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CITES IN AFRICA:

AN EXAMINATION OF DOMESTIC IMPLEMENTATION AND COMPLIANCE

by Yvonne Fiadjoe*

INTRODUCTION

The Convention on International Trade in Endangered Species (“CITES”) has been relatively ineffective in Africa as a result of minimal enforcement and compliance.¹ As a non-self-enforcing treaty, CITES requires that State Parties enact domestic legislation to enforce the provisions of the Convention. Even though non-compliance with CITES is not unique to the African region,² there are several factors peculiar to the region that exacerbate the problem of implementation of these provisions. These problems must be addressed simultaneously from geographic, social, political, and economic angles.

Because of the importance of species preservation and the prominence of international environmental law in modern legal systems, African countries ought to include CITES provisions in their domestic laws. To ensure the effectiveness of the Convention, African countries must domestically enforce all CITES provisions.

This paper is divided into four parts. Part One provides a brief overview of CITES and background to the African situation. Part Two details some of the problems which have impeded the implementation of CITES in Africa. Part Three then discusses recommendations and proposals to ensure compliance with CITES in signatory countries of the African region. Part Four provides a conclusion to this study.

PART ONE: OVERVIEW OF CITES & BACKGROUND TO THE AFRICAN SITUATION

CITES is an international conservation agreement providing guidelines for trade³ in endangered species.⁴ CITES entered into effect in July 1975⁵ and currently has 152 signatories.⁶ The Convention⁷ has been regarded as the *Magna Carta*⁸ for wildlife.⁹

CITES¹⁰ was created¹¹ in order to protect¹² endangered species from extinction.¹³ To achieve this aim, CITES categorizes species into three appendices¹⁴ indicating the actual numbers of a species and how trade affects the species.¹⁵ Different levels of protection are accorded to each Appendix.¹⁶ Appendix 1 species are those “threatened with extinction which are or may be affected by trade.”¹⁷ As a result, trade in Appendix 1 species is only authorized in exceptional circumstances. Appendix 2 species are those that are not immediately threatened with extinction, but may become so unless trade is restricted.¹⁸ Therefore, trade in species listed in Appendix 2 is subject to restrictions in order to prevent utilization that is “incompatible with their survival.”¹⁹ Species protected under Appendix 3 are species that require regulation.²⁰ These species are not immediately threatened with extinction, but still require regulation in order to prevent exploitation.²¹ Trade in species categorized

under the three appendices is restricted unless it is in accordance with the provisions of the Convention.²²

Because CITES is a non-self-executing treaty, a State party must usually adopt legislative or other measures to implement the Convention.²³ Since 1992,²⁴ the laws of 136 countries have been reviewed under the National Legislation Project (“NLP”), a system for reviewing and evaluating domestic measures to implement CITES.²⁵ In determining the level of compliance, the NLP looks at four criteria:²⁶ (1) whether there has been legislative designation of authorities responsible for implementing the Convention;²⁷ (2) whether legislation addresses all species listed in the Convention;²⁸ (3) whether domestic legislation expressly prohibits illegal trade and designates specific depart-

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ments and agents responsible for enforcing the Convention;²⁹ and (4) whether domestic legislation facilitates³⁰ the confiscation or return of species that are illegally traded.³¹

After this assessment is made, countries are classified into one of three categories. Countries accorded Category 1 status are those that have adequately implemented all necessary legislation to ensure compliance with CITES. Category 2 countries are those that have implemented some legislation, but need more to meet the legislative requirements.³² Category 3 countries are those that have not met the requirements of CITES.

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Despite the various categorizations, the effectiveness of CITES does not depend on whether countries have enacted the necessary legislation, but on whether the legislation is being enforced. Nevertheless, attaining Category 1 status is an important first step in the quest for compliance and effectiveness.³³

The African Situation

The success of CITES is often determined by the number of animals listed in the appendices, the number of member countries in a region, the number of proposals submitted, and the number of permits issued.³⁴ If these were the only determinants of compliance with CITES in Africa, then implementation of CITES could be considered a resounding success. In fact, 49 out of 52 African countries are State Parties to CITES, comprising 32% of the Convention's signatories.

However, the seminal indicator of whether the treaty is effective is not accession or ratification alone, but rather the implementation and enforcement of the treaty provisions within a country.³⁵ The dual process of implementation and enforce-

“Recognizing the inherent weaknesses of CITES, African States have resorted to several other initiatives designed primarily to strengthen compliance with CITES.”

ment must not be decoupled. To do so would render the treaty ineffective. In reality, implementation without subsequent enforcement has the same effect as no implementation at all. The key to enforcement is in actual ‘on-the-ground’ compliance. Therefore, the success of CITES should not be determined by the number of State parties to the Convention, but by the actual compliance with its provisions. In this respect, many African countries have failed to fully implement the CITES provisions into domestic legislation and enforce those provisions enacted.³⁶

Of the 49 African countries that are signatories to CITES, only five countries are classified as Category 1 countries.³⁷ Because African countries have the largest species populations in the world (for example, 40% of the 4,800 plant species located in the deserts of South Africa can be found nowhere else in the world), it is of critical importance to take note of these trends and to discern ways in which the problem may be addressed.

Twenty countries, or 41%, have been accorded Category 2 status countries.³⁸ Even though limited implementation by these countries is better than no implementation at all, the effective-

ness of the Convention is greatly undermined by such minimal compliance. For the Convention to be effective, there must be full implementation of the necessary legislation coupled with compliance.

The majority of African countries fall under the Category 3 rubric. These twenty-four countries, or 45%, need to strengthen their initiatives to ensure full compliance with the Convention. Considering that the vast majority of the countries in this category ratified the Convention more than fifteen years ago,³⁹ it seems that there are fundamental problems that may need to be addressed. In fact, this trend may be indicative of the existence of collective problems that are impeding the implementation of the CITES in Africa.

