⁸⁵ The highly sophisticated black market trade in wildlife is valued at approximately five billion dollars per year, much of which is

283. See Kenworthy, *Endangered Species*, *supra* note 159, at A4.

284. Because the demand for rhinoceros horn continues to prevail over protective rhinoceros laws, some countries have attempted to make the wild rhinoceros less desirable to poachers by removing the rhino's horn and then returning the animal to the wild. Carol Cunningham & Joel Berger, *The De-horning Dilemma*, WILDLIFE CONSERVATION, Jan./Feb. 1994, at 15, 15. *But cf.* Bill Keller, *Even Shorn of Horns, Rhinos of Zimbabwe Face Poacher Calamity*, N.Y. TIMES, Oct. 11, 1994, at C4 (noting that the de-horning program was ineffective against poachers).

285. See, e.g., Jessica Speart, *Deadly Cargo*, ANIMALS, Nov./Dec., 1994, at 18, 18-21 (describing the connection between drug and wildlife smuggling); Galster & LaBudde, *supra* note 273, at 2-4 (describing drugs concealed in animal skins and the relationship between narcotics and wildlife).

connected to highly profitable drug networks.²⁸⁶ Overall, enforcement problems, understaffed customs offices, and insufficient personnel training allow tens of thousands of illegal shipments to pass through the borders undetected.²⁸⁷ The connection between wildlife and drug smuggling is thriving worldwide from Colombia to the United States to Japan, and deals with a myriad of wildlife products including exotic parrots, snakes, and tigers.²⁸⁸ The devastating effects which surround the drug trade also surround the trade in wildlife.²⁸⁹ The big dealers capitalize on wildlife by selling at a 6000% mark-up, a profit margin which rivals that of cocaine, and these same dealers frequently make violent threats against the enforcement agents.²⁹⁰ The atrocities committed against valuable wildlife resources and the wildlife protectors are indifferent to human and animal rights alike.²⁹¹

Despite the dangers involved, the attitudes towards wildlife and drug crime differ. Generally, the fines imposed against the wildlife smugglers²⁹² are so insignificant in proportion to the contraband's value, that the incentive to poach is not affected. While communities throughout the world strive to actively fight drug and weapons smuggling, illegal trade in wildlife, which usually involves drugs and weapons smuggling, is often left on the backburner of priorities. As one enforcement

286. See Galster & LaBudde, *supra* note 273, at 1.

287. The United States is certainly not a stranger to these problems. For example, the United States has only 200 to 250 enforcement agents to investigate the imports even though it receives about 90,000 wildlife shipments annually, 90-95% of which go unexamined. *Id.* at 2.

288. See *generally id.* (discussing the relationship between wildlife and drug smuggling).

289. *Id.* at 5 (stating that in Columbia, death threats to wildlife agents are commonplace and so are the ensuing murders).

290. *Id.* at 6.

291. See *id.* at 3-5, 18, 26 (detailing violations such as crowding rare birds in boxes for days, stuffing snakes with cocaine, killing Columbian park managers, organizing canned hunts, manufacturing "fake" tiger bone powder and selling it under false pretenses, and sedating chimpanzees and concealing them in fruit shipments). The Endangered Species Project recently compiled a thorough, detailed account of the wildlife and drug trade's intensity throughout the world. See *generally id.* at 1-47.

292. Massive drug-wildlife networks and their "lords" have been identified in the United States as well as in Columbia, but the criminals often go unprosecuted. *Id.* at 5-9. In fact, one of the American "lords" presently "lives comfortably off the interest of his poaching and drug money." *Id.* at 6 (including a recent photograph of this person).

officer stated, "[t]he police consider selling a kilo of cocaine a crime . . . but they don't see anything wrong with selling a bird."²⁹³

When a wildlife product becomes rare, the demand and the market price increase.²⁹⁴ Also, once the endangered wildlife becomes extinct, the crime of wildlife smuggling continues in some other wildlife commodity until depletion occurs there as well. The international community must address the sources of this illegal trade as criminal violations and not just as violations against wildlife. Otherwise, the efforts of numerous individuals, governments, and evolution as a whole will be lost against the unchallenged smugglers.

