

# Enhancing the International Regime for Protecting Endangered Species: the Example of CITES

Rosalind Reeve\*

*There was a time when the hunter killed only for his life and food, when wild animals were driven from one area into another instead of being shot or poisoned. Now there are few places left to drive the game. Only 50 years ago man had to be protected from the beasts; today the beasts must somehow be protected from man.<sup>1</sup>*

## I. An Overview of the Outcome of WSSD for Endangered Species

The World Summit on Sustainable Development (WSSD) was profoundly disappointing for endangered species, providing no tangible results to help secure their future. The Johannesburg Declaration and the Plan of Implementation that emerged from negotiations are more notable for their omissions than their commitments to enhancing the international regime for protecting wild fauna and flora. There are no timetables and targets aimed specifically at endangered species protection, and no new funds are committed or accessed. Attention in this context is focused on the 1992 Convention on Biological Diversity (CBD). The Plan of Implementation affirms the CBD as the “key instrument for the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from genetic resources”.<sup>2</sup> Meanwhile the older and more specialised global conventions, notably the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1972 Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention) and the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS), receive barely a mention.

CITES, despite its long-standing recognition as the flagship wildlife agreement, is accorded one brief reference in the Johannesburg Plan of Implementation, and then only in the context of a general commitment to support the conservation of Africa’s biological diversity.<sup>3</sup> The World Heritage Convention merits a more specific commitment to “Promote concrete international support and partnership for the conservation and sustainable use of biological diversity, including ecosystems,

---

\* Dr., PhD; Associate Fellow of the Royal Institute of International Affairs; consultant on biodiversity issues, wildlife trade, conflict timber and compliance systems in international environmental law.

<sup>1</sup> Peter Beard, *The End of the Game* (1963).

<sup>2</sup> Para. 42.

<sup>3</sup> Para. 64(e).

at World Heritage sites and for the protection of endangered species, in particular through the appropriate channelling of financial resources and technology to developing countries and countries with economies in transition".<sup>4</sup> The mechanism for achieving the channelling of resources, however, is unclear. The CMS is not mentioned at all in either the Johannesburg Declaration or the Implementation Plan. This omission provides support for the CMS Secretariat's observation that "the creation of more comprehensive global conventions focussing on both environment and development with their powerful funding mechanisms has distracted attention away from the traditional specialised treaties".<sup>5</sup>

The dramatic loss of Earth's biological diversity – the variety of all living organisms in terrestrial and aquatic ecosystems – in recent decades is well documented. It is generally recognised that the Earth is currently experiencing mass extinction on a scale potentially akin to the disappearance of the dinosaurs. Wild species face many threats, most attributable to human activity. Destruction of natural habitats is recognised as the greatest threat. Others include the introduction of alien invasive species, pollution, industrial agriculture and over-exploitation through domestic commercial use and international trade, not to mention climate change and ozone depletion. In its most recent state of the environment report, GEO-3, the United Nations Environment Programme (UNEP) states that 24% of all mammals (1,130 species), 12% of birds (1,183 species) and 5,611 species of plants are currently regarded as globally threatened. The true figure for plants is probably higher since only 4% of known plant species have been properly evaluated.<sup>6</sup> In Africa, increased demand for bushmeat, not only for subsistence use but also consumption in restaurants and abroad, has now become one of the main factors driving declines in populations of wild fauna.<sup>7</sup>

Yet while the fact of biodiversity loss is recognised and reiterated in the Johannesburg documents, the response is patently inadequate to reverse the decline. Even the CBD receives little in the way of concrete targets, timetables and additional funding. The Implementation Plan states that "A more efficient and coherent implementation of the three objectives of the Convention and the achievement by 2010 of a significant reduction in the current rate of loss of biological diversity will require the provision of new and additional financial and technical resources to developing countries".<sup>8</sup> This ambiguous language, however, begs the question whether 2010 is a target or not, and whether the need for new resources is merely a statement or a commitment for their actual provision.

A notable omission from the outcome of the WSSD is any reference to wildlife crime, or indeed to environmental crime other than illegal international trade in

<sup>4</sup> Para. 42(f).

<sup>5</sup> "Guide to the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention)", CMS Secretariat (Jan 2002).

<sup>6</sup> *Global Environmental Outlook-3, GEO-3* (UNEP/Earthscan, 2002).

<sup>7</sup> Rob Barnett, *Food for Thought: the Utilization of Wild Meat in Eastern and Southern Africa* (TRAFFIC East/Southern Africa, 2000); <[www.traffic.org/bushmeat](http://www.traffic.org/bushmeat)>.

<sup>8</sup> Para. 42.

forest products. The Johannesburg Declaration lists among its “conditions that pose severe threats” to sustainable development illicit drug problems, illicit arms trafficking and trafficking in persons, but fails to include environmental crime. The total value of the illegal activities involved in international environmental crime may be in the order of \$ 20-40 billion a year, about 5-10% of the size of the global drugs trade.<sup>9</sup> In 1998, G8 environment ministers expressed “grave concern about the ever-growing evidence of violations of international environmental agreements, and particularly the involvement of international organised crime”. They went on to state that “This harms not only the global environment, but also the health and livelihoods of people in developed and developing countries alike.”<sup>10</sup> Yet four years later, a UNEP initiative resulting from the G8 meeting appears to have faltered, producing merely a set of non-binding guidelines that codify existing practice on compliance with and enforcement of multilateral environmental agreements (MEAs).<sup>11</sup> Meanwhile in Johannesburg environmental crime was almost completely overlooked. This serves to reinforce the conclusion reached by Brack and Hayman that “Compared to the war on drugs ... the resources and political will devoted to tackling international environmental crime are derisory – yet the problem threatens every citizen of the world, and undermines several key environmental treaties.”<sup>12</sup>

Another marked omission from the outcome of WSSD is any reference to the bushmeat crisis. The increasingly unsustainable and often illegal commercial trade in meat from wild animals for human consumption is clearly linked with poverty, one of the main themes of WSSD, and has major implications for public health, quite apart from the serious threat it poses to endangered species and ecosystems, notably in Africa. Zoonotic diseases (of animal origin) can jump from wildlife, particularly primates, to humans. A notorious example is the simian immunodeficiency virus (SIV), thought to be the cause of AIDS, while reports are beginning to connect consumption of non-human primates with outbreaks of the ebola virus.<sup>13</sup> The Implementation Plan exhorts the reduction of AIDS prevalence, strengthening of health systems and financial support for researching and controlling ebola, but no mention is made of potential links with bushmeat consumption. Commercial hunting for bushmeat has become the most immediate threat to the future of wildlife in the Congo Basin.<sup>14</sup> It is well documented that logging practices in West and Central Africa result in increased consumption of bushmeat within concession

<sup>9</sup> Duncan Brack/Gavin Hayman, *International Environmental Crime: the Nature and Control of Environmental Black Markets*, background paper for workshop at the Royal Institute of International Affairs (RIIA), 27-28 May 2002.

