

Lessons Learned from the Implementation of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

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Summary

The world is facing a biodiversity crisis. The rate of human-induced species extinction is 100 to 1000 times higher than non-human caused extinctions (Wilson, 2016). While the main cause of species extinction is habitat loss, the second cause is overexploitation, including poaching and the international illegal wildlife trade (IPBES, 2019). The main instrument for governing international wildlife trade is the Convention on International Trade in Endangered Species of Wild

Fauna and Flora (CITES) and policing—in a broad sense—is crucial to implementation of and compliance with CITES. My research into CITES implementation and compliance found a number of areas for improvement that could help protect CITES-listed species if adopted. However, much more needs to be understood about the policing of wildlife trafficking and the enforcement, or not, of wildlife and trade legislation meant to be protecting species.

According to E.O. Wilson (2016), the rate of human-induced species extinction is 100 to 1000 times higher than non-human caused extinctions. While the main cause of species extinction is habitat loss, the second cause is overexploitation, poaching and the international illegal wildlife trade (IPBES, 2019). The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), which came into force in 1975, is one of the main international mechanisms to combat the latter. Even though CITES has been adopted by 183 parties, implementation of CITES legislation remains inconsistent, compliance at times lacking, and listed species still face extinction (CITES, 2016; Reeve, 2006; Wyatt, 2013).

Without national legislation implementing CITES, the regulation of international wildlife trade would be impossible. As Oldfield (2003) has noted, lack of enforcement is often blamed when wildlife populations decline. Yet the fault may be with the design and implementation of the regulation (Oldfield, 2003), but there has been very little exploration of national implementation (Wandesforde-Smith, 2016) or of projects and approaches that might improve CITES (Bowman, 2013). In addition, there are a range of, often poorly understood, factors which are like-

ly to influence the apparent effectiveness of CITES, such as the soft law mechanisms integral to implementation and compliance (i.e. international action plans, reviews of significant trade, non-detriment findings and so forth) (Aguilar, 2013; Munoz, 2016).

Between May 2018 and May 2020, I held a UK (United Kingdom) Arts and Humanities Research Council (AHRC) Leadership Fellowship – Lessons Learned from the Implementation of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (AH/R002584/1) – which sought to address the lack of empirical investigation of CITES implementation and compliance.

Research AIMS

- To know the nature and extent of implementation of and compliance with CITES legislation in all member countries and parties in order to better understand the effect of legal and illegal trade on species survival, which will also help to enlighten broader research gaps related to environmental and wildlife law enforcement.
- To identify lessons learned in relation to CITES legislation, implementation, and compliance in

order to provide evidence to CITES parties as to how their own practice can be improved and to inform other environmental agreements of approaches to implementation and compliance.

- To widely share the three case studies of lessons learned with relevant stakeholders and policy makers in order to inform changes to CITES legislation, implementation, and compliance and wider environmental governance.

Background: Cites and the National Legislation Project (NLP)

The NLP assesses parties’ implementation of CITES by looking for evidence in their legislation of four components: designate at least one Management Authority and one Scientific Authority; prohibit trade in specimens in violation of CITES; penalise such trade; and confiscate specimens illegally traded or possessed. After nearly 50 years, parties’ implementation is broken down as follows:

- Category 1 – implementation meets the requirements – 92 parties (50+%)
- Category 2 – implementation does not meet all of the requirements – 46 parties (25.3%)
- Category 3 – implementation does not meet the requirements – 36 parties (19.8%)
- 8 countries have not been assessed (4.3%)

The CITES Secretariat and Standing Committee also monitor compliance with the Convention in terms of annual and biennial reporting.

- 18 countries are in need of urgent action
- 31 countries have some form of trade suspensions
- 9 parties are in need of urgent action and have a trade suspension

Implementation of and compliance with CITES legislation, then, appears to need improvement.

Methods

Content analysis of 183 parties’ legislation

- CITES legislation or review of the legislation is available in English for 112 member countries and parties (this distinction is necessary to reflect that the European Union is a signatory to CITES). I have working knowledge of Spanish and Russian, which comprised a further 20 countries. Therefore, Google translate was relied upon in 47 instances. In four instances, the text could not be translated or was unclear (three in Arabic; one in Somali).

- A Delphi iterative survey to experts based upon that content analysis (32 first round; 23 second round).
- Identification of three case studies of best practice/lessons learned (Canada, Indonesia, South Africa – see separate case studies summaries on my website) followed by in-depth interviews about the three country case studies lasting from 30 to 65 minutes each (20 interviews).

