A Tale of Two CITES: Divergent Perspectives upon the Effectiveness of the Wildlife Trade Convention

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The question concerning the overall functional effectiveness of the Convention on International Trade in Endangered Species (CITES) has attracted a range of sharply contrasting responses. These divergent assessments appear to correlate closely with the fundamentally different philosophies of conservation which are currently espoused within the international community, and are themselves shaped by the disparate psychological predilections from which they emerge. Although the concept of ‘sustainable utilization’ features prominently in the supporting rhetoric of most constituencies, much depends upon whether it is the aspect of ‘sustainability’ or ‘utilization’ that commands motivational priority. In certain quarters, an essentially individualistic, materialistic and libertarian perspective predominates, with the result that especially strong justifications are expected for constraints upon use. Since this standpoint is so deeply ingrained within human psychology, it is essential that it be accommodated within conservation regimes. Yet at the same time, it cannot be overlooked that this very inclination has done much to precipitate the biodiversity crisis in the first place, and must therefore be balanced by a more holistic and ecocentric perspective. In that respect, a widespread lack of effective understanding remains evident in policy-making circles, and a variety of well-entrenched myths and misconceptions still represent a significant impediment to progress.

INTRODUCTION

As the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) passes another significant milestone in the form of the 40th anniversary of the date of its adoption, it is pertinent to reflect on the various judgements that have been made over the course of that period with regard to its overall record of achievement. On the one hand, there have undoubtedly been a number of weighty testimonials in its favour. Thus, without ever denying the scope for substantial improvement, commentators have described it as ‘perhaps the most successful of all international treaties concerned with the conservation of wildlife’, under which ‘real progress has been made’, or otherwise commended its effectiveness. A review conducted by independent consultants in 1996 suggested that ‘in a nutshell, most Parties believe that CITES works’. Nevertheless, a significant number of much more sceptical appraisals have also been delivered, including some that have suggested that the Convention’s entire approach is fundamentally misconceived, and that it is in urgent need of substantial reconfiguration in order to meet the conservation requirements of the twenty-first century. Some commentators have gone so far as to suggest that it is so counter-productive that it should actually be abandoned or abolished. So radically divergent, indeed, do these two sets of judgments appear to be that one might easily suppose that two completely different treaty regimes were under consideration.

This ongoing controversy certainly requires to be taken seriously, for it is clear that we find ourselves at a critical moment in history in terms of our relationship with...
the planet that is our home. One recent, wide-ranging and authoritative international study7 coordinated by the Stockholm Environment Institute has identified a number of planetary life-support systems that are fundamental to human survival and then sought to establish, wherever feasible, tolerably safe functional boundaries for the operation of each – practical limits beyond which abrupt and irreversible change to the human environment might be occasioned. It concluded that in only one instance – stratospheric ozone depletion – could the system in question be regarded as having been rendered reasonably safe from threat. In four cases, by contrast, (ocean acidification, the phosphorus cycle, land conversion and the availability of fresh water) the margins of safety were being approached with varying degrees of acrafty, while in the case of another (climate change) the boundary had already been crossed. As regards the final two – operation of the nitrogen cycle and depletion of biological diversity – it seems that we are now far into the danger zone. Even governments themselves, moreover, have felt compelled to recognize the validity of this final concern, at least in a formal sense – thus, having witnessed the comprehensive failure of the international community to meet the targets previously set for arresting the ongoing decline in biological diversity by the year 2010, the United Nations has now seen fit to dedicate an entire decade (2011–2020) to the task.8 All too obviously, therefore, 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. Furthermore, since compliance with environmental norms will ultimately depend as much on the response of individuals as of governments, public perceptions of their suitability, fairness and effectiveness must always be kept firmly in mind.

