

PART I

Endangered Species, Sustainable Development and the Law

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Introduction

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1.1 IMPLEMENTING CITES FOR SUSTAINABLE DEVELOPMENT

Endangered species conservation is a critical challenge for sustainable development. Although serious attempts are being made to reverse current trends, many species and their crucial habitats continue to be degraded and lost at alarming rates. Various international agreements, notably the venerable Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), have aimed to regulate trade in listed species through the development of national frameworks and international collaborative measures. In spite of these initiatives, the implementation of international regulations remains a challenge for developing countries, especially for countries with limited scientific, human, technical and financial capacity and resources.

October 2013 marked the fortieth anniversary of CITES. In October 2015, *Transforming Our World – the 2030 Agenda for Sustainable Development*, together with 17 global Sustainable Development Goals (SDGs) encompassing 169 specific targets, was agreed at the United Nations.¹ In SDG 15, states and stakeholders committed to take urgent and significant action to reduce the degradation of natural habitats, to halt the loss of biodiversity and, by 2020, to protect and prevent the extinction of threatened species (SDG 15.5), and to take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products (SDG 15.7). In order to do all this, they committed, inter alia, to mobilize and significantly increase financial resources from all sources to conserve and sustainably use biodiversity and ecosystems (SDG 15.a) and to enhance global support for efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities (SDG 15.c). In December 2022, the Kunming-Montreal Global Biodiversity Framework was adopted during the

¹ See UN General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1. See also UN Convention on Biological Diversity, CBD, Dec. 15/4 CoP15 (2022) Doc. CBD/COP/DEC/15/4

Convention on Biological Diversity 15th Conference of the Parties (COP 15) in Montreal, Canada.

This volume focuses on the legal aspects of implementing CITES to achieve the world's SDGs. It provides a serious contribution to the current scholarly debates on the protection of listed species, by analyzing key issues under CITES that affect the design and implementation of national regulatory regimes, as well as existing policies and laws on CITES-listed species as they relate to the sustainable development objectives of each country. It also examines the practical, legal, political and economic problems encountered in the attempt to implement these regulations in contemporary settings. It considers, in particular, how regulations that implement CITES can also foster more sustainable development worldwide.

The importance of understanding how the CITES regime contributes to sustainable development was highlighted in the outcomes of the 2019 CITES 18th Conference of the Parties (CITES COP 18). This CITES COP, originally scheduled to be held in May and June 2019 in Colombo, Sri Lanka, was ultimately held in August 2019 in Geneva, Switzerland. During CITES COP 18, state parties adopted an implementation strategy for 2020 and beyond, also recognizing the need to ensure that the strategy complemented the post-2020 strategy developed by the UN Convention on Biological Diversity (CBD) and the SDGs and 2030 Agenda adopted by the global community in 2015.² Indeed, as noted in CITES' *Strategic Vision: 2021–2030*, CITES provides

a global framework for the legal and sustainable international trade in CITES-listed species. Today, CITES regulates trade in more than 36 000 species of wild animals and plants. CITES is widely regarded as one of the most important international conservation instruments. Since 1975, the Conference of the Parties has adapted this framework to changing circumstances and, through the adoption of Resolutions and Decisions, has demonstrated an ability to construct practical solutions to increasingly complex wildlife trade and conservation challenges.³

The CITES *Strategic Vision: 2021–2030* highlights the contribution of CITES' activities to achievement of the Strategic Plan for Biodiversity 2011–2020 and the relevant Aichi Biodiversity Targets adopted by the parties to the CBD, as well as to achievement of the 2030 Agenda for Sustainable Development and its SDGs and targets relevant to CITES; it also outlines the Convention's direction for the 2021–30 time frame in fulfillment of its mandate and emphasizes that parties' efforts to implement the Convention may also provide benefit to, and draw strength from, efforts being undertaken in the 2030 Agenda for Sustainable Development and its SDGs and targets relevant to CITES, including those for terrestrial and marine wildlife, among other fora. Indeed, in their vision statement, CITES parties declare that by 2030 all international trade in wild fauna and flora shall be "legal and

² CITES Resolution CoP Doc. 18.3 on CITES' *Strategic Vision: 2021–2030*, https://cites.org/sites/default/files/document/E-Res-18-03_0.pdf, accessed June 11, 2022.