IV. PROPOSALS FOR CHANGE

As the foregoing analysis indicates, CITES is not enough to reduce the power the consuming markets have on the survival of wildlife. Total CITES implementation is a difficult goal to achieve considering the sophistication of the black market trade. CITES and national wildlife laws clearly cannot stand on their own. Enforcement measures *must* be strengthened, but more importantly, the consuming market's high demand must be reduced and controlled. The following discussion addresses some slightly controversial proposals as well as some other proposals which require more development to succeed.

A. *The Future of Wildlife Enforcement*

In the past, many authorities have recommended improving the parties' national legislative measures and also the binding text of CITES.²⁹⁵ Without more stringent enforcement, both at the national and international levels, CITES will not reach its goals of balancing endangered species conservation with legitimate trade interests.

293. *Id.* at 5.

294. *See, e.g., id.* at 5 (indicating that buyers in the United States, Europe, Japan, and the Middle East will pay at least \$10,000 for a rare macaw parrot).

295. *See, e.g.,* Gavitt, *supra* note 171, at 81-82; Topkov, *supra* note 228, at 16 (stating that inadequate internal legislation is the primary enforcement problem); Burns, *Critical Appraisal*, *supra* note 82, at 216 (alleging that voluntary compliance fails in some aspects of CITES' text); Stewart, *supra* note 64, at 448-49 (proposing that a party's reservations be limited in number and duration).

1. *An Enforcement Infrastructure*

CITES does not have a centralized enforcement agency to investigate possible violations or impose uniform sanctions.²⁹⁶ A CITES enforcement body would at least ensure that violators receive like sanctions for like violations. Of course, the mechanics of such a proposal would be complex and would also require a great deal of effort to organize. Despite the benefits of a universal enforcement structure, a major obstruction would involve overriding each country's sovereignty. Each country's economic situation and cultural norms differ from one another in ways that cannot be reconciled by a central enforcement body. The CITES' drafters, recognizing these differences, provided that enforcement rest with the parties because they are and should be "the best protectors of their own wild fauna and flora."²⁹⁷

The world-wide black market in wildlife trade has grown on an unprecedented scale despite laws prohibiting such activity. A law enforcement network with authority to monitor and eliminate smuggling across the borders would be an invaluable tool for CITES enforcement. Such a network is a novel idea only in that its focus would be exclusively on combating wildlife smuggling. A similar system, the Interpol network, extends throughout the world and is utilized to fight drug and weapon smuggling.²⁹⁸ Recently, Interpol was expanded to include an "environmental crimes" division which serves to track down hazardous waste smuggling and dumping.²⁹⁹ Just as drug, weapon, and hazardous waste smuggling have no borders, wildlife smuggling also has no respect for territorial boundaries. If CITES parties cooperated to develop a network similar to Interpol, wildlife enforcement personnel around the world would be able to systematically communicate with one another to protect wildlife and reduce smuggling. Reduction of illegal trade conserves wildlife, while it also protects valuable resources which can be used for a country's benefit for generations to come. A CITES enforcement committee,³⁰⁰ on the other hand,

296. See CITES, *supra* note 14, pmb1.

297. *Id.*

298. See Galster & LaBudde, *supra* note 273, at 1.

299. *Id.*

300. CITES presently has four committees: the Standing Committee updates the

could be a less intrusive enforcement mechanism. This committee would not impose sanctions per se on countries and individuals, but instead would investigate and identify enforcement infractions, and then proceed to assist and advise the parties involved.³⁰¹ It is likely that the formation of such a committee would require some mutually acceptable compromise on the issues of national confidentiality and sovereignty. Until such a compromise is established, however, CITES should continue to adopt resolutions strengthening the enforcement at the Secretariat level. As the above discussion implies, cooperation among the parties is a key element towards successful enforcement. The establishment of a universal environmental ethic is the primary factor in reducing the demand for wildlife.

B. Sanctions

There is a need for more stringent sanctions against the individual smugglers and the indifferent CITES parties. If a penalty against a wildlife trader is so inconsequential in comparison with the total value of the smuggled item, then there is virtually no risk factor involved in his breaking the laws and consequently no deterrence. Similarly, if a party receives no reprimand for its indifference towards wildlife laws and enforcement, then there is little incentive for the party to produce any conservation effort.

