

The Strengths & Shortcomings of Cites

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II(a). STRENGTHS OF CITES

A lot of welfare is on the credit of CITES, like the first, with 183 groups agreeing to the compact; CITES has been admired for motivating people about the ecological significance of giving security to unique and disappearing species from unrestrained global commerce.^[1] Some professionals also value the agility of CITES in shaping business limitations for species regarding their requirements of security, however allowing controlled trade of species which can be quickly developed.^[2] Secondly, professionals admired CITES for its effective checking plan, which makes available the complete record of some species and gives the full information to the parties, which helps in selecting a species for enrolling in an appendix.^[3] The CITES checking plan has been hyped as an achievement due to the agreement citation of about 5600 animals and 30,000 plant varieties.^[4] Thirdly, the conferences of CITES in 2013 and 2016 are regarded as so effective because, as a result of these, a lot of unique and disappearing species are enlisted in the treaty for the security of these species.^[5]

Especially the conference held in 2013 is considered a 'complete achievement' and a 'wholesome victory' because it resulted in the addition of five kinds of sharks, various kinds of turtles, the Ecuadorian Machalilla's frog, and ebony and rosewood trees in the treaty.^[6] Also, the 2013 conference was acclaimed for advancing business treaties of rhinos and elephants and designing a recording scheme on the stealing of great species of apes.^[7]

The 2016 conference also deliberated to be fruitful regarding the species' security.^[8] Such as a large number of suggestions to legalize (Appendix II) or ban (Appendix I) global businesses of different species were given, and most of them were approved.^[9] These comprise Appendix 1, enrolling of African gray parrots, entire eight species of pangolin, and Barbary macaques. Glossy and thresher sharks and Mobula rays were itemized in Appendix 2. Also, a large number of Rosewood and Palisander tree species were demolished due to the wood business. A large number of amphibians and reptiles which are required for the foreign pet trade and are greatly endangered, were enlisted along with their increased security level.^[10]

Fourth, CITES has been admired for playing an important role in inter-convention collaboration and cross-insemination, basically in the way of organized analysis and laws of orientation.^[11] An example of this would be CITES' "understanding of 'water is not under the control of any government of state', which abridges the association in this agreement system, settled pre-UNCLOS, and the act of sea according to the UNCLOS.^[12]" CITES reflected to elucidate these terminologies according to the 1982 agreement of UNCLOS, reducing confusion among CITES and the worldwide act of fisheries.^[13]

Moreover, CITES takes on the aim to “participate in greatly lessening the level of a shortfall of biodiversity by guaranteeing that CITES and other multifaceted tools and methodologies are logical and communally accommodating.”^[14] CITES affiliation with the Convention on Biological Diversity (CBD) is an instance of this mutual alliance.^[15] Both the CITES and CBD administrators handed into a Memo of Sympathy which submitted “Groups of both agreements, as proper, harmonize and less duplication of efforts between their home establishments for every treaty, also suggested that the CITES Secretariat, explore probabilities according to which CITES turn out to be an associate in the endowment of proper requirements of CBD”.^[16]

For instance, CITES implemented a proper solution to make use of CBD’s Addis Ababa’s Philosophies and plans for the Justifiable consumption of biodiversity, “fourteen codependent useful codes, workable strategies, and some tools for their employment which manage the consumption of elements of biodiversity to guarantee the maintainability of these consumptions”^[17] Which results in no loss outcomes.^[18] No loss outcomes recount to the phrase in Article IV of CITES according to which “parties must allow the business in varieties of species counted in Appendices 2 only if the Controlled Authority of State of Export has: (a) recommended that “this type of trade will not prove harmful for the survival of such species’ (Article IV) and (b) clarified that the trade of varieties of these species must be regulated to preserve that species in its collection at a reliable level with its part in the environment in which it present and more beautiful beyond the level of which that species would be adequate for insertion in Appendix 1 (Article IV)”.^[19]

II(b). DEFICIENCIES OF CITES

A lot of most important shortcomings are credited to the operations of CITES. According to the treaty, parties should employ local legislature maintenance CITES and to institute administrative and technical establishments. In a Congressional Research Service report of US in 2016, “nearly 50% of the parties had not applied lawmaking which adequately conceals the basic accountabilities of CITES, containing (1) creation of administration and technical establishments; (2) ban on trade in defilement of CITES; (3) punishments for defilement; and (4) rules for unlawfully removing traded specimens”.^[20]