³ *Ibid.*

sustainable, consistent with the long-term conservation of species, and thereby contributing to halting biodiversity loss, to ensuring its sustainable use, and to achieving the 2030 Agenda for Sustainable Development.” Further, in their agreed values, CITES parties commit to “act in the best interest of the conservation of species, working to ensure their use is legal and sustainable, and aim to adopt measures proportionate to the anticipated risks to the species under consideration.” They recognize “a shared commitment to fairness, impartiality, geographic and gender balance, and to transparency.” According to the *Strategic Vision*, its purpose includes, as a priority, both “to improve the working of the Convention, so that international trade in wild fauna and flora is conducted legally at sustainable levels and supports the conservation of listed species; and to ensure that CITES policy developments are mutually supportive of international environmental priorities and take into account new international initiatives, consistent with the terms of the Convention.”⁴

Of high relevance for this volume are four of the five broad Strategic Goals identified by parties as the key components of the *Strategic Vision*. Goal 1 is that “[t]rade in CITES-listed species is conducted in full compliance with the Convention in order to achieve their conservation and sustainable use.” Under this Goal, Objective 1.1 is that “Parties comply with their obligations under the Convention through the adoption and implementation of appropriate legislation, policies, and procedures”; Objective 1.2 is that “Parties have established CITES Management and Scientific Authorities and enforcement focal points that effectively carry out the duties required of them under the Convention and relevant Resolutions”; and Objective 1.3 is for “[i]mplementation of the Convention at the national level [to be] consistent with Resolutions and Decisions adopted by the Conference of the Parties.” Goal 2 is that “Parties’ decisions are supported by the best available science and information.” Under this Goal, Objective 2.2 is that “Parties cooperate in sharing information and tools relevant to the implementation of CITES”; and Objective 2.3 is that “Parties have sufficient information to enforce the Convention.” Goal 3 is that “Parties (individually and collectively) have the tools, resources and capacity to effectively implement and enforce the Convention, contributing to conservation, sustainable use and the reduction of illegal trade in CITES-listed wildlife species.” Under this Goal, Objective 3.1 is that “Parties have in place administrative procedures that are transparent, practical, coherent and user-friendly, and reduce unnecessary administrative burdens”; Objective 3.3 is that “[s]ufficient resources are available at the national and international levels to support necessary capacity-building programmes and ensure compliance with and full implementation and enforcement of the Convention”; Objective 3.4 is that “Parties recognize illegal trade in wildlife as serious crime and have adequate systems in place to detect and deter it”; and Objective 3.5 is for “Parties [to] work collaboratively across range, transit and destination states, to address entire illegal

⁴ Ibid.

trade chains, including through strategies to reduce both the supply of and [the] demand for illegal products, in order for trade to be legal and sustainable.” Goal 4 is that “CITES policy development also contributes to and learns from international efforts to achieve sustainable development.” Under that Goal, Objective 4.1 is that “Parties support sustainable wildlife trade policies, especially those that increase the capacity of Indigenous peoples and local communities to pursue livelihoods”; Objective 4.2 is that “[t]he importance of achieving CITES’ aim as a contribution to achieving the relevant Sustainable Development Goals, as well as the post-2020 global biodiversity framework, is recognized”; Objective 4.3 seeks to ensure that “[a]wareness of the role, purpose and achievements of CITES is increased globally”; and Objective 4.4 is that “CITES Parties are informed of international actions for sustainable development that may have a bearing on achieving the goal of CITES.”⁵

These strategic priorities highlight myriad practical correlations between conservation efforts, the regulation of key species throughout the global trading system and across chains of supply and demand, and the pressing need to identify and strengthen sustainable development. They recognize the inherent connections between the use of trade controls and mechanisms to protect and conserve species and other multilateral environmental agreements such as aspects of the World Heritage Convention, plant conservation measures and combating international wildlife crimes.⁶ Further, they emphasize the need for domestic trade and market regulation for the prevention of illicit flows of protected species as well as the need for an international system of oversight to ensure that these mechanisms are created and implemented.⁷ This volume explores these challenging themes, considering the role of law and governance reform in strengthening implementation of CITES worldwide for more sustainable development.

1.2 STRUCTURE OF THIS VOLUME

In Part I, this volume lays the foundations for the book, explaining the problems that CITES was created to address and the role of law and legal regimes in shaping the relevant environmental, economic and social policies, regulations and institutions for implementing CITES as a treaty. This initial Chapter 1 features a brief introduction to the CITES regime and its links to the world’s SDGs, highlighting the relevant aspects of the CITES Strategic Vision and laying out the structure of the volume. Then, in Chapter 2, John E. Scanlon, Marcos Regis Silva and Marceil Yeater discuss the origins and evolution of CITES and its contributions to sustainable

⁵ Ibid.

