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CITES and the Whole Chain Approach to Combating Illegal Wildlife Trade

Annecoos Wiersema*

1. Introduction

Is the Convention on International Trade in Endangered Species (CITES)¹ still relevant to the fight to control unsustainable wildlife use and illegal wildlife trade? In this special issue of the *Journal of International Wildlife Law and Policy* on CITES, it is important to take this question seriously. Poaching of certain species is rampant, enforcement efforts are either nonexistent or fighting a losing battle, and many decisions seem to be made without concern for CITES. In August 2017, a South African rancher decided to hold an online auction of rhino horn, despite the fact that commercial international trade in rhino horn is illegal, and it is highly likely that some of that horn will end up traveling internationally.² As Bowman has said, “now is not the time for complacency where the operation of conservation treaty regimes is concerned: every criticism deserves due consideration, even the most radical.”³

The biggest driver of biodiversity declines is still overexploitation, and, for some species, overharvesting remains the primary threat to their survival.⁴ When those species are traded, whether legally or illegally, that trade may be regulated or even prohibited by CITES. However, since its earliest days, critics have questioned what the treaty does and have contended that it does too much, too little, or both.⁵ At the same time, anyone in conservation knows that addressing unsustainable levels of trade in endangered or threatened species requires national and sub-national action. In a prior issue of this journal, Geoffrey Wandesforde-Smith asked an important

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¹ Convention on Int'l Trade in Endangered Species of Wild Fauna and Flora, 3 March 1973, 27 U.S.T. 1087 [hereinafter CITES].

² Agence France-Presse, *Rhinoceros Horn Online Auction: Few Buyers After Outraged Protests*, THE GUARDIAN, 26 August 2017, <https://www.theguardian.com/world/2017/aug/27/rhinoceros-horn-online-auction-few-buyers-after-outraged-protests>; <https://rhinohornauction.com/web/> (the website for the auction, which can be viewed in three languages, English, Chinese, and Vietnamese).

³ Michael Bowman, A Tale of Two CITES: Divergent Perspectives upon the Effectiveness of the Wildlife Trade Convention, 22 REV. EUR., COMP. & INT'L ENVTL. L. 228–238, 229 (2013).

⁴ Sean Maxwell et al., Biodiversity: The Ravages of Guns, Nets and Bulldozers (Comment), 536 NATURE 143 (2016).

⁵ Bowman, *supra* note 3. See generally ENDANGERED SPECIES, THREATENED CONVENTION: THE PAST, PRESENT AND FUTURE OF CITES (Jon Hutton and Barnaby Dickson eds., 2000) [hereinafter ENDANGERED SPECIES, THREATENED CONVENTION].

and provocative question, suggesting that those interested in conservation may have been looking for law in the wrong places by relying on international law.⁶ Specifically, Wandesforde-Smith looked at CITES and questioned its effectiveness and role in curbing overharvesting of wildlife.⁷ This, despite Wandesforde-Smith's acknowledgement that CITES does have an influence on the level of engagement by states in the problem of wildlife trafficking.⁸

This article picks up Wandesforde-Smith's questions—is CITES effective, and is it law?—and explores them by tackling two different questions. First, what is happening at all levels of governance—international, national, and sub-national—to tackle illegal wildlife trade? And, second, what is the role of CITES in these efforts? The article does not measure the effectiveness of these efforts or the causal relationship between CITES and the range of efforts to tackle wildlife trafficking. Measuring effectiveness and causation would require a global empirical longitudinal study. Nevertheless, the article sheds important light on why CITES is still relevant to the discussion about tackling wildlife trafficking. In looking at both of these questions together, as this article does, we get a more complete picture of the role international law can and does play in combating illegal wildlife trade. The article is then both a response and a supplement to Wandesforde-Smith.

The article asks different questions because it is an attempt to change the way we look at CITES. Rather than looking at CITES as the embodiment of international law sitting at the top of a hierarchy of law, dependent on domestic law implementation, this article places it in the middle of two circular chains. The first, the governance chain is the chain that represents the different scales of governance required to combat wildlife trafficking. CITES is the most important of several international-level mechanisms. However, the others, national and sub-national, are not at a lower level. They are simply other points in the circular chain, so that while some influences flow directly from CITES, others flow from national or sub-national activity back to CITES. The second chain represents the chain of supply. It is also circular because while we might be tempted to think of a straight line from source to consumption, in fact consumption and demand influence the source as well.

When we view CITES as holding a place in these two intersecting circular chains, we begin to understand how significant it is and why the question to ask is not whether it is law but, rather, how it interacts with legal and non-legal efforts to combat wildlife trafficking. This is similar to what ecologists tell us about how we should study species: the focus should not be on the single animal or species, but rather on the way in which an animal or species interacts with its surroundings and the processes and connections that animal or species is involved in.⁹

The article begins by setting out the core treaty obligations in the CITES text and briefly noting the ways in which CITES has developed over the years through

⁶ Geoffrey Wandesforde-Smith, *Looking for Law in All the Wrong Places? Dying Elephants, Evolving Treaties, and Empty Threats*, 19 J. INT'L WILDLIFE L. & POL'Y 365 (2016).

⁷ *Id.* at 375.

⁸ *Id.* at 374–375.

⁹ CARL WALTERS, *ADAPTIVE MANAGEMENT OF RENEWABLE RESOURCES* 53–54 (1986).

the focus of the Secretariat and through decisions made by its parties at Conferences of the Parties. At this point in the article, the reader may be tempted to conclude that CITES is indeed irrelevant. The next two sections of the article attempt to rehabilitate it by adding new dimensions to the inquiry of its role in combating illegal wildlife trade. Section III discusses some examples of efforts to combat illegal wildlife trade that go beyond CITES and address various parts of the whole chain of supply for illegally traded wildlife, from source to consumption. The final section addresses what relationship CITES has to these efforts and what that means for CITES' place in the fight to combat wildlife trafficking.

2. CITES

2.1. *The core treaty text*

CITES, concluded in 1973, is a well-established international environmental treaty with 183 member states and concrete obligations.¹⁰ Unlike many other international environmental treaties, it does not have flexible language or commitments based on a country's development status. Instead, it has firm obligations and is, as a result, one of the "hardest" law treaties in the field of international environmental law. Despite a lot of hope and love poured into CITES, however, there have also been many criticisms. As we shall see, the parties have added to the broader understanding of CITES over the years. Nevertheless, they have not amended it. Thus, for now, it is worth focusing on the original text of the treaty to lay the foundation for some of the criticisms that have dogged it over the years.

The scope of CITES is limited to international trade and species affected by that international trade.¹¹ The treaty operates with the use of three appendices, with Appendix I and Appendix II being the most significant.¹² The parties to the treaty are to list species according to the degree of threat they are under due to international trade, and the listing of those species in turn affects what will be required for any international trade to occur.

Appendix I is meant to apply to the most endangered species, "all species threatened with extinction which are or may be affected by trade."¹³ These species are then subject to the need for both an export and import permit if they are to be traded internationally.¹⁴ Among other things, the import permit for species listed

¹⁰ CITES, *supra* note 1.