FAILED INITIATIVES

Recognizing the inherent weaknesses of CITES, African States have resorted to several other initiatives designed primarily to strengthen compliance with CITES.

The Monitoring the Illegal Killing of Elephants (“MIKE”) system is one such initiative.⁴⁰ The basic premise of the MIKE system is to monitor illegal elephant hunting and determine the impact of such hunting on elephant species. This system entails data collection at designated sites in selected African and Asian States, including a collection of elephant population data,⁴¹ reporting of illegal hunting, and deployment of law enforcement officers to detect illegal hunting and trade.⁴²

One of the major shortcomings of the MIKE system, though, is that it does not provide a mechanism to ensure actual compliance with CITES. It only provides data on elephant species. Furthermore, the complexity of the system requires huge amounts of funding for it to be successful. Recognizing that the elephant is only one of several species listed in CITES appendices, it is very difficult to justify expending such large amounts of funds on one species.⁴³

The 1994 Lusaka Agreement is another initiative that has impacted CITES.⁴⁴ This Agreement entered into force in 1996, and provided for the development of wildlife law enforcement officers recruited from National Bureaus.⁴⁵ These officers were a part of the Lusaka Agreement Task Force (“LATF”), which was primarily responsible for conducting cross-border investigations into wildlife trade at the requests of the National Bureaus. The LATF’s mandate was very wide, permitting them to take part in undercover operations and move freely between States without visas and entry restrictions, subject to the consent of Parties.

The Lusaka Agreement signaled a positive step by African nations to curtail illegal trade, but it was not successful. Although it was open to accession by all African States, only six have acceded.⁴⁶ Issues of sovereignty were of great concern to State Parties. Furthermore, as with most agreements in Africa, the Lusaka Agreement had severe funding problems. To date, all these factors have severely crippled the effectiveness of the Lusaka Agreement.

Subsequently, the South African Development Community⁴⁷ developed a protocol on wildlife conservation and law enforcement. This protocol basically prescribes an alternative for wildlife law enforcement.⁴⁸ The Protocol does

away with the issue of cross-border policing, replacing that system with Interpol.

A problem with African countries' implementation of CITES is that they have developed several systems geared towards the same aim. In so doing, they spread their finances and human resources too thin and become jacks-of-all-trades but masters at none. African States ought to focus on the development of one regime and place all efforts into that system. There is no benefit in developing several systems and having a half-hearted reception to each of them.

PART TWO: REASONS FOR NONCOMPLIANCE

The geographic, political, economic and social structures of African countries have contributed to impeding the implementation of CITES in countries' domestic legislation.⁴⁹ In fact, implementation and enforcement of CITES in Africa has been complicated by several factors. Some of these factors include: corruption, the Precautionary Principle, the flexibility of the Convention, lack of financial and human resources, inconsistency between countries in implementing regimes, and in some cases a lack of political will, wars, and internal conflict.⁵⁰

CORRUPTION

A major impediment to the compliance and subsequent effectiveness of CITES is the issue of corruption.⁵¹ The 2003 Global Corruption Report cites several African countries as having serious problems of corruption.⁵² The report highlights corruption in various sectors. However, the aspect of greatest interest to this study and the issue of CITES is the corruption in governmental institutions. Regrettably, the institutions designated with the authority to ensure compliance with CITES are often those that have the highest levels of corruption. In Burkina Faso, for instance, a corruption survey indicated that the police are the most corrupt institution in the country. In Senegal, the traffic police, customs officials, and police were identified as the most corrupt institutions. In Benin, the situation is exacerbated by the fact that transit agents help importers avoid controls in transporting illegal goods.⁵³ It is not unrealistic to expect that the CITES regime cannot function effectively if the very institutions which are to guarantee its effectiveness are themselves in disrepute.

Interestingly enough, only Nigeria, which was cited as having a corrupt governmental institution, has been accorded Category 1 status under CITES. All other countries plagued with serious corruption problems have not been accorded such status under CITES. For example, Mali, which has a serious problem with the mismanagement of public funds as well as an ineffectual judicial system, has received a Category 2 classification. In Mozambique, where corruption is extremely rife, one of the most corrupt agencies is the port system. Mozambique falls within the Category 3 classification.

The pattern of corruption seems to be linked with the many armed conflicts in the region. Conflict tends to provide opportunities for illicit access to natural resources. Such is the case in Eritrea, Ethiopia, Burundi, Rwanda, Somalia, Sudan and the Democratic Republic of Congo ("Congo"). It is interesting to note that Rwanda, Somalia and Burundi, where there have been

long-standing wars, have nevertheless all been accorded Category 3 status.

An inextricable link appears to exist between the endemic corruption in Africa and the ability to comply with CITES. The greater the corruption, the lower the compliance categorization.

THE PRECAUTIONARY PRINCIPLE

The Precautionary Principle is a very contentious principle⁵⁴ in international law, because States implement and interpret it differently.⁵⁵ The basic premise of the Precautionary Principle is that in the absence of scientific evidence as to the effect of a particular substance or activity, the protection of the environment should be the primary concern.⁵⁶ Essentially, the Precautionary Principle recognizes that scientific certainty may often come too late to prevent environmental harm.⁵⁷ In this regard, the Precautionary Principle provides a mechanism whereby an environmental harm can be prevented and unnecessary expenditure avoided.

“Regrettably, the institutions designated with the authority to ensure compliance with CITES are often those that have the highest levels of corruption.”

