



The Trade in Endangered Species: The CITES Regime

International Environmental Law

Dr Richard Caddell

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Introduction

- What is CITES?
- History of the Convention
- Why is it necessary?
- What does it do and how does it do it?
- How does it cooperate with other treaties
- Challenges to effective operation



What is CITES?

- The Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973
- One of a series of international treaties to protect wildlife globally
- One of the most widely supported wildlife treaties in the world (184 parties)
- Concluded on 3 March 1973 in Washington DC; entered into force officially on 1 July 1975
- Applies to an enormous variety of plants and animals
- NB – specific mandate, not holistic protection
- Import, Export, Re-export, Introduction from the Sea



History of CITES

- Historical concerns over wildlife trade
- 1963: International Union for Conservation of Nature and Natural Resources suggested a treaty to regulate export, import and transit of skins and trophies
- 1973: Final text of CITES agreed
- CITES entered into force on 1 July 1975 and applies in most countries of the world



How does CITES work?

- CITES provides a framework to ensure that trade in species is lawful, sustainable and traceable
- CITES does **NOT** replace national laws – every country that participates in the Convention needs to develop legislation and practices to enforce it in their territory
- It is important that national laws are up-to-date and enforced, or CITES becomes ineffective
- Countries that sign up to CITES have clear obligations to set up national institutions and to ensure that trade in particular species is prohibited and penalised, and specimens are confiscated



CITES principles

- Wild animals and plants are an irreplaceable part of natural systems and must be protected for this and future generations
- Flora and fauna has a strong aesthetic, scientific, cultural, recreational and economic value
- People on the ground are best placed to protect species within their borders
- International cooperation is the best way to ensure that certain species are not over-exploited through trade



The CITES Institutions

- Many wildlife treaties have an institutional machinery to allow them to operate effectively
- **Conference of the Parties** – meets every 2-3 years and is the decision-making body of CITES
- Decisions on listing (and de-listing) species are taken at the COP
- Animals Committee and Plants Committee – expert bodies that advise the COP and review species to ensure they are listed on the correct Appendix
- **Secretariat** – administrative body of CITES
- **Standing Committee** – assists Secretariat and supervises budget



The CITES listing system

- Many laws deal with species by categorising them as requiring particular legal protections
- CITES parties list species on three Appendices with a sliding scale of protection
- Appendix I: species that are threatened with extinction – very strict requirements on trade
- Appendix II: not necessarily threatened with extinction but may become so unless trade is strictly regulated
- Appendix III: individual countries need to protect this species and require help from other countries in order to do so



Appendix I species

- Specimens can only be traded with an export permit and an import permit
- Exporting state is happy that exports are not detrimental to survival of the species, that the specimen was obtained legally, that any living specimen will be transported humanely and that there is a valid import certificate
- Import permit allowed only if it is not for purposes detrimental to survival of the species, that the importer can house and care for it and that it is not to be used for 'primarily commercial purposes'
- Approximately 700 animals and 340 plants on Appendix I



Appendix II species

- Specimens can only be traded with an import and export certificate
- Similar standards to Appendix I species
- Export permit granted where exports are not detrimental to species survival, if specimen is obtained lawfully and it will be shipped humanely
- Import permit granted if there is a valid export or re-export permit
- Approximately 5000 animals and 30,000 plants on Appendix II



Appendix III species

- Softer standards as the species is not endangered everywhere
- Exporting state must be convinced that the specimen was obtained lawfully and will be transported in a humane manner
- Importer must present a certificate of origin, and an export permit if the specimen comes from a country that has listed that plant/animal on Appendix III
- Approximately 200 species of plants and animals on Appendix III




Listing controversies

- Extinct animals – the saga of the woolly mammoth
- Whaling and CITES
- Indigenous concerns – the polar bear controversy
- Downlisting attempts – the ivory question



CITES obligations

- Parties must enforce the provisions of CITES and prohibit trade in specimens in violation of the Convention
- States must take measures to penalise trade and/or possession of these specimens
- States must provide for the confiscation or return of any seized specimens
- Confiscated specimens to be returned to state of origin (at their expense) or sent to a rescue centre
- Specimens legally traded must pass through formalities with minimal delay
- Records of species traded must be kept by each party
- Parties must report regularly to CITES on national implementation



Institutional requirements

- CITES parties must establish two types of national institutions to help implement the Convention
- **Management Authorities:** responsible for granting permits or certificates
- **Scientific Authorities:** provide scientific advice about whether exports and imports will not endanger the species' survival and whether the person importing it is able to care for the specimen properly