¹¹ "Trade" is defined as being trade that is international in scope, defining it to mean "export, re-export, import and introduction from the sea." *Id.* art. I(c). "Introduction from the sea" is in turn defined as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State." *Id.* art. I(e).

¹² Appendix III listing does not require agreement by all the parties to CITES, but allows an individual state to identify any species "subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade." *Id.* art. II(3) (describing the criteria for listing on Appendix III). Once listed on Appendix III, an export permit is required for any specimen leaving the country that listed the species, and that export permit requires that the species not have been obtained contrary to the laws of the listing state. *Id.* art. V(2)(a) & (3).

¹³ *Id.* art. II(1).

¹⁴ *Id.* arts. III(2)(a), III(3)(a).

on Appendix I requires that that “specimen is not to be used for primarily commercial purposes.”¹⁵ This is why commentators talk about the parties to CITES being able to ban international trade in species: because listing on Appendix I ends commercial international trade.

Listing on Appendix II does not carry the requirement of an import permit for its international trade, only an export permit, and Appendix II-listed species are not therefore subject to a complete restriction on commercial trade.¹⁶ Appendix II applies to all species “which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.”¹⁷

In order for these Appendices and the resulting permit requirements to affect levels of trade in wildlife, the text of CITES requires states’ scientific authorities—designated pursuant to the treaty—to determine that the export and, where relevant, import, “will not be detrimental to the survival of that species.”¹⁸ These non-detriment findings (NDFs) are then included in the permits. Without the NDFs, states would not have enough information to allow or deny trade, so the NDFs are critical to the success of the treaty. Unfortunately, capacity and lack of information exchange have dogged NDFs over the years, although, as discussed below, that now seems to be changing.¹⁹

2.2. Criticisms of CITES’ core approach

The limitation of CITES to international trade and a listing system regulating trade have allowed for some consistent and trenchant criticisms over the years. Many critics observe that nothing in CITES addresses the primary threat to species generally—the loss of habitat. This is significant not only for broader concerns about biodiversity as a whole, but also for some of the species covered by CITES.

The concern about what this gap means comes from different sides of certain debates. On one side, some commentators worry about the interaction of trade with increasing threats emanating from another source, such as climate change. In 2010 and again in 2013, the United States proposed transferring the polar bear to Appendix I from Appendix II.²⁰ Neither attempt was successful, with many countries noting that the primary threat to the polar bear comes not from commercial

¹⁵ *Id.* art. III(3)(c).

¹⁶ *Id.* art. IV(2).

¹⁷ *Id.* art. II(2)(a). The text also allows for co-called lookalike species to be added to the list, so that trade in those lookalike species does not undermine efforts to protect species subject to stricter requirements. *Id.* art. II(2)(b).

¹⁸ *Id.* art. III(2) & (3) & art. IV(2).

¹⁹ See *infra* text accompanying notes 34–37.

²⁰ CITES, *Consideration of Proposals for Amendment of Appendices I and II*, 15th Meeting of the Conf. of the Parties, Doha, Qatar, 13–25 March 2010, CoP15 Prop. 3 (2010); CITES, *Consideration of Proposals for Amendment of Appendices I and II*, 16th Meeting of the Conf. of the Parties, Bangkok, Thailand, 3–14 March 2013, CoP16 Prop. 3 (2013), at 2 [hereinafter Polar Bear Proposal 2013]; see also Annecoos Wiersema, *Uncertainty, Precaution, and Adaptive Management in Wildlife Trade*, 36 MICH. J. INT’L L. 375, 412–415 (2015) [hereinafter *Uncertainty, Precaution, and Adaptive Management*] (discussing the polar bear proposals in more detail).

trade but from climate change.²¹ The proposal in 2013 had noted that the projected decrease in habitat likely to come from climate change would exacerbate other threats and invoked the need for a precautionary approach “to ensure that primarily commercial trade does not compound the threats posed to the species by loss of habitat.”²² Nevertheless, the parties narrowly defeated the proposal, and it was not renewed at the 2016 CoP.

On the other side, some critics worry not only that CITES is ignoring a primary threat to many of the species listed on its Appendices, but also that ignoring that threat actually exacerbates illegal trade. For example, where demand for land encroaches on habitat for elephants and rhinoceros, it can lead to increasing conflict between local communities and species. This in turn can lead to increased poaching because of factors such as easier access and less support from local communities for maintaining populations of a species that is seen as more of a pest than a valuable benefit.

Another criticism of CITES comes from its mechanism for trying to avoid extinction. Critics have consistently argued that CITES operates from the assumption that trade and, therefore, use are antithetical to the survival of a species.²³ This is not an entirely fair criticism of the treaty, because Article II allows regulated trade. Nevertheless, it is true that once a species reaches a threat level due to trade, Appendix I should be triggered by the parties and a ban on commercial international trade put in place. Critics of this strategy argue that some trade may actually benefit certain species, even highly endangered ones, and that banning trade can actually lead to more demand and illegal trade.²⁴ I have challenged the assumptions behind these arguments elsewhere and will not address them directly here.²⁵

Although these criticisms can come from different sides of the debates about how best to combat illegal wildlife trade, all have in some part a central theme. The running theme is that the power of international law to combat threats to species from trade and other drivers is limited and that the particular text of CITES has failed and will keep failing to stop illegal wildlife trade. These are not just criticisms of CITES that could be fixed with a few amendments. They cut to the heart of the role of international law in the fight against wildlife trafficking.

For example, the observation that CITES does not address threats to habitat is correct. Yet changing that would not be a simple fix. Habitat protection implicates sub-national action. Our history in the United States is similar to that of many countries where land use decisions are local; even the federal role over species and land

²¹ CITES, 16th Meeting of the Conf. of the Parties, Plen. Mtg., Bangkok, Thailand, 3–14 March 2013, Summary Rec. of its 6th Sess., at 2, CoP16 Com I. Rec. 6 (Rev. 1), 13 March 2013.

²² Polar Bear Proposal, *supra* note 20, at 2.

²³ See Chris Huxley, *CITES: The Vision*, in ENDANGERED SPECIES, THREATENED CONVENTION, *supra* note 5, at 3, 10–11.

²⁴ Jon Hutton & Grahame Webb, *Crocodiles: Legal Trade Snaps Back*, in TRADE IN WILDLIFE: REGULATIONS FOR CONSERVATION 108, 108–118 (Sara Oldfield ed., 2003) (claiming that “legal trade can displace illegal trade” rather than “legal trade [leading] to illegal trade”).

²⁵ See Annecoos Wiersema, *Uncertainty and Markets for Endangered Species under CITES*, 22 REV. EUR., COMP. & INT’L ENVTL. L. 239 (2013) [hereinafter Wiersema, *Uncertainty and Markets*].

protection is contested.²⁶ In part because of this, the one major international treaty that does address biodiversity protection within countries, the Convention on Biological Diversity (CBD), is written with very flexible language, limiting obligations to what a country can do “as far as possible and as appropriate” and other phrases deferential to countries’ special needs and capabilities.²⁷ Taking a treaty with the strict provisions CITES has and expanding its reach into domestic affairs would be contentious. Indeed, it is likely only because CITES addresses only the most endangered species and trade that crosses borders that it could have been agreed to with its strict provisions in 1973. This suggests that international law is limited in what it can truly do for wildlife protection. Similarly, the argument that trade bans might sometimes be problematic for species that are heavily sought after raises questions about international law, in that it challenges the notion that a straightforward application of an international treaty will solve the complex dynamics of international trade and demand for wildlife.