Although slightly different definitions have been used to explain the Precautionary Principle, the 1992 Rio Declaration definition is most widely accepted. The Declaration provides that “in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible harm, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁵⁸

The problem which developing countries have with the Precautionary Principle is that it can be evoked to include additional species in the CITES appendices. Developing countries have resisted the application of this principle, because its application will mean that they must be more diligent in the preservation of wildlife.⁵⁹ In some instances, these countries have taken the stance that the imposition of this principle is premised on western ideologies, which fail to consider the peculiar situation of developing nations.

FLEXIBILITY

The inherent flexibility of CITES has contributed to the problem of non-compliance.⁶⁰ The flexibility of the Convention

manifests itself in several ways. For instance, CITES allows parties to opt out of decisions pertaining to species listings. As a result, the State Party is in no way bound by a new provision.⁶¹ Still, it must be kept in mind that this same mechanism is essential to “keeping all the players in the cooperative process and allowing the regime to bend⁶² rather than break.”⁶³ In addition to the opt-out mechanism, CITES provisions themselves are quite flexible. For example, Article VIII, which deals with measures that the parties may impose to enforce the provisions of the Convention, has been interpreted to facilitate the exemption of ranching for trade in listed species. In reality, this type of interpretative flexibility often results in a trade-off, whereby provisions are interpreted liberally in their application, but there is subsequently a stricter listing of species.⁶⁴

“Even though CITES came into force decades ago, several of the provisions of the Convention remain very contentious. Such provisions result in non-compliance and the ineffectiveness of the Convention.”

A necessary corollary to the flexibility of the Convention is the down-listing of species.⁶⁵ In some instances, State Parties argue that the down-listing of a species will influence the preservation of the species.⁶⁶ For example, at a Convention held in Harare, Southern African⁶⁷ countries argued that down-listing of ivory allowed them to sell their stockpiles of ivory.⁶⁸ They stated, in turn, that the revenue generated from such a sale⁶⁹ would be used toward elephant conservation and community development programs. Therefore, they argued, controlled trade of ivory would benefit the preservation of elephants. Although this argument may seem untenable, as it is difficult to understand how depletion of a species may result in its replenishment, one must look at the efforts of African nations to raise such arguments in circumstances where elephant populations are constantly expanding and wreaking havoc (i.e. by trampling crops of peasant farmers). Often, these animals may appear to be more of a nuisance than an asset. Thus, using the species for immediate economic gain as well as domestic consumption⁷⁰ seems more viable.⁷¹

THE PROVISIONS OF THE CONVENTION

Even though CITES came into force decades ago, several of the provisions of the Convention remain very contentious. Such provisions result in non-compliance and the ineffectiveness of the Convention. For example, Article III(2)(d) provides that the importing State must grant an import permit before Appendix 1 species may be traded. The problem with the language of the provision is that it takes power to control a species away from the exporting country, putting control in the hands of

the potential importer. Thus, the importer’s assessment of the biological status of the species carries more weight than that of the exporting State.

Article III(3)(c) has also raised concern. This provision states that trade in Appendix 1 species must not be primarily for commercial purposes. Although the intention of the drafters to completely restrict trade in order to preserve the species is a good one, this provision does not consider circumstances where commercial trade may benefit the species and even contribute to its preservation.

Finally, Article XIV facilitates the adoption of domestic measures that are stricter than those of the Convention. Although the original intent was to encourage exporting States to strengthen their domestic measures, the provision has often been used by importing nations to curtail trade.⁷²

LACK OF FINANCIAL AND HUMAN RESOURCES

In several instances, African countries have reported that their inability to comply with the provisions has not been because of a lack of interest, but rather because of a critical lack of finances. This is clearly problematic, as the entire CITES system is premised on the availability of funds.⁷³ For example, the basic structure of the regime mandates the creation of a domestic authority to oversee

provisions as well as a support system, both of which require adequate funding. Without these structures, the police, customs, other law enforcement agencies, and the populace at large do not have any guaranteed assistance in achieving the provisions of the Convention.

The situation is further aggravated by the fact that in most countries, there are no trained personnel to carry out the provisions of the Convention.⁷⁴ For example, customs officials are often untrained about which species are categorized under the three appendices and what trade is allowed or restricted under the Convention. Since personnel are untrained, enforcement capacity is weak. Because enforcement capacity is weak, it is no surprise that illicit trade goes unreported. Several countries have noted that they have neither the resources nor the capacity to comply with these provisions.

In order to resolve the issue of lack of funding, some countries have utilized trade in endangered species as a way of earning money.⁷⁵ Such trade in endangered species⁷⁶ is considered to be very lucrative.⁷⁷ In some instances, trade⁷⁸ has flourished⁷⁹ under CITES. For example, it is estimated that in 1998, Zimbabwe sold about 82.8 tons of elephant hides.⁸⁰ In 1997, Botswana, Namibia, and Zimbabwe earned an estimated \$5 million from ivory sales.⁸¹

Even though it appears that there are short term gains in trading endangered species, the costs to countries that may have to invest more funds in anti-poaching strategies, is far greater in the long run.

LACK OF POLITICAL WILL

Several African countries have suffered from grave political problems.⁸² In some instances, government instability coupled with the problems of periodic coup d'états and impending civil wars all make compliance with CITES seem unimportant. For example, in Côte d'Ivoire and Liberia,⁸³ it is difficult to see how species preservation could ever be addressed in circumstances where the impending war⁸⁴ continues to claim human lives.⁸⁵ As a result, governments are more concerned with preservation of human life than with species preservation.⁸⁶

Another political problem in many countries is that legislation is often inconsistent, so trade in endangered species is addressed in a fragmented way. For example, there are glaring inconsistencies in permit procedures, sanction provisions, legal definitions and the conservation status of indigenous species. This exacerbates the problem of ensuring compliance, especially since authorities must also battle budgetary and capacity constraints.⁸⁷

ture and framework of the Convention is still a strong one, and for that reason alone, an amendment is not suggested. Perhaps a more tenable position may be to develop new approaches to species preservation within the existing framework.⁸⁹

LACK OF FINANCIAL AND HUMAN RESOURCES

The issue of lack of financial resources can be addressed by utilizing the natural resources present in a country as a way of generating income and earning well-needed foreign exchange. For instance, countries could follow in the footsteps of Kenya and Namibia by promoting eco-tourism. In Kenya, tourism⁹⁰ is recorded as being the country's largest foreign exchange earner. Through tourism, governments can inform their local populations that economic gains can only be achieved by preservation of endangered species, rather than by killing off species.