Professionals also rely on that a lot of countries are facing a shortage of control and supervise worldwide species business.^[21] Especially at the national level, states might not have enough economic and human assets to supervise this business, also, they do not give priority to the illegal import and export of species due to cultural and financial causes.^[22] Other hurdles are also present that obstruct the real implementation of CITES endowments, comprising exploitation at the government level, accord in species robbers and law implementing officers, also the absence of governmental support to deal with prohibited trade of species.^[23] CITES was also condemned for not delivering proper assistance regarding the enforcement of punishments on crimes related to wildlife, resulting in a great clash that how states punish the robbers and all the people involved in the illegal import and export of wildlife.^[24]

According to CITES, “any party can announce an autonomous statement that it will not be compelled endowment of treaty linked to trade in a specific species enrolled in the Appendices,” which is a perception called objections.^[25] “An objection can only be raised when a state turns to be a party to a treaty or when an alteration is approved. However, it can be discontinued at any time.”^[26] Objections are regarded as a major risk for the operations of CITES.^[27] For instance, “once an objection is reserved, the party is considered as not accompanied by other parties regarding that specific species, and can participate in free trade with other states which are not involved in that treaty or the party which is having the same objections.”^[28] Professionals have faith in that objections can be utilized as an ambiguity which can diminish unique and disappearing species if the business is not supervised correctly, damaging the aims and goals of the treaty.^[29]

Another weakness of CITES is that various species enrolled according to the treaty have to go through severe fall-offs in their number.^[30] Such as, from 2005 to 2015, the population of elephants in central Africa reduced to 64% as a result of the great stealing and illegal business of ivory, and the present CITES monitoring system is unsuccessful in stopping this illegal trade.^[31] According to the facts and figures, at this time, the African elephants are confronting an awful drop in 25 years^[32]. Furthermore, even after enrolled in Appendix 1, the rhinos population is also facing a major fall off quickly.^[33] The number of Black Rhinos decreased from 65,000 to 2600 from 1970 to 1998; the population of northern African White Rhinos decreased from 200 in 1970 to 25; and the Sumatran Rhino number decreased from 600-1000 to 400 from 1990s to 2000.^[34] Researchers also illustrate that instead of being enrolled in Appendix 1, illegitimate business in nearly all species of big Asian cats has intensified.^[35] An instance of this is the global population of such species, which decreased to 40% from 2000 to 2010, down from a whole global populace of 3500.^[36]

One of the major weaknesses of CITES is the deficiency of a real clash solution scheme. Article XVIII of CITES oversees clash solution. As stated in this article:

1. Any clash that happens between two or more groups regarding the understanding or implementation of the endowments of the existing treaties must be focused on the cooperation of the groups having this clash.
2. If the solution to the problem cannot be found according to the statements of this Article, the groups might, by the joint accord, put forward this clash towards settlement in detail in front of the Permanent Court of Arbitration at the Hague and the parties involved in clash must be forced towards the resolution of settlement.”^[37]

Such endowments have never been understood or extended on by a Meeting of Parties Resolution.”^[38] It is also noteworthy that according to section 2 of the Article, parties must show accord towards each other in presenting the cause of clash to arbitration, a practice which is unimportant or inessential.^[39] On the other hand, when both of the parties are sanctioned to arbitration, they are destined by the results.^[40]

“The Permanent Court of Arbitration” has implemented settlement laws, particularly for the clashes

concerning nature and natural sources.^[41] These laws permit for the choice of a board of judges with practice and proficiency in ecosystem or preservation of law of natural resources and “a suggestive list of professionals in ecology.”^[42] The arbitral court may comprise one, three, or five members and is authorized to “direct any short-term ways required to avoid severe risks to the ecosystem, or else if parties come to an agreement.”^[43]

Article XVIII of CITES has never been appealed, mainly for the reason that NGOs which play an important role in the progress and implementation of CITES, play no role in the process of settlement, and the adjudication process can have an endowment for amicus curiae mandates.^[44] When parties struggle to settle their clashes, built on Article XVIII (1), a process like this may have some shortcomings. Especially if parties fail to find a solution through discussions and decide not to be involved in the settlement process, parties can appeal for Article XIV.1 (a) of the Treaty, which permits the government to take “severe local actions concerning the terms and conditions for business, acquiring, control or transportation of species counted in Appendices 1, 2 and 3 or the thorough exclusion of that.”^[45] Therefore, this endowment indirectly “empowers the practice of autonomous financial restrictions through business limitations or trade exclusion beside other nations, as long as these are well-matched with wide-ranging valid principles of the universal act.”^[46]