If all of the criticisms are grouped together, the picture looks even more bleak. While CITES may have a role to play in triggering action, without domestic law, it is meaningless. It requires domestic implementation.²⁸ To the extent that it sets the agenda by listing species, perhaps that is helpful—unless one dislikes trade bans—but even then, one might ask whether that is truly law or something that could just as easily be done by an international body such as the IUCN, which already produces the Red List of Threatened Species.²⁹ Indeed, taking it out of the hands of an international law document might even help to depoliticize it. We will revisit this idea later in the article.

Further, even if a party acts internally, implementing CITES and addressing the protection needs of its wildlife more broadly, it may not be immediately clear that international law has a significant role to play in that. One example that seems to illustrate this is the United States, where commentators concerned about conservation focus on domestic law, rather than emphasizing CITES.

In our analysis so far, CITES does not seem to give us much reason for hope.

2.3. Adding to the treaty text

Of course, one cannot properly understand and engage with CITES if one focuses only on its core text. Over the 45 years that CITES has been in existence, the parties have held 17 Conferences of the Parties (CoPs) and many more meetings of the treaty’s standing committees. At these meetings, the parties agree on resolutions that, over time, have shaped how the treaty should be understood and implemented.

²⁶ See, e.g., Amanda R. Garcia, *The Sage Grouse Debate: Cost-Benefit Analysis and the Discourse of the Endangered Species Act*, 14 N.Y.U. ENVTL. L.J. 572 (2006) (discussing the sage grouse controversy).

²⁷ *Convention on Biological Diversity*, United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 5 June 1992, 31 I.L.M. 818; see also Elisa Morgera & Elsa Tsioumani, *Yesterday, Today, and Tomorrow: Looking Afresh at the Convention on Biological Diversity*, 21 Y.B. INT’L ENVTL. L. 3, 9–11 (2010) (discussing some of the shortcomings of the Convention on Biological Diversity).

²⁸ Wandesforde-Smith, *supra* note 6, at 376.

²⁹ See THE IUCN RED LIST OF THREATENED SPECIES, www.iucnredlist.org.

These resolutions also add depth and thicken the obligations of the parties.³⁰ The parties have worked to enhance the capacity of parties, to generate more information, and to acknowledge the importance of local communities and sustainable use for overall strategies to limit extinction.

In short, the treaty has developed significantly over the years.³¹ These changes have come through CoP Resolutions, the focus of the Secretariat at any given time, and guidance documents. In addition, nongovernmental organizations (NGOs) have played a significant role.

Some of these changes seem to be largely value-neutral. They serve to enhance the capacity of member states to implement the treaty and effectively carry out its obligations. For listing, for example, the parties have developed criteria, which in their most recent iteration are 18 pages long.³² Although the parties did not agree on every aspect of the criteria for listing, the most recent version is more scientifically oriented than prior criteria.³³

In this category of relatively value-neutral changes, we might also put the fairly recent development of guidance on non-detriment findings on certain species, including sharks and perennial plants.³⁴ The parties at CoP16 agreed to a Resolution with guidance on NDFs that built on an expert workshop.³⁵ The CITES website has a CITES Virtual College with training materials that provide information about understanding NDFs, as well as a number of other issues related to implementation. The website also has links to NDF case studies and allows parties to submit reports, all adding to the potential for sharing of information among parties.³⁶ This should help to correct the problem in which officials make NDF determinations “on an intuitive basis, based on their own knowledge and the advice of researchers and experts in the field.”³⁷ The parties have also spent time developing the Review of Significant Trade, a program aimed at improving implementation, modifying the

³⁰ See Annecoos Wiersema, *The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements*, 31 MICH. J. INT'L L. 231, 234–246 (2009) (describing how consensus-based CoP resolutions can thicken the parties' obligations to treaties, even though they may not technically be binding).

³¹ See Peter H. Sand, *International Protection of Endangered Species in the Face of Wildlife Trade: Whither Conservation Diplomacy?* 20 ASIA PAC. J. ENVTL. L. 5, 7–21 (2017); Peter H. Sand, *Whither CITES: The Evolution of a Treaty Regime in the Borderland of Trade and Environment*, 8 EUR. J. INT'L L. 29 (1997).

³² CITES, *Criteria for Amendment of Appendices I and II*, Conf. 9.24 (Rev. CoP17).

³³ See Annecoos Wiersema, *Adversaries or Partners? Science and the Precautionary Principle in International Wildlife Treaty Regimes*, 11 J. INT'L WILDLIFE L. & POL'Y 211, 223–228 (2008) (describing some of the debates surrounding the criteria for listing).

³⁴ See *NDF Capacity Building Materials*, CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, https://cites.org/eng/prog/ndf/capacity_building_materials; VICTORIA MUNDY-TAYLOR ET AL., CITES NON-DETRIMENT FINDINGS GUIDANCE FOR SHARK SPECIES (2ND REVISED VERSION), A FRAMEWORK TO ASSIST AUTHORITIES IN MAKING NON-DETRIMENT FINDINGS (NDFs) FOR SPECIES LISTED IN CITES APPENDIX II (German Federal Agency for Nature Conservation & TRAFFIC 2014); DJ LEAMAN & TEE OLDFIELD, CITES NON-DETRIMENT FINDINGS GUIDANCE FOR PERENNIAL PLANTS: A NINE-STEP PROCESS TO SUPPORT CITES SCIENTIFIC AUTHORITIES MAKING SCIENCE-BASED NON-DETRIMENT FINDINGS (NDFs) FOR SPECIES LISTED IN CITES APPENDIX II (Bonn, Germany: German Federal Ministry of Environment, Nature Conservation, and Nuclear Safety 2014).

³⁵ CITES, *Non-Detriment Findings*, Conf. 16.7 (Rev. CoP17); see also Wiersema, *supra* note 20, at 405–407 (discussing the CoP Resolution with particular reference to the precautionary principle).

³⁶ CITES, *Non-Detriment Findings*, <https://cites.org/eng/prog/ndf/index.php> (last visited 20 November 2017).