Income might also be generated through taxation in the context of endangered species. Companies responsible for depleting plant and animal resources in endangered species

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SOCIAL PROBLEMS

Many countries in the African region are faced with unprecedented development and population pressures. In fact, most countries in the Sub-Saharan region expect their populations to double within the next couple decades. Thus, it becomes difficult to balance the management of population growth of both humans and plant or animal species.

PART THREE: RECOMMENDATIONS AND PROPOSALS

To ensure compliance with CITES, it is imperative that State Parties address the fundamental problems that have impeded the adequate implementation of the Convention into their domestic legislation. The international community must realize that the answer to implementation does not lie in accession to the Convention alone. It also lies in the implementation of infrastructure support systems. To this end, it is suggested that the following measures, where applicable, be invoked to guarantee not only full compliance with CITES, but also to ensure species preservation. The guiding principle of any measure that is implemented must be the ability to comply with such a measure.

FLEXIBILITY OF THE CONVENTION

Even though the flexibility of the Convention has contributed to non-compliance, no amendments should be made.⁸⁸ One of the main arguments often used to support amendments is that the provisions of the Convention are outdated. However, the basic struc-

ture should be taxed accordingly. In Ghana, environmental taxation exists whereby companies that pollute or deplete the environment, such as mining, bauxite, and timber companies, are directly taxed. Additionally, there is indirect taxation, where companies must replant trees felled during their operations or build community facilities such as hospitals, clinics, and markets for the local communities.

To address the lack of human resources, governments ought to encourage NGO participation in their initiatives.⁹¹ Many NGOs have professionals well-versed in relevant environmental issues who can play an important role in disseminating information. Basically, governments must enhance cooperation with NGOs and other major groups needed to work as social partners for sustainable development.

Also, governments may sponsor regional and sub-regional workshops that aim to share information about best management practices,⁹² develop national legislation and regulations, train customs officials, police the enforcement methods of government entities and civil society groups (for example, the Green Advocates in Liberia⁹³), and also utilize training programs through organizations such as the International Network for Environmental Compliance and Enforcement (“INECE”).⁹⁴

LACK OF POLITICAL WILL

Many African countries are now attempting to address some of the root causes of environmental degradation through initiatives such as the New Partnership for Africa's

Development (“NEPAD”).⁹⁵ The NEPAD emphasizes good governance with reference to environmental obligations. Although not yet in force, the NEPAD⁹⁶ proposes to deal with the issue of the environment under eight different priority areas: (1) desertification; (2) wetland conservation; (3) invasive alien species; (4) coastal management; (5) global warming; (6) cross-border partnerships; (7) environmental governance; and (8) finance from different angles.

However, markedly absent from NEPAD is any reference to preservation of endangered species. While this issue may be covered under “wetland conservation” or perhaps “cross-border partnerships”, the wording of the provisions do not place suffi-

“In Kenya . . . the imposition of criminal sanctions led to a marked decrease in illicit trade and an increased number of persons arrested for violations of the Convention.”

cient emphasis on endangered species. Therefore, endangered species preservation ought to be included as the ninth area of priority intervention in the region. Indeed, African leaders can show true quality of leadership by promoting mandates that support environmental sustainability in all its various facets.⁹⁷

Monitoring institutions must also be developed. In fact, it is well documented that environmental agreements work best when they are supported by a strong monitoring component.⁹⁸ There are clear examples of the effectiveness of CITES when supported by governmental initiatives.⁹⁹ For example, South Africa and Zimbabwe conduct culling programs aimed at maintaining their elephant populations at a level¹⁰⁰ the available habitat can support.¹⁰¹ By far the greatest threat to elephant populations is poaching.¹⁰² As a result, on June 30 1989, when Tanzania banned elephant¹⁰³ hunting by its citizens, the government made it clear that illegal trade activities would not be tolerated. This contributed significantly to curtailing the trade in elephants. For successful enforcement of CITES, one of the first measures is for governments to take a strong stance against illicit trade in endangered species.

Social Problems

It is necessary that education be placed at the forefront of any CITES initiative. This includes education of enforcement

agents, but also of local populations. This will inevitably be an essential component of the process of curtailing illicit trade.

Another social measure that could be used is the imposition of criminal sanctions to enforce trade issues. In Kenya, for example, the imposition of criminal sanctions led to a marked decrease in illicit trade and an increased number of persons arrested for violations of the Convention. Also, arrests and indictment for illicit trade will act as a deterrent to smugglers. It is only when the illegal trade is sanctioned¹⁰⁴ that States can ensure high levels of compliance. In so doing, governments will be sending a clear signal to violators that they are serious about controlling the trade in endangered species.¹⁰⁵

Another way in which State Parties can ensure compliance with CITES is by reviewing current legislation on environment and development to ensure that it addresses present day realities.¹⁰⁶ National conservation legislation should incorporate creative tools and strategies in achieving sustainable legal wildlife trade¹⁰⁷ (for instance, through the use of incentives and the involvement of communities in biodiversity management).¹⁰⁸

Finally, an effective way of dealing with non-compliance might be the use of trade sanctions.¹⁰⁹ Since 1985, three African countries have been subject to these sanctions. In 2001, Congo was under scrutiny for alleged permit fraud. Rebels were discovered to have issued false CITES documents, which were then used to transport chimpanzees across borders. The chimpanzees were listed on Appendix 2, and as a result, were not to be traded. Congo has not yet complied. However, the other two cases have been successful. In Equatorial Guinea, even though it was not a member of CITES, the Secretariat urged Parties to the Convention to ban all trade in CITES species with the country in 1988. In 1992, Equatorial Guinea acceded to the Convention and the ban was subsequently lifted.¹¹⁰ In 1999, Senegal was also subjected to a trade sanction. In 2000, this too was lifted.