⁶ See CITES CoP Doc. 15.1, Cooperation with Other Biodiversity-Related Conventions; CITES CoP Doc. 15.3, Global Strategy for Plant Conservation; CITES CoP Doc. 15.5, International Consortium on Combating Wildlife Crime; CITES CoP Doc. 15.6, Cooperation between CITES and the World Heritage Convention.

⁷ CITES CoP Doc. 31, Domestic Markets for Frequently Traded Illegal Specimens.

development. By itself, CITES is a regulatory instrument that aims to ensure that international trade in wildlife is legal, traceable and sustainable. These authors argue that while there is no explicit reference to sustainable development within the Convention itself, which was concluded in 1973, the treaty provisions are aligned with the concept of sustainable development. Further, its mechanisms establish a practical framework for enabling regulation of the international wildlife trade to contribute towards achieving sustainable development. The authors outline the genesis of CITES and the governance processes supporting its operation, including regular amendments to its species lists, interpretive Resolutions and action-oriented Decisions adopted at meetings of the COP. They also discuss the evolution of CITES, including within the context of decisions taken at global sustainable development summits, such as Rio+20, and explore how these summits have recognized and further enhanced the contributions of CITES to sustainable development. Finally, they detail some of the practical tools and mechanisms of CITES, such as legal acquisition findings, non-detriment findings (NDFs) and quotas for proposed trade, the Review of Significant Trade in Commercially Exploited Species and guidance on addressing livelihood issues, and outline how these mechanisms support the sustainable use of wildlife; in so doing they make a tangible contribution to sustainable development.

In Chapter 3, Blessing Ajayi, Jorge Cabrera Medaglia, Marie-Claire Cordonier Segger and David Andrew Wardell link the work of CITES and other treaties to protect species at risk with broader recent discussions in international law and policy on sustainable development. Reviewing recent international, regional and national developments on these issues, they highlight recent law and policy reform innovations across multiple levels of governance, identifying major implementation challenges and achievements and suggesting key areas for additional research, analysis and capacity-building. Further, the authors discuss the regimes that regulate international trade and investment in certain species as commodity value-chains, providing examples of comparisons between non-CITES species versus CITES species. The focus is on analyzing regulations that implement the sustainable development provisions of CITES that affect trade and investment flows, globally. The authors explain value-chains approaches, then discuss endangered species commodity value-chains, including how global trade in species products can be demand driven, and how non-CITES and CITES species can be compared. The authors then present the key concepts in value-chains analysis, explaining the law and governance aspects. These aspects are illustrated with examples of regulatory regimes with national and transnational dimensions, taking into account species highlighted in the rest of the volume. In conclusion, the authors highlight emerging concepts and consider the utility and limitations of a law and governance approach, and its broader linkages to global landscapes governance.

In Part II, this volume examines emerging challenges for CITES in relation to law and sustainable development, including sustainable livelihoods, land tenure reform and rural communities, Indigenous and traditional knowledge, economic incentives for the sustainable use of CITES-listed species, CITES trade measures and sustainable development, demand reduction and management for ensuring legality and sustainability, criminal prosecution and enforcement challenges, criteria for listing species in Appendices I and II, access to information and public participation and related issues.

Chapter 4 by Lydia Slobodian highlights that addressing biodiversity loss requires more than appropriate laws; it also requires effective enforcement and implementation. However, many of the most biodiverse countries in the world lack the necessary capacity and resources to effectively enforce wildlife protection laws, particularly against increasingly organized and powerful criminal networks. Building the capacity of these countries is an important but incomplete part of a fair and lasting solution; it must be accompanied by action on the part of more developed countries to take responsibility for their role in driving, controlling and perpetrating wildlife crime outside their borders. While CITES itself is a landmark agreement in recognizing this responsibility, countries can fulfill the responsibility by expanding jurisdiction through measures such as trade-based and supply chain regulations and long-arm legislation. These measures can allow more capable countries to take on a larger share of the burden of enforcing wildlife legislation, resulting in fairer, more effective and more efficient implementation of CITES. However, such extraterritorial jurisdiction raises practical, legal and ethical issues, including questions of sovereignty. In this chapter, the author analyzes some of the possibilities and potential problems of expansion of jurisdiction in the context of CITES, the UN Convention on Transnational Organized Crime and other sources of international law.

