

Verification mechanisms in CITES

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The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is one of the oldest multilateral environmental agreements (MEAs).¹ Seen as the flagship wildlife accord, CITES now has 155 states parties and has been in force since 1 July 1975. It addresses one of many threats to the earth's biological diversity: over-exploitation of wildlife through international trade. Its primary objective is to ensure 'the international co-operation of Parties to prevent international trade in specimens of wild animals and plants from threatening their survival'.²

A formal verification system was not established by or for CITES at the outset. Instead, resolutions and decisions of the Conference of the Parties (COP)—so-called 'soft' law—have gradually put in place mechanisms to induce state party compliance with CITES rules. Collectively these mechanisms amount to a compliance system. While among them are techniques that in other treaty contexts might collectively be called verification, CITES parties use the term only to refer to *ad hoc* inspection activities.

A 'compliance system' has been defined as the 'subset of the treaty's rules and procedures that influence the compliance level of a given rule'.³ It can be broken down into three sub-systems: the primary rule system; the compliance information system; and the non-compliance response system.⁴ The sub-systems all contain elements of verification. The latter is seen as a means to appraise the verity of a treaty's information base, to review progress in regard to implementation of state party commitments, and to permit states parties to respond to non-compliance with some type of action.

The chief actors in the CITES compliance system are the COP, the Standing Committee and the CITES Secretariat. The COP is composed of state party represen-

tatives and is the supreme decision-making body, meeting every two and a half years. The Standing Committee is an executive body made up primarily of 14 representatives of the parties—elected on a regional basis⁵—which oversees the operation of the convention between COP meetings. Its functions include: overseeing financial activities; co-ordinating and advising other committees, as well as working groups set up by the COP; drafting potential COP resolutions; and performing ‘any other functions as may be entrusted to it’ by the COP.⁶ The Geneva-based Secretariat, meanwhile, comprises over 30 professionals and support staff. In addition to information gathering and review, it is mandated: to undertake scientific and technical studies that will contribute to implementation; to prepare reports and make recommendations on implementation; and ‘to perform any other function as may be entrusted to it by the Parties’.⁷ The Animals and Plants Committees, composed of individual experts (usually biologists) elected on a regional basis, also play a minor role in the compliance system. Reporting to the COP and the Standing Committee (if requested), these technical bodies review the status of selected CITES species and advise on action to be taken.

Non-governmental organisations (NGOs) are also key players in the compliance system. The World Conservation Union (IUCN) and Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC)—a joint programme of the World Wide Fund for Nature (WWF) and IUCN—play central roles in aspects of compliance, including verification. Although the World Conservation Monitoring Centre (WCMC) is now part of the United Nations Environment Programme (UNEP), for 25 years it maintained the CITES database as an NGO. Other NGOs also have considerable influence in CITES, mostly through lobbying at COP meetings. Action taken under CITES to protect rhinos and tigers, for instance, resulted largely from pressure applied by NGOs.

Primary rule system

The convention regulates international trade in wildlife through a permit system that is applied to species listed in three Appendices. Appendix 1 is a ‘black’ list, prohibiting commercial trade. It includes ‘all species threatened with extinction which are or may be affected by trade’.⁸ Only non-commercial trade, largely for scientific and educational purposes and hunting trophies, is allowed. Appendix 2

is a 'grey' list under which commercial trade is controlled. It encompasses 'all species which although not necessarily now threatened with extinction may become so unless trade . . . is subject to strict regulation'.⁹ Appendix 3 includes species listed unilaterally by parties needing international assistance to control trade.¹⁰ Over 30,000 species are listed, mostly in Appendix 2.

Although 'mega fauna', such as elephants, whales, rhinos and tigers, tend to receive most attention, over 25,000 of the listed species are, in fact, plants.¹¹ The Appendices are revised at each COP meeting—a two-thirds majority is required for amendments to be adopted. Proposed changes to Appendices 1 and 2 are subject to review by other parties and by the Secretariat. The IUCN Species Survival Commission and TRAFFIC conduct a separate assessment, which is distributed as a formal COP document, affording them significant influence in the listing process.

All trade in listed species must have a permit or certificate, the requirements for which depend on which Appendix they are listed in. One of the most important, but rarely implemented prerequisites for Appendix 1 and 2 trade is a 'no-detriment' finding—that is, that trade will not be detrimental to the species' survival. CITES incorporates several exemptions, including reservations regarding the listing of a species, as well as a number of exceptions pertaining to captive bred or artificially propagated specimens and household or personal effects, for example.¹² These exemptions were designed to give CITES flexibility. However, abuse¹³ has led to successive redefinitions of the exemptions by the COP. Sometimes it has narrowed the exemption; more often it has accommodated special interests to enable legitimate trade in Appendix 1 species through its definitions of 'captive breeding' and 'artificial propagation'.¹⁴ Although there is no reference to a quota system in the convention, the setting of quotas—introduced initially as exceptional measures to control trade in leopard skins and African elephant ivory—is now standard practice.¹⁵ To prevent non-parties from 'free-riding' on CITES by trading with parties outside the terms of the convention, they are required to provide 'comparable documentation'—issued by 'competent authorities'—to that of a state party.¹⁶