<sup>10</sup> Communiqué from G8 Ministers’ meeting, Leeds Castle, UK (3-5 Apr 1998).

<sup>11</sup> UNEP Governing Council Decision SS.VII/4 “Compliance with and enforcement of multilateral environmental agreements”, UNEP(DEPI)/MEAs/WG.1/3, annex II (Feb 2002).

<sup>12</sup> Brack/Hayman, *supra* note 9.

<sup>13</sup> Bushmeat Crisis Task Force (BCTF) Fact Sheet, “Health and Disease” (May 2000); news reports in February 2002 connecting an ebola outbreak in Gabon with consumption of gorilla meat.

<sup>14</sup> BCTF Fact Sheet, “The Bushmeat Crisis in West and Central Africa” (May 2002).

areas and facilitate the supply of bushmeat to urban markets through road construction.<sup>15</sup> Yet the Implementation Plan neglects to address the issue. Its strong language on sustainable forest management (in itself a controversial concept) omits any reference to links between logging and bushmeat consumption and fails to recommend wildlife protection measures in concession areas.

There are a few glimmers of light in the otherwise bleak WSSD landscape. The relatively strong promotion of sustainable tourism development, including non-consumptive and ecotourism, in the Implementation Plan could elicit some tangible benefits for endangered species, depending of course on how it is interpreted. Genuine ecotourism must produce positive benefits for wildlife, for example by setting aside conservation areas or enhancing protection of existing natural heritage and ecologically sensitive areas. This is recognised in the Plan, and action to promote ecotourism is laid out, including enhancing foreign direct investment, international cooperation and public/private partnerships, as well as developing education and training programmes and providing technical assistance to developing countries and countries with economies in transition.<sup>16</sup> No financial mechanism is specified to achieve this, but a likely way will be to enhance the flow of funds from the Global Environment Facility (GEF) through the International Finance Corporation, the investment arm of the World Bank and an executing agency of GEF.<sup>17</sup>

Another flicker of hope is a commitment to "promote and support initiatives for hot spot areas and other areas essential for biodiversity and promote the development of national and regional ecological networks and corridors".<sup>18</sup> Unfortunately, once again how this is to be achieved has been overlooked. Expanding wildlife habitat and providing dispersal areas through corridors and networks is essential for protection of endangered species but inevitably involves the potential for conflict over land use. One way to overcome this is to promote the conversion of use of prospective corridors and dispersal areas to ecotourism. The Implementation Plan makes the linkage between ecological networks and ecotourism in the context of Africa, supporting the establishment of national and cross-border conservation areas to promote ecosystem conservation and sustainable tourism.<sup>19</sup> But it fails to address how national governments could provide incentives for land owners to set aside conservation areas for ecotourism, for example through tax concessions and small enterprise grants.

The promotion of support for World Heritage sites is also encouraging, but whether it will result in tangible and adequate resources to secure protection of these areas is doubtful. The World Heritage Fund amounts to about US\$ 4 million per year. Any party may request assistance for a site on the World Heritage List or the subsidiary list of World Heritage in Danger. But with around 150 natural world heri-

---

<sup>15</sup> BCTF Fact Sheet, "The Role of the Logging Industry" (Apr 2000).

<sup>16</sup> Para. 41.

<sup>17</sup> See IFC website <[www.ifc.org/enviro/EPU/STourism](http://www.ifc.org/enviro/EPU/STourism)>.

<sup>18</sup> Para. 42(f) Johannesburg Implementation Plan.

<sup>19</sup> Para. 64(b).

tage sites designated around the world, and many more cultural sites, the amounts available per site are limited. Emergency requests up to US\$ 75,000 can be approved,<sup>20</sup> though normally about US\$ 20,000 can be expected. For a site like Garamba National Park in the Democratic Republic of Congo, on the Danger List because of conflict in the region, and which costs between US\$ 800,000 and US\$ 1 million a year to run properly, this is a drop in the bucket.<sup>21</sup> Contributions to the World Heritage Fund would need to be multiplied many times over to provide adequate resources just to support sites on the Danger List, a prospect that is far from realistic.

## II. CITES

The example of CITES, also known as the Washington Convention, will be used to illustrate what could and should have emerged from Johannesburg to strengthen the international regime for the protection of endangered species.<sup>22</sup> Although illegal and uncontrolled international trade is just one of the threats faced by endangered wildlife, it has led to drastic depletion of some species, and remains a serious threat demanding continued attention at an international level. Yet CITES, the Convention established to ensure that the threat does not lead to species extinction, is itself endangered – by lack of resources and political will to enable its full implementation and enforcement. WSSD has done nothing towards securing its future and strengthening the regime, and arguably through neglect could prove to have a negative effect on the Convention's evolution.

### 1. The Regime

CITES, having entered into force on 1 July 1975, has accumulated over a quarter of a century of experience during which a complex system of wildlife trade controls and means to induce compliance by parties has evolved. At its core is a list of over 30,000 species of fauna and flora divided into three appendices: Appendix I, a “black list” in which commercial trade is prohibited; Appendix II, a “grey list” of controlled species for which commercial trade is allowed subject to conditions; and Appendix III, which includes species listed unilaterally by parties. Over 25,000 listed species are plants and most are on Appendix II.<sup>23</sup>

---

<sup>20</sup> *Operational Guidelines for the Implementation of the World Heritage Convention*, UNESCO, WHC.02/ 2 Jul 2002.

<sup>21</sup> Kes Hillman Smith/Makuko Girineza, *The Role of World Heritage in Danger Listing in Promoting International Cooperation for the Conservation of World Natural Heritage: Lessons learned so far on the World Heritage Sites of the Democratic Republic of Congo*, WHC/IUCN Workshop, Amman, Jordan, 6-7 Oct 2000.

<sup>22</sup> For a more detailed view of CITES and recommendations for its future development, the reader is referred to Rosalind Reeve, *Policing International Trade in Endangered Species: the CITES Treaty and Compliance* (Earthscan / RIIA, 2002).