Findings

Legislative content analysis

Separate EA, MA, SA	41	Same EA and MA	14
Same EA, MA, SA	17	No SA	5
No EA	85	Overlap of EA, MA, SA	9
Separate MA and SA	58	Other	4
Same MA and SA	29		

[MA – Management Authority, SA – Scientific Authority, EA – Enforcement Authority]

Table 1: Five countries do not have a Scientific Authority, which means that they cannot properly implement CITES. Of interest, although not required in CITES, 85 countries do not have an Enforcement Authority. This raises the issue of the level of attention given to discovering violations as well as to any resulting arrests, prosecutions, and so forth when violations do take place. Perhaps this relates to CITES violations not having to be criminalised, but instead violations can be administrative or civil breaches.

Yes	103
No	80

Table 2: From the legislative content analysis it appears that 103 countries prohibit trade that violates the CITES articles. Yet, 80 countries have legislation that does not appear to explicit do so. Further research is needed to explore the exact nature of the prohibition.

Fines	16
Fine/Prison	99
Prison	3
Unclear	13
Blank	52

Table 3: Penalties is a difficult component to analyse since it is possible that the penalties for violations of the main law implementing CITES sit within another piece of administrative, civil, or criminal legislation that outlines sanctions. So while a majority of countries appear to have provisions to penalise violations of CITES, there were 65 countries for which penalties could not be determined. Further analysis is necessary to unpack the level of the sanctions and further data collection is warranted to uncover whether these penalties are actually applied and the extent of wildlife law enforcement.

Wildlife only	71	Evidence	1
Both (wildlife/equipment)	47	None	1
Equipment	8	Blank	55

Table 4: A majority of countries seem to have provisions to confiscate wildlife and some go further to mention equipment (i.e. tools, vehicles). It was unable to be determined for 55 countries what confiscation measures are in place.

No of Reports	No of Countries	No of Reports	No of Countries
0	67	4	10
1	27	5	17
2	13	6	26
3	9	7	15

As mentioned, there are 31 countries under suspension for their reporting practices. The number of countries which have failed to submit biennial reports is much higher, with 67 countries having never submitted a biennial report. These reports are critical to assess implementation as well as challenges and limitations. It is important to also stress the point of some survey participants that even for countries which do report, the quality of reporting can be poor, so is a further element of compliance and reporting that needs to be addressed.

Delphi Iterative Survey Results

In general, survey participants agreed that CITES members should be required to have an Enforcement Authority. Whereas there was mostly agreement

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that each of the authorities should be separate, for the most part, the most important aspect is that each of the two (or three) authorities are independent without pressure when making decisions and that they have clearly defined roles. In regards to prohibiting trade and penalising such violations, participants agreed with suggestions to improve members implementation of CITES, which were supportive rather than punitive. For instance, suggestions for use of trade sanctions or introducing measures to restrict trade from countries failing to completely

implement these components, were somewhat agreed with, but suggestions for working groups and/or a mentorship scheme between countries were agreed with more. The same was true for the suggestions for improving implementation of confiscation measures. Survey participants recommended in terms of confiscations that member countries should try to utilise or draft legislation that allowed for cost recovery mechanisms for housing live wildlife and storing evidence etc. as well as for asset forfeiture.

Concerning compliance, again survey participants supported non-punitive measures to improve compliance, such as working groups. In addition, there was also some support (25 out of 32) for there to be more visibility on the CITES websites of whether or not countries have submitted their annual and biennial reports.

Round 2 of the Delphi Iterative Survey unpacked the responses of the 32 participants from the first round. For the authorities, this quote from one survey participant sums up the consensus:

“The keys to success for enforcement are: independent decision making for risk management, good communication with the MA (regardless of embedded or outside agency enforcing), and a values-based understanding of trade and application of law.”

In regards to prohibition, further exploration revolved around the lack of protection given by some countries to non-native species. Survey participants disagreed that this was a problem. A majority felt that ‘Stricter domestic measures are good mechanisms for preventing trade in wild-taken specimens of nationally endangered species’. Yet, one participant commented this undermines the spirit of the Convention and will result in parties not participating in CITES. It was recommended that ‘Importing countries could respond more strongly by not allowing countries with poor implementation of or compliance with CITES to import CITES species’ and this was mostly agreed with. Cost recovery mechanisms and asset forfeiture were supported in terms of confiscations, but less so as a penalty. Finally, Round 2 survey participants mostly agreed with suggestions to add additional criteria to the NLP, particularly around successful prosecutions and the specific types of penalties that are allowed.