CITES is a non-self-executing treaty, meaning that national legislation is required to implement several provisions.¹⁷ Parties are obliged to prohibit trade that contravenes the convention, and to penalise violations and confiscate specimens.¹⁸ The convention also permits them to adopt 'stricter domestic measures' than those

mandated by the treaty itself.¹⁹ Parties are required to designate ‘one or more Management Authorities competent to grant permits or certificates’ and ‘one or more Scientific Authorities’.²⁰ The latter play an important role in verification through monitoring export permits, producing no-detriment findings and ensuring that exports are limited in order to maintain healthy populations—a form of self-certification.²¹ Yet they are often under-resourced, under-staffed and, in some cases, non-existent.²²

Compliance information system

CITES was one of the first MEAs to provide for an information system.²³ The collection, review and dissemination of data are responsibilities of the Secretariat. The regime relies largely on self-reporting by parties, but also on information supplied by NGOs and intergovernmental organisations, such as Interpol²⁴ and the World Customs Organisation (WCO). In addition, information may be gathered by the Secretariat during *ad hoc* visits to states parties, usually at the request of the COP or the Standing Committee.

Reporting by states parties

Parties are required to provide annual and biennial reports.²⁵ Annual reports are to include information on trade in CITES specimens, while biennial reports are to contain data on legislative, regulatory and administrative steps taken to enforce the agreement.²⁶ Emphasis has been placed on annual reporting. The two primary objectives are to monitor trade in listed species, and to provide information on compliance, particularly detection of possible illegal trade. This is done through highlighting discrepancies between reported imports and exports and by assessing compliance with quotas.²⁷ The biennial reporting requirement has remained largely unimplemented and little time has been devoted to pursuing the issue.²⁸ But difficulties in obtaining current information for the national legislation project (detailed below) have drawn attention to the lack of biennial reporting, leading to a call in 2000 for parties to submit reports.

The Secretariat is mandated to study parties’ reports, to request further information, and to prepare annual reports on implementation.²⁹ Some of these functions are contracted out. Trade information from parties’ reports is maintained in a

database by the WCMC. The database has been in existence since 1975 and some 500,000 records are added to it every year, allowing import and export records to be compared and export records to be compared with export quotas. Consequently, it provides a limited form of verification. In situations where the records do not match, or parties report possible illegal trade, the WCMC informs the Secretariat.

Annual reports are essential for analysing trade in CITES-listed species—trade studies are heavily dependent on precise and complete reporting by parties. Yet reporting has proved to be a persistent problem.³⁰ Either parties have failed to submit reports or they have filed them late. Alternatively, they have failed to comply with the guidelines on reporting, or they have provided incomplete or inaccurate data.³¹ The 2000 assessment by the WCMC showed a decline in the number of parties reporting since 1995, making accurate and confident analysis of trade in CITES-listed species increasingly difficult.³²

The role of NGOs

Certain NGOs have always played an important role in the functioning of the Secretariat and in the provision and review of information—the IUCN was involved in founding CITES and initially in administering the Secretariat. The legal basis for their involvement is the provision in the convention that enables the Secretariat to be ‘assisted by suitable inter-governmental or non-governmental, international or national agencies or bodies technically qualified in protection, conservation and management of wild fauna and flora’.³³ This has led to the development of a close relationship between the Secretariat and those NGOs contracted for particular tasks. These include IUCN specialist groups, its Environmental Law Centre, and TRAFFIC. As well as reviewing and commenting on parties’ proposals to amend the Appendices, the IUCN and TRAFFIC play a key role in reviewing the trade in, and status of, significantly traded species, as well as in examining and categorising parties’ national legislation under the national legislation project (see below). The Africa Resources Trust was also contracted to develop a guide for the COP meeting in 2000 to help parties review and control significant trade in species listed in Appendix 2.

The Secretariat receives information on compliance from NGOs, either directly or indirectly via reports from states to the Secretariat.³⁴ Since its establishment

in 1976, TRAFFIC has collected information on illegal wildlife trade and has transmitted it to the Secretariat and national authorities. Some of those authorities report infractions to the Secretariat that were originally reported to them by TRAFFIC. Co-operation with the TRAFFIC network, consisting of 22 offices worldwide, has resulted in CITES having one of the best operational information sources of any MEA.³⁵ Data about illegal trade in Thailand, for instance, contributed, in part, to the Standing Committee recommending trade sanctions. Similarly, TRAFFIC was instrumental in providing information on illegal trade in Italy, and it assisted the Secretariat and the Italian CITES Management Authorities to enable Italy eventually to come into compliance.³⁶ TRAFFIC also maintains the Elephant Trade Information System (ETIS), which was set up to monitor the ivory trade. While other NGOs also provide information on an *ad hoc* basis, they do not have such a close relationship with the Secretariat.