³⁷ Soledad Aguilar, *Regulatory Tools for the Management of Fish and Timber Species Through CITES*, 22 REV. EUR., COMP. & INT'L ENVTL. L. 281, 283 (2013).

program occasionally to ensure that it is effective.³⁸ In response to ongoing discussion about the best way to end unsustainable poaching of the African elephant, the parties also created new mechanisms to gather information: Monitoring the Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS).³⁹

Some changes have really gone to the substance of the treaty, although not always in the same way. After some resistance at first, parties are now willing to list commercially traded species such as fish and timber on the CITES appendices.⁴⁰ For the parties to be willing to make this shift, they had to be in some way willing to accept the view that CITES is a regulatory tool, one that is not just about banning trade, but is also about regulating trade to ensure they are not traded to extinction. While that is an appropriate read of the text, it is not always intuitively understood. Thus the listing of certain commercially traded timber species and fish species suggests a willingness to accept the role of CITES as regulator of trade and not only as a tool to eliminate trade.⁴¹

Other substantive changes have added a dimension to the treaty, such as the recognition of the role of range states in management decisions and the role of sustainable livelihoods.⁴² These efforts were intended to ensure that listing decisions took account of the economic reliance many communities place in sustainable trade, so that the parties did not simply list species without taking local communities and the need for sustainable livelihoods into account.⁴³

Decisions at the most recent CoP suggest that a counter-narrative is also at play, again not value-neutral. Proposals to encourage demand reduction and the elimination of domestic markets in ivory were approved by the parties, despite some hesitation by the Secretariat about whether the latter went beyond the scope of the treaty text.⁴⁴ These, and a resolution addressing corruption, show an increased willingness to reach inside countries' borders in order to tackle illegal wildlife trade. Further, attempts to limit demand are significant because they embed a value choice, namely that utilization of certain species should be reduced, perhaps because that is the only way it can be sustainable. This approach could be inconsistent with the push for recognition of sustainable livelihoods. It certainly suggests that for proponents of demand reduction, finding alternatives—whether synthetic, farmed, or captive-bred—is less of a priority than cutting out the market completely. When China raised the possibility of synthetic substitutes for rhino horn at the most recent Conference

³⁸ CITES, *Review of Significant Trade in Specimens of Appendix II Species*, Conf. 12.8 (Rev. CoP 17); see also *Review of Significant Trade Management System*, CITES, <http://sigtrade.unep-wcmc.org/>.

³⁹ See *infra* note 85; CITES, *Monitoring the Illegal Killing of Elephants (MIKE)*, <https://cites.org/eng/prog/mike/>; CITES, *The Elephant Trade Information System (ETIS)*, <https://cites.org/eng/prog/ETIS/index.php>.

⁴⁰ Aguilar, *supra* note 37; Sara F. Oldfield, *The Evolving Role of CITES in Regulating the International Timber Trade*, 22 REV. EUR., COMP. & INT'L ENVTL. L. 291 (2013).

⁴¹ Oldfield, *supra* note 40, at 292–300.

⁴² Rosie Cooney and Max Abensperg-Traun, *Raising Local Community Voices: CITES, Livelihoods, and Sustainable Use*, 22 REV. EUR., COMP. & INT'L ENVTL. L. 301 (2013).

⁴³ *Id.*

⁴⁴ See *infra* notes 85–86 and accompanying text.

of the Parties in 2016, other states responded with concern that this could simply maintain or fuel demand.⁴⁵

Looking at this snapshot of some of the ways in which CITES has developed gives an overall picture of a treaty that can adapt. Some of these shifts seem also designed to reach inside borders and go beyond purely legal solutions. However, the core treaty text itself has not changed. We might, at this stage then, be left with two easy negative conclusions. First, that if poaching is continuing, CITES—both its narrow and expanded selves—may not be having any beneficial effect.⁴⁶ Second, that if these shifts are not part of the core text to CITES, they may be peripheral to efforts that focus more directly on the whole chain of supply of wildlife. These efforts are discussed in the next section. The section also identifies places where the parties to CITES or its institutions have also spoken on the issue.

3. Beyond CITES: Multiple scales and the whole chain approach

As the parties have met to add depth and understanding to CITES through CoP resolutions, the fight to end illegal wildlife trafficking has gone beyond the specific scope of the text of CITES and outside its parameters. The problem of habitat protection and encroachment as a driver of species decline is serious around the world. Canvassing efforts at protection of biodiversity is beyond the scope of this article. But even if we narrow our discussion to efforts focused purely on overharvesting and international trade of species, we can find efforts that reach within countries' borders to try to tackle the full supply chain of illegally traded wildlife.

When CITES was negotiated, it seems that the cross-border nature of the trade moved the issue into the international level of governance. If a species was traded internationally, international cooperation was warranted. This may have given the impression that the question of solving illegal wildlife trade was now purely an international one, requiring other scales of governance primarily for purposes of national enforcement. This vertical view of the role of CITES is in keeping with Wandesforde-Smith's view that, in fact, instead of focusing attention on the international level, more attention should be paid to the domestic level of legislative and judicial enforcement.⁴⁷ Not only is this a vertical model to represent how illegal wildlife trade could be restricted, it is a vertical model of a narrow view of law: CITES is international law; implementation and enforcement are domestic law.

Shifting our focus to the whole chain of supply involved in wildlife trade gives us, by contrast, a different dimension. It allows us to look at all of the participants involved in illegal trade and all of the participants involved in combating it. It is less a vertical perspective that would focus on the different scales of law to determine where we should focus our energy. Instead, rather than looking at CITES as the

⁴⁵ IISD Reporting Services, *Summary of the Seventeenth Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora: 24 September–4 October 2016*, 21 EARTH NEGOTIATIONS BULLETIN, 8 October 2016 [hereinafter *Summary Report, CoP17*].

⁴⁶ Wandesforde-Smith, *supra* note 6, at 375.

⁴⁷ *Id.* at 376–380.

embodiment of international law sitting at the top of a hierarchy of law, dependent on domestic law implementation, this article places it in the middle of two circular chains. The first, a governance chain, is the chain that represents the different scales of governance required to combat wildlife trafficking. In this chain, CITES is the most important of several international-level mechanisms, but the national and sub-national levels are not hierarchically lower. They are additional links in the circular chain. While some influences flow directly from CITES, others flow from national or sub-national activity back to CITES. The second chain represents the chain of supply. It is also circular because consumption and demand influence the source as well. The chain of supply is circular, then, because supply and demand are connected in dynamic and self-referential ways. This perspective more closely resembles the true pictures of international law and international relations as being built on networks that reach inside states and across borders.⁴⁸ The most interesting and innovative work being done to combat illegal wildlife trade is now being done at all of the points along these two chains. This section summarizes some of the most significant developments in this work.

3.1. Source country

First, let us begin with the source, meaning not just the source state, but the places where wildlife is taken or killed. Governments and NGOs are increasingly interested in what triggers poaching or tolerance of poaching by local communities. Factors include competing demand for land, poverty and lack of economic opportunity, the effects of war, and ambivalence or dislike of living with certain animals that trample crops or kill humans.⁴⁹ Much work still needs to be done to capture the benefits of living with wildlife for local communities, particularly financial benefits. Models include eco-tourism, trophy hunting, and other sustainable use operations. However, progress can also be made by allowing for economic development, regulating land use for human and wildlife benefit, and minimizing deadly or costly human-wildlife interactions.⁵⁰

More research and more work are needed here. Trophy hunting and eco-tourism can generate significant revenue, but it does not always go to local communities. Indeed, although trophy hunting can be beneficial for conservation, studies have also suggested that in many cases, the revenue going to local communities is a fraction of the total revenue earned.⁵¹ And evidence of the effect of payments or schemes

⁴⁸ See ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004).

⁴⁹ See Rosaleen Duffy et al., *Toward a New Understanding of the Links Between Poverty and Illegal Wildlife Hunting*, 30 CONSERVATION BIOLOGY 14 (2015) (concluding that more study is needed to determine what motivates people to hunt illegally).