CITES parties are working to establish trade boundaries and banks with the help of Article XIV.1 (a). Such as, “EU Associates nation implement a severe importation prohibition contrary to Indonesia regarding all species enlisted in CITES Appendix 2 in 1991-1995.”^[47] Independent trade methods have frequently been employed by the US in reaction to CITES violations, comprising “an importation prohibition according to Lacey Act against Singapore in 1986”^[48] And assurance according to the Pelly Amendment against Japan in 1991 and Taiwan in 1993, which tiles away for “foreign business limitations or the refutation of fishing rights at American coastlines.”^[49]

The clash-resolving strategy of CITES has a large number of weaknesses. Such as independent trade steps of a state, due to unproductive discussions and parties not entreating CITES settlement phrase may result in reciprocal methods, thus obstructing worldwide trade and may steer towards a trade combat. Actually, these reciprocal means might have more destructing influence if they are employed in other fields in spite of species trade, for example, in the implementation of greater charges on the trade of things not related to wildlife, escalation of government aids for some non-wildlife goods, which provides the establishing country a discriminating benefit in the trade of a specific product as compare to their other partners.

As a result of independent trade dealings that are established at the domestic level, inconsistency is expected in some states that have local measures and acts to establish independent trade measures, but others do not have these measures.

As discussed above, conditions, for example, dishonesty at the government level, conspiracy among robbers of wildlife and executives of law implementation departments, also the deficiency of administrative power to fight with prohibited trade of wildlife may obstruct a state’s capability to

establish an operative ecological guiding scheme, comprising authorization schemes for allocating approvals related to environment, and probing organization to notice that why approvals would be rated and the extent that would be established. This can take some countries, particularly rising nations, towards major drawbacks contrary to advanced nations like the US.

Furthermore, as there is no impartial individual or administration to observe the establishment of trade approvals like these, a state of affairs may ascend where some states can establish agreements that are considerably stricter as contrasted to an average state that might establish under the same conditions for the same defilement.

This type of situation can be affected by external conditions of an ecological act, for example, the geopolitical intricacies among two states. Professionals rely on the United States Supreme Court, which declared in 1986 that “the establishment of trade approvals is related to the foreign strategies preferences of the US rule and hence cannot be authorized by communal matters”^[50] to prepare the implementation of the universal ecological act on whether or not it is presently suitable for any management, this is only just a persuasive beginning for the enduring protection of joint natural resources”.^[51]

III. Generating an Operative Cites Disagreement Resolution System

CITES needs to implement a clash-resolving method as offered by the World Trade Organization (WTO). At first, the WTO scheme permits “friend of the court briefs” through NGOs to be suggested for deliberation.^[52] The WTO Appellate framework newly established that the DSU disagreement board has a choice to receive suggestions from NGOs in the way of actions, as a share of their authority to get data by using any means.”^[53] By allowing the proposal of amicus mandate and permitting the contribution of NGOs. Thus WTO scheme solves some basic issues of parties related to Article XVIII of CITES and the Permanent Court of Arbitration.

About WTO, it is the concern of the General Council to settle different types of disputes, which comprise all members of WTO.^[54] The Council has the authority to create panels of professionals to cogitate disputes, and to admit or discard the panels’ judgments or the outcomes of a petition.^[55] Furthermore, the Council supervises the execution of the decisions of the board and its endorsements, and it has the supremacy to approve retaliatory activities if a state does not obey a ruling.^[56]

The arguing groups have to spend a period of two months as a consultation period. In this period, they can exchange their ideas for the settlement of the dispute arising between them, or they can pursue the involvement of the director general of WTO to support in arbitrating the dispute.^[57] If the consultation fails during the given period, the complaining group can appeal for a board to be selected; the selected panel would see this matter and then make verdicts and recommendations on the dispute.^[58] However, the findings of the panel can be overturned by the General Council, but this happens very rarely because this needs a consensus, and the consensus is normally hard to

accomplish.^[59] International trade specialists are usually selected for the creation of a panel, and those experts can consult with professionals and they can even employ an expert appraisal group if systematic or technical problems are raised by an entity.^[60] The proceedings typically last six months; then a final report is submitted by the panel to the disputing parties with endorsements and decisions. After that, the report is submitted to the General Council after three weeks.^[61] If there is no appeal against the report, then the General Council takes two months to cogitate and accept the report. Any of the parties has the right to appeal the findings of the report to an Appellate body of seven members. The Appellate Body can uphold, amend, or reverse the findings of the panel.^[62] This procedure takes a time of usually two months or three months.^[63]