National legislation

- COP8 – Secretariat tasked with identifying parties that need to develop further legislation to implement CITES
- National legislation must:
 - Designate 1 Management and 1 Scientific Authority
 - Prohibit trade in species in violation of CITES
 - Penalise trade in these species
 - Confiscate specimens that have been traded in this manner

CITES permits

- CITES permits follow a particular format
- Export permits carry information specified in Appendix IV of CITES (as amended)
- All permits and certificates need the CITES title, name and official stamp of the Management Authority and a control number
- Copies must be clearly marked as such
- Separate permits/certificates are required for each consignment
- Management Authority of importing state cancels export permit upon receipt



Exemptions and Special Procedures

- There are a series of exemptions to the operation of CITES
- No application to transit or transshipment through a CITES party – while the specimens remain in Customs control
- Specimen was acquired before the provisions of CITES applied to it and the national Management Authority issues a certificate stating so
- Specimen was bred or propagated in captivity and there is a certificate stating this
- Non-commercial loans, donations or exchanges between scientists if approved by Management Authority



Personal use

- CITES generally does not apply to personal or household effects
- Exceptions – an Appendix I species is acquired by someone outside their usual state of residence and is being imported into that state
- Exceptions – an Appendix II species is acquired by someone outside their usual state of residence and in a state in which removal from the wild occurred, is being imported into that state and an export permit is usually needed



Circuses, zoos and menageries

- Travelling zoos, circuses and menagerie animals may be exempt if:
- Exporter or importer registers these details with the Management Authority
- Specimen predates the application of CITES or has been bred in captivity
- Management authority is satisfied that the specimen will be transported and cared for so as to minimise risk of injury, damage or cruelty

Developing effective compliance





Review of Significant Trade

- The primary 'teeth' of CITES: Res Conf 12.8
- CITES Committees consult on which species are subject to 'significant' trade
- If concerning patterns of trade are observed, states are requested to justify basis for exports
- Failure to satisfy Animals or Plants Committee results in a Recommendation to improve implementation
- Standing Committee can issue trade suspensions on countries that fail to meet these Recommendations

NLP - Analysis

Based on analysis, legislation is placed in one of three categories:

Category 1: legislation that is believed generally to meet the requirements for implementation of CITES

Category 2: legislation that is believed generally not to meet all requirements for the implementation of CITES

Category 3: legislation that is believed generally not to meet the requirements for implementation of CITES



Key Convention provisions

- What is essential to include in national legislation
 - Article II of the Convention requires Parties to only allow trade in specimens of CITES-listed species in accordance with the provisions of the Convention
 - Articles III to VII set forth the conditions under which trade is allowed to take place
 - Article IX requires that Parties designate a Management Authority and a Scientific Authority
 - Article VIII requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed

Components



Essential



Recommendations



Good practice

Designation of authorities

Essential *Art. IX*

- The **CITES Management Authorities** and **CITES Scientific Authorities** should be **designated by a legal instrument** (law, regulation, decree)
- The legislation should clearly and precisely describe the **roles and responsibilities** of the national CITES MA and SA and specifically give them the powers to carry out these responsibilities (power to grant – and not to grant - permits and certificates, power to establish export quotas, etc.)

Designation of authorities

Recommended

Res.10.3, Res.11.3, Res. Conf. 18.6

- The Scientific Authorities should be **independent** of the Management Authority(ies) and the functions (roles and responsibilities) of the Management and Scientific Authorities should be **separate**.
- If several MAs are designated, **only one should be appointed for official communication** with the CITES Secretariat and other Parties
- Legislation should require and provide mechanisms for **coordination, collaboration and communication** between the Management and Scientific Authorities as well as with other relevant government agencies (e.g. Customs, police, border control, sector ministries/agencies responsible for fisheries, forestry, foreign trade etc.)