The primary mechanism to track CITES shipments is a scheme of permits and certificates issued by national authorities, the requirements for which vary for each Appendix.<sup>24</sup> Built into the scheme are exemptions, for example for “pre-Convention” specimens (acquired before CITES provisions applied) or for those bred on captivity or artificially propagated,<sup>25</sup> and special provisions developed after the treaty was signed, for example for trade in “ranchered” specimens and the system of export quotas. Since the treaty was concluded in 1973, a whole new body of rules has evolved by way of recommendations of the Conference of the Parties (COP) that has re-shaped the regime. These recommendations take the form of resolutions and revised resolutions that are meant to be of long term effect, supplemented by decisions that are generally valid from one meeting of the COP to the next.

Since CITES is a non-self-executing treaty, national legislation is required to implement several of its provisions. Parties are required to take measures to prohibit trade in specimens violating the Convention, and to provide for penalties for violations and for the confiscation of specimens.<sup>26</sup> Parties also have the right to adopt stricter domestic measures than those provided for in the Convention.<sup>27</sup> Meanwhile, trade with non-parties requires documentation “comparable” with CITES permits and certificates, issued by “competent authorities” in the non-party state.<sup>28</sup>

CITES provisions are implemented by a system of national and international institutions, some provided for in the treaty and some established later by resolution. At the national level, parties are required to designate Management Authorities to grant permits and certificates and to maintain records of trade, and Scientific Authorities to advise on whether trade will be detrimental to wild populations (the so-called non-detriment finding). At the international level, in addition to the governing COP provided for in the treaty, successive resolutions have established an executive Standing Committee composed mainly of regional representatives from Management Authorities that oversees operation of the Convention in between COP meetings, and three technical committees composed largely of scientists – the Animals, Plants and Nomenclature Committees.<sup>29</sup> At the centre of the system is a uniquely powerful Secretariat, provided by UNEP and based in Geneva. The basis for the Secretariat’s strength is a treaty mandate to make recommendations on implementation.<sup>30</sup> This recommendatory role, usually ascribed to bodies of party representatives, is unusual among MEAs. It has been pushed to a level of involvement rarely witnessed in international fora, and is a source not only of strength but

---

<sup>23</sup> For Appendices I-III, see <[www.cites.org/eng/append](http://www.cites.org/eng/append)>. The current list is valid from 13 February 2003.

<sup>24</sup> Articles III, IV and V; CITES Resolution Conf. 12.3 “Permits and Certificates”.

<sup>25</sup> Article VII.

<sup>26</sup> Articles II.4 and VIII.1.

<sup>27</sup> Article XIV.1.

<sup>28</sup> Article X.

<sup>29</sup> Resolution Conf. 11.1 (Rev. COP12) “Establishment of Committees” <[www.cites.org/eng/resols/11](http://www.cites.org/eng/resols/11)>.

<sup>30</sup> Article XII.

also of controversy within the CITES regime, an issue which will be discussed further below. Another unusual feature is the strong role played by certain non-governmental organisations (NGOs) in the functioning of the Secretariat, notably IUCN (the World Conservation Union) and TRAFFIC (Trade Records Analysis of Fauna and Flora in Commerce), a joint programme of IUCN and WWF (World Wide Fund for Nature).

To ensure compliance with its rules by the 162 parties to CITES,<sup>31</sup> a complex and multi-faceted system has evolved. It can be broken down into three sub-systems: the primary rule system, the compliance information system, and the non-compliance response system.<sup>32</sup> Given that primary rules have already been described, albeit briefly, attention will be devoted in the following paragraphs to the information system and non-compliance response.

Information gathering under CITES is largely dependent on annual national reports of trade data, which are compiled into a database maintained by the World Conservation Monitoring Centre (UNEP-WCMC) based in Cambridge, UK. Parties are also required to report biennially on legislative, regulatory and administrative measures to enforce the Convention, but this requirement has not been implemented and remains largely moribund. Supplementing the trade database is information from NGOs. Cooperation with the TRAFFIC network provides an ongoing source of information, while IUCN and TRAFFIC are frequently contracted to conduct reviews of selected species and their trade. Other NGOs such as the Species Survival Network and its members provide information on an *ad hoc* basis, though their relationship with the Secretariat is more distant.

Parties are also supposed to provide the Secretariat with information on illegal trade, convicted traders and persistent offenders, though many fail to do so. This information used to be compiled into a publicly available infractions report produced for each COP meeting (every two and a half years), but in 2000 this was abolished by the Secretariat in favour of a computerised system, the Trade Infraction and Global Enforcement Recording System (TIGERS). Access to the database is restricted to parties on request. The system is supplemented with CITES Alerts on specific issues of concern, but distribution is restricted to specified governmental and intergovernmental agencies. Thus, while information processing and distribution may have become more efficient and targeted, it has led to the curtailment of public access to information and the loss of useful tool through publication of parties' infractions and involvement in illegal trade.

Given the controversy surrounding the ivory trade in CITES, a special system is being developed to provide information on elephants. It consists of an Elephant Trade Information System (ETIS) and a programme for Monitoring Illegal Killing of Elephants (MIKE). In essence ETIS is a database of seizures of elephant pro-

---

<sup>31</sup> Syria has just become the 162<sup>nd</sup> party.

<sup>32</sup> For definitions and discussion see Ronald B. Mitchell, "Compliance Theory: An Overview" in James Cameron/Jacob Werksman/Peter Roderick (eds.), *Improving Compliance with International Environmental Law* (Earthscan, 1996), at 17, and Re e v e, *supra* note 22, chapter 2.

ducts reported by parties and maintained by TRAFFIC, while MIKE, still in the developmental stages, is a sophisticated system managed by the Secretariat to monitor elephant populations, illegal hunting and other threats at selected sites in Africa and Asia. The original purpose of the system was to monitor the effects of CITES decisions concerning elephants and to establish whether a resumption of the ivory trade would cause an increase in poaching, but it has since been recognised that the most that can be achieved is to establish correlations between decisions and events in the field. Nevertheless, large amounts of funds are being devoted to establishing MIKE (over US\$ 3 million for 2001-2003<sup>33</sup>), with the rationale that polarised opinion on the ivory trade threatens the Convention predicating the need for decision-making on the basis of the best possible information.