Infractions reports

Under the convention, the Secretariat is required to inform parties of cases of non-compliance. In response, parties are obliged to provide 'relevant facts' and to take remedial action.³⁷ They are also asked to supply the Secretariat with detailed information on significant cases of illegal trade and to notify it about convicted illegal traders and persistent offenders.³⁸ Since 1987, the Secretariat has been compiling data from the few parties that comply with this provision, as well as from NGOs and other sources, such as Interpol and the WCO, into a Report on Alleged Infractions, which is prepared for each COP meeting. Until COP II in April 2000, the objectives of these detailed, publicly available reports were listed as: providing parties with a record of significant violations; identifying other enforcement problems affecting compliance; and stimulating discussion and seeking mechanisms to reduce or to eliminate problems.³⁹

Two types of infraction were detailed prior to COP II: illegal trade, commonly committed by individuals; and non-compliance by parties with the provisions of the convention.⁴⁰

Despite some parties complaining about having their violations placed on record, infractions reports came 'to be accepted as a reliable and impartial instrument reinforcing national implementation and accountability'.⁴¹ At COP II, though, the

Secretariat unilaterally decided to redefine the goal of the reports as being to provide an 'overview of illicit trade and to identify significant problems relating to the issuance and acceptance of CITES documents' and henceforth to report 'only work by Parties that illustrates innovative or particularly significant enforcement action'.⁴²

This decision resulted in the COP II report having just six pages of mostly general information, compared with almost 100 pages of detailed infractions in previous years. Only three infraction cases were mentioned in anything more than general terms. The justification for this unilateral shift was that many incidents cited previously were purportedly irrelevant to analysis of wildlife crime (betraying a misunderstanding of the term 'infractions'). Other factors cited were the discomfort felt by certain parties at having their violations put on record and by the Secretariat at the disclosure of the *modus operandi* of criminals in a publicly available document.

On-site verification through missions

As a means of verification, the CITES Secretariat conducts *ad hoc* visits or missions to parties experiencing implementation problems. The purpose is to gather information, assess problems and provide advice to national authorities. Secretariat missions to Bolivia, Greece and Italy, for example, yielded information on non-compliance that, in part, contributed to eventual recommendations for trade sanctions. Secretariat missions are also used to verify progress with implementing conditions specified for the lifting of trade sanctions. Italy and Thailand provide examples of where verification missions have been used to this effect.

Missions are only conducted with the consent of the country concerned. There is no provision for 'challenge missions' without consent. An exception was the refusal of the United Arab Emirates (UAE) to meet a Secretariat staff member sent in November 1986 to begin a dialogue over trade sanctions.⁴³

The most extensive and controversial use of on-site verification by the Secretariat has been in connection with the sale to Japan of ivory stocks by Botswana, Namibia and Zimbabwe in April 1999.⁴⁴ In 1997, the African elephant populations from these three range states were downgraded to Appendix 2 status. Commercial exports of raw ivory were, however, limited to 'experimental trade' in declared stocks and subject to conditions that the Secretariat was tasked with verifying. Japan was the only permitted buyer.

The Secretariat undertook verification missions to each of the four countries and reported an almost clean bill of health to the Standing Committee.⁴⁵ Although eight other range states disagreed with some of the Secretariat's conclusions,⁴⁶ the sales went ahead, pending a further visit to Botswana. More verification missions were undertaken to oversee the auction and import of the ivory into Japan, and to check that Botswana, Namibia and Zimbabwe had reinvested revenues into elephant conservation. A final verification mission was sent to Japan in December 1999 to check on its domestic ivory controls. The Secretariat concluded that they were satisfactory.

This intensive monitoring of ivory sales through on-site verification was unprecedented. One reason for it was the controversy surrounding the auctions and the need to demonstrate that the process was strictly controlled. As well as its verification missions, the Secretariat conducted visits to 27 elephant range states in Africa and Asia to 'secure commitment' to the international system for Monitoring the Illegal Killing of Elephants (MIKE), which is currently under development.⁴⁷ Although not admitted by the Secretariat, this was clearly in response to criticism levelled by range states that they had been largely excluded from the MIKE process⁴⁸—developed primarily by the IUCN under the auspices of the Secretariat.

Technical expert missions, organised by the Secretariat and the Standing Committee, have increasingly been used to investigate problems relating to illegal trade in high profile endangered species, particularly rhinos and tigers, in range and consumer states. These have been followed by high-level political missions that report their recommendations to the Standing Committee and the COP.⁴⁹ Technical missions—the composition of which is decided by the chair of the Standing Committee—typically consist of one or more Secretariat staff, accompanied by experts drawn from the IUCN and TRAFFIC. They examine records, conduct interviews and visit relevant sites (accompanied by governmental representatives).

Non-compliance response system

The CITES non-compliance response system has evolved over several years through COP resolutions and practice. It uses 'carrots', mostly technical assistance, strongly backed by 'sticks' in the form of trade sanctions. The Standing Committee has frequently recommended—on Secretariat advice—the suspension of trade in

Box 1 'Country-specific' non-compliance response for parties experiencing major implementation problems¹

- A) When the Secretariat requests information on an alleged infraction, parties should reply within one month or indicate a date when it can be supplied.
- B) If the requested information has not been filed within one year, parties should provide the Secretariat with justification for non-response.
- C) The Secretariat must work with parties to try to solve major implementation problems and to offer advice or technical assistance.
- D) If a solution cannot be achieved, the Secretariat brings the matter to the attention of the Standing Committee, which may pursue it in direct contact with the party concerned. If a party does not implement Standing Committee recommendations, other parties may be advised to impose sanctions on trade in CITES-listed species with the non-compliant party.
- E) The Secretariat keeps parties informed through notifications and its report of alleged infractions.