AN ASSESSMENT OF THE RADICAL CRITIQUE

The more trenchantly negative appraisals of CITES can seemingly be grouped into two principal categories. The first of these emanates largely from the ranks of ‘green’ nongovernmental organizations (NGOs) of one shade or another, and consists essentially in condemnations of the Convention’s persistent failure to fulfil its brief, as evidenced by such indicators as the unwillingness of its plenary body to prohibit or restrict a wider range of transactions through the listing of additional species on its Appendices, the shortfall of effort invested in ensuring the more effective enforcement of its regulatory system (including, perhaps, the reluctance to impose controls or sanctions upon countries that are seen to be a cause for particular concern), and the failure to eliminate incompetence and corruption on the part of those charged with responsibility for implementation.9 Such perceived deficiencies have even caused some to conclude that CITES ‘fails totally’, and should no longer be supported.10

It hardly requires to be stated that such claims must be treated with some scepticism since they are plainly representative of only one particular viewpoint, which is inherently selective and factional in nature. In particular, as a chorus of countervailing voices is always prompt to point out, they are prone to be driven by powerful emotions, often indulged in unrestrained or unreflective fashion,11 as well as being infused here and there by a more carefully calculated, self-serving motivational current which derives as much from considerations of a financial or public relations nature as from those relating to conservation as such. To put it bluntly, entities of this kind have a gallery of their own to which they must inevitably play. A rather less frequently or loudly articulated truism, however, is that this will equally be true of all the other participants in the trade regulation process, whether they are of the political, commercial or technocratic variety. After all, governments, businesses and scientific institutions can themselves scarcely mount a plausible claim to be immune to concerns of a financial or public relations character when the reality is that such considerations number among the most crucial determinants of their own ultimate prospects of survival or success. In addition, all the key preoccupations by which their own conduct is driven – aspirations for economic and social development, pride in national sovereignty or tradition, the quest to understand the natural order, the desire to secure profits, the inclination to reduce or resist bureaucratic controls – must themselves be recognized as essentially emotional at root because there is ultimately nothing else that they can be: the very semantic thrust of the term ‘emotions’ is, after all, to indicate powerful emotions, often indulged in unrestrained or unreflective fashion,11 as well as being infused here and there by a more carefully calculated, self-serving motivational current which derives as much from considerations of a financial or public relations nature as from those relating to conservation as such. To put it bluntly, entities of this kind have a gallery of their own to which they must inevitably play. A rather less frequently or loudly articulated truism, however, is that this will equally be true of all the other participants in the trade regulation process, whether they are of the political, commercial or technocratic variety. After all, governments, businesses and scientific institutions can themselves scarcely mount a plausible claim to be immune to concerns of a financial or public relations character when the reality is that such considerations number among the most crucial determinants of their own ultimate prospects of survival or success. In addition, all the key preoccupations by which their own conduct is driven – aspirations for economic and social development, pride in national sovereignty or tradition, the quest to understand the natural order, the desire to secure profits, the inclination to reduce or resist bureaucratic controls – must themselves be recognized as essentially emotional at root because there is ultimately nothing else that they can be: the very semantic thrust of the term ‘emotions’ is, after all, to indicate and describe all those naturally ingrained systems of stimulation to action. Although we generally prefer to insist

8 Convention on Biological Diversity (UNGA Resolution 65/161, 11 March 2011), reflecting the current strategic plan of the Biodiversity Convention, which can be found at: <http://www.cbd.int/doc/strategic-plan/>.
10 Note, for example, the petition to that effect addressed to the European Commissioner for the Environment and organized by Friends of the Orangutans, Malaysia, ‘Stop Funding CITES: They Are Part of the Problem and Not the Solution’, found at: <http://www.change.org/>.
11 This will not uncommonly be characterized as self-indulgent sentimentality by the voices in question.
that we are governed by reason rather than emotion, this tendency can itself arguably be explained as a product of the interaction between our basic desires for power, independence, order, mental activity and status. Any notion of reason operating purely in the abstract as a motivator to action, and in isolation from our emotions, must surely now be rejected as untenable – for as common sense suggests and as a growing body of scientific findings tend to confirm, ‘reason’ is essentially the means by which we reflect upon, moderate, harmonize and justify our basic emotional responses as best we can.