The CITES information system is supplemented by *ad hoc* in-country missions, conducted by the Secretariat with the consent of the party concerned. Their purpose may be to verify compliance in problem parties, to provide technical assistance such as drafting legislation, to review controls on trade in specific species at risk such as the tiger technical missions between 1998 and 1999, or to verify specific events such as the ivory sales from southern African countries to Japan in 1999.

The CITES non-compliance response system has evolved over several years through COP resolutions and practice. The system uses “carrots” (but to a limited extent due to funding constrictions) strongly backed by “sticks” in the form of recommended trade restrictions. Two types of this mixed response can be identified: “country-specific” and “species-specific”. Within “country-specific” response further distinctions can be made between a basic procedure elaborated in 1989 for problem parties experiencing major problems with implementation of the Convention overall and other procedures that have evolved to address non-compliance by parties in relation to specific issues, notably lack of national implementing legislation, non-submission of annual reports, and non-designation of Scientific Authorities. Within “species-specific” response a distinction can be made between the review mechanism that has evolved for significantly traded Appendix II species, and *ad hoc* responses that have been instigated for high profile Appendix I species such as the tiger and rhinoceros.

The procedure in place since 1989 to deal with parties experiencing major implementation problems provides for due notice to the non-compliant party, time to respond in cases of an alleged infraction, the provision of advice and technical assistance by the Secretariat, and notification to parties and the COP. It also mandates the Standing Committee to pursue the matter with the party concerned and “find a solution”.<sup>34</sup> The procedure does not, however, specify the measures to be taken in cases of non-compliance. Instead, these have evolved through practice, and include:

- provision of security paper for permits and certificates by the Secretariat;
- requirement that the Secretariat confirms permits for a period of time;

<sup>33</sup> CITES CoP12 Doc. 34.2, “Illegal Killing of Elephants” (Nov 2002), see website <[www.cites.org](http://www.cites.org)> for CITES documents.

<sup>34</sup> CITES Resolution Conf. 11.3, “Compliance and Enforcement”, <[www.cites.org/eng/resols/11](http://www.cites.org/eng/resols/11)>.

- formal warning by the Secretariat;
- suspension of cooperation by the Secretariat;
- verification missions by the Secretariat;
- recommendation by the Standing Committee, based on Secretariat advice, to suspend trade in CITES-listed species with the non-compliant party;
- specification by the Standing Committee, based on Secretariat advice, of conditions to be met before a recommended trade suspension is lifted.

The Secretariat has recommended expanding non-compliance response measures to include suspension of rights and privileges and financial penalties, but so far the suggestions have had a lukewarm reception in the Standing Committee and at COP12. Parties have expressed a desire for more positive measures to induce compliance, but have not indicated how the inevitable financial costs will be met. Meanwhile, draft compliance guidelines have been prepared by the Secretariat and distributed to parties for comment, providing another opportunity to debate the issue of whether non-compliance response measures should be expanded and what their nature should be.

Suspension of trade in CITES-listed species has frequently been recommended against non-compliant countries, using as the legal basis Article XIV which allows parties to adopt stricter domestic measures (see Table). This has been referred to as the collective application of Article XIV on a temporary basis.<sup>35</sup> Six parties (one on two occasions) and four non-parties have been subject to recommended trade suspensions since 1985 for major implementation problems.<sup>36</sup> In addition, CITES trade suspensions have been recommended for five parties with inadequate implementing legislation under the national legislation project.<sup>37</sup> Most recently the Standing Committee recommended a suspension of CITES trade with nine parties for persistently failing to provide annual reports.<sup>38</sup>

A recent development evolved from practice based on recommendation from the Secretariat is a requirement for compliance plans. Under the national legislation project, the Secretariat recommended that legislation plans be requested from parties with legislation in category 2 (meets only some of the requirements for CITES implementation) or category 3 (generally does not meet the requirements).<sup>39</sup> About 50% of parties are affected, and if they fail to produce legislation plans or to adopt adequate legislation by specified deadlines, the Standing Committee has recommended that trade in CITES-listed species be suspended.<sup>40</sup>

<sup>35</sup> Peter H. Sand, "Commodity or Taboo? International Regulation of Trade in Endangered Species", *Green Globe Yearbook 1997*, 21.

<sup>36</sup> For Country Case Studies see *Reeve*, *supra* note 22, chapter 5.

<sup>37</sup> For a full description of the national legislation project see *Reeve*, *ibid.*, chapter 6.

<sup>38</sup> CITES Notifications to the Parties No. 2002/064 (19 Dec 2002), No. 2003/06 (7 Feb 2003), No. 2003/016 (13 Mar 2003) and No. 2003/027 (6 May 2003).

<sup>39</sup> *Reeve*, *supra* note 22, chapter 6.

<sup>40</sup> See CITES CoP12 Doc. 28 "National Laws for Implementation of the Convention" (Nov 2002) for list of parties required to produce legislation plans (note, Greece, Poland and Thailand were removed at COP12).

**Table: Countries and Territories Subjected to Recommended CITES Trade Suspensions**

<i>Country/territory</i>	<i>Suspension recommended</i>	<i>Suspension lifted</i>
<u>Parties with major implementation problems</u>		
Bolivia	1985/6	1987
UAE (withdrew from CITES 1988-1990)	1985 Nov 2001	1990 Still in force (phased withdrawal)
Thailand	1991	1992
Italy	1992	1993 (temporary) 1995 (permanent)
Greece	1998	1999
Democratic Republic of Congo	Jul 2001	Dec 2002
<u>Non-parties</u>		
Macau	1986	1986
El Salvador (joined 1987)	1986	1987
Equatorial Guinea (joined 1992)	1988	1992
Grenada (joined 1999)	1991	1992
<u>Parties subject to suspensions under national legislation project</u>		
Guyana	Sep 1999	Nov 1999
Senegal	Oct 1999	Jan 2000
Fiji	Jan 2002	Dec 2002 (temporary)
Vietnam	Jan 2002	Mar 2002
Yemen	Jan 2002	Oct 2002
<u>Parties subject to suspensions for persistent non-reporting</u>		
Afghanistan	Dec 2002	Still in force
Bangladesh	Dec 2002	Feb 2003*
Cambodia	Dec 2002	Still in force
Djibouti	Dec 2002	Still in force
Dominica	Dec 2002	Mar 2003
Liberia	Dec 2002	Still in force
Rwanda	Dec 2002	Mar 2003
Somalia	Dec 2002	Still in force
Vanuatu	Dec 2002	Mar 2003
Mauritania	May 2003	Still in force

\* Bangladesh was included by accident.