In Chapter 5, Blessing Ajayi, Marie-Claire Cordonier Segger, Markus W. Gehring, and David Andrew Wardell consider evidence of sustainable development challenges in implementing CITES trade measures, such as leakage along global value chains, as well as CITES loopholes in European Union Forest Law Enforcement, Governance and Trade (FLEG-T) measures, and third-party trading. Relying on new data from International Tropical Timber Organization (ITTO) databases, developing country archives, and analysis of regional and bilateral trade agreements and economic partnerships that seek to support environmental and social objectives, the chapter provides a discussion of possible constructive ways forward. First, the authors introduce the potential contributions of CITES trade measures to sustainable development and explain recent challenges in implementing CITES trade measures. Second, they consider CITES trade measures in law and policy, reviewing the structure of CITES treaty provisions and institutions, and the use of trade and criminal law measures. Third, the authors consider the potential for trade and investment regimes to frustrate or foster CITES objectives, drawing on

experiences in the World Trade Organization (WTO), regional/bilateral trade agreements/economic partnerships, FLEG-T and the Peru–US free trade agreement (Peru–US FTA). In conclusion, they canvass the areas of progress, the need for better horizontal integration across silos and instruments, and the need for harmonization and enforcement.

Finally, in Chapter 6, Clarissa Castillo Cubillo, Jorge Cabrera Medaglia and Laura Elizondo García note that the Central America–Dominican Republic free trade agreement (CAFTA-DR) is one of the trade agreements that dedicates a complete chapter (Chapter 17) to environment protection. The accord establishes a Submission Mechanism for Matters related to the Enforcement of Environmental Legislation. The “Public Communication” mechanism seeks to encourage citizen participation, allowing individuals and non-governmental organizations (NGOs) to seek the enforcement of any environmental law when the party has not enforced properly their own environmental provisions. Although the Submission Mechanism is not a CITES mechanism per se, the authors propose that it can contribute to the protection of the species listed in the CITES Appendices. The authors concisely discuss the Environmental Submission Process, its characteristics, weaknesses and strengths, and the types of submission that are submitted to the Secretariat for Environmental Matters. They then focus specifically on a case from the Dominican Republic dealing with the protection of the hawksbill turtle (*Eretmochelys imbricata*) listed in Appendix I, as well as sea turtles in general. The authors emphasize the value of public involvement in decision-making, in the enforcement of laws, and the value and importance of this kind of alternative mechanism that encourages public involvement while supporting the enforcement of national and international laws such as CITES.

In Part III, this volume examines the global implementation of CITES by considering specific species and commodity value chains. It considers concerns related to regulating global trade in CITES-listed species for use as exotic pets and entertainment (large cats and other mammals, exotic birds, fish); CITES-listed species for use in medicines and cosmetics (horn bark, plants, leeks, mammals like primates for scientific research, etc.); CITES-listed species for use in clothing, fashion and ornaments (reptiles, amphibians, ivory, mammals like vicuña); CITES-listed species for use in construction and furnishings (hardwoods, trees, plants); and CITES-listed species for use in food and gardens (mammals, fish, plants, trees).

In Chapter 7, scientists Anthony B. Cunningham and Terry Sunderland explain that *Prunus africana* (listed in CITES Appendix II in 1995) is at the confluence of the “northern perspective” on bans as a conservation tool and the “southern perspective” on sustainable use as a conservation incentive. After forty-two years of international trade in wild harvested medicinal bark from Africa and Madagascar, the experience with *Prunus africana* holds several lessons for both policy and practice in forestry, conservation and rural development. First, the authors note, commercial harvesting is allowed in protected areas in Cameroon

and is proposed for protected areas in Burundi and the Democratic Republic of Congo (DRC). Second, the authors argue that hopes of decentralized governance were misplaced due to elite capture, concentration of power and corruption in several range states, plus warfare in the eastern DRC. Third, in contrast to lucrative bark exports, livelihood benefits to local harvesters from wild harvest are less than USD 1 per day from bark harvests, due to a net bark price of USD 0.33 per kg. As with CITES cases like orchids, crocodiles and *Aquilaria* resin, the authors recommend developing separate, traceable *Prunus africana* bark supply chains based on cultivated stocks, unlocking opportunities for more than 3,500 small-scale farmers currently growing this species.