PART FOUR: CONCLUSION

Even though many countries have acceded to the Convention, implementation of the CITES provisions in the domestic legislation of countries in the African region is lacking. Even though this treaty was ratified by some of these countries more than twenty years ago, governments today still require assistance in the implementation of the provisions of the Convention. These countries’ accession to the Convention may seem progressive, but upon closer examination, the converse is true. Even where domestic legislation is in place, there may not necessarily be compliance and enforcement.

This study is in no way conclusive. Some of the many issues that still need to be addressed are: (1) what laws have been put in place in Category 1 countries in Africa; (2) the types of enforcement mechanisms utilized in countries; (3) the effectiveness of the enforcement mechanisms; (4) whether legal strategies, such as taxation, can be deployed to assist with a more effective implementation of the CITES Convention; and (5) what mechanisms ought to be used to monitor the effectiveness of CITES. 

ENDNOTES: CITES in Africa

- ¹ See Geographic Map of Africa on p.3b for countries of the Continent.
- ² Telephone Interview with Erin Heskett, IFAW (May 20, 2003).
- ³ See Peter H. Sand, *Transnational Environmental Law: Lessons in Global Change* 237 (1999), available at <http://www.jura.unimuenchen.de/tel/materials/cactus.html> [hereinafter Sand].
- ⁴ See the Secretariat's website at <http://www.cites.org> (last visited Aug. 8, 2003), (providing official documents on CITES as well as background information on the Convention).
- ⁵ The Convention was signed on March 3, 1973 and entered into force on July 1, 1975. For the full text of the Convention, see the Secretariat's website at <http://www.cites.org/eng/disc/text.shtml> (last visited Aug.8, 2003). Also available at 993 UNTS 243-438 (1976).
- ⁶ For a list of all contracting parties, see <http://www.cites.org/eng/parties/alphabet.shtml> (last visited Apr. 18, 2003).
- ⁷ For a detailed analysis of the Convention, see Simon Lyster, *International Wildlife Law* 239-277 (1985).
- ⁸ See Elizabeth N. Layne, *Eighty Nations Write Magna Carta for Wildlife*, 75(3) AUDUBON MAGAZINE, 1973, at 99.
- ⁹ For links to other Multilateral Environment Agreements dealing with wildlife, see <http://www.law-lib.utoronto.ca/resguide/global/compliance%20WSSD.htm> (last visited July 9, 2003).
- ¹⁰ For a brief overview of the history of CITES, see *In 2003, 30 Years of International Agreement*, OFFICIAL NEWSLETTER OF THE PARTIES SPECIAL EDITION, March 3 2003, at 2, available at <http://www.cites.org/eng/news/world/30special.pdf> (last visited Aug. 8,2003) -
- ¹¹ One of the main bases for the development of CITES was a general acknowledgement and recognition by States that several species faced extinction. See Wayne F. King, *The Wildlife Trade in Wildlife and America: Contributions to an Understanding of American Wildlife and Its Conservation* (1978).
- ¹² See K.D. Hill, *The Convention on International Trade in Endangered Species: Fifteen Years Later*, 13 LOY. L.A. INT'L & COMP. L. REV. 231, 245 (1990), (noting that CITES created a trade instrument as well as a conservation document).
- ¹³ For more information on the system adopted by CITES as well as the scope of the Convention, see the Yearbook of International co-operation on Environment and Development's website at <http://www.greenyearbook.org/agree/nat-con/cites.htm> (last visited Aug. 3, 2003).
- ¹⁴ "CITES acts as the ultimate traffic cop, deciding when international trade in certain species, whether the African elephant, jaguar, or exotic birds, can continue unimpeded, when it must slow, and when it must stop entirely to avoid the tragedy of extinction." Ginette Hemley, *International Wildlife Trade-A CITES Sourcebook IX* (1994).
- ¹⁵ For a list of the appendices as well as the species listed in each appen19dix, see at <http://www.cites.org/eng/append> (last visited Aug.3, 2003). .
- ¹⁶ Sand, *supra* note 3, at 237, (arguing that the approach adopted by CITES in the protection of endangered species is "an unprecedented new approach to co-operation between governments and non-governmental organizations").
- ¹⁷ CITES, March 3, 1973, art. II, app. 1.
- ¹⁸ *Id.* at art. II, app. 2.
- ¹⁹ *Id.*
- ²⁰ *Id.* at art. III.
- ²¹ For further information on CITES regulation, see the website of the US NGO, Care for the Wild at <http://www.careforthewildus.org/news/cites.html> (last visited Mar. 30,2003) -
- ²² CITES, *supra* note 4, art. V.
- ²³ For further information on the measures States must adopt as well as information on the nature of the treaty, see Rosalind Reeve, *Policing International Trade in Endangered Species – The CITES Treaty and Compliance* (2002) [hereinafter Reeve].
- ²⁴ See COP 12, Nov. 13-15, 2002, Doc.28 at 1, available at <http://www.cites.org/eng/cop/12/doc/E12-28.pdf>.
- ²⁵ Reeve, *supra* note 23.
- ²⁶ For an explanation of the basic requirements of these criteria, see COP 12, *supra* note 24, para. 2, p. 1.
- ²⁷ *Id.*
- ²⁸ The legal basis for this requirement is obtained from the provisions of arts. II, III, IV, V, VI and VII.
- ²⁹ Art.VIII(1)(a) provides the mandate to do this.
- ³⁰ For a discussion on the position in South Africa dealing with whether domestic legislation facilitates implementation, see *Notes on the Basic Requirements South Africa Will Have to Face in Revising Its Insufficient CITES Permit Support System*, available at http://www.wag.co.za/wag_news_rel/notes_on_basic_requirements.html.
- ³¹ The legal basis for this requirement is obtained from art. VIII(1)(b).
- ³² David .S. Favre, *International Trade in Endangered Species: A Guide to CITES* 276 (1989).
- ³³ In fact, as far back as 1986, the World Wildlife Fund described CITES as "perhaps the most effective conservation treaty in existence." *Worldwildlife Fund Factsheet: Cites*, (World Wildlife Fund, Gland, Switzerland), Dec. 1986. However, see Mark Trexler et al., *The Convention on International Trade in Endangered Species: No Carrot, but Where's the Stick?*, 17 ENVTL. L. REP. 10, 222 (1987).
- ³⁴ For a discussion on the success of Multilateral Environment Agreements, see "Do International Conventions Work? The CITES Debate Rages On" at http://www.wildnetafarica.com/CITES/info/iss_014_debate_05.htm (last visited Mar. 30, 2003).
- ³⁵ For more information on implementation, see *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (David G.Victor et al.eds., 1999) -
- ³⁶ See 'Regional Reports: Africa', CITES AC 18 Doc.5.1. (Rev.1), documented for A.C. 18 (Apr.2002).
- ³⁷ For a list of the countries, see *supra* note 32, at app. 2.
- ³⁸ *Id.*
- ³⁹ For example Algeria in 1984, Ghana in 1976, Liberia in 1981, Morocco in 1976 and Mozambique in 1981.
- ⁴⁰ For more information on the MIKE system, see <http://www.cites.org/eng/prog/MIKE/index.shtml> (last visited Apr. 5, 2004)-
- ⁴¹ MIKE and ETIS systems are the basis upon which CITES parties make any decisions regarding elephant species.
- ⁴² Kal Raustiala, *Reporting and Review of Institutions in 10 Multilateral Environmental Agreements* 84 (UNEP 2001), (providing more information on how MIKE works) [hereinafter Raustiala]
- ⁴³ *Id.* at 88.
- ⁴⁴ See *Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora: Lusaka Final Act* (UNEP 1994).