Successively for considering and adopting the findings, the General Council has a period of one month.^[64] If it is found by the Council that a party is involved in something wrong, the other party, that is, the losing one, is given a chance to implement the recommendations of the panel during an appropriate period.^[65] But if the required party fails to contrivance the panel's recommendations, then they have to offer recompense to the other Party or undergo some penalty; so it relates to the process of negotiation which gets initiated between the two groups, and they get subjected to dialogs.^[66] If these consultations fail, the Council, that is, the General Council, has the authority to officially approve the winning group to take reciprocal actions, including commanding limited trade authorizations that can append concessions or responsibilities contrary to the other group.^[67] "In principle, the contents should be executed in a similar segment as the argument. But if it does not seem to be concrete or is unproductive, then the authorizations could be enforced in an altered sector of a similar agreement. On the other hand, if this proposal also seems to be ineffective or infeasible, and if the situations are grim enough, then there is a possibility to take actions under another settlement."^[68]

The system that is WTO system could be extremely beneficial for the adaptation by CITES for several reasons. One of them could be that CITES is a Convention that controls trade and would assume to have several trade specialists arbitrating cases; this is something that is currently missing from Article XVIII.^[69] Furthermore, the Parties of CITES are supposed to have the accountability to institute and direct the arbitration board instead of subcontracting it to a peripheral association which can have a detached connection using the CITES Convention.

As resultantly, the Parties at CITES could have greater influence in confirming the arbitration verdict and developing procedures to advance the aims and goals of the Convention, including its objectives. With the help of the recommendations and rulings of the panel, the Parties at CITES can specify to one another which type of deeds are objectionable according to them and can use the pressure of peers to daunt other groups from taking part in those undesirable practices of the trade.

Moreover, the WTO system provides an opportunity for rival parties to convey a resolution when arbitration is in the process, and when the decision is made by the panel, the economic and political relationship can be leveraged by those parties with other third-party affiliates of CITES. Those affiliates can aid the broker in a settlement between arguing groups; this is something that is not

imaginable under the arbitration process of Article XVII.

More stability and orderliness are required to ensure by CITES introducing the system of WTO as compared to the current system of Article XVIII. Instead of instituting autonomous trade sanctions that seem to be excessive as well as arbitrary, the trade agreements should be rational and approved by CITES. The authorization must be done after guaranteeing the exhaustion of all other resolutions comprising penalties and compensation. Another strong point about CITES is that after making a finding panel puts pressure on the unfair party so that they can take significant actions to resolve their wrongdoings, securing them from being subjected to a random and unwarranted trade sanction, providing them a chance to nullify their violation.

Work Cited

Addis Ababa Principles and Guidelines, Convention on Biological Diversity,
www.cbd.int/sustainable/add.shtml.

Baur and Irvin, *supra*, at 330

Agence France-Presse, *African elephant numbers plummet during 'worst decline in 25 years'*, The Guardian, Sept. 25, 2016.

Cooperation and Partnerships, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <https://cites.org/eng/disc/coop.php>

Donald C. Baur and Wm. Robert Irvin, *Endangered Species Act: Law, Policy and Perspectives* 329 (American Bar Association, 2nd ed., 2009).

D.J. Leaman and T.E.E. Oldfield, *CITES Non-detriment Findings Guidance for Perennial Plants*, 7, Federal Agency for Nature Conservation (2014),
www.bfn.de/fileadmin/MDDB/documents/service/skript358.pdf.

Geir Ulfstein, *Making Treaties Work: Human Rights, Environment, and Arms Control* 157 (Cambridge University Press 2010).

Jon Hutton & Barnabas Dickson, *Endangered Species Threatened Convention* 82-84 (Routledge 2013).

More Highs Than Lows for Wildlife at CITES Meeting, Voices for Wildlife (Oct. 6, 2016),

<http://voices.nationalgeographic.com/2016/10/06/more-highs-than-lows-for-wildlife-at-cites-meeting/>.