NOTES 1 Paraphrased from CITES Resolution, 'Compliance and Enforcement', Conf. 11.3 (April 2000) (formerly Resolution Conf. 7.5, October 1989). Unusually, parties have also been advised to suspend trade in CITES-listed species with three non-parties—Equatorial Guinea, El Salvador and Grenada—whose unregulated trade was undermining the convention. All of these states are now CITES parties.

CITES-listed species with offending countries, using the provision allowing parties to adopt stricter domestic measures as the legal basis. Yet, despite its key role in non-compliance response, the Standing Committee is inaccessible to most NGOs. While transparency has improved with the publication of the Committee's proceedings on the CITES website, as of October 2001 the only NGOs generally permitted to attend its meetings are the IUCN and TRAFFIC.

Two types of carrot and stick response can be identified: 'country-specific' and 'species-specific'. Within the country-specific category, further distinctions can be made between the basic procedure elaborated in 1989 for parties experiencing major problems with implementation of the convention overall, and other procedures that have evolved to address non-compliance by parties in specific areas. Within the 'species-specific' category, a distinction can be made between the review and response mechanism for significantly traded Appendix 2 species, and *ad hoc* responses that have been instigated for high profile endangered species.

Country-specific non-compliance response

In 1989, at the suggestion of the WWF, a non-compliance response procedure was introduced for parties experiencing major implementation problems (see box 1).

Although the Secretariat used a similar procedure before 1989, the existence of a formal resolution has strengthened the non-compliance response.⁵⁰ Since 1989, several cases of parties with implementation problems, including two European Union (EU) members—Greece and Italy—have been brought before the Standing Committee, resulting in suspensions of trade in CITES-listed species (see table 1). In comparison, during the 1980s, there was reluctance to act firmly against powerful but non-compliant consumer states, notably Japan and EU nations. Nearly all countries that have been subject to trade suspensions over the years have responded (at least on paper). Exceptions are the UAE, which temporarily withdrew from the convention and still presents a problem with respect to compliance, and the Democratic Republic of the Congo (DRC), which was subjected to a CITES trade suspension in June 2001.⁵¹

Of the procedures that have evolved to deal with non-compliance, the national legislation project, initiated in 1992, has been the most successful. Parties' legislation has been reviewed by the IUCN Environmental Law Centre and TRAFFIC USA, and has been categorised according to whether it meets all, some or none of the basic requirements for CITES implementation.⁵²

Table 1 Countries subjected to trade suspensions in CITES-listed species, 1985–2000

Country	Recommended	Lifted
Bolivia	1985–86	1987
United Arab Emirates¹	1985	1990
El Salvador^{*2}	1986	1987
Equatorial Guinea^{*3}	1988	1992
Thailand	1991	1992
Grenada^{*4}	1991	1992
Italy	1992	1993 ⁵ 1995 ⁶
Greece	1998	1999
Guyana	1999	1999
Senegal	1999	2000
Democratic Republic of the Congo	2001	s/E ⁷

NOTES * Non-parties at the time suspensions were imposed; 1 Withdrew from CITES between 1988 and 1990; 2 Joined CITES in 1987; 3 Joined CITES in 1992; 4 Joined CITES in 1999; 5 Temporary lifting of trade suspension; 6 Permanent lifting of trade suspension; 7 Trade suspension still in force.

Table 2 National legislation project by region¹

Region	Cat.1 ²	Cat.2 ³	Cat.3 ⁴	Analysis ⁵
Africa	3	20	23	2
Asia	3	9	12	3
Central and South America & Caribbean	6	15	7	3
Europe	19	7	5	1
North America	3			
Oceania	3	1		1
Total	37	52	47	10

NOTES 1 Information as of April 2000; 2 category 1; 3 category 2; 4 category 3; 5 analysis ongoing.

SOURCE Doc. II.21.1 Annex 2 prepared by the Secretariat for COP II, 10–20 April 2000.

The COP (on Secretariat advice) set deadlines for parties in the second and third categories to enact adequate CITES legislation. Technical assistance was offered to those that needed it. Some complied and upgraded their legislation, although the majority did not. Eventually, the COP recommended that trade in CITES-listed species should be suspended, at the discretion of the Standing Committee, with seven non-compliant third category parties identified as having a significant level of CITES trade if they did not comply by 9 June 1998.⁵³ The countries concerned were: Egypt, Guyana, Indonesia, Malaysia–Sabah, Nicaragua, Senegal and the DRC. The Secretariat was given the role of verifying progress.⁵⁴ Five states responded to the mere threat of sanctions, while Guyana and Senegal took remedial action within months of trade sanctions being applied.⁵⁵

CITES is unique among MEAs in its use of trade restrictions against parties solely on the grounds that they have inadequate implementing legislation. The national legislation project revealed that about 75 percent of parties reviewed between 1992 and 1999 did not have the full range of national legislative and administrative measures needed to implement CITES.⁵⁶ The combination of carrots, in the form of technical assistance, and sticks, in the form of threatened trade sanctions, has proved effective. Parties are slowly improving their legislation, but with 68 percent of parties still falling into categories 2 and 3 as of April 2000 there is some way to go.⁵⁷