Prohibition of trade violating CITES

Essential

Articles II, III, IV, V, VI and VII

- **All species** included in the three Appendices of the Convention must be covered by national legislation irrespective of whether they are native or exotic.
- **Timely (automatic) amendment** of any annexes or schedules to reflect periodic changes made to the Appendices.
- All types of CITES **specimens** (live or dead animals and plants, as well as parts and derivatives) taking into account all annotations used in the Appendices
- All types of **trade transactions** under the Convention (export, import, re-export, and introduction from the sea, irrespective of their commercial or non-commercial character)



Prohibition of trade violating CITES

Essential (Continued)

- **General clause prohibiting** any trade in CITES specimens in violation of the Convention (e.g. without a valid permit or certificate), as a catch-all provision
- **Conditions and procedures** for the granting of permits and certificates required for trading in CITES specimens should be clearly set out in the legislation to ensure that such trade is legal (legal acquisition finding), sustainable (NDF) and traceable (marking etc.)
- The **care of live animals** in trade should be addressed in the legislation
- The legislation should consider **exemptions and special procedures** set out in the Convention Article VII, as appropriate



Prohibition of trade violating CITES

Recommended

Res. 12.3, Res. 10.21, Res. 9.6, Res. 9.7

- The legislation should include a **standardized form for the national CITES permit/certificate** (e.g. in an annex)
- The legislation should cover any specimen which appears from an accompanying document, the packaging or a mark or label, to be a **part or derivative** of an animal or plant species included in the Appendices, unless specifically exempted
- The **Live Animal Regulations and the Perishable Cargo Regulations of the International Air Transport Association (IATA)** and the CITES Guidelines for the non-air transport of live wild animals should be taken into account (as a reference)
- Legislation should provide for the **inspection of specimens in transit, or being transshipped**, to verify the presence of a valid CITES permit or certificate as required under the Convention or to obtain satisfactory proof of its existence



Prohibition of trade violating CITES

Good Practice

- The legislation should be aligned as closely as possible with the provisions, language and spirit of the Convention
- The legislation should replicate the distinction between Appendices I, II and III of the Convention



Penalization of illegal trade

Essential (Conv. Art. VIII)

- A clear definition of the **prohibited actions/activities** should be included in the legislation, for example:
 - trade without a **valid permit/certificate**
 - **possession** of specimens that were illegally acquired/introduced
 - **Falsification** of documents / mis-declaration of origin/volume of the specimens
 - **Attempts** at any of the above
- The legislation should specify that such actions/activities constitute an **offence** which is punishable by with adequate penalties, including imprisonment, fine, confiscation, suspension of activity, etc.



Penalization of illegal trade

Recommended

Resolution Conf. 11.3 (Rev. CoP18)

- **The ministries and agencies and their agents** mandated to enforce the Convention should be clearly designated in the legislation and should have the **necessary powers and authorities** to carry out their functions
- **Cross-references to any offences and penalties** related to CITES that are provided in Customs, general crime/penal, environmental or other legislation
- A maximum penalty of at least **4 years of imprisonment** for CITES-related offences involving **organized crime** or trafficking in endangered species



Penalization of illegal trade

Good Practice

- The **criminal legislation** on regulated or prohibited goods, organized crime, money laundering, controlled deliveries, wire tapping, the use of informants, etc. should cover serious offences related to CITES
- The legislation should **provide offences and penalties** for attempted violations, aiding and abetting, corporate and corporate officer liability, recidivism, obstruction of justice, false statement, tampering, fraud



Authorization to confiscate

Essential

Conv. Article VIII, paragraph 1(b), paragraph 2

- The legislation (either specialized CITES legislation or other legislation) shall provide for the **permanent confiscation** - as distinguished from the **temporary seizure** - of illegally traded or possessed specimens



Authorization to confiscate

Recommended

Conv. Article VIII, Res. Conf. 17.8

- The legislation should **specify which authorities** have the power to confiscate, the extent of their confiscation powers, the procedures that must be followed, including for decision on temporary and **final disposal** of confiscated specimens;
- The legislation should allow for **costs of storage, destruction, return to the country of origin** etc. of confiscated specimens to be charged to the offender;
- The MA should have the authority to **designate rescue centres** to look after confiscated living specimens