Suspensions of trade may also be recommended for specific species. The main mechanism for this “species-specific” non-compliance response is the significant trade review.<sup>41</sup> Its main aim is to induce parties to carry out non-detriment findings and to set export quotas. In essence it involves selection of significantly traded Appendix II species on the basis of information from the trade database; desk-based reviews of biology, management and trade by consultants from IUCN, TRAFFIC and UNEP-WCMC; categorisation of the species based on “priority concern” by the Animals and Plants Committees as appropriate, then the formulation by the Committees of recommendations for action by range states (states where the species occurs in the wild). If these are not implemented within specified deadlines (between 90 days and two years) a recommendation can be made by the Standing Committee, acting on Secretariat advice, to suspend trade in the species concerned with the non-compliant range states.<sup>42</sup>

Since 1992, numerous species have been subject to a recommended trade suspension from specified countries (including non-parties). As of April 2002, 25 species, two genera (groups of species) and 23 countries were affected by recommended trade suspensions as a result of the significant trade review.<sup>43</sup> A recent revision of the review process qualified the use of this non-compliance tool as a “last resort” (wording that was added unilaterally by the Secretariat to a working group draft), and added a provision urging more technical assistance to range states, but no extra funding was provided to support this. In 2001, a country-based review of trade in Appendix II species was commissioned for Madagascar, a biodiversity hotspot which has long experienced problems with CITES implementation and enforcement. Depending on its outcome, the review could signal a move towards a more country-based or regional approach, but in doing so it risks overlapping with the mechanism for non-compliance response in countries with major implementation problems.

A subsidiary type of species-specific non-compliance response exists in the *ad hoc* responses that have been initiated for high profile Appendix I species needing urgent action, notably the rhino and tiger.<sup>44</sup> A series of technical expert missions to range and consumer states, followed by high level political missions and backed up by threatened trade sanctions, have been effective, at least in the case of the rhino. In the case of the tiger the initiative has certainly raised awareness but it remains to be seen how effective it will be in reducing illegal trade in tiger parts and enabling populations to recover.

The need for technical assistance and capacity building, particularly in developing country parties and those with economies in transition, has long been recognised within the CITES regime, but both are severely limited by funding con-

---

<sup>41</sup> See *Reeve*, *supra* note 22, chapter 7.

<sup>42</sup> CITES Resolution Conf. 12.8, “Review of significant trade in specimens of Appendix-II species”, <[www.cites.org/eng/resols/12](http://www.cites.org/eng/resols/12)>.

<sup>43</sup> CITES Notification to the Parties No. 2002/021 Annex 2 (9 Apr 2002).

<sup>44</sup> See *Reeve*, *supra* note 22, chapter 8.

straints. Technical assistance has been provided to parties by the Secretariat since the late seventies. An Identification Manual of species, now running to several volumes, is available and guidelines are provided for annual reporting, along with a model law and checklist for parties needing to up-date their legislation. Enforcement training was recently conducted, but limited to tiger range states. There is also a legal capacity building programme in progress based on regional seminars and a programme of training workshops for Scientific Authorities. But these one-off seminars and workshops are a drop in the bucket compared with the needs of parties.

## 2. Weaknesses

Despite its complex and well established system of trade controls, and an apparently strong non-compliance response system, numerous weaknesses can be identified in the CITES regime. These include inadequate national implementation and enforcement; the lack of a CITES institution dedicated to enforcement and compliance; lack of cooperation and coordination among government agencies at national and international level; delayed, non-existent or poor annual and biennial reporting; and the *ad hoc* basis for in-country visits to verify information. Underlying these are grossly inadequate funding and lack of political will.

Problems affecting national implementation have been identified as lack of or insufficient national legislation, particularly regarding penalties; issuance of irregular documents; lack of or insufficient border control; fraud; lack of or insufficient coordination and communication between the Management Authority, Scientific Authority and enforcement agencies; insufficient communication with the Secretariat; and lack of or insufficient control of domestic trade (since domestic trade has implications for international trade).<sup>45</sup> The national legislation project, using technical assistance backed by the threat of trade restrictions, has improved the standard of legislation in many parties, but as of May 2003 about 50% still have legislation in category 2 or 3.

Enforcement is undoubtedly the Achilles Heel of CITES, but despite a great deal of rhetoric and numerous resolutions calling for stronger enforcement measures, there has been little tangible progress. Enforcement assistance within CITES on a permanent basis is provided by just one officer in the Secretariat's Legislation and Compliance Unit. Specialised wildlife crime units have been established in some countries, but they are few and far between.<sup>46</sup> While CITES requires parties to designate Management and Scientific Authorities, there is no similar require-

---

<sup>45</sup> Marceil Yeater, "Enforcement and the CITES National Legislation Project" in: Monika Anton/Nicholas Dragffy/Stephanie Pendry/Tomme Rozanne Young (eds.), *Proceedings of the International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU, 5-6 Nov 2001* (TRAFFIC/IUCN, 2002).

<sup>46</sup> India, Namibia, the Russian Federation, South Africa, Taiwan, the UK and US have all established or are in the process of establishing wildlife crime units.

ment to establish specialised enforcement agencies, despite the dependence of the regime on agencies such as the police, customs and wildlife authorities to enforce the system on the ground. Officers from these agencies are also effectively excluded from CITES decision-making since there is no dedicated institution within the regime requiring their input, other than the species-specific and *ad hoc* Tiger Enforcement Task Force (TETF). A series of attempts to set up a permanent Enforcement Working Group, or even just a Law Enforcement Network, failed partly because of lobbying against the initiatives by the Secretariat.<sup>47</sup>

Poor cooperation among CITES authorities and enforcement agencies at national and regional level is a well recognised problem, but little is being done to improve it. Organisations such as the Lusaka Agreement Task Force (LATF) in Africa<sup>48</sup> and the North American Wildlife Enforcement Group (NAWEG) are positive developments, but only six African countries participate in LATF, and other regions have no similar mechanisms for cooperation on wildlife law enforcement. Other problems affecting enforcement are lack of cooperation between investigators and prosecutors and lack of awareness on the part of the judiciary.<sup>49</sup> Even if stringent penalties are provided for in wildlife legislation (which is often not the case) they may not be reflected in judgements, which frequently hand down non-deterrent fines.<sup>50</sup> A recent UNEP initiative to promote awareness of environmental law among judges has so far not addressed CITES in its symposia, an indication of the lack of importance ascribed to the Convention compared with other global MEAs such as the Climate Change Convention, CBD or Montreal Protocol on substances that deplete the ozone layer.