⁵⁰ George Wittemyer, *Testimony for the Senate Foreign Relations Subcommittee on Africa and Global Health Policy Hearing on "Stemming Wildlife Poaching,"* 16 July 2015 (describing a successful community conservation scheme in northern Kenya), available at http://savetheelephants.org/wp-content/uploads/2016/11/2015_Wittemyer_Testimony_US_Senate.pdf.

⁵¹ ECONOMISTS AT LARGE, *THE \$200 MILLION QUESTION: HOW MUCH DOES TROPHY HUNTING REALLY CONTRIBUTE TO AFRICAN COMMUNITIES?*, at 7 (2013) (concluding that only around three percent of the revenue from hunting companies in Tanzania goes to community development); DEMOCRATIC STAFF OF THE H. COMM. ON NAT. RES., 114TH CONGRESS, *MISSING THE MARK: AFRICAN TROPHY HUNTING FAILS TO SHOW CONSISTENT CONSERVATION BENEFITS*, (2016); cf. Peter A. Lindsey

that allow locals to benefit from wildlife is conflicting on whether it leads to more conservation.⁵² Not enough has been done to consider the possibility of eco-tourism as a replacement for trophy hunting operations.⁵³ Nevertheless, increasing attention by governments, researchers, and NGOs suggests questions are being asked.

The parties to CITES have paid attention to this, in part, in response to efforts by experts concerned that limiting trade can be harmful to local communities who rely on sustainable utilization of wildlife for livelihoods. Since 2004, the parties to CITES have begun to address the importance of recognizing the relationship between conservation and sustainable livelihoods and, in 2008, established a CITES and Livelihoods Working Group.⁵⁴ However, the text of CITES has not changed to facilitate these efforts, nor have the listing criteria changed.⁵⁵

In addition to work being done to focus on the relationship of local communities with wildlife, resources for anti-poaching efforts and protection of species continue to increase, coming from NGOs and through some technological support—for example, satellite data that can help track wildlife and poachers. Some of this is contentious, since it has brought NGOs into questions about arming rangers. Some, however, simply involves logistical support.

These efforts do not seem overtly legal in nature. However, schemes that capture benefits for local communities, regulate land use, or incentivize eco-tourism and other projects all have legal rules governing how they function. Indeed, where they do not, they are less likely to achieve their goals.⁵⁶

Finally, there are also more overtly legal efforts being undertaken within source countries. Increasing attention is being paid to legislation, enforcement, and prosecution. These efforts involve training enforcement officers, prosecutors, and judges. They also involve efforts to make sure legislation is in place implementing CITES and providing for its enforcement. The parties have directed the Secretary-General of CITES to work with parties who are not in compliance with Article VIII of the treaty, which requires the parties to implement the treaty in domestic laws; the Secretariat has done extensive work on this issue.⁵⁷ Beyond legislation, stakeholders have increasingly recognized the importance of what happens in courts even in countries

et al., *Trophy Hunting and Conservation in Africa: Problems and One Potential Solution*, 21 CONSERVATION BIOLOGY 880, 880–881 (2006) (identifying ways in which trophy hunting has helped conservation and local communities in several African countries, including South Africa, Mozambique, and Zimbabwe).

⁵² See, e.g., Katherine A. Hart et al., *Consumptive Versus Non-Consumptive Use of Sea Turtles? Stakeholder Perceptions About Sustainable Use in Three Communities near Cahuita National Park, Costa Rica*, 42 MARINE POL'Y 236 (2013); Róger Madrigal-Ballesteros et al., *What Makes Them Follow the Rules? Empirical Evidence from Turtle Egg Harvesters in Costa Rica*, 37 MARINE POL'Y 270 (2013); Nowella Anyango-Van Zwieten et al., *Compensating for Livestock Killed by Lions: Payment for Ecosystem Services as a Policy Arrangement*, 42 ENVTL. COMPENSATION 363 (2015).

⁵³ Craig Packer et al., *Effects of Trophy Hunting on Lion and Leopard Populations in Tanzania*, 25 CONSERVATION BIOLOGY 142 (2011).

⁵⁴ See Cooney and Abensperg-Traun, *supra* note 42; CITES, Resolution Conf. 16.6, <https://cites.org/sites/default/files/document/E-Res-16-06-R17.pdf>.

⁵⁵ Cooney and Abensperg-Traun, *supra* note 42, at 301.

⁵⁶ W.-G. Crossmary et al., *The Assessment of the Role of Trophy Hunting in Wildlife Conservation*, 18 ANIMAL CONSERVATION 136 (2015); Lindsey et al., *supra* note 51, at 882.

⁵⁷ CITES, Resolution Conf. 8.4; CITES, *National Laws for Implementing the Convention* (last visited 20 November 2017), <https://cites.org/legislation>.

that have implementing legislation.⁵⁸ Some of this research then feeds into efforts to train prosecutors and court officials. The NGO WildlifeDirect, for example, has a legal program operating in Kenya that includes investigatory support, prosecutorial support, and capacity development for wildlife law enforcement officials.⁵⁹

3.2. Transit

In recent years, those involved in combating wildlife trafficking have begun to pay more attention to two aspects of the transit routes used for wildlife trafficking. First, the current Secretary-General, John Scanlon, has made significant efforts to enhance cooperation with international organizations that deal with international crime.⁶⁰ These efforts have been fueled by the recognition that wildlife trafficking is being carried out by transnational criminal organizations, who are also engaged in trade in arms, drugs, and humans.⁶¹ In 2010, the International Consortium on Combating Wildlife Crime (ICWC) was formed with the agreement of its member organizations.⁶² These five intergovernmental organizations each address aspects of wildlife crime, and the ICWC is intended to allow for greater cooperation in fighting that crime. They are CITES, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank, and the World Customs Organization.⁶³ Indeed, in 2012, the World Customs Organization launched its Environmental Programme to contribute to combating environmental crime, including wildlife crime.⁶⁴

Second, the transportation sector has come together to address wildlife trafficking. Some airlines have put in place bans on the transport of hunting trophies, although not all of these are a response to CITES.⁶⁵ More closely tied to CITES, in 2016, a diverse group of stakeholders that included transport industry representatives, conservation groups, and intergovernmental bodies, including CITES, agreed to the Buckingham Palace Declaration.⁶⁶ The Declaration contains 11 commitments that will allow transport companies to ensure they are not being used for illegal international wildlife trade.⁶⁷ In 2016, the International Air Transport Association (IATA), the trade association of the world's airlines, adopted a resolution on

⁵⁸ See, e.g., LYDIA SLOBODIAN ET AL., WILDLIFE CASES IN TANZANIAN COURTS, IUCN (2016); WILDLIFEDIRECT, *Outcome of Court Trials in the First Two Years of Implementation of the Wildlife Conservation & Management Act, 2013* (June 2016), <http://wildlifedirect.org/wp-content/uploads/2017/03/WildlifeDirect-Courtroom-Monitoring-Report1.pdf>.

⁵⁹ WILDLIFEDIRECT, *Legal Program* (last visited 20 November 2017), <http://wildlifedirect.org/legal-program/>.

⁶⁰ John Scanlon, *CITES at Its Best: CoP16 as a "Watershed Moment" for the World's Wildlife*, 22 REV. EUR., COMP. & INT'L ENVTL. L. 222, 224–225 (2013).