Pervaze A. Sheikh and M. Lynne Corn, Cong. Research Serv., RL32751, The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 11 (2016).

Permanent Court of Arbitration, *Panels of Arbitrators and Experts for Environmental Disputes*,

<https://pca-cpa.org/en/about/structure/panels-of-arbitrators-and-experts-for-environmental-disputes/>

Peter H. Sand, *Enforcing CITES The Rise and Fall of Trade Sanctions*, 22 *Rev. of Eur., Comp. & Int'l Env'tl. Law* 251, 252-253 (2013).

Reservations, Convention on International Trade in Endangered Species of Wild Fauna and Flora, https://cites.org/eng/app/reserve_intro.php.

World Wildlife Fund (U.S.), *Effective Dispute Resolution: A Review of Options for Dispute Resolution Mechanisms and Procedures* 20 (1999).

Solène Guggisberg, *The Use of CITES for Commercially-Exploited Fish Species* 383 (Hamburg Studies on Maritime Affairs, Volume 35 2016).

The World Trade Organization, *Chapter 3: Settling Disputes*, 56 (WTO Press).

Workshop Report Final Draft: Expert Workshop Promoting CITES-CBD Cooperation and Synergy, International Academy for Nature Conservation (May 14, 2004), www.cbd.int/cooperation/final-report-CITES%20CBD_Vilm_Workshop_Report.doc.

1. Pervaze A. Sheikh and M. Lynne Corn, Cong. Research Serv., RL32751, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) 11 (2016). ↑
2. *More Highs Than Lows for Wildlife at CITES Meeting*, *Voices for Wildlife* (Oct. 6, 2016), <http://voices.nationalgeographic.com/2016/10/06/more-highs-than-lows-for-wildlife-at-cites-meeting/>. ↑
3. Solène Guggisberg, *The Use of CITES for Commercially-Exploited Fish Species* 383 (Hamburg Studies on Maritime Affairs, Volume 35 2016).
4. " *Cooperation and Partnerships*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, <https://cites.org/eng/disc/coop.php> ↑
5. *Workshop Report Final Draft: Expert Workshop Promoting CITES-CBD Cooperation and Synergy*, International Academy for Nature Conservation (May 14, 2004), www.cbd.int/cooperation/final-report-CITES%20CBD_Vilm_Workshop_Report.doc. ↑
6. Donald C. Baur and Wm. Robert Irvin, *Endangered Species Act: Law, Policy, and Perspectives* 329 (American Bar Association, 2nd ed., 2009). ↑
7. *Addis Ababa Principles and Guidelines*, Convention on Biological Diversity, www.cbd.int/sustainable/add.shtml. ↑
8. Baur and Irvin, *supra*, at 330. ↑
9. D.J. Leaman and T.E.E. Oldfield, *CITES Non-detriment Findings Guidance for Perennial Plants*, 7, Federal Agency for Nature Conservation (2014), www.bfn.de/fileadmin/MDB/documents/service/skript358.pdf. ↑
10. *Reservations*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, https://cites.org/eng/app/reserve_intro.php. ↑
11. Sheikh and Corn, *supra*, at 12. ↑

12. Randall A. Abate, *supra*, at 283. ↑
13. Agence France-Presse, *African elephant numbers plummet during 'worst decline in 25 years'*, The Guardian, Sept. 25, 2016. ↑
14. Jon Hutton & Barnabas Dickson, *Endangered Species Threatened Convention* 82-84 (Routledge 2013). ↑
15. CITES, 27 UST 1087, Art. XVIII. ↑
16. GeirUlfstein, *Making Treaties Work: Human Rights, Environment, and Arms Control* 157 (Cambridge University Press 2010). ↑
17. Peter H. Sand, Enforcing CITES The Rise and Fall of Trade Sanctions, 22 Rev. of Eur., Comp. & Int'l Envtl. Law 251, 252-253 (2013). ↑
18. World Wildlife Fund (U.S.), *Effective Dispute Resolution: A Review of Options for Dispute Resolution Mechanisms and Procedures* 20 (1999). ↑
19. The World Trade Organization, *Chapter 3: Settling Disputes*, 56 (WTO Press). ↑
20. Permanent Court of Arbitration, *Panels of Arbitrators and Experts for Environmental Disputes*, <https://pca-cpa.org/en/about/structure/panels-of-arbitrators-and-experts-for-environmental-disputes/> ↑