At COP II, four more parties were identified as possible candidates for trade sanctions—Fiji, Turkey, Vietnam and Yemen. All other category 2 and 3 parties were required to enact CITES legislation by COP 12 in November 2002. The task of deciding whether trade suspensions should be recommended against non-compliant parties has been delegated to the Standing Committee, with the Secretariat verifying progress in upgrading legislation. A legal capacity-building strategy has also been approved. For instance, national experts will be trained at regional workshops.⁵⁸

Trade suspensions have also been recommended against parties that persistently fail to comply with reporting requirements. Failure to report, as well as the submission of inaccurate and incomplete reports, was highlighted by the Secretariat as a major area of concern at COP II.⁵⁹ On its advice, the COP decided that trade in CITES-listed species should be suspended with parties that have failed to provide annual reports for three consecutive years without adequate justification.⁶⁰ Fifty-three mostly developing country parties were later warned by the Secretariat that if their annual reports were not received by specified dates they might be subject to a Standing Committee recommendation to suspend trade.⁶¹ In the event, however, the Committee, expressing discomfort with the COP decision, did not propose sanctions for the 20 countries that failed to respond to the warning. Instead, it instructed the Secretariat to prepare for consideration at its next meeting an analysis of the actions that might be taken in response to problems of non-compliance, such as the late or non-submission of annual reports, prompting questions over the extent of the Committee's discretion in implementing COP recommendations.

Parties failing to designate Scientific Authorities have also been subject to trade suspensions. Following a COP 10 resolution recommending that parties not accept export permits from countries that have not informed the Secretariat of the establishment of their Scientific Authorities, the Secretariat warned 10 states that they should designate Scientific Authorities by particular deadlines to avoid sanctions.⁶² Parties were notified in March 1999 that export permits should not be accepted from Afghanistan and Rwanda until information about their Scientific Authorities had been published in the CITES Directory.⁶³ Neither of these countries appears to have complied.⁶⁴ Meanwhile, a programme to provide assistance to Scientific Authorities to improve their implementation of the convention is currently being developed by the Secretariat in association with the IUCN.

Species-specific non-compliance response

The main form of species-specific non-compliance response is through the significant trade review mechanism for Appendix 2 species. Dating back to 1983, the mechanism, introduced initially for animals, has become increasingly complicated as a result of successive revisions and the introduction of plants. In essence, it involves selection by the WCMC of a candidate list of significantly traded species using the CITES database; selection from the list by the Animals and Plants Committees of species to be reviewed through desk studies by consultants, usually from the IUCN and/or TRAFFIC; and categorisation of the species according to whether CITES trade controls are being implemented.

If sufficient information is available on a particular species, the relevant Animals or Plants Committee consults with the Secretariat and makes primary recommendations (such as export quotas) and secondary recommendations (such as field studies). Parties are given 90 days to implement primary recommendations and 12 months to introduce the less urgent secondary recommendations. If too little is known about a species, range states are given two years to carry out status assessments, during which time conservative quotas are set. Once the assessments are complete, the Animals and Plants Committees make primary and secondary recommendations in consultation with the Secretariat, with the same deadlines for their implementation. If range states fail to apply the quotas, complete the status assessments or employ the primary or secondary recommendations within the specified time limits, the Secretariat can recommend to the Standing Committee that 'all Parties immediately take strict measures, including as appropriate suspension of trade in the affected species with that Party'.⁶⁵ The Secretariat is responsible for verifying implementation of recommendations, and reporting on species previously reviewed or eliminated from the process, in order to allow for their reintroduction into the mechanism, if necessary.

The non-compliance response element, enabling the Standing Committee to recommend suspension of trade in affected species for non-compliant parties, was introduced in 1992 (initially for animals). The following year, the Standing Committee recommended that imports of specified species from 16 states should be suspended until the Secretariat had determined that primary and secondary recommendations had been implemented.⁶⁶ The Committee also agreed that non-

parties could be subject to the process.⁶⁷ Since then, the list of parties subject to species-specific trade suspensions has been continually updated, as states comply, or fail to comply, with primary and secondary recommendations. As of COP II, Standing Committee recommendations for suspension of imports affected 16 species and two genera (groups of species), and involved 16 countries, three of which were non-parties.⁶⁸

The other form of species-specific response for high profile endangered species has been employed on an *ad hoc* basis for rhinos and tigers that have been driven to near extinction by illegal trade in their body parts. Following intense NGO lobbying and calls for sanctions against consumer states, the rhino, and later the tiger, were made special projects of the Standing Committee. A tentative recommendation for parties to consider sanctions against China and Taiwan was made, and minimum protection measures were agreed for implementation within a time limit.⁶⁹ Subsequently, technical missions visited consumer states to verify progress, followed by political missions reporting to the Standing Committee. The outcome was a recommendation for trade sanctions against Taiwan but not against China—a decision that some observers criticised as inequitable. The process was helped by the US certification of China and Taiwan under the Pelly Amendment (passed by the US Congress in 1967), resulting in a ban on imports of wildlife products from Taiwan.⁷⁰ Eventually, all consumer countries responded to pressure and went some way toward improving trade controls.