⁶¹ *Id.*

⁶² CITES, *The International Consortium on Combating Wildlife Crime* (last visited 4 November 2017), <https://cites.org/eng/prog/iccwc.php>.

⁶³ CITES, *ICWC Partners* (last visited 4 November 2017), <https://cites.org/eng/prog/iccwc.php/Partners>.

⁶⁴ Kunio Mikuriya, *Illicit Wildlife Trade and the Role of Customs*, 12 U. PA. ASIAN L. REV. 55, 58 (2016).

⁶⁵ In the wake of the public outcry over the killing of Cecil the Lion in Zimbabwe, some airlines responded to the outcry by saying they would no longer carry hunting trophies. Krishnadev Calamur, *How Cecil the Lion Is Making Airlines Change Their Ways*, THE ATLANTIC, 5 August 2015, <https://www.theatlantic.com/international/archive/2015/08/cecil-the-lion-airlines/400403/>.

⁶⁶ Mikuriya, *supra* note 64, at 60.

⁶⁷ *Id.* For the text of the Buckingham Palace Declaration, see United for Wildlife Transport Taskforce, *Buckingham Palace Declaration* (2016), https://www.unitedforwildlife.org/custom/uploads/2016/03/01_UfW_Taskforce-Declaration_FINAL.pdf.

the illegal trade in wildlife at its 72nd annual meeting.⁶⁸ The resolution calls on airlines to increase awareness about the problem of illegal trade in wildlife and wildlife products, to work proactively with air enforcement agencies, and even to consider adopting policies to discourage illegal trade.⁶⁹ The resolution also encourages IATA's members to sign the Buckingham Palace Declaration.⁷⁰ Beyond airlines, in 2015, USAID developed ROUTES, which stands for Reducing Opportunities for Unlawful Transport of Endangered Species.⁷¹ It is a five-year commitment to develop assistance for the transport sector in efforts to reduce wildlife trafficking via land, sea, and air.⁷²

3.3. Consuming market state

3.3.1. Demand

An important driver for wildlife products is demand. Addressing demand in consuming markets is important both for sustainable trade and for when trade bans are in place, to ensure the supply can meet demand and to ensure that demand does not drive illegal trade. For a long time, demand was not addressed overtly by parties to CITES or NGOs. Indeed, addressing demand can be contentious because it can implicate traditional practices, although not always, and it can affect people dependent on the sale of items for their livelihoods.⁷³ Beyond the text of CITES, challengers to CITES' core approach of regulating or banning trade have regularly invoked arguments about the immutability of demand and the inappropriateness of trying to change it.⁷⁴ The implicit discourse regarding wildlife trade for many years seems to have regarded demand for certain wildlife parts as immutable. Indeed, the view that demand was immutable has also contributed to economic arguments that demand for many wildlife products is inelastic, in the sense that it is unaffected by price.⁷⁵ Perhaps more significantly, questioning demand was traditionally off the table in discussions, since it would raise questions about the appropriateness of challenging uses tied to tradition, cultural practices, and traditional Chinese medicine (TCM).

Yet within the last decade, NGOs have been challenging this assumption and tackling demand. NGOs themselves have always been part of raising awareness and discouraging the direct violation of CITES' restrictions with campaigns. However, they had not been directly focused on changing consumers' behavior or desires.⁷⁶ Many

⁶⁸ Int'l Air Transp. Ass'n [IATA], *Resolution on the Illegal Trade in Wildlife* (1 June 2016), <http://www.iata.org/pressroom/pr/Documents/resolution-agm-2016-wildlife.pdf>.

⁶⁹ *Id.* 2, 4, & 5.

⁷⁰ *Id.* para. 6.

⁷¹ See ROUTES, *Welcome to ROUTES* (last visited 4 November 2017), <http://www.routespartnership.org/>.

⁷² *Id.*

⁷³ Cooney and Abensperg-Traun, *supra* note 42.

⁷⁴ See Kirsten Conrad, *Trade Bans: A Perfect Storm for Poaching*, 5 TROPICAL CONSERVATION SCI. 245, 249–250 (2012).

⁷⁵ *Id.* at 249.

⁷⁶ Gayle Burgess, *Powers of Persuasion? Behavioural Change and Reducing Demand for Illegal Wildlife Products*, 28 TRAFFIC BULLETIN 65, 67 (2016).

airports have posters, notices, and even specimens to inform travelers that transportation of these goods is illegal. Yet more recent efforts show greater sophistication and care with campaigns.

The NGO WildAid has run media campaigns they describe as “culturally sensitive” with videos using celebrity ambassadors directly targeting the public in many countries regarding consumption of many species.⁷⁷ Their slogan is: “When the buying stops, the killing can too.” For example, a video with the basketball player Yao Ming discourages the consumption of shark fin soup by showing a fish tank in a busy Chinese restaurant with a shark slowly bleeding to death as the restaurant guests dine because it has had its fin and only its fin removed.⁷⁸ In a recent video, launched on 22 August 2017, Jackie Chan and pangolins compare their kung fu skills in a film intended to inform potential buyers that pangolins are now protected by law.⁷⁹

TRAFFIC now has someone in the position of “Consumer Behavioural Change Coordinator,” Gayle Burgess, and it has developed a toolkit for tackling behavior and demand.⁸⁰ Drawing on the tactics of marketing and advertising companies, so ubiquitous in our modern world, these efforts are more sophisticated and targeted than earlier NGO campaigns that simply highlighted charismatic species. In 2014, TRAFFIC and a number of other partners launched a campaign in Vietnam directly targeting wealthy, urban businessmen between the ages of 35 and 50, which market research had indicated were the primary consumers of rhino horn in Vietnam. The “Chi” campaign does not invoke images of dead rhinos or the conservation status of rhinoceros, but instead “promotes the idea that success and masculinity stem from within, not from rhino horns or products made from this material.”⁸¹

In response perhaps to new efforts on demand reduction, in 2016 the CITES parties approved a resolution explicitly addressing demand.⁸² It might be said that aside from this recent CoP Resolution, these initiatives are completely independent of CITES, or at least have been to date.

Demand reduction is still an emerging area, but it shows that those engaged in tackling illegal wildlife trade are questioning assumptions, willing to go beyond CITES, and delving into the consumer and demand end of the chain. These efforts also implicitly acknowledge that each end of the chain is linked. The chain is truly circular, with demand and supply connected in self-referential ways.

⁷⁷ See WildAid: *What We Do*, <http://www.wildaid.org/about-wildaid>; WildAid, *Shark Fin Demand in China Down, Report Finds*, 4 August 2014, <http://www.wildaid.org/news/shark-fin-demand-china-down-report-finds> (describing WildAid's campaigns).

⁷⁸ See WildAid: *Yao Ming – Shark Fin Soup*, <http://www.wildaid.org/video/yao-ming-shark-fin-soup>.

⁷⁹ See WildAid: *Jackie Chan Fights for Pangolins* (22 August 2017), <http://www.wildaid.org/kungfupangolin>.

⁸⁰ Burgess, *supra* note 76, at 66; see *Wildlife Consumer Behaviour Change Toolkit*, <http://www.changewildlifeconsumers.org/>.