Authorization to confiscate

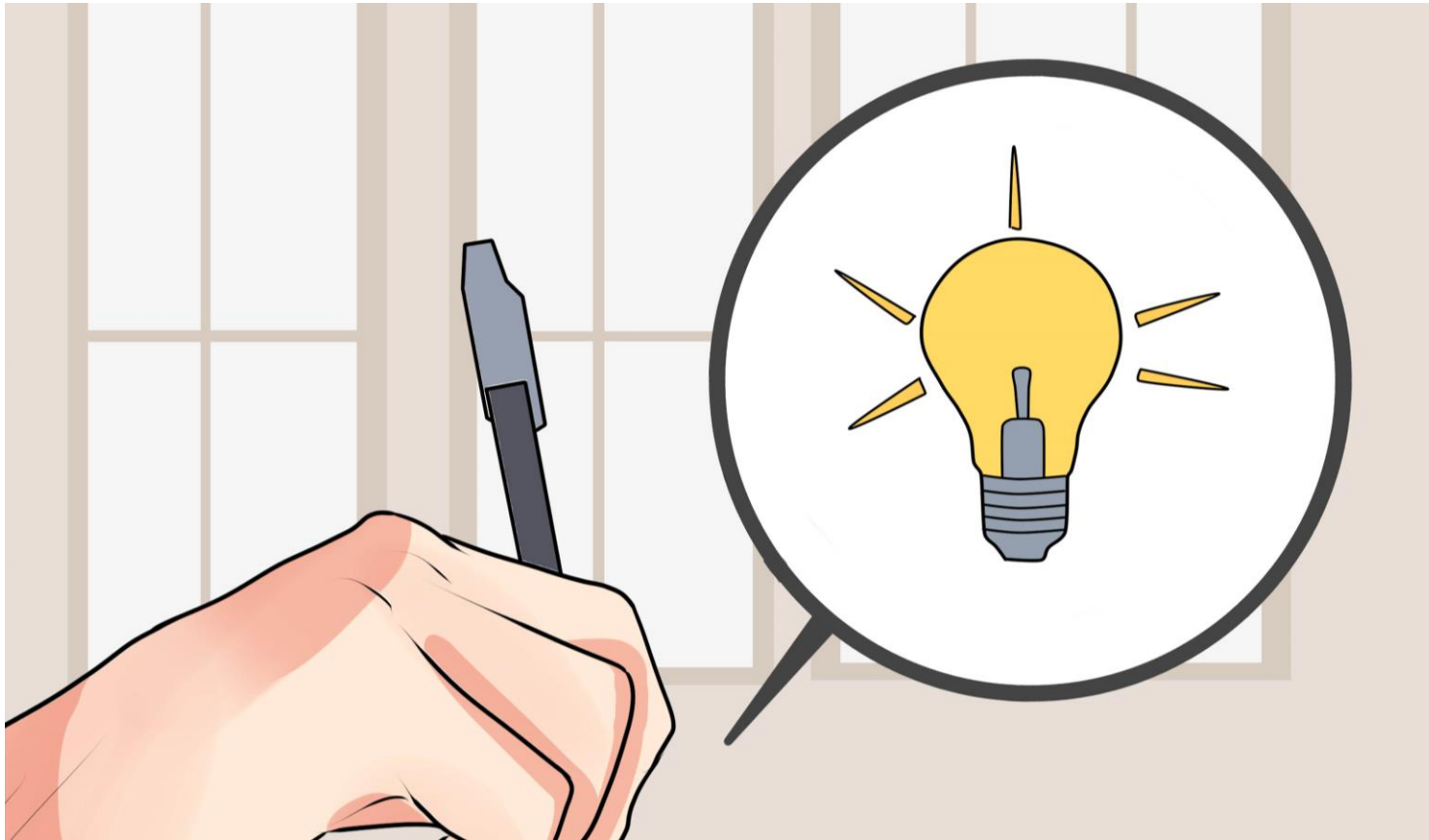
Good Practice

- The legislation should authorize the confiscation of not only specimens but also **vehicles, vessels, containers, equipment**, etc. used in the commission of a CITES-related offence
- Confiscation of specimens of CITES-listed species involved in an infraction should be compulsory.
- The application of this precautionary measure should not be subordinated to the identification of the offender and the penal liability of the accused



Developing national legislation

- Parties' experience in the development of strengthened CITES implementing legislation has shown the importance of
 - **simultaneous preparation** of enabling and implementing legislation
 - provision for the timely incorporation of **periodic amendments** to the CITES Appendices
 - addressing **illegal possession** as well as illegal trade
 - **ensuring policy coherence** in relation to national wildlife trade policy, other biodiversity-related conventions to which a State is party, natural resource management (including fisheries management), the criminal justice system and development policy



Legislative plan

- Approach (Act or secondary)
- Timeline and related outputs
- Responsible lead ministry or agency
- Other ministries, agencies, stakeholders to be consulted
- Consultation with the CITES Secretariat

Cooperation with other treaties

- CITES part of the Biodiversity-Related Conventions – although a sometimes tetchy relationship
- Closest cooperation with CMS due to similar operating processes – taxonomical synergies, joint species initiatives
- Joint Work Programmes with other BRCs



Key challenges

- Sheer scale of species subject to oversight
- Limited implementation of provisions in many jurisdictions
- Implementation challenges – corruption, finance, capacity, organised crime
- Western biases – global South, Eastern medicine





Any questions?