1. Increased Penalties

Article VIII of CITES provides that the parties will take appropriate enforcement measures including the imposition of penalties for the trade or possession of particular species.³⁰² CITES does not specify how to impose penalties, and as a result, many parties' penalty provisions are inadequate to serve as deterrents against illegal trade.³⁰³ For example,

Secretariat regarding CITES implementation; the Plants Committee and the Animals Committee develop and maintain lists of plants and animals in order to determine which species are being threatened by trade; and the Working Group on Transport of Live Specimens Committee reviews present transportation implementations and infractions. FWS, *GLANCE*, *supra* note 27, at 2.

301. Such a resolution, specifically the establishment of the Law Enforcement Working Group, was proposed at the Ninth Conference of the Parties but was met with vehement opposition. See Interview with Sanders, *supra* note 172.

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

303. As of this writing, Greece did not have any penalty for illegal wildlife

Hong Kong imposes only a maximum \$1000 fine under its Animal and Plant Ordinance for any trade violations.³⁰⁴ Prison sentences have generally not been imposed against violators.³⁰⁵ With such insignificant fines, most smugglers probably view any potential penalty as a cost of doing business.

Heavier sanctions will not necessarily eliminate the incentives to smuggle, but they might reduce the trade involving small wildlife dealers who cannot afford to take the risk of being apprehended. Therefore, it is extremely important for the parties to agree upon a standard penalty. Obviously, in order for any penalty to be imposed, a country's enforcement measures must first be strong enough in order to intercept the violator.

2. *Public Embarrassment and Economic Sanctions*

Imposing fines against an offending nation is not the practice in international law and would accomplish nothing more than adding to that country's deficit. International public embarrassment by CITES parties, on the other hand, is potentially a more powerful tool provided that it is only employed in limited, serious instances.³⁰⁶ Economic sanctions against non-complying countries must likewise be infrequently employed to make their imposition truly meaningful. Taiwan, for example, recently received economic sanctions from the United States as a result of Taiwan's unrelenting participation in illegal wildlife trade.³⁰⁷ As discussed, the United States imposed the sanc-

possession. See E.U. Implementation, *supra* note 193, at 3. In Spain, the laws do not provide for any penalties for wildlife violations. *Id.* at 3-4.

304. Lyster, *supra* note 20, at 264-65. Compare the \$1000 fine to the \$1400 per ounce market value of African rhino horn. See Galster & LaBudde, *supra* note 273, at 12.

305. See Jeffery C. Melick, *Regulation of International Trade in Endangered Wildlife*, 1 B.U. INT'L L.J. 249, 265 (1982).

306. On January 18, 1990, the United Kingdom declared a reservation on Hong Kong's behalf to the proposed ivory ban. See Sands & Bedecarré, *supra* note 57, at 817. The reservation was justified as protecting Hong Kong, the world's largest ivory dealer, from economic losses. *Id.* at 820. The United Kingdom's reservation, however, received immense negative reactions from the public interest NGOs, causing the United Kingdom to reconsider the duration of its reservation. *Id.* at 819-22. This is an example of the influence public pressure has on parties.

307. See Kenworthy, *President Imposes*, *supra* note 252, at C1. In 1994, the CITES Standing Committee identified Taiwan's CITES implementation as inadequate despite prior mention to Taiwan. *Government Reacts*, *supra* note 273. The United

tion as a last resort following numerous warnings and attempted negotiations with Taiwan.³⁰⁸ As a result of the public sanction, the international community is now fully aware of Taiwan's infractions and alleged inability to uphold its responsibility to protect endangered species. Consequently, Taiwan is attempting to prove to the community that not only was the sanction unnecessary, but also that Taiwan is a capable wildlife protector.³⁰⁹ Meanwhile, the United States has expressed its willingness to offer Taiwan technical and law enforcement assistance to promote conservation measures and the ultimate reconsideration of the trade boycott.

Strong economic sanctions by the consuming parties provide the suppliers with the requisite incentive to either clean up their acts or suffer economic trade losses. Furthermore, the consuming parties demanding the largest percentage of the world's wildlife market have demonstrated their aversion to being associated with the cause of a species' extinction. Hence, the power to exert pressure on wildlife exporters is quite influential. In order for this power to be effective, however, all the major consuming parties must join together in any proposed boycott and adhere to specific restrictions concerning any trade with the exporting party.

In summary, increased penalties and the public embarrassment associated with economic sanctions for illegal wildlife trade activities can conceivably serve to improve enforcement measures and reduce illegal trade throughout the world, thereby helping the international community move toward an era of more conscientious conservation.