Recommendations

Authorities

- Concentrated effort to get all members to have a Scientific Authority
- Consider adding an Enforcement Authority to the Convention

Prohibition

- Ensure all members prohibit violations of the Convention in native and non-native species

Penalties

- Consider a resolution or decision to set penalties, possibly in line with the UN (United Nations) guidelines that four plus years indicates a serious crime
- Audit what penalties are being given and to what levels and extent

Confiscations

- Support members to widen confiscations to include assets and proceeds of crime
- Wider dissemination of International Fund for Animal Welfare (IFAW) and International Union for the Conservation of Nature (IUCN) guidelines on confiscation of live wildlife

Overall recommendations

- Focus on getting the science right
- More visibility on the CITES website in regards to non-implementation and non-compliance

Disciplinary action should be considered for consistently non-compliant members

- Make the NLP fit for purpose and more robust (including marine species)
- Make non-detriment findings available on the CITES website to increase transparency
- Encourage importing countries to increase scrutiny of incoming wildlife and non-detriment findings

For more information

For more detail of the findings, particularly of the case studies and recommendations, please contact me (tanya.wyatt@northumbria.ac.uk), visit my webpage (<https://drtwyatt.weebly.com>), or read my book *Is CITES Protecting Wildlife? Assessing implementation and compliance*, London: Earthscan.

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Zusammenfassung

Erkenntnisse aus der Durchsetzung und Wahrung des Übereinkommens über den internationalen Handel mit gefährdeten Arten freilebender Tiere und Pflanzen (CITES)

Die Biodiversität steckt weltweit in einer Krise. Das Tempo des menschenverursachten Artensterbens ist 100 bis 1000 Mal höher als jenes von natürlichem Artensterben (Wilson, 2016). Der Hauptgrund dafür ist Habitatverlust, gefolgt von Übernutzung der natürlichen Ressourcen, wozu auch Wilderei und der weltweite illegale Handel mit Wildtieren und -pflanzen zählen (IPBES, 2019). Das wichtigste Instrument zur Regulierung dieser Bereiche ist das

Übereinkommen über den internationalen Handel mit gefährdeten Arten freilebender Tiere und Pflanzen (CITES), und Polizeiarbeit im weitesten Sinne ist grundlegend für die Durchsetzung und Wahrung der darin enthaltenen Schutzbestimmungen. In meiner Forschungsarbeit habe ich aufgezeigt, in welchen Bereichen Verbesserungen zum Schutz der von CITES abgedeckten Arten beitragen können. Es bedarf jedoch noch weiterer Forschung, um mehr über die Polizeiarbeit auf diesem Gebiet und den Vollzug – oder Nicht-Vollzug – von einschlägigen Rechtsbestimmungen zum Artenschutz in Erfahrung zu bringen.

Résumé

Enseignements tirés de l'application et du respect de la Convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction (CITES)

Le monde est secoué par une crise de la biodiversité. Le taux d'extinction des espèces causée par l'homme est 100 à 1000 fois supérieur aux extinctions d'origine naturelle (Wilson, 2016). Si la première cause d'extinction des espèces est la perte d'habitat, la deuxième est la surexploitation, qui inclut le braconnage et le commerce international illégal d'espèces sauvages (IPBES, 2019). L'instrument principal régissant le commerce international

d'espèces sauvages est la Convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction (CITES); et l'activité policière, au sens large, est essentielle à l'application et au respect de cette convention. Mes travaux de recherche dans ce cadre ont débouché sur une liste d'aspects à améliorer qui, s'ils étaient repris, contribueraient à protéger les espèces visées par la CITES. Toutefois, il reste encore beaucoup à comprendre sur la lutte contre le trafic d'espèces sauvages et sur l'application, ou non-application, des normes sur la faune sauvage et son commerce qui visent à protéger les espèces.

Riassunto

Lezioni tratte dall'attuazione e dall'adempimento della Convenzione sul commercio internazionale delle specie di fauna e di flora selvatiche minacciate di estinzione (CITES)

Il mondo sta affrontando una crisi della biodiversità. Il tasso di estinzioni indotte dall'attività umana è da 100 a 1000 volte superiore rispetto agli altri tipi di estinzione (Wilson, 2016). Per quanto la causa primaria di estinzione sia la perdita degli habitat, la seconda causa è il sovrasfruttamento delle risorse, comprendente anche il bracconaggio e il commercio internazionale illecito di flora e fauna selvatiche (IPBES, 2019). Lo strumento principale per la gestione internazionale

del commercio di flora e fauna selvatiche è la Convenzione sul commercio internazionale delle specie di fauna e di flora selvatiche minacciate di estinzione (CITES); l'attività di polizia latu sensu è cruciale per l'attuazione e l'adempimento della CITES. Dalla mia ricerca sull'attuazione e l'adempimento della CITES risultano diverse opportunità di miglioramento, che se colte potrebbero contribuire a tutelare le specie menzionate nella CITES. È tuttavia necessario approfondire l'analisi delle attività di polizia legate al traffico di specie selvatiche e dell'attuazione – o mancata attuazione – della normativa in materia di commercio e di flora e fauna selvatiche volta alla tutela delle specie.