In response to the need for further action on tigers, the Standing Committee authorised more technical and political missions. The technical mission was led by the Secretariat and included staff from TRAFFIC and members of Environment Canada's wildlife enforcement division. Meanwhile, the chair of the Standing Committee led the political mission.⁷¹ They resulted, *inter alia*, in the creation of a Tiger Enforcement Task Force (TETF), composed of enforcement officials from range and consumer states and co-ordinated by the Secretariat. Aiming to combat illicit trade in tigers and their parts, the TETF will provide technical advice on wildlife crime and illicit trade, as well as intelligence support to parties. India, which was heavily criticised by the political mission and narrowly avoided the imposition of trade restrictions, hosted the first meeting of the TETF in April 2001.⁷²

Conclusion

The CITES compliance system has evolved over many years through the accretion of 'soft law' and practice. Central to its operation are the Secretariat and the Standing Committee. The former wields considerable power, since not only does it review and verify information, but it also makes recommendations to the COP and the Standing Committee, which on occasion are far reaching and are often acted on. This distinguishes CITES from other more recent MEAs, such as the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer and the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change. These accords delegate (or propose to delegate) recommendatory functions on compliance to a special implementation or compliance committee made up of state party representatives from different regions.⁷³

While it is recognised that there cannot be a single formula for all compliance systems, some form of implementation or compliance committee, in addition to a secretariat, is now an accepted institutional necessity for MEAs that commit parties to specific undertakings. The CITES Standing Committee performs this task as part of an increasingly busy agenda, which squeezes compliance matters between finance, administration and other delegated executive functions. Of necessity a political body, the Committee has sometimes been criticised for dealing with non-compliant countries inequitably, and, in the case of national reporting, for failing to address the issue at all. A dedicated compliance or implementation committee, preferably composed of independent experts, or at least party representatives with relevant expertise, may go some way towards addressing these shortcomings. The lack of such a committee for CITES also prevents experts (generally lawyers and law enforcement officers) from influencing the convention in a consistent and formal way, and concentrates power in the hands of the Secretariat. This can be an advantage if the Secretariat's power is applied neutrally and within the bounds of its mandate. While this is generally the case, the Secretariat has occasionally over-stepped its remit: its unilateral decision to reform the infraction report is just one example. The International Institute for Sustainable Development commented in December 2000 that, 'Despite the Secretariat's self-description as "humble servants to the Parties", many believe that it is subtly stretching its powers to a level of involvement not witnessed in other international environmental fora'.⁷⁴

A compliance or implementation committee would not only formally empower other experts, but it would also focus more attention on, and, significantly, generate funding for improving state party implementation of CITES.

The CITES compliance system has made increasing use of trade sanctions against non-compliant parties and non-parties. The sanctions have generally elicited the required response. Yet, given that there is no systematic, only *ad hoc*, on-site verification for checking that parties have complied, the true success of the system cannot be assessed. It needs to be judged against the inherent weaknesses of the compliance system. One weakness is poor annual reporting by the parties, undermining the convention's main information base. Other flaws include the lack of transparency of the Standing Committee through exclusion of NGOs (except the IUCN and TRAFFIC) from meetings and the inadequacy of national implementation. While the latter is slowly improving as a result of the national legislation project, there is no equivalent programme aimed at systematically reviewing and improving the capacity of parties to enforce their legislation—a capacity that is widely assumed to be poor, particularly among developing countries. All these weaknesses need to be redressed if CITES is to achieve its goal. Not only will the compliance system benefit, but, more importantly, the wildlife that the convention aims to protect stand more chance of surviving into the future.

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Endnotes

¹ The contents of this chapter have been extracted and summarised from a forthcoming book by the author: *Policing Trade in Endangered Species: The CITES Treaty and Compliance*, Earthscan/Royal Institute of International Affairs, London (spring 2002).

² Organisation for Economic Co-operation and Development (OECD), 'Experience with the use of Trade Measures in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)', 1997. See www.oecd.org.

³ Ronald B. Mitchell, 'Compliance Theory: An Overview', in James Cameron, Jacob Werksman and Peter Roderick (eds.), *Improving Compliance with International Environmental Law*, Earthscan, 1996, p. 17.

⁴ Mitchell, p. 17.

⁵ As of 2000, the regional representatives on the Standing Committee are:

- **Africa** Burkina Faso, South Africa, Tanzania and Tunisia;
- **Asia** China and Saudi Arabia;
- **Central and South America and the Caribbean** Ecuador, Panama and St Lucia;
- **Europe** France, Italy and Norway;
- **North America** United States; and
- **Oceania** Australia.

Other Standing Committee members are Switzerland, the Depositary of the convention, and Chile, the host of the next COP (COP 12).

⁶ CITES Resolution, Establishment of the Standing Committee of the Conference of the Parties, Conf. II.1 Annex I, April 2000.

⁷ CITES Article XII.

⁸ CITES Article II.1.

⁹ CITES Article II.2.

¹⁰ CITES Article II.3.

¹¹ OECD, p. 17, quoting CITES trade statistics from the Wildlife Conservation Monitoring Centre, Cambridge.

¹² CITES Article VII.