Not only, moreover, do we do this on an individual basis, we also strive collectively for such harmonization through the elaboration of our political programmes, normative systems and ultimate societal goals. It is clear that each one of the various natural human impulses identified has a legitimate role to play in this process, and that none of them should therefore be permitted to monopolize ethical discourse or public policy to the exclusion of any other. Rather, each must compete for its place in, and relative influence over, the catalogue of policy priorities that emerges from the ongoing process of rational deliberation of their respective claims to relevance and importance in specific contexts. A strong argument can be made that sensitivity to the fate of other life forms is the one which is least firmly entrenched in our collective consciousness, which perhaps helps to explain why the current biodiversity crisis has become so acute. Even though we know rationally that we have no prospect of ultimately flourishing, or even surviving, without their contribution to the maintenance of planetary life-support systems, such considerations are all too easily overwhelmed by more powerful and immediate impulses. ‘Of course we are committed to conservation,’ we tell ourselves, ‘but in this particular situation . . . ’. Despite these recidivist tendencies, it can at least be said that


13 This idea seems to have taken firm root during the era of the Enlightenment, though even then there were those, such as the Scottish philosopher David Hume, who perceived the reality of the matter.

14 Thus, reason without emotion is like logic without a premise or mountaineering without mountains: there is simply no purchase that it can acquire or progress that it can make. For further discussion see, e.g., S. Reiss, n. 12 above; D. Brooks, The Social Animal (Random House, 2011); A. Damasio, Descartes’ Error: Emotion, Reason and the Human Brain (Avon Books, 1994); G. Gigerenzer, Gut Feelings (Penguin Books, 2007); D. Kahneman, Thinking, Fast and Slow (Farrar, Straus & Giroux, 2011); D. Laming, Understanding Human Motivation (John Wiley & Sons, 2004); R.S. Lazarus and B.N. Lazarus, Passion and Reason (Oxford University Press, 1994); J.E. LeDoux, The Emotional Brain (Simon & Schuster, 1996).

15 In some people, it might perhaps be experienced as an extended manifestation of empathy or of the basic desire for social justice, but in others such feelings are likely to be under-developed or non-existent.

16 For a convenient recent statement of global policy, see: The Future We Want (UNGA Resolution 66/288, 11 September), Annex (the outcome document of the 2012 UN Conference on Sustainable Development).

17 Leaving aside the rather special case of fisheries regimes, the incorporation of institutional arrangements in nature conservation treaties seemingly began with the Convention on Wetlands of International Importance, especially as Waterfowl Habitat 1971 (Ramsar, 2 February 1971; in force 21 December 1975) (‘Ramsar Convention’), see especially Article 6. However, Article 11 of CITES, n. 1 above, is much more expansive and explicit with regard to the question of participation. For further discussion of these developments, see R. Boardman, International Organization and the Conservation of Nature (Indiana University Press, 1980), esp. Chapter 5.
precisely to addressing such issues. Resolutions on paper are not, however, automatically translated into resolute action on the ground, and it is here that the monitoring capacity of civil society is likely to prove of particular importance since governments themselves not unnaturally have only limited enthusiasm for holding each other to account in such matters. NGOs have duly played a vital role in this process from the outset, with the efforts of bodies such as the Environmental Investigation Agency (EIA) to ensure that the question of animal welfare was not denied its legitimate place on the CITES agenda standing as just one of many notable examples.

Where, by contrast, environmental NGOs choose to devote their energies to the mere disparagement or undermining of the CITES system, it is much less easy to discern how the cause of conservation can effectively be advanced: it is, in particular, difficult to see how the worthy aspiration to restrict all trade that puts target species at risk of extinction could possibly be advanced by starving of funds the only institution that has effective authority to address that problem. Just occasionally, perhaps, shock tactics of this kind might serve as an effective propaganda ploy or otherwise produce some positive outcome, but such cases seem destined to be few and far between. Above all, if they are not even supported by a cogent exposition of the grievances that have given rise to the campaign in question, they are only likely to convince those who needed no convincing in the first place. Thus, the complaint that a Bangkok market situated ‘in walking distance from the CITES Thailand office ... openly sell[s] wildlife which in theory is legally protected’ seems not of itself to demonstrate any dereliction of duty on the part of CITES agencies. For such a claim to be substantiated, it would surely have to be shown as a minimum that the specimens in question had arrived as part of an international (as opposed to purely domestic) transaction, were of a species that was not merely ‘legally protected’ but subject to the particular protection against commercial exploitation that is attracted by Appendix I listing, and did not fall within any of the exemptions or other special circumstances that might lawfully cause them to forfeit such protection. It may very well be, of course, that some or all of these points were actually capable of demonstration, but in that case the only sensible course would surely have been to address them explicitly. That would at least have helped to point the way towards possible solutions.