⁸¹ TRAFFIC, *Consumer Behavior Change Leading to Demand Reduction*, <http://www.traffic.org/demand-reduction/> (describing the “Chi” campaign).

⁸² CITES, *Demand Reduction Strategies to Combat Illegal Trade in CITES-Listed Species*, RESOLUTION CONFERENCE 17.4, <https://cites.org/sites/default/files/document/E-Res-17-04.pdf>.

3.3.2. *The role of domestic markets*

CITES does not say anything about whether countries should allow domestic trade in wildlife and wildlife parts that are listed on Appendix I or Appendix II. It simply does not reach inside borders in this way. As with demand, it does not fall within the scope of the CITES text. Indeed, the text of CITES defines “trade” as being trade that is international in scope, defining it to mean “export, re-export, import and introduction from the sea.”⁸³

This is problematic to the extent that the existence of domestic markets can facilitate illegal trade in a number of ways. First, these markets may maintain the perception that buying these items is completely legitimate. Even if those items cannot be traded internationally, they can be bought openly and legally on domestic markets; therefore, there is no stigma attached. Second, these domestic markets can facilitate laundering, as items can be bought on domestic markets and then taken overseas, or funneled through places where there is legal domestic trade. With the rise of communication apps, it is possible to transfer that to online avenues for finalizing sales.

Concern about domestic markets has surfaced periodically among CITES member states, and the connection between legal domestic markets and illegal international markets is known. Nevertheless, in a nod to the scope of CITES’ text, it has not been a prominent issue for discussion at meetings of the parties or in states’ internal legislation. Until recently. At high-level meetings between President Obama of the United States and President Xi of China in 2015, the two leaders committed to shut down their domestic ivory markets.⁸⁴ At the most recent CoP in 2016, the parties also added language to a prior resolution to Resolution 10.10 on “Trade in Elephant Specimens” urging the parties “particularly those in whose jurisdiction there is a legal domestic market for ivory, or any domestic commerce in ivory, to take all necessary legislative, regulatory and enforcement efforts to close their domestic markets for commercial trade in raw and worked ivory.”⁸⁵ The Secretariat expressed concern that this extended beyond the scope of the Convention, but the amendment was adopted.⁸⁶

4. CITES and the whole chain approach

The examples discussed in the prior section that focus on links in the chain of supply give a snapshot of some of the activities that are being undertaken to try to address illegal wildlife trade. We have seen that for some of these, CITES has now been involved, even if its text has not been amended. This alone does not completely rehabilitate CITES, however. It is unclear whether the changes in CITES are directly

⁸³ CITES, *supra* note 1, art. I(c). “Introduction from the sea” is in turn defined as “transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.” *Id.* art. I(e).

⁸⁴ The White House, Office of the Press Secretary, *Fact Sheet: President Xi Jinping’s Visit to the United States* (25 September 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>.

⁸⁵ CITES Summary Report Conf. 24 September–5 October 2016, United States of America, *Actions to Combat Wildlife Trafficking*, at 7 [hereinafter *Actions to Combat Wildlife Trafficking*]; see also CITES, *Trade in Elephant Specimens*, RESOLUTION CONFERENCE 10.10 (Rev. CoP17), at 2.

⁸⁶ *Actions to Combat Wildlife Trafficking*, *supra* note 85; *Summary Report, CoP17*, *supra* note 45, at 12.

connected in any close way to these activities. Further, it is still unclear how much law plays a part in these strategies. We may still wonder whether, if CITES is just now addressing things such as corruption and demand reduction, it is less a leader in the whole chain approach and more of a latecomer to the party. Nevertheless, there a number of ways in which CITES, as it has developed, is connected to these efforts.

The most important aspect of CITES' role is its most straightforward function, namely its textual mandate to list species according to their threat level from international trade. In doing so, the parties to CITES set the substantive agenda for all the efforts in the whole chain approach. Every aspect of the whole chain approach applies to illegally traded wildlife. It is the parties at CITES CoPs who determine which species are being illegally traded as opposed to legally traded, whether it is because they require permits under Appendix II but can otherwise be commercially traded, or because commercial cross-border trade in them or their parts is illegal.

We still need to answer two questions. First, does CITES do this better than individual states could? Second, is this law?

The answer to the first question is certainly yes. This is not only because CITES brings together information from multiple sources and countries, but also indirectly because the very existence of CITES triggers a focus on certain species that can then generate research. Commentators sometimes complain that elephants get more attention than fungi and orchids, but it is arguable that without CITES, fungi and orchids would get even less attention.

This ability to set the agenda for research extends to other aspects of the chain beyond the simple question of what constitutes a crime and what should be criminalized in domestic law. It can also facilitate research into other aspects of the fight against wildlife crime. For example, while forensic scientists may worry when a new species is listed that the technology does not yet have the capacity to keep up with the legal requirements, that listing in turn can spur new research and the development of new technologies.⁸⁷ Even with capacity-building, listing can help. The listing of several shark species on Appendix II in 2013 led to increased efforts to develop the tools needed to differentiate species fins and various other means needed to differentiate legal and illegal trade. There is now NDF guidance on shark species.⁸⁸

This also demonstrates that even if CITES is a latecomer to some of the efforts along the chain of supply, it can nevertheless contribute to their growth as tools and to their effectiveness. Taking successful examples from one or more locations and using CITES as a platform for information gathering and exchange can then allow lessons to be disseminated. Here, we see the circular nature of the governance chain in action, as lessons are learned, shared, and disseminated along the chain.

The substantive decisions about listing are not just triggers for research or capacity-building, however. They also serve a signaling function for prices and markets. Critics of CITES contend that making some wildlife parts illegal can increase

⁸⁷ Ross McEwing and Nick Ahlers, *Out of Sequence: Is Wildlife DNA Forensics Delivering as an Illegal Trade Enforcement Tool?*, 28 TRAFFIC BULL. 56, 57 (2016).

⁸⁸ See text accompanying CITES, *supra* note 34.

the price for those parts because supply is then limited, while demand stays constant. Those more in favor of CITES' approach of bans in commercial trade for the most endangered species can counter with examples of where the price plummeted after an Appendix I listing, as with the price of ivory when the African elephant was moved to Appendix I in 1989.⁸⁹ Traders appear to watch CITES decisions closely, and speculators may even pay attention to debates about legalizing trade in certain items, recognizing the value of stockpiling or selling at any given time depending on the status of the species.⁹⁰ CITES listing decisions may also affect demand to the extent that the legality of an item affects the stigma of purchasing it.⁹¹ Further, when items are legal, they may be openly sold, giving the impression that buying those items is unproblematic.

Indeed, TRAFFIC's Consumer Behavioural Change Coordinator, Gayle Burgess, describes the need for a "Twin-Track Approach" in tackling demand.⁹² The first of these tracks "involves measures to impose a societal behavioural control (e.g. policies, legislation and regulation) or restrict consumer choice (e.g. retailers removing offers for sale)."⁹³ Burgess defines demand reduction as a process and result: "the process of reducing the expressed intent of potential consumers to purchase products, and the result of changing actual buyer behavior: i.e. fewer illegal wildlife products bought."⁹⁴ She continues that "[t]o achieve this, an 'enabling environment' of effective action to starve the supply of goods into the market (i.e. 'supply reduction') is critical."⁹⁵

Indeed, the plight of tigers reinforces the view that rather than being irrelevant, CITES decisions are highly relevant. Captive tiger-farming is permitted, and yet there is ample evidence that this has allowed laundering of poached tigers, which are sometimes preferred to captively raised tigers.⁹⁶ Thus what might initially appear to be a failure by CITES to control tiger poaching may be seen, in fact, as an example of the significance CITES has in signaling and affecting demand. Where CITES has not restricted an alternative source that can in turn allow for laundering and continue to fuel demand, it has not been able to put an end to poaching.