- ⁴⁵ *Id.* at 236 for a detailed analysis of the Lusaka Agreement.
- ⁴⁶ Other signatories are Uganda, Kenya, Lesotho, Tanzania, Zambia, Ethiopia, South Africa, and Swaziland.
- ⁴⁷ The members of SADC are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- ⁴⁸ CITES Doc.SC.41.6.1. (Rev.) Annex 2, report of the Secretariat's Mission to Verify Compliance with Decision 10.1, Part A by Botswana, Japan, Namibia and Zimbabwe', SC 41 (Feb 1999).
- ⁴⁹ Fifth International Conference on Environmental Compliance 439 (November 16-20, 1998) (suggesting the possibility of direct implementation of environmental agreements to ensure compliance).
- ⁵⁰ *Enhancing Compliance and Strengthening Enforcement of Multilateral Environmental Agreements (MEAs)*, Backgrounder on the Johannesburg Summit 2002 Call to Action, (CIEL, Washington, DC), Feb. 21, 2002 at http://www.ciel.org/Tae/Johannesburg_Call_Back2.html (last visited Aug. 4, 2003).
- ⁵¹ Telephone Interview with Carroll Muffett, Director of International Programs, Defenders of Wildlife (June 5, 2003).
- ⁵² Transparency International produced the report. Corruption is defined by the organization as the misuse of entrusted power for private gain. The definition encapsulates both public and private sector corruption, at both petty and grand levels, available at [http://www.globalcorruptionreport.org/download/gcr2003/20_West_Africa_\(Alabi\).pdf](http://www.globalcorruptionreport.org/download/gcr2003/20_West_Africa_(Alabi).pdf) (last visited Aug.12, 2003).
- ⁵³ For a controversial article speaking about UN officials and government officials being major buyers and traffickers of African ivory, see <http://www.kws.org/ivorytrade.htm> (last visited March 30, 2003).
- ⁵⁴ For more information on research currently being done on the precautionary approach and how it ought to be applied in the context of MEAs, see the Joint Initiative of Fauna and Flora International, Resource Africa, IUCN Species Program, Environmental Law Centre, Regional Office for South Africa and TRAFFIC, at http://www.fauna-flora.org/presss_pub/news_detail.asp?news_id=27 (last visited July 13,2003), for more information, see at <http://www.pprinciple.net> (last visited July 13, 2003).
- ⁵⁵ In recent times, the WTO has stipulated that the precautionary principle is trade restrictive and thus the use of that mechanism can be challenged. See *Trade, Environment and Sustainable Development: Views from Sub-Saharan Africa and Latin America* (Peider Konz et al eds. 1999).
- ⁵⁶ See Susan Wolf and A. White, *Principles of Environmental Law* 17 (Susan Wolf et al. eds., 1997).
- ⁵⁷ See David Hunter, James Salzman, and Durwood Zaelke, *International Environmental Law and Policy* 405 (2d ed. 2002), for further discussion on the precautionary principle. (*Secondary Source*) [hereinafter *Hunter*].
- ⁵⁸ *Wolf, supra* note 56 at 233, (discussing the preventive principle and an explanation of the preventive approaches to pollution adopted in the United Kingdom).
- ⁵⁹ See CITES Resolution Conf. 10.3/11.3 (emphasizing the importance of the precautionary principle).
- ⁶⁰ See Antonio Chayes et al., *On Compliance*, 47 INT'L ORG. 175 (1993), (examining the issues of tolerance and what may be considered to be acceptable compliance levels).
- ⁶¹ *Sand, supra* note 3.
- ⁶² *Id.* Sand notes that in practice, knowledgeable observers believe that they often are used simply for temporary administrative reasons.
- ⁶³ *Id.*
- ⁶⁴ *Id.*
- ⁶⁵ Martjin Wilder, *Quota Systems in International Wildlife and Fisheries Regime*, 4 J. ENV'T & DEV. 55, 60-69 (1994).
- ⁶⁶ For a discussion on down-listing and how it affects species preservation, see Whales and CITES at Greenpeace Digital at <http://www.greenpeace.org.uk> (last visited July 23,2003) -