C. Education: The Key to Reducing the Demand

Public education is another powerful mechanism with which to ensure a more permanent protection strategy for endangered species.³¹⁰ Education addresses the central and

States then followed the committee's recommendation to impose the wildlife trade sanctions. See Letter from President Clinton, *supra* note 268.

308. See *supra* notes 270-274 and accompanying text.

309. Taiwan considered the sanction as a regrettable decision. Kenworthy, *President Imposes*, *supra* note 252, at C1. Meanwhile, however, Taiwan is presently attempting to improve its CITES implementation which ultimately means that the sanction is working. Interview with Hemley, *supra* note 97.

310. See, e.g., Burns, *Critical Appraisal*, *supra* note 82, at 222-23 (discussing

most influential cause of species endangerment: the consuming market and its control over wildlife. Educational campaigns can heighten public awareness of the threat to wildlife caused by the constant demand for exotic pets and plants as well as luxury items and other status symbols.³¹¹ If CITES parties dedicate more efforts to making a commodity illegal, the item's value traditionally increases along with the demand from customers who can afford to pay the higher costs.³¹² Alternatively, however, if more effort is dedicated to reducing the demand, then the result will be a reduction in the need for the supply. Subsequently, illegal wildlife trade would decline as the illegal trade organizations realize that the wildlife trade is no longer a lucrative business.

1. Cultural Differences

Wildlife products used in Asian medicines place an enormous demand on certain wildlife species. Modern alternatives are readily available and are generally more successful in curing ailments. Merely to suggest an alternative remedy, however, ignores the reality that such a change requires a profound cultural adjustment by the people using the traditional medicines.³¹³ Nevertheless, Asian countries do have youn-

research which demonstrated that education substantially increases public support for conservation programs).

311. See, e.g., *Minister Warns: Check Before You Bring Back Souvenirs*, UNS, Nov. 1, 1994, available in LEXIS, News Library, UNS File (reporting on U.K.'s plan to launch new program to educate tourists); Jeff Barnard, *Beauty Threatens Survival of Many Species*, L.A. TIMES, Jan. 1, 1995, at Metro, Part B (finding that the fur trade is responsible for 40% of vertebrate species' being on the endangered list); Highley & Highley, *supra* note 270, at 34 (describing a famous incident of Bhutanese Princess Deki Wangchuck being apprehended while attempting to smuggle 22 rhino horns and nine bear gall bladders).

312. A government ban on ivory, for instance, did not automatically reduce the demand; instead prices increased, people avoided detection and the resource continued to disappear. See Susan L. Landy, *CITES: Banning the Ivory Trade—An Attempt to Save the African Elephant From Extinction*, 5 FLA. INT'L L.J. 111, 117 n.51 (1989).

313. It interesting to note just how much influence the consumers have on cultural practices. For instance, about a decade ago, Japan formally requested that its pharmacies promote alternatives to rhino horn. The result was a noticeable reduction in rhino horn demand. See McFadden, *supra* note 65, at 325. South Korean doctors followed suit by substituting the rare rhino horn for the more plentiful buffalo horn. *Id.* Substituting one product for another is a complex issue, and this example is not used to promote such an alternative, but to instead demonstrate the power of the consumer.

ger generations who are willing to improve their country's technology and knowledge, and it is worth the effort to help them discover new things. WWF is one NGO³¹⁴ which has already committed itself to working with local groups, traditional Chinese doctors, and governments in Asia for the purpose of introducing alternative medicines.³¹⁵ An important aspect in WWF's commitment is that WWF is working with the Asian people and their governments, reducing the likelihood that they will feel subservient to Western lifestyles.

As might be expected, many Asian communities in Western countries also practice traditional medicine.³¹⁶ Public embarrassment through media campaigns and the stigma attached to the use of endangered species products might be sufficient to prevent many of these consumers from attempting to purchase these precious wildlife products.

Eventually, Asian medicine consumers will realize that unless they discover alternative ingredients, the medicines will be as extinct as the animals themselves. If these consumers simply allow the supply to run dry, then they will be left with nothing, except perhaps the alternatives. Persuading the consumers of these wildlife products to use alternatives now as opposed to later makes sense in the face of wildlife extinction. Active alternative-use campaigns need to be more visible to the public throughout the world. CITES, with its growing membership, is the focal point for organizing such a campaign. The CITES parties cannot reasonably expect that Asian countries will become dependent on Western medicines if CITES and the NGOs include in their educational campaigns a training mechanism to teach Asian doctors how to develop the new medicines, thereby aiding them in their self-sufficiency.