Cooperation on enforcement at international level has improved in recent years with memoranda of understanding being signed by the Secretariat with the World Customs Organisation (WCO), Interpol and LATF. Information is shared, for example through CITES Alerts and reported incidents of illegal trade. But the system is limited by the lack of a formalised enforcement network in CITES and the presence of only one enforcement officer in the Secretariat. The International Network for Environmental Compliance and Enforcement (INECE), involving government agencies, intergovernmental bodies and NGOs, is another mechanism with the potential to improve cooperation but its activities seem to be confined largely to its biennial conferences.

The most obvious flaw in the CITES institutional system, in addition to its effective exclusion of enforcement officers, is the lack of a compliance committee. Minimal institutional requirements at international level are generally considered

<sup>47</sup> Reeve, *supra* note 22, 225.

<sup>48</sup> Established under the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (UNEP, 1994).

<sup>49</sup> Proceedings of the Commonwealth Africa Regional Workshop on the Use of and Enforcement of the Criminal Law in the Prevention of Environmental Crime, Gaborone, Botswana (8-12 Nov 1999).

<sup>50</sup> For an overview of the problem in Europe see Tomme Rozanne Young, "National Wildlife Trade Regulation in EU Member States" in: Anton [*et al.*], *supra* note 45.

to be a secretariat, to collect governmental and non-governmental information and transform it into a comparable set of data and facts; a separate body to evaluate and interpret the data and facts, composed of individual experts or governmental representatives, and which may be selective in membership or open-ended; and a main political body to "take measures", which acts on its own or on the recommendation of the "reviewing" and/or "recommendatory" body.<sup>51</sup> Within CITES, the Secretariat is responsible for the reviewing and recommendatory functions in addition to its usual duties, while many decisions on measures are delegated by the COP to the Standing Committee. On issues concerning implementation, enforcement and compliance there is often little review of the Secretariat's recommendations given the busy agenda of the Standing Committee, itself until recently a non-transparent body that excluded NGOs except for IUCN and TRAFFIC.<sup>52</sup> This has placed unprecedented power in the hands of the Secretariat, which at times has been misused. Irregular behaviour has twice led to upheavals within the Secretariat, most recently in 1998 following an investigation by the UN Office of Internal Oversight amidst rumours of corruption. And criticism has often been expressed that the Secretariat has not taken a neutral position on certain issues, most notably the ivory trade.<sup>53</sup> A delegate to a dialogue meeting of African elephant range states convened to reach a compromise on proposed ivory sales before COP12 expressed the opinion that the Secretariat's behaviour in the meeting was akin to that of another party.<sup>54</sup>

Modern regulatory MEAs have all established or are in the process of establishing some form of implementation or compliance committee in addition to a secretariat and decision-making body. But CITES parties are reluctant to follow this path. A recent initiative to set up an implementation committee purely for addressing technical implementation issues such as identification and labelling failed. Instead a clearance mechanism directing the Standing Committee to delegate these issues to existing institutions was approved at COP12.<sup>55</sup> Any attempt to establish a new body was resisted, with lack of funds most often cited as the reason. Moreover, the Secretariat, in a paper reviewing the CITES committee structure, also used discussions in WSSD on international environmental governance and the negative effects of the proliferation of convention bodies and meetings as a reason not to expand CITES institutions.<sup>56</sup>

Another institutional weakness is poor capacity in national Management and Scientific Authorities, particularly in developing country parties (many of which are richer in biodiversity than developed party states) and countries with economies in transition. Some parties have yet to designate Scientific Authorities, and

---

<sup>51</sup> Winfried Lang, "Compliance Control in International Environmental Law: Institutional Necessities", *Heidelberg Journal of International Law*, 1996, 56, at 694.

<sup>52</sup> The 49<sup>th</sup> Standing Committee meeting in April 2003 was the first to admit other NGOs.

<sup>53</sup> See Reeve, *supra* note 22, 258, for a description of the Secretariat's chequered history.

<sup>54</sup> Anon (Nov 2002).

<sup>55</sup> CITES CoP12 Com. II Rep. 3 (Nov 2002).

<sup>56</sup> CITES CoP12 Doc. 13.3 "Review of the Committee Structure" (Nov 2002).

among those national institutions that exist there is enormous variation in capacity, funding and competence from party to party. Authorities in developing countries are particularly handicapped by lack of trained personnel, equipment and access to telecommunications. CITES has never had sufficient funding to enable it to engage in really effective and sustained national institutional strengthening – to the extent, for example, that the Montreal Protocol has supported through its Country Programmes.

A number of weaknesses can be identified in the CITES information system. Reporting by parties has long presented a problem, yet it is only recently that recommended trade suspensions have been used against persistently non-compliant parties, and even then only for non-production of annual reports on trade, not for failure to produce biennial reports which have been virtually ignored. The threat of trade suspensions prompted several parties to produce their annual reports between 2000 and 2002, and at the twelfth meeting of the COP (COP12) in November 2002 a review of reporting was approved with the aim of turning the system into a management tool that can be of use to parties rather than a chore.<sup>57</sup> The review, which will also address the question of biennial reporting of implementation and enforcement measures, provides some promise for a long term solution to improve reporting on a sustained basis, but as a short term measure the option of recommending trade restrictions has been retained. Inconsistent reporting by parties of enforcement related information also presents a problem, an issue which will be addressed by a meeting of experts later in 2003. It is hoped that the meeting will also address information sharing and channels of communication with NGOs other than TRAFFIC since the potential exists for improved cooperation.

Another area of weakness in information gathering is in the *ad hoc* nature of verification through on-site missions. A valuable tool, Secretariat missions tend to be reserved for high profile species and countries presenting serious problems through non-compliance. But on-site verification is not formalised as regular tool in the significant trade review, despite the review being considered a key mechanism that provides CITES with teeth. Species reviews are desk based and reliance is placed on the word of Management Authorities that they have implemented and continued to implement Animals and Plants Committee recommendations – which sometimes is not the case.<sup>58</sup>

Lastly, lack of funds is now severely constraining the Convention's development. Unlike the more recent MEAs, CITES is unable to access funding from the Global Environment Facility (GEF), which favours ecosystem oriented projects rather than a species approach. Instead it derives financial support from the CITES Trust Fund, established under UNEP auspices and maintained with voluntary contributions from parties (that are often delayed), supplemented by external funding from governmental and NGO donors. The Trust Fund supports a budget of around US\$

<sup>57</sup> CITES CoP 12 Doc. 22.1 "Annual Reports" (Nov 2002).