¹³ Simon Lyster, *International Wildlife Law*, Grotius, 1985, p. 256; Peter H. Sand, 'Commodity or Taboo? International Regulation of Trade in Endangered Species', *Green Globe Yearbook*, 1997, p. 22; Gwyneth G. Stewart, 'Enforcement problems in the endangered species convention: reservations regarding the reservation clauses', *Cornell International Law Journal*, 1981, vol. 14, p. 429; Paul Matthews, 'Problems Related to the Convention on the International Trade in Endangered Species', *International and Comparative Law Quarterly*, 1996, vol. 45, p. 421; Valerie Karno, 'Protection of endangered gorillas and chimpanzees in international trade: can CITES help?', *Hastings International and Comparative Law Review*, 1991, vol. 14, pp. 989–1015:1002.

¹⁴ Sand, p. 22.

¹⁵ Willem Wijnstekers, *The Evolution of CITES: A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, CITES Secretariat, 1995, p. 11 and p. 303; Sand, p. 22; Martijn Wilder, 'Quota systems in international wildlife and fisheries regimes', *Journal of Environment and Development*, 1995, vol. 4, no. 2, p. 55.

¹⁶ CITES Article X.

¹⁷ Cyrille de Klemm, *Guidelines for Legislation to Implement CITES*, IUCN Environmental Policy and Law Paper No. 26, IUCN–The World Conservation Union, 1993.

¹⁸ CITES Articles II.4 and VIII.1.

¹⁹ CITES Article XIV.1.

²⁰ CITES Article IX.1.

²¹ CITES Articles III and IV.

²² The Infractions Reports prepared for COP 7, 8 and 9 noted that 15, five and 10 parties, respectively, had not identified Scientific Authorities.

²³ Farhana Yamin and Annabella L. Gualdoni, 'A case study of a regional approach to compliance with CITES in southern Africa', in James Cameron, Jacob Werksman and Peter Roderick (eds.), *Improving Compliance with International Environmental Law*, Earthscan, 1996, pp. 187–218:188.

²⁴ The International Criminal Police Organisation.

²⁵ CITES Article VIII.7. Wijnstekers, p. 191.

²⁶ CITES Article VIII.

²⁷ John Caldwell and Lorraine Collins, 'A Report on Annual Reports Submitted by the Parties to CITES', CITES Doc. 10.26 Annex, prepared for COP 10, 9–20 June 1997. Updated by Jonathan Harwood, 'A Report on Annual Reports Submitted by the Parties to CITES', CITES Doc. 11.19 Annex 2, prepared for COP 11, 10–20 April 2000.

²⁸ Many annual reports contain some or all of the information required in biennial reports. CITES Doc. 7.19, 'Report on National Reports under Article VIII, Paragraph 7, of the Convention', prepared by the Secretariat for COP 7, 9–20 October 1989; CITES Doc. 9.24 (Rev.), 'National Laws for Implementation of the Convention', prepared by the Secretariat for COP 9, 7–18 November 1994.

²⁹ CITES Article XII.

³⁰ The many resolutions on reporting back this up. See CITES Resolutions Conf. 2.16 on 'Periodic Reports' (1979), Conf. 3.10 on 'Review and Harmonization of Annual Reports' (1981), Conf. 5.4 on 'Periodic Reports' (1985), and Conf. 8.7 on 'Submission of Annual Reports' (1992); also see Resolution Conf. 11.17, 'Annual Reports and Monitoring of Trade' (2000).

³¹ CITES Doc. 8.17 (Rev.), 'Report on National Reports Under Article VIII, Paragraph 7, of the Convention', prepared by the Secretariat for COP 8, 2–13 March 1992.

³² Harwood.

³³ CITES Article XII.

³⁴ John Lanchbery, 'Long-term trends in systems for implementation review in international agreements on fauna and flora', in David G. Victor, Kal Raustiala and Eugene B. Skolnikoff (eds.), *The Implementation and Effectiveness of International Environmental Commitments*, International Institute for Applied Systems Analysis, 1998, p. 71.

³⁵ Sand, p. 25.

³⁶ Rosalind Reeve, *CITES and Compliance: Past, Present and Future*, David Shepherd Conservation Foundation, 2000, p. 24 and p. 27.

³⁷ CITES Article XIII.

³⁸ CITES Resolution Conf. 9.8 (Rev) (June 1997), now incorporated into Resolution Conf. 11.3 'Compliance and Enforcement' (April 2000).

³⁹ CITES Doc. 8.19 (Rev.), 'Review of Alleged Infractions and Other Problems of Enforcement of the Convention', prepared by the Secretariat for COP 8 (hereinafter 'COP 8 Infractions Report').

⁴⁰ CITES Doc. 10.28, 'Review of Alleged Infractions and Other Problems of Implementation of the Convention', prepared by the Secretariat for COP 10 (hereinafter 'COP 10 Infractions Report').

⁴¹ Sand, p. 25.

⁴² CITES Doc. 11.20.1, 'Review of Alleged Infractions and Other Problems of Implementation of the Convention', prepared by the Secretariat for COP 11 (hereinafter 'COP 11 Infractions Report').

⁴³ Reeve, *CITES and Compliance: Past, Present and Future*, p. 21.

⁴⁴ For a description of the sales and verification missions, see CITES Doc. 11.31.1, 'Experimental Trade in Raw Ivory of Populations in Appendix II', prepared by the Secretariat for COP 11.

⁴⁵ 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', prepared for SC41, 8–12 February 1999.