314. See *supra* notes 91 & 97 and accompanying text.

315. Interview with Fuller, *supra* note 177. WWF recently joined with Johnson & Johnson to develop an educational campaign in Asia regarding medicine. *Id.*

316. See, e.g., Galster & LaBudde, *supra* note 273, at 11-12 (discussing The Chinatown Syndrome: Siberian tiger bone, African rhino horn, and American bear gall are all illegal products that are readily available in California in raw form or as ingredients in prescription).

2. Sustainable Use: The Pros and Cons³¹⁷

Generally, the sustainable use concept involves wildlife use only at rates which allow wildlife to maintain themselves in their own ecosystem.³¹⁸ Many environmental organizations contend that sustainable use is the key to wildlife preservation. Other groups view the concept as an "unreal, abstract quality of economic models."³¹⁹ It is conceivable that both views are correct: proponents correctly allege that sustainable use can prevent wildlife abuse while preserving the resource for future generations,³²⁰ and opponents similarly contend that historical experiments with sustainable use have demonstrated little understanding of the actual limits in wildlife survival.³²¹ Philosophically, a species' intrinsic value should not be determined by any human concept of utility. However, it is an unfortunate fact that many Third World Nations' survival depends upon the value of its wildlife.

For some Third World Nations, maintaining a "sustainable harvest" of wildlife often results in over-exploitation problems because of legal and illegal trade avenues that are uncontrollable.³²² Unfortunately, denying sustainable use to countries which are rich only in their wildlife resources would be met

317. For a thorough analysis concerning the negative aspects of sustainable use as it applies in tourism, ecotourism, communal wildlife management, game ranching, safari hunting, and international trade, see APRIL L. ADAMS, U.S. HUMANE SOCIETY, SUSTAINABLE USE OF WILDLIFE AND THE INTERNATIONAL DEVELOPMENT DONOR ORGANIZATIONS 1-50 (1994). *But cf.* John Aquilino, CITES & "Sustainable Use:" A Radical Dividing Point 1-10 (1994) (unpublished manuscript, on file with the author) (describing the more positive aspects); JACKSON & KEMF, *supra* note 241, at 18-20 (describing sustainable tiger conservation efforts).

318. See ADAMS, *supra* note 317, at 3-4. The "sustainable use" concept is very complex and controversial as it relates to its practice versus its theory. For instance, the sustainable use concept has been viewed as nothing more than an accepted form of animal management which exploits the world's precious wildlife into extinction. See generally JOHN A. HOYT, ANIMALS IN PERIL: HOW "SUSTAINABLE USE" IS WIPING OUT THE WORLD'S WILDLIFE 7-81 (1994) (presenting the case for and against the sustainable use concept and then following with actual case studies of the concept actually in practice).

319. ADAMS, *supra* note 317, at 7.

320. See Topkov, *supra* note 228, at 16-17.

321. See, e.g., ADAMS, *supra* note 317, at 10-11 (contending that commercial uses in wildlife have historically been consistently unsustainable).

322. See *id.* at 13 (describing the effects of the sustainable harvest approach on the African elephant).

with opposition. However, poverty-stricken governments will certainly not solve their economic problems by increasing wildlife consumption to generate income. Only genuine changes in political structure will ultimately improve these countries' economic situations.³²³ Such changes involve great amounts of time—time which most endangered species do not have. Therefore, a certain degree of sustainable use may be necessary in order to save this precious time.

Educational programs headed by CITES could attempt to combine the best aspects of these divergent views on sustainable use in order to attain the most reasonable method for preserving wildlife.³²⁴ It is quite difficult to admit that adopting some form of a sustainable use model may be necessary to ultimately protect wildlife. Promoting the deep-rooted belief that wildlife has an inherent and intrinsic value deserving respect from humans is a preferable model; nevertheless, this model is not realistic on a world-wide scale. Wildlife use will occur regardless of whether it is sustainable or not. In summary, if CITES is able to adopt a uniform sustainable use model with practical restrictions on its application, perhaps a more acceptable use of wildlife will result.³²⁵ Any activity, whether sustainable or not, which poses a potential threat to wildlife should be carefully scrutinized.³²⁶ CITES is both a

323. *Id.* at 20. Jerusalem's Foreign Minister, Shimon Peres believes that "[w]hat separates poor from rich and weak from strong is intellectual capacity, science, technology planning, motivation and, above all, education." Liat Collins, *Peres: Conservation Is as Important as Peace*, JERUSALEM POST, Mar. 15, 1994, available in LEXIS, News Library, TSPOST File, at *1.