Calls for the abridgement, abandonment or embargo of CITES’ programmes seem less conspicuously incongruous in the case of those who are inherently sceptical of the virtues of regulation, and the constituency which advocates the systematic liberation of the wildlife trade duly provides the second source of radical critique. Some in this camp have indeed gone so far as to demand the outright abolition of the CITES system on the grounds that it is completely counter-productive. The typical thrust of the arguments presented here is that the proscription of commerce leads only to the creation of a black market and hence to an escalation of demand for the product in question. In addition to that, attempts to enforce the law will inevitably prove costly, and may provoke a violent backlash. If a lawful trade were permitted, it is claimed, these harmful effects could simply be avoided. As the United States’ experience with alcohol prohibition serves to demonstrate, such arguments are certainly not to be dismissed out of hand, but they need to be considered dispassionately, in detail and on a case-by-case basis. The problem cannot meaningfully be addressed by reference to any broad-brush, ideologically motivated assumption that unrestricted trade is best, for experience with overly liberal approaches to the sale of alcohol might seem to provide an equally compelling cautionary tale in contradiction of this view. All that this tangle of experience demonstrates is that tackling society’s problems is invariably a challenging task, in respect of which there will often be no simple solutions. A realistic aim is to strike the best balance achievable, which entails considering not only the direct impact of prohibition itself, but also such educative effects as it may produce, and the way in which these may be reinforced by other programmes of public information or instruction. In the case of the wildlife trade, it may also be relevant to consider the extent to which residual demand may be met by sources other than wild-living populations of plants or animals. Finally, it must be remembered that wildlife

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18 Details of such measures may be found on the CITES website at: [http://www.cites.org](http://www.cites.org).
20 Explicit recognition of EIA’s efforts occurred in both the CITES Technical Committee and in Plenary Session: see ‘Proceedings of the Fifth Meeting of the Conference of the Parties’ (Buenos Aires, 22 April–3 May 1985), Com. 5.20 and Plen 5.8. It is, however, very much open to question how effectively CITES has pursued this issue over time.
22 Ibid.
24 An interesting case study might be provided by the attempts to persuade weavers in the Himalayan region to abandon the manufacture of shatoosh shawls made from the wool of the endangered...
may often be more profitably and humanely exploited by non-consumptive means. Unfortunately, objectivity is all too easily lost in the heat of debate. The case of the African elephant is a prime example, where two contrasting conservation strategies, both of African origin, have been devised and have seemed at times to offer comparable success.\(^{25}\) Accordingly, it might seem appropriate to allow them to run in parallel, as the CITES’ ‘split-listing’ system far-sightedly allows. Unfortunately, one has the potential significantly to undermine the other, rendering an ideal solution extremely elusive.\(^{26}\) In such circumstances, to take into account ethical considerations concerning the perceived best interests of the animals themselves certainly cannot be dismissed as rampant sentimentality.

The real difficulty here, as noted above, is that the underlying motivations of those on the trade-liberalization side of the argument are no less immediate or emotional in character than those of the ‘green’ lobby that they so deprecate. Indeed, grand theories commending the virtues of laissez-faire may well be borne of nothing more than a strong personal resentment of authority, discipline and societal restrictions.\(^{27}\) In this process of self-justification, inconvenient facts are brushed aside and the simple constraints of logic all too readily abandoned. The following assertion is typical of the genre:

Ban something, and you’ll soon get a thriving trade at astronomical prices, funding crime syndicates, and employing armies of gangsters with bigger guns and faster cars than the police. . . . Cattle and sheep are also poached, but you don’t see paramilitary expeditions assembled for this purpose.\(^{28}\)