<sup>58</sup> Ann Michels, *History of Species Reviewed under Resolution Conf. 8.9 (Rev.): Part I: Aves*, (SSN, Jul 2001); Reeve, *supra* note 22, 181.

5 million a year, while external funding, granted on a project basis, varies. During the triennium 1997-1999, US\$ 1.6 million was received in external funding, while for the period 2000-2001 US\$ 2.4 million was received (excluding funds for ongoing, partially funded projects such as MIKE).<sup>59</sup> These sums are paltry compared with funds available through GEF. As of 2000, the GEF had approved biodiversity projects amounting to over US\$ 600 million.<sup>60</sup> COP12 saw a marked reluctance on the part of parties to increase their contributions to CITES. The Secretariat requested a 12% increase in contributions so as not to jeopardise current work programmes, and made strong appeals to parties, but in the event after extensive negotiations only a 6% increase was agreed.

### 3. Recommendations for Strengthening CITES – What WSSD Could Have Done

WSSD could have made three minimum but significant contributions to strengthening the CITES regime. One would have been to recommend access to GEF funding, and to consider making GEF a financial mechanism of the Convention, as was done for Convention to Combat Desertification. The second would have been to provide support for institutional strengthening at national and international level to improve implementation, enforcement and compliance. The third could have been to improve regional cooperation on wildlife law enforcement. But on all these issues Johannesburg was silent, and in the area of institutions its recommendations have arguably had a negative effect.

CITES structure, by allocating considerable review and recommendatory powers to the Secretariat, a non-elected body, departs from accepted institutional requirements. It could be argued that this has strengthened the system by enabling the use of trade sanctions as a non-compliance response. But as it stands too much power is concentrated in the hands of the Secretariat, power that is unparalleled in other MEAs except at regional level. Parties lack adequate control over the review and recommendatory process, and the system is vulnerable to criticism over controversial decisions through lack of an independent body of experts from which recommendations emanate. As a political body with a busy agenda, the Standing Committee is inadequate to fulfil this role. Instead, there is a need for a compliance committee of independent experts, incorporating among others enforcement officers and lawyers with expertise on compliance, that can review issues relating to compliance, and make recommendations to the Standing Committee for action on a case-by-case basis and to the COP on issues where broad-based resolutions or decisions are needed, such as national legislation or annual reporting. In addition, considering the Secretariat's past history, terms of reference clearly defining the Se-

<sup>59</sup> CITES CoP Inf.4, "External Funding" (Nov 2002).

<sup>60</sup> "Matrix on Trade Measures Pursuant to Selected MEAs", WT/CTE/W/160, note by the WTO Secretariat (19 Sep 2000).

cretariat's role in relation to other CITES institutions and the extent to which it can exercise its recommendatory function are needed.

To realise its full potential, the proposed compliance committee would need to be constituted in sub-groups (along the lines proposed under the Kyoto Protocol<sup>61</sup>) able to make recommendations on a range of measures on implementation, enforcement and compliance. One of the groups should comprise enforcement officers who could be selected on a regional basis. Such an expansion of CITES institutions would inevitably require considerably more funds than are currently available, or are likely to be made available in light of the recommendation in the Johannesburg Implementation Plan that the international sustainable development calendar be streamlined and the number of meetings reduced.<sup>62</sup> While recognising the need for efficiency, this should not be used to block the institutional evolution of conventions in essential areas such as compliance and enforcement, which seems to be the effect in CITES.

Several non-compliance procedures are operating in CITES side-by-side, having evolved separately from each other to address country-specific, issue-specific or species-specific problems. The recent blurring of the distinction between the significant trade review and the procedure for addressing major implementation problems (with the Madagascar review) indicates that some coordination, clearly allocating roles between institutions, is needed. The proposed compliance committee could be at the centre of a new coordinated system. It could operate in tandem with the Animals and Plants Committees on the significant trade review, perhaps playing a role in overseeing verification of their recommendations and in cases of non-compliance replacing the Secretariat in making recommendations for Standing Committee action. Meanwhile, country-based and issue-based non-compliance response, as well as *ad hoc* responses to urgent Appendix I cases, would most appropriately be handled by the Compliance Committee and Standing Committee, the Secretariat providing a role in information collection, analysis and dissemination, and verification.

Action by the proposed Compliance Committee would most appropriately be triggered by:

- Secretariat reports compiled from biennial reports on implementation, enforcement and compliance, supplemented with information from a wide range of NGOs and subject to some kind of expert review, and information from UNEP-WCMC's review of annual trade reports;
- a party with respect to another party; and
- a party with respect to itself.

Some form of NGO trigger, perhaps subject to admissibility criteria and resulting in an enquiry into the case of non-compliance publicised through the CITES website, would be beneficial. Precedents exist with the representation procedure

---

<sup>61</sup> The compliance committee proposed under the Kyoto Protocol consists of a facilitative branch and an enforcement branch.

<sup>62</sup> Para. 138(a).

under the International Labour Organisation and citizen submissions under the North American Agreement on Environmental Cooperation as well as under the recently established Aarhus Convention compliance mechanism.<sup>63</sup>

CITES is chronically under-funded compared with the commitments it is expected to implement. Expectations and the number of parties have grown but the budget has not, and parties show no willingness to increase their contributions. A re-examination of the Convention's funding mechanism is needed. An ideal solution would be a financial mechanism along the lines of the Montreal Protocol's Multilateral Fund, supported by contributions from developed consumer countries and devoted to building capacity for implementation and enforcement of CITES in developing party range states. But in the current political climate, and given the long-standing lack of party political will when it comes to increasing CITES funding, it will not be realised. A more realistic option would be to access GEF funding. The Johannesburg boat may have been missed, but it is not too late for parties to actively lobby the GEF Assembly and Council for a proportion of biodiversity funds to be allocated to CITES implementation and enforcement.

A stronger funding base for CITES could enable many more initiatives to strengthen the overall regime, providing the money was spent wisely. In the past there has been a tendency to spend a disproportionate amount of funds on scientifically or trade driven species-specific projects, monitoring populations and management, to the detriment of cross-cutting projects to enhance implementation and enforcement. The imbalance needs to be redressed. Revision of the institutional structure to include enforcement officers in the proposed Compliance Committee sub-group would not only enable them to influence decision-making but also funding priorities.