We may now have a sense that CITES is an integral part of efforts to combat wildlife trafficking, but we can still legitimately be pressed on whether this is law or international law. The answer is, again, yes. Not all of it, but much of it is either directly or indirectly linked to law. The decision to list a species creates an international legal obligation. One cannot be an international lawyer if one is then going to quibble about who will enforce that international legal obligation. Even for those

⁸⁹ Andrew M. Lemieux and Ronald V. Clarke, *The International Ban on Ivory Sales and its Effects on Elephant Poaching in Africa*, 49 BRIT. J. CRIMINOL. 451, 453 (2009).

⁹⁰ C. Mason, E.H. Bulte, and R.D. Horan, *Banking on Extinction: Endangered Species and Speculation*, 28 OXFORD REV. ECON. POL'Y 180 (2012).

⁹¹ For example, marijuana consumption increased in Colorado when recreational marijuana was first legalized under state law. Sam Kamin, *Marijuana Legalization in Colorado: Lessons for Colombia*, 75 REVISTA INSTITUTO COLOMBIANO DE DERECHO TRIBUTARIO 339, 351 (2016).

⁹² Burgess, *supra* note 76, at 66.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*; see also Gayle Burgess and James Compton, *Editorial*, 25 TRAFFIC BULLETIN 41 (2013).

⁹⁶ EIA, STOP STIMULATING DEMAND!: LET WILDLIFE TRADE BANS WORK (2013).

who seek some kind of enforcement, it is clear that many international legal obligations are now backed up by domestic enforcement. Wandesforde-Smith is correct to the extent that there may not be enough of that, which is why the multiple efforts described above to enhance states' activities in enforcement are so important. Yet where this article differs is in the sense that one cannot separate the needed domestic enforcement from the substantive activities of CITES, most importantly listing. Thus even if those concerned with stopping wildlife trafficking were to turn their attention to domestic law, the legal component that CITES adds would still be a part of that.

CITES' position in a more circular notion of the chain of governance is evident in other ways. Under the Dominican Republic–Central America Free Trade Agreement, the Secretariat for Environmental Matters has the authority to produce a factual record in response to an allegation that a party has been failing to “effectively enforce” its environmental law.⁹⁷ When the Humane Society International alleged that the Dominican Republic (DR) was failing to enforce its domestic laws with regard to the sale of items made from sea turtle shells, the fact that the relevant sea turtles were protected under CITES was an integral part of the domestic law and the allegation. The Secretariat's Factual Record was more of a capacity-building report than an exercise in shaming, and it drew on support from NGOs who work closely on CITES, including TRAFFIC.⁹⁸ The Submission also triggered voluntary action by DR to do more to protect the sea turtles.⁹⁹ It is hard to imagine any of these positive results happening without CITES as the legal backbone.

These ways in which CITES plays a role go beyond the direct implementation of legal requirements. However, lawyers have long been attuned to the idea of regimes bringing together multiple actors from multiple scales to work on a particular problem. The outcome will be a combination of legal and non-legal activities. This means that the CITES text, or even the CITES text accompanied by its CoP decisions, cannot be enough to solve the problem of illegal wildlife trade. However, they are most certainly useful in a whole chain approach to solving it. CITES is not enough. Nor is it irrelevant. It sits as an integral part of two circular chains: a governance chain and the chain of supply.

Let us go back to Wandesforde-Smith's concerns. In his frustration that “there are no provisions in the treaty itself that can be directly invoked to apply judicial sanctions to wildlife criminals,”¹⁰⁰ he is echoing a familiar frustration with international law. To the extent that we seek a hierarchical and vertical legal system where international law sits at the top with domestic law implementation, we will not get it—or we will get it only imperfectly. If this is the goal, then it would indeed be a mistake for those engaged in fighting wildlife trafficking to be looking to international law for the solution.

⁹⁷ Dominican Republic–Central American Free Trade Agreement (CAFTA-DR), art. 17.7, available at <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta>.

⁹⁸ CAFTA-DR SECRETARIAT FOR ENVTL. MATTERS, FACTUAL RECORD: CAALA 07-001 SEA TURTLES DR 7 (2011).

⁹⁹ Andrew Lurié and Maria Kalinina, *Protecting Animals in International Trade: A Study of the Recent Successes at the WTO and in Free Trade Agreements*, 30 AM. U. INT'L L. REV. 431, 461–462 (2015).

¹⁰⁰ Wandesforde-Smith, *supra* note 6, at 368.

However, it is unclear why those seeking the solution to wildlife trafficking would ever be looking only to international law. Indeed, since we are dealing with trans-boundary transportation of wildlife and their parts, it would be just as much of a mistake to look only at domestic law, even in a country such as the United States that has to date had a relatively robust internal system for protecting endangered species.

Further, CITES cannot be said to have failed because it has not given rise to an overarching normative goal that says trade in all species is banned. In some sense, CITES has given increased normative force to the view that states should cooperate to avoid species extinction and should not advance species extinction, both in domestic legal systems and the international legal system. Yet CITES is a regulatory scheme. Serious debates rage about the best way to protect some of the species that are traded internationally, particularly the African elephant. The fact that states agree on the goal of saving the African elephant but do not agree on the means of doing so does not mean that CITES has no normative force. Nor does it mean that CITES is irrelevant.

5. Conclusion

If we change the questions, we also change what we will see. Thus this article asks two different questions. First, what is happening at all levels of governance—international, national, and sub-national—to tackle illegal wildlife trade? And, second, what is the role of CITES in these efforts?

What we find is that efforts are being made at all levels of governance, by multiple actors, along multiple points of the chain of supply. And CITES has a role to play in each of these. Substantively, its parties set the agenda using its core approach of listing on the CITES appendices and invoking restrictions and regulation of trade. This creates baseline legal obligations and commitments that can be incorporated in domestic law and invoked in other fora. They also send signals to the market. Beyond law, CITES facilitates cooperation, plays a role in capacity-building, and either enlarges the scope of new efforts or triggers them. In these ways, CITES is a link in two circular chains, a governance chain and the chain of supply.

Perhaps most significantly, the story of CITES and its connection to a whole chain approach to tackling illegal wildlife trade reminds us of something critical in solving complex, global conservation problems. The fight is not over. We cannot resolve it with law alone. We cannot resolve it with science alone.¹⁰¹ We cannot resolve it at only one level of governance. And we need multiple actors involved along every link of both chains.

¹⁰¹ See Arie Trouwborst et al., *International Wildlife Law: Understanding and Enhancing Its Role in Conservation*, 67 *BIOSCIENCE* 784, 787–789 (2017) (describing the importance of multidisciplinary approaches that bring law and science together).