If only reality were so simple! Instead, the sad irony is that, on the very day that this particular polemic first came to my attention, international press reports were offering graphic accounts of a pitched gun battle which occurred in the Nigerian central state of Plateau and arose directly out of an ongoing saga of cattle rustling in the area. These clashes, which initially involved rival groups of herders, and subsequently drew in the military, left almost 50 people dead and dozens of homes burned.\(^{29}\) It seems, moreover, that such incidents are by no means unprecedented in Nigeria, and have been reported also in Kenya, Uganda and Sudan.\(^{30}\) The tragic truth appears to be that, wherever significant interests are at stake, passions have become inflamed and weapons are readily available, humans are all too prone to succumb to their use, and that such propensities may be triggered in a host of situations. Trade bans of themselves seem no more likely to instigate such conflict than to defuse it: such outcomes will depend entirely on the circumstances of the individual case. Some, indeed, might conclude that human interests might better be served in such situations by the imposition and enforcement of additional restrictions – most obviously upon the apparently unconstrained availability of weaponry rather than the removal of existing ones. Interestingly, governments themselves seem belatedly to be coming round to such a view.\(^{31}\)

Yet this is to digress from the principal weakness of anti-regulation ideology, which is that the dismissal of any regulatory system as having ‘failed’ simply on the grounds that the illicit trade which it targets has not been eliminated appears to make very little sense. The most obvious reason is that the overall scale and adverse consequences of this trade may still be significantly less than that which would have obtained had the ban not been imposed, in which case it might legitimately be considered a partial success. The point becomes even clearer when the ‘smart solution’ characteristically proposed as the alternative – namely, the

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\(^{26}\) For details, see, e.g., J. Paige, n. 29 above, which refers also to similar clashes in Wase district, some 80 miles away; F. Womakuyu, ‘Karamoja Starving but Cattle Rustling Goes On’, *New Vision Archive* (25 May 2008), reporting that in parts of Uganda ‘gun battles are the order of the day’; I. Lucheli, ‘13 Commandments to Fight Cattle Rustling Set Up’, *Standard Digital News* (26 March 2011), found at: <http://www.standardmedia.co.ke/?articleID=2000031930&story_title=13-commandments-to-fight-cattle-rustling-set-up&pageNo=3>.

\(^{27}\) See, in particular, the 2013 Arms Trade Treaty (UN Doc. A/CONF.217/2013/L.3, 27 March 2013), Annex.
extension of property rights to wildlife and the positive encouragement of exploitation and trade — is examined in more detail. Under such a regime, it is asserted, the designated owners would naturally be motivated to protect their own long-term interests by ensuring the restriction of trade to sustainable levels. Yet while this approach may certainly prove worthy of consideration on a case-by-case basis, the presentation of it as a universal panacea, or even as an option of first resort, seems naive in the extreme. Community-based conservation seems an attractive idea in principle, but its record in practice has been rather mixed, with various communities having exploited the resources upon which they are dependent far beyond the limits of sustainability. While poverty is commonly the principal driver of such action, there may sometimes be more sustainable methods of tackling it. It is therefore encouraging to note that various NGOs are now working with local communities precisely in order to encourage to note that various NGOs are now working with local communities precisely in order to develop such approaches, and that detailed research is ongoing. Nevertheless, there may still be cases where a simple motivation to ‘cash in quick’ ultimately prevails: indeed, it has frequently been pointed out that the discipline of economics has traditionally offered positive encouragement to such short-termism.

A second problem with the ‘smart solution’ typically overlooked by its advocates is that it incidentally entails the creation of a new ban of the very kind they themselves rail against — specifically, the prohibition of exploitation by anyone other than the newly designated owner of the resource. What they fail to explain is why this particular type of prohibition would fare any better than all those to which they are so resolutely opposed. For the unfortunate truth, as the cattle rustling cases amply demonstrate, is that people may be prepared to go to extraordinary lengths to purloin the property of others. Indeed, if one wanted an example of a trade ban that had quite comprehensively ‘failed’ by reference to the criteria advanced by the particular author cited above, one would surely select the one he actively embraces, since laws against theft, robbery, fraud and handling stolen goods have been in existence for hundreds of years (not just 40, like CITES) without ever coming close to eliminating the practices they seek to proscribe — indeed the aggregate global value of the trade in misappropriated property must by now be absolutely mind-boggling! By the author’s own lights, therefore, property laws should surely be ripe for abolition — not extension. In this particular case, moreover, the problems naturally inherent in the enforcement of property regimes might well be exacerbated by the assertion of all sorts of customary rights which had allegedly been overridden in the reform process, or simple disgruntlement with the shares accorded. Migratory species inevitably present an additional layer of complication. Finally, it pays to remember that the perennial shortage of funding support for conservation initiatives generally has been gravely exacerbated of late by a global economic crisis that was in large measure precipitated by capitation to arguments championing the supposed benefits of deregulation, in this instance of the financial sector. Now is scarcely the time to argue for more of the same!