A way to address the weakness of national institutions in developing country parties and countries with economies in transition would be the formulation of national CITES Action Plans. Under current circumstances these would be largely academic unless parties themselves were prepared to allocate new resources. But if GEF funds could be accessed for capacity building on a conditional basis, such as timely provision of annual and biennial reports, Action Plans with timetables and targets linked to the continued provision of funds would be feasible. The plans would need to pay equal attention to the needs of Management and Scientific Authorities and wildlife law enforcement agencies, and include a requirement for establishing specialised wildlife law enforcement units. The capacity building programmes would need to include a component aimed at improving judicial awareness of wildlife crime with a view to the imposition of deterrent penalties, and bringing wildlife crime investigators together with prosecutors in joint training ses-

---

<sup>63</sup> For more detail see Reeve, *supra* note 22, chapter 11; Cesare Romano, *The ILO System of Supervision and Compliance Control: A Review and Lessons for Multilateral Environmental Agreements* (International Institute for Applied Systems Analysis, 1996), and in relation to the Aarhus Convention <[www.unece.org](http://www.unece.org)>.

sions, perhaps as part of a wider capacity building programme using a cascade ("train-the-trainer") approach.

Strengthened funding could also enable improvements in the CITES information base. It could help to reinstate infractions reports, providing better access to information on illegal trade and enforcement related issues. It could also enable the proper functioning of the biennial reporting system so that it could provide a regular up-date of the state of compliance in parties. In the Climate Change Convention the equivalent requirement for national communications is taken much more seriously. In-depth reviews of the communications carried out by independent teams with in-country visits are building an extensive, and importantly, reliable database for the Convention. When extended to the Kyoto Protocol they will also provide a basis for identifying potential non-compliance. Given the dependence of CITES on national measures, biennial reporting needs to be implemented and ascribed far more importance than it is at the moment. Periodic in-depth review of the reports involving in-country visits by independent teams, which consult among others a broad range of NGOs, would improve not only the quality and amount of information available on which to base compliance related decisions, it would probably improve the quality of reporting over time. Another approach, with less of a cost implication, would be the publication of the reports on the CITES website, inviting comments from other parties and NGOs, or as is done in the International Labour Organisation the distribution of reports to relevant national NGOs for review and comment.

On-site verification of compliance could also be expanded with more funds. Of particular value would be its formalisation as a regular tool within the significant trade review to check compliance with Animals and Plants Committee recommendations. Eventually this would lead to strengthening of controls of Appendix II trade by verifying non-detriment findings and compliance with export quotas. In-country research would also benefit the initial species reviews.

A firm financial base could enable the expansion of non-compliance response to include the positive measures desired by the Standing Committee and the COP. The use of "sticks" in CITES clearly needs to be balanced with more supportive measures through technical assistance and capacity building. More sustained capacity building is needed. Examples of initiatives that could be supported with more funds are a sponsorship programme to enable training and higher education; regular train-the-trainer refresher courses in each region, bringing together all relevant authorities, including law enforcement agencies and prosecutors; expansion of law enforcement capacity; and improving access to information technology in developing countries to close the gap between the internet "haves" and "have-nots". But as things stand these are pipe-dreams. Given the funding constraints that exist and will likely persist, necessity dictates that there will be continued reliance on recommended trade restrictions as a tool to respond to non-compliance. Their use has been remarkably effective against non-responsive countries with major implementation problems, at least to the extent a paper study can determine. Most parties targeted for major problems appear to have moved into compliance, while non-par-

ties have been induced to join the Convention. Meanwhile all but one of the parties targeted under the national legislation project have responded by enacting CITES implementing legislation.

A new coordinated compliance procedure would need to embrace the continued use of recommended trade suspensions, and an extended range of positive and negative responses to enable a broader response to different types of non-compliance. It would also need to build in the monitoring of compliance plans by the Secretariat, much as happens already, with penalties for failing to meet targets and timetables. Some kind of appeals procedure along the lines of the hearings provided for in the proposed Kyoto Protocol compliance mechanisms would be desirable, not least since it would help to deflect attempts by parties to challenge recommended trade restrictions in the World Trade Organisation.<sup>64</sup>

Improved cross-border cooperation on wildlife law enforcement is essential if governments are to successfully combat organised wildlife crime. The Africa-based Lusaka Agreement Task Force and NAWEG are encouraging developments that could and should act as precedents for other regions. But so far there seems to be little evidence of other regions taking an initiative. A Lusaka-type agreement would be particularly valuable in the Asian region where enforcement problems are extensive.<sup>65</sup> UNEP's experience as the umbrella organisation under which the Lusaka Agreement was negotiated puts it in an ideal position to take a lead on this, the first step being to facilitate a meeting of wildlife law enforcement officers from countries in the Asian region. A basis from which to launch such an initiative is provided in recommendations of a UNEP-hosted enforcement workshop held in 1999, which included, *inter alia*:

- guidelines for co-operation at regional and global level related to compliance and enforcement;
- encouraging collaborative law enforcement projects between countries sharing borders; and
- bringing together customs agencies, environmental law enforcement units and police on a regional basis to improve understanding and launch co-operative actions.<sup>66</sup>

To date UNEP has only followed up on the workshop's recommendation for a set of MEA enforcement guidelines whose practical use is somewhat questionable, and which are not even mentioned in the Johannesburg Implementation Plan. Had it ascribed more importance to environmental crime and to MEA enforcement generally, WSSD could have given UNEP a mandate to implement the outstanding recommendations from its 1999 workshop, which could have tangible outcomes in the fight against wildlife crime if they were realised.

<sup>64</sup> For more discussion of the relationship between CITES and the WTO, see Reeve, *supra* note 22, chapter 12.

<sup>65</sup> CITES Doc. 42.10.4 "Tiger Technical Missions" (Sept/Oct 1999).

<sup>66</sup> "Report on the Workshop on Enforcement of and Compliance with Multilateral Environmental Agreements (MEAs)", UNEP/Env.Law/MEAs.RPT (30 July 1999).

To conclude, CITES often attracts publicity giving it quite a high profile in the minds of the public, but generally speaking this is not matched by political action, and universally speaking it fails to be matched by funding. Political will somehow needs to be activated, along with access to a stable and adequate financial mechanism such as GEF. WSSD could have been instrumental in this. Instead it chose to put its eggs (brittle as they are) into the CBD basket and ignore a long-standing convention with a compliance system that gives it teeth and the potential to produce tangible results. This failure is nothing short of an indictment of the WSSD process and provides little hope for the future of endangered species.