⁴⁶ CITES Inf. SC.41.12, Letter to the Standing Committee from Burkina Faso, Chad, Congo-Brazzaville, Ghana, Kenya, Liberia, Mali and Zambia, presented to SC41. Germany, India and Italy also expressed concern that the conditions for the ivory sales had not been fulfilled.

⁴⁷ CITES Doc. 11.31.2, 'Monitoring of Illegal Trade and Illegal Killing', prepared by the Secretariat for COP II.

⁴⁸ CITES Inf. SC.41.12.

⁴⁹ Reeve, p. 42.

⁵⁰ Several notifications have referred to the implementation monitoring procedure as providing for the Secretariat to take a 'more active role in identifying enforcement problems concerning the implementation of the Convention'. See Notification to the Parties No. 595, 'Secretariat Investigations Officer' (1990); Notification to the Parties No. 630, 'CITES Enforcement Co-ordination' (1991); Notification to the Parties No. 636, 'Thailand: Ban on CITES Trade' (1991).

⁵¹ Reeve, *Policing International Trade in Endangered Species*.

⁵² CITES Doc. 10.31 (Rev.), 'National Laws for Implementation of the Convention', prepared by the Secretariat for COP 10.

⁵³ CITES Doc. 10.31 (Rev.).

⁵⁴ CITES Decision 10.115, Directed to the Secretariat 'Regarding implementation of Resolution Conf. 8.4', June 1997.

⁵⁵ Notification to the Parties No. 1999/75, 'Senegal: Recommendation to Suspend Trade', 21 October 1999; Notification to the Parties No. 1999/78, 'Guyana: withdrawal of the recommendation to suspend trade', 5 November 1999; CITES Doc. 11.21.2, 'National Laws for Implementation of the Convention: Measures to be Taken with Regard to Parties without Adequate Legislation', prepared by the Secretariat for COP II; Notification to the Parties No. 2000/004, 'Senegal: withdrawal of the recommendation to suspend trade', 31 January 2000.

⁵⁶ CITES Doc. 11.21.1.

⁵⁷ CITES Doc. 11.21.1.

⁵⁸ Reeve, *The CITES Compliance System*.

⁵⁹ Harwood.

⁶⁰ CITES Decision 11.37, Directed to Parties 'Regarding annual reports', April 2000.

⁶¹ CITES SC45 Doc. 13.1, 'Late or Non-Submission of Annual Reports', prepared by the Secretariat for SC45, 19–22 June 2001.

⁶² CITES Resolution Conf. 10.3, 'Designation and Role of the Scientific Authorities' (1997). CITES Doc. SC. 41.15, 'Designation of Management and Scientific Authorities', prepared for SC41.

⁶³ Notification to the Parties No. 1999/24, 'Parties that have not designated Scientific Authorities', 12 March 1999.

⁶⁴ According to the directory on the CITES website, www.cites.org.

⁶⁵ CITES Resolution Conf. 8.9 (Rev.), 'Trade in Specimens of Appendix II-Species taken from the Wild' (2000), and CITES Decisions 11.106/11.117, 'Regarding implementation of Resolution Conf. 8.9 (Rev.)', (2000).

⁶⁶ Notifications to the Parties No. 737, 'Significant Trade in Animal Species Included in Appendix II: Recommendations of the Animals Committee', 20 April 1993, and No. 775, 'Significant Trade in Animal Species Included in Appendix II: Recommendations of the Animals Committee', 23 November 1993.

⁶⁷ 'Twenty-Ninth Meeting of the Standing Committee: Summary Report', 1–5 March 1993, p. 14.

⁶⁸ CITES Doc. 11.41.1 Annex 2, 'Implementation of recommendations of the Animals Committee made in accordance with Resolution Conf. 8.9', prepared by the Secretariat for COP II.

⁶⁹ 'Decisions of the Standing Committee on Trade in Rhinoceros Horn and Tiger Specimens', in 'Thirtieth Meeting of the Standing Committee: Summary Report', 6–8 September 1993, p. 29.

⁷⁰ The US Pelly Amendment to the Fishermen's Protective Act of 1967 establishes a process that allows any person or entity to petition the US government to certify that nationals of a country are diminishing the effectiveness of an international fisheries programme or an international endangered or threatened species programme. If this determination (formally called a certification) is made, then the US president has discretionary power to impose trade sanctions against that state.

⁷¹ CITES Doc. sc.42.10.4, 'Tiger Technical Missions', prepared by the CITES Tiger Missions Technical Team for sc42, 28 September–1 October 1999.

⁷² 'UK Action Boosts the Fight to Protect Tigers', Foreign and Commonwealth Office, Department of the Environment, Transport and the Regions, press release, 31 October 2000; Environment News Service, 'New task force set to tackle tiger poaching', 3 April 2001, available at ens.lycos.com.

⁷³ The Montreal Protocol on Substances that Deplete the Ozone Layer has an Implementation Committee that deals with non-compliance, while the Kyoto Protocol to the United Nations Framework Convention on Climate Change is developing a compliance system that proposes a Compliance Committee with an enforcement and a facilitation branch.

⁷⁴ 'A Brief Analysis of the CITES Technical Committees Meetings', *Earth Negotiations Bulletin*, 21/17, International Institute for Sustainable Development, 18 December 2000. See www.iisd.ca.