Although deregulation arguments of this ilk might seem too transparently dogmatic to make much headway in the policy debate, it is troubling to note that fainter echoes of the same ideological predispositions and cavalier approach to historical fact can be found in presentations of an ostensibly more serious and scholarly nature. In this vein, it has been claimed that CITES was concluded in an era when international trade was thought to be the principal threat to conservation, whereas it is now known that the loss and destruction of habitat is of much greater practical significance: had these fundamental ecological realities been properly appreciated at the time, an entirely different model of conservation treaty would undoubtedly have been concluded. Even insofar as the international trade in wildlife might have been considered a significant problem, moreover, this alternative model should have employed techniques of an entirely different character in order to address it: thus, CITES is sometimes said to constitute an example of ‘top-down’, ‘command-and-control’ approaches to regulation, when what is actually required is some form of ‘bottom-up’, market-based mechanism based on offering suitable economic incentives for sustainable local management. As currently constituted, the Washington treaty is (or runs the risk of appearing to be) actively antipathetic to trade, when in reality, the argument runs, it is only the commodification of wildlife which serves to invest it with value, offsetting the risk of the habitat it occupies being turned over to more profitable uses and thereby maximizing its chances of survival. The emergence during the decades since its adoption of the principle of sustainable development, of which the utilization of natural resources in

32 See I. Vegter, n. 21 above.
34 See, e.g., J. Goodall, 50 Years at Gombe (Stewart, Tabori & Change, 2010), esp. Section IV.

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perpetuity represents an integral component, has served only to underline still further the deficiencies in the thinking which spawned the current wildlife trade regime.

Translating this critique on to a broader canvas, CITES is sometimes portrayed as just one of a wider array of conservation instruments which, largely in deference to the demands of NGOs from the developed world, have pursued a resolutely ‘preservationist’ approach to conservation. As such, they collectively represent little more than a new form of imperialism, whereby the sovereignty of States and peoples to control their own resources and destinies may more easily be suppressed. Finally, it is increasingly argued that the traditional ‘altruistic’ approach to conservation must, in the light of the international community’s acknowledged failure to arrest or reverse the ongoing decline in biological diversity, be regarded as having conspicuously failed to achieve its objectives and should therefore be replaced by something avowedly more anthropocentric in character, and on that account inherently more likely to be successful.

Taken collectively, these allegations plainly comprise a charge sheet of potentially devastating impact, and it is therefore necessary to evaluate them a little more closely in order to determine whether they can be substantiated. The first concerns the state of conservation knowledge at the time that CITES was drafted, and specifically the assertion that it reflected a gross misperception of the significance of international trade as a threat to wildlife conservation. In particular, the charge of ignorance of the far greater problems posed in that regard by the destruction or conversion of habitat is one that is widely encountered, and is indeed a recurrent theme of one particular body of critique that emerged around the time of the 25th anniversary of the Convention. Yet it is extremely difficult to discern any justification for it from the historical record. To someone whose experience of international conservation regimes derived from CITES exclusively, it might conceivably appear plausible, but the wider reality is that the very States that were involved in the negotiation of the Washington treaty had already devoted extensive attention to the question of habitat conservation in the years immediately preceding. Thus, the grave threat that was posed by the progressive deterioration and destruction of wetland habitats across the globe was addressed in the Ramsar Wetlands Convention of 1971, while the desire to extend protection to certain natural areas of outstanding universal value was addressed specifically in the World Heritage Convention a year later. Shortly before the adoption of these instruments, UNESCO’s Man and the Biosphere Conference had served to focus attention upon the general question of humankind’s relationship with the rest of nature, and the subsequent inauguration of its biosphere reserves programme represented a notable example of a non-treaty-based habitat conservation regime of a supranational kind.