In Chapter 8, Laura Elizondo García, Jorge Cabrera Medaglia and Clarissa Castillo Cubillo begin with the observation that it is estimated that between 26 million and 73 million sharks are killed every year to meet the fin market demand. The hammerhead shark (*Sphyrna lewini*), the great hammerhead shark (*Sphymamo karran*) and the smooth hammerhead shark (*Sphyrna zygaena*) are among the most commonly found species in the global fin trade. Estimations suggest that 1 million to 3 million of these sharks are killed every year, causing the International Union for Conservation of Nature (IUCN) to classify them as globally endangered since 2006. The authors describe the general situation of global fin trade and specifically the particularities surrounding the *Sphyrna lewini* fin trade. They focus on the problem of shark finning, on how this practice reduces the number of specimens and on the potential consequences of not taking measures to establish regulations that aim for a sustainable use. They also examine the process that led to the proposal to include this species in CITES Appendix II, the legal implications internationally of having the *Sphyrna lewini* listed and the positive implications that this could have for the preservation of its population and for future proposals of other shark species that may be affected by the fin trade.

In Chapter 9, Daniel W. S. Challender and Douglas C. MacMillan note that historical responses to the conservation and sustainable use of wildlife have been predominantly regulatory, relying largely on the implementation of CITES. However, these supply-centric approaches have at best had mixed effectiveness, while CITES largely disregards the economic reality of wildlife trade in implementation terms. In this chapter, the authors examine the outcome of CITES policies on the trade and conservation of pangolins (*Manis* spp.) in Asia, specifically an Appendix II listing, inclusion in multiple phases of the Review of Significant Trade process and a proposed transfer to Appendix I at COP 11 in 2000. They argue that reforms to this supply-centric approach are needed urgently, and that these should include an explicit and in-depth understanding of consumer demand factors and changing market dynamics (e.g. rapidly increasing demand, rising prices). Such approaches could involve the monitoring of demand and consumer preferences, and could be used to inform demand management measures such as social marketing programs to change consumer behavior. In a world of rapid

economic and social change, “keeping up” with markets and managing demand as well as supply is essential to conserving trade-threatened species.

In Chapter 10, Peter Stoett and Rob White highlight that trade in endangered species is one of the most pernicious forms of transnational environmental crime, involving several layers of participants and facilitated by systemic corruption. It persists despite the fact that CITES permits states to take pre-emptory actions to curtail it. The intervention of INTERPOL in the trade reflects the difficulties that states experience in enforcing CITES, but the authors question whether it is an effective approach to this transnational environmental crime. The chapter summarizes, analyzes and evaluates the current role of INTERPOL’s Project Predator (focused on Asian large cats) and Project Wisdom (focused on elephants and rhinoceros), two ongoing efforts to curb illegal wildlife trade. While there are many challenges to the success of these projects, the chapter suggests that the projects are a necessary spoke in the evolving wheel of global environmental governance. It focuses specifically on whether the projects have helped or hindered the advent of sustainable development in key focus countries. It also questions whether global governance enforcement impedes or encourages key development indicators in tourism, local development, agricultural production, national legislative construction and other important areas, and concludes with specific suggestions for improvement.

In Part IV, this volume considers regional and national innovations in CITES implementation for sustainable development. Its chapters examine objectives, obstacles and experiences with legal innovations from Africa (Cameroon, Kenya, Zambia), from Latin America and the Caribbean (Peru, Costa Rica, Jamaica and others), from Asia-Pacific (Vietnam, Indonesia, China, Oceania and others) and from Europe (the EU, Norway, Switzerland and others), as well as legal innovations from North America (the USA, Canada, Mexico).

In Chapter 11, Adeshola Olatunde Adepoju, Oyetayo Oyelowo, Collina Kambai and Babajide Charles Falemara begin by signaling the decline of biodiversity and its economic and ecological consequences. The chapter highlights the conflicts that arise when balancing competing economic and environmental interests and values. Highlighting the successes and problems faced in implementing CITES, the authors focus on the involvement of local peoples in the implementation of biodiversity-related conventions, penalties for defaulters, and capacity challenges faced by law enforcement in carrying out obligations. Experiences with the Omo Forest Reserve and the Yankari Game Reserve located in southwestern (Ogun State) and northeastern (Bauchi State) Nigeria, respectively, are explored as a baseline for other potential biosphere reserves. These reserves contain several populations of globally endangered and near-threatened species from the IUCN Red List and the CITES-listed species. Unfortunately, the authors explain, there are high levels of illegal trade in endangered and protected species, coupled with community conflicts. Though conservation efforts have a long history in the country, achievements are not encouraging. The authors argue that