- ⁶⁷ For further information on COP 10, see <http://www.animalsagenda.org> (last visited July 23, 2003).
- ⁶⁸ These countries argued that their elephant populations were growing, and there was insignificant poaching in their countries. They also noted that they had the means to ensure conservation. See at <http://www.careforwildus.org/news/CITES/cites.html> (last visited July 23, 2003).
- ⁶⁹ It is estimated that global trade in crocodilian skins (listed in appendix 2) is in excess of \$200 million per year. See World Wildlife website at http://www.worldwildlife.org/pdfs/mahogany_ceritification_study.pdf (last visited July 23,2003)-
- ⁷⁰ It is estimated that wildlife and fish contribute a minimum of 20% of the rural diets worldwide. In West Africa, it is estimated that about 25% of protein requirements are attained from wild meat. In Liberia, about 75% of the country's meat is from wild animals. Elizabeth L. Bennett et al., *Hunting of Wildlife in Tropical Forests* (WORLD BANK Paper No.76, September 2000).
- ⁷¹ Rob Barnett, *Food for Thought: the Utilization of Wild Meat in Eastern and Southern Africa* (TRAFFIC East/Southern Africa, 2000), at <http://www.traffic.org/bushsmeat> (last visited Aug. 4, 2003).
- ⁷² For example, in the United States, several domestic laws impose stricter measures than CITES. These laws include the Endangered Species Act (ESA), the African Elephant Conservation Act, Eagle Protection Act, Wild Bird Conservation Act, Migratory Bird Treaty Act, Rhinoceros and Tiger Conservation Act. A fine example of the imposition of stricter domestic measures occurred when the US banned the importation of the Nile crocodile under the ESA even though it was down listed to Appendix 11 of CITES.
- ⁷³ Telephone Interview with Carroll Muffett, Director of International Programs, Defenders of Wildlife (June 5, 2003).
- ⁷⁴ Telephone Interview with Chris Wold, Louis and Clark University (May 20, 2003).
- ⁷⁵ For more on the situation in Zambia and the Zambian government's proposition to 'hold a one-off sale of its 17-ton ivory stockpile accumulated from poachers or culled elephants', see at http://www.production.enn.com/news/wirestories/2002/05/05092002/reu_47166.asp (last visited Aug.3, 2003).
- ⁷⁶ Essmond Martin, *The South and South East Asian Ivory Markets in Illegal Ivory Export Goes To Asia*, available at http://www.afrol.com/News2002/afr006_ivory_trade.htm (last visited Jan. 3, 2003), (noting that tourists "are the main buyers of worked ivory").
- ⁷⁷ The U.S. Customs Agency notes that wildlife trafficking is as profitable as drug trading, see at <http://www.awionline.org/wildlife/aa-cites.htm> (last visited Aug. 4, 2003).
- ⁷⁸ For information on U.S. support of the sale of stock piles of ivory from Namibia, Botswana, and South Africa to the exclusion of Zambia and Zimbabwe, see the East African publication at <http://www.nationaudio.com/News/EastAfrican/25112002/Regional/Regional2.html> (last visited Aug. 4, 2003).
- ⁷⁹ See at <http://www.nationaudio.com/News/DailyNation/09032000/Features/Horizon3.html> (last visited Aug. 4, 2003).
- ⁸⁰ See at <http://www.careforwildus.org/news/CITES/cites.html> (last visited Mar. 4, 2003).
- ⁸¹ See *Henley, supra* note 14 at 55, (noting that the estimated minimum declared value for international wildlife trade is about \$10 billion annually).
- ⁸² See at <http://www.riia.org/pdf/research/africa/Africa%20BP02.pdf> (last visited Aug. 3, 2003).
- ⁸³ Carl Quaye, *President Kuffuor and The Search for Peace*, WEST AFRICA MAGAZINE, June 9-15, 2003 at 6, (addressing the issue of the conflicts in