324. See, e.g., *WWF Launches Global Conservation Training Program*, FOCUS, Sept./Oct. 1994, at 1, 6 (describing WWF's new program, Education for Nature, which addresses the urgent need to educate and train new conservationists in developing countries which would otherwise deplete their wildlife); Aquilino, *supra* note 317, at 5 (stating that Zimbabwe's CAMPFIRE program involves rural community wildlife management which Zimbabwe alleges serves both animals and humans).

325. As education increases and demand decreases, this concept of sustainable use will be unnecessary. At that point, poor rural people will realize that wildlife trade benefits only the major commercial exploiters. Governmental commitment to social development such as education, health clinics, family planning, sanitation, and training in market skills will replace wildlife use. See ADAMS, *supra* note 317, at 20.

326. This notion of an "exhaustive examination" prior to the continuance of any activity which poses "a significant risk to nature" is not unique; it is referred to as the "precautionary principle." See CHRIS WOLD, U.S. HUMANE SOCIETY, CITES AND THE PRECAUTIONARY PRINCIPLE: THE BURDEN TO SHOW THAT USE IS SUSTAINABLE 1 (1994) (discussing the evolution of the precautionary principle and the necessity of review when the notion of sustainable use is practiced in wildlife management).

"conservation and trade instrument"³²⁷ and in order for CITES to gain meaningful participation by the parties, a compromise between the two interests is an absolute necessity.

V. CONCLUSION

CITES has been described as "perhaps the most successful of all international treaties concerned with the conservation of wildlife."³²⁸ However, this comment has revealed that CITES is effective only as an instrument for public pressure and international cooperation. Smugglers continue to evade wildlife laws and consumers continue to demand wildlife. Nevertheless, there is some room for optimism because the major wildlife consumers and producers are parties to CITES. Stricter regulations and enforcement measures are undoubtedly necessary in order to combat illegal trade, and yet educational campaigns, training, and alternative-use programs are also necessary to make any respectable progress in conservation efforts. Progress is certainly plausible considering the evidence of an increased worldwide governmental commitment regarding education and other campaigns.

As the world approaches the twenty-first century, it also approaches one of its greatest challenges: to finally enter into an era of wildlife preservation and respect for all life forms.³²⁹ The last unicorn is not a mythological creation; indeed, the unicorn is very real and is facing a modern threat of extinction. Because it has been established that species will cease to exist without human consent, the human race must also accept their position as "stewards for this threatened world."³³⁰ Stephen Jay Gould's words of wisdom most certainly apply to the plight of endangered species everywhere:

327. Hill, *supra* note 84, at 245.

328. Lyster, *supra* note 20, at 240.

329. Traditionally, wildlife protection focused upon "individual animals" while now protection focuses upon biodiversity. LISA MIGHETTO, *WILD ANIMALS AND AMERICAN ENVIRONMENTAL ETHICS* 94 (1991). Unfortunately, some conservationists promote species diversity over individual animals, considering the latter an animal welfare rather than conservation issue. See Interview with Roberts, *supra* note 160. An environmental ethic should encompass animal welfare, species protection, and general compassion for all life rather than the conservation of one aspect of life over others. *Id.*

330. GOULD, *supra* note 4, at 48.

I suggest that we execute . . . a pact with our planet. She holds all the cards, and has immense power over us—so such a compact, which we desperately need . . . would be a blessing for us and an indulgence If we treat her nicely, she will keep us going for a while. If we scratch her, she will bleed, kick us out, bandage up, and go about her business She will uphold her end; we must now go and do likewise.³³¹

Change, and the decision to change, need to be made almost immediately. Without human protection, the last unicorns—the tigers, the rhinos, and the other dependant species—will disappear and evolve into the unicorn of ancient legend.

Shennie Patel

331. *Id.* at 50–51.