Liberia and Cote D'Ivoire and how the Ghanaian President is playing a leading role in the quest for peace).

⁸⁴ War is also prevalent in countries such as the Democratic Republic of the Congo. For more information, see Guy Arnold, *Endless Crisis*, WEST AFRICA MAGAZINE, June 9-15, 2003 at 18, (examining Western and African responses to fighting in that country).

⁸⁵ Issaka K. Souare, *Abuse of Power in Africa*, WEST AFRICA MAGAZINE, June 9-15, 2003 at 18.

⁸⁶ Derek de la Harpe, *African Attitudes Towards CITES: A Look at One Factor Behind the Diversity of Opinion*, available at http://www.wildnetafrika.com/cites/info/vfs_essay_002.html (last visited March 30, 2003).

⁸⁷ Markus Burgener, *Nature Conservation Legislation Reviewed in South Africa*, DISPATCHES, July 2001, available at <http://www.traffic.org/dispatches/salaw.html> (last visited May 29, 2003).

⁸⁸ This is in contrast to the proposition by Peter H. Sand who provides a pessimistic outlook on the future of CITES. He believes that the Convention may already have reached its outer limits and that its relevance may be diminished unless new methods of regulation can be developed. Compare Peter H. Sand, *Commodity or Taboo? International Regulation of Trade in Endangered Species*, GREEN GLOBE YEARBOOK OF INTERNATIONAL CO-OPERATION ON ENVIRONMENT AND DEVELOPMENT 19-36 (Olav Schram Stokke et. al. eds., 1997), available at http://www.greenyearbook.org/articles/97_01_sand.pdf (last visited Aug 4, 2003) .

⁸⁹ See John Whitfield, *CITES Comes of Age*, NATURE, Nov. 19, 2002, available at <http://www.nature.com/nsu/021118/021118-3.htm> (last visited Aug. 4, 2003), (noting that the approaches to the Convention in recent times are quite progressive and have influenced the willingness to apply CITES to 'truly commercial species' as opposed to previous thinking which was to only apply the Convention to rare plants and animals).

⁹⁰ *International Expeditions*, ENVIRONS 2002-2003, at 90-102, for information on tourism in Africa.

⁹¹ Hunter et al., *supra* note 57 at 1022.

⁹² For example like the weeklong workshop which ended on August 19³, in Anguilla. There, enforcement agencies in the United Kingdom Overseas Territories (OTs) in the Caribbean were informed about ways to combat illegal wildlife trade in the region. See at http://www.traffic.org/news/cites_uk.html (last visited Aug 3, 2003).

⁹³ 'Green Advocates' is an association of Liberian lawyers dedicated to promoting environmental sustainability through education, legislation and the rule of law. For more information on the work that Green Advocates is embarking upon, see, Alfred Brownell, *Green Advocates in Liberia*, TUL. ENVTL L. NEWS, Fall 2000, at 8.

⁹⁴ INECE is an international partnership that specializes in the promotion of compliance and enforcement of domestic and international environmental laws through networking, capacity building, and enforcement cooperation. INECE's partner institutions include the US EPA, UNEP, the World Bank, OECD and the EU. See at <http://www.inece.org> (last visited Aug 3, 2003).

⁹⁵ For information on this initiative, visit the NEPAD website at <http://www.nepad.org> (last visited Aug.13, 2003).

⁹⁶ See at http://www.riia.org/login_popup.php?page=International%20Affairs&fwd=http://www.riia.org/pdf/int_affairs/INTA261.pdf&fwdID (last visited Aug. 3rd, 2003) .

⁹⁷ INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT: PAST ACHIEVEMENTS AND FUTURE CHALLENGES (David Freestone & Alan Boyle eds., 1999).

⁹⁸ Raustiala, *supra* note 42.

⁹⁹ Telephone Interview with Chris Wold, Louis and Clark University (May 20, 2003).

¹⁰⁰ Peter Fitzmaurice, *Saving the Elephant: Nature's Great Masterpiece*, THE ECONOMIST, July 1, 1989, at 15.

¹⁰¹ Michael J. Glennon, *Has International Trade Failed the Elephant?* 84 AM. J. INT'L L. at 2 (1990).

¹⁰² R. Yaeger & N. Miller, *Wildlife, Wild Death: Land Use and Survival in Eastern Africa* (1986).

¹⁰³ For a perspective on the preservation of endangered species for the well being of the community, see S. Fitzgerald, *International Wildlife Trade: Whose Business Is It?* (World Wildlife Fund: Washington, DC), 1989, at 5-12.

¹⁰⁴ For example, the sanction against Thailand in 1991-1992. CITES secretariat, *Notifications to the Parties* No.636 of 22 April 1991 (ban recommended) and 673 of 2 April 1992 (ban lifted). This ban was implanted by the USA by virtue of a unilateral decision to ban wildlife imports from Thailand; US *Federal Register* 56,32206. Also the ban against Italy in 1992-93. CITES Secretariat, *Notifications to the Parties* No.675 of 30 June 1992 (ban recommended), No.722 of 19 February 1993 (ban suspended), and No.842 of 18 April 1995 (ban lifted). See also T. Scovazzi, *Two Italian Judgments Relating to the Implementation of Environmental Conventions*, 5 EUR. ENVTL. L. REV. 315 (1996).

¹⁰⁵ S. Patel, *the Convention on International Trade in Endangered Species: Enforcement and the Last Unicorn*, 18 Hous. J. INT'L L. 157 at 97-99 (1995). See also A. F. Upton, *the Big Green Stick: Reducing International Environmental Degradation Through US Trade Sanction*, 22 B.C. ENVTL. AFF. L. REV. 671, 671-692 (1995).

¹⁰⁶ See at <http://www.ecouncil.ac.cr/rio/natreg/afmidea/english/gha.htm> (last visited Aug. 9, 2003).

¹⁰⁷ See at <http://www.natureserve.org/conservation/endangeredSpecies.jsp> (last visited Aug. 3, 2003).

¹⁰⁸ Markus Burgener, *Nature Conservation Legislation Reviewed In South Africa*, available at <http://www.traffic.org/dispatches/salaw.html>.

¹⁰⁹ COP-11 adopted the following decision in 2001. "Parties should not authorize any trade in specimens of CITES- listed species with any party that the Standing Committee has determined has failed, without having provided adequate justification, to provide annual reports for three consecutive years. CITES Decision 11.37

¹¹⁰ Steve Charnovitz, *Encouraging Environmental Cooperation Through the Pelly Amendment*, 3 J. ENV'T DEV. 4 (1994).