Furthermore, these developments were by no means the beginning of the process since habitat conservation had in truth been a feature of international treaty regimes since the turn of the twentieth century, when the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa sought, inter alia, to encourage States to undertake the creation of nature reserves. This aspect became even more prominent in its successor agreement – the 1933 Convention relating to the Preservation of Fauna and Flora in their Natural State – where it was dealt with at substantially greater length than were the additionally recognized threats posed by direct exploitation and international trade in wildlife products. A broadly similar pattern to this was followed in the convention adopted by American States a few years later concerning the conservation of nature and natural resources in the Western hemisphere, though the approach to protected areas was arguably more sophisticated. A further key development at the regional level, marking the advent of the postcolonial era in world history, saw the adoption of a new treaty on nature conservation, designed to replace its 1933 predecessor, by the independent states of Africa themselves in 1968 under the aegis of the Organization of African Unity (OAU, now the African Union). This instrument not only contained provisions for the creation of protected areas...

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41 Ramsar Convention, n. 17 above.
42 Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972; in force 17 December 1975).
43 Convention for the Preservation of Wild Animals, Birds, and Fish in Africa (London, 19 May 1900) (‘1900 London Convention’).
44 The Convention Relative to the Preservation of Fauna and Flora in their Natural State (London, 8 November 1933; in force 14 January 1936) (‘1933 London Convention’).
45 Ibid., respectively Articles 2–7, 9 and 10.
alongside the regulation of direct exploitation and associated trade, but also reflected enhanced awareness of the importance of habitat generally through its prominent emphasis upon the conservation of floral, aquatic and edaphic resources wherever located, alongside the more traditional concern for fauna. It may be significant here that some of the most strident assertions regarding the ignorance of the importance of habitat protection that was supposedly evident in the conservation theory and practice of the early 1970s have emanated from commentators from southernmost Africa, the nations of which were conspicuous by their absence from participation in the 1968 OAU convention.48 Plainly, however, that can scarcely be regarded as justification for simply airbrushing it from the historical record.

Indeed, even the drafting history of CITES itself seems to expose the weakness of these claims since a detailed study of the preparatory work conducted shortly after its conclusion49 revealed that references to the importance of habitat loss were actually incorporated in certain earlier drafts of its own preamble, before being omitted from the final version.50 This excision was most unlikely, moreover, to have been attributable to a conclusion that habitat loss was of no real significance after all; a far more plausible explanation is that it was prompted by the recognition that explicit references to it served little practical purpose, as the Convention’s substantive provisions were not aiming to address it. Rather, it seems likely that the task of regulating international trade was perceived to be a functionally distinct and severable operation from that of habitat conservation – one which required to be addressed in its own right and on its own terms, and through principles, procedures and documentary protocols that were tailored precisely to meet those specific needs. This conclusion seems wholly justified, moreover, since a number of earlier instruments that had sought to tackle the problem of trade alongside other conservation issues had, not surprisingly, found it impossible to address it in sufficient depth or detail.51 As a result, they had achieved very little. Unlike habitat conservation, which can be pursued to considerable effect on a purely unilateral basis, the regulation of trade must almost by definition be a cooperative exercise. Accordingly, the strategy which led to the adoption of CITES as a separate instrument had much to commend it, and certainly cannot be interpreted as indicative of any lack of appreciation of the importance of habitat conservation. In sum, any meaningful appraisal of the effectiveness of the Convention must necessarily take into account the fact that it is, and was only ever intended to be, a single element within a much broader network of conservation instruments operating at the national, regional and global levels.

This leads on to the claims that have been made with respect to the nature and structure of the CITES regime itself. One preliminary difficulty here concerns the distinction conventionally drawn between the twin models of regulatory approach which supposedly constitute the principal options available for international environmental management. In particular, it should be recognized that the formal allocation of legal regimes to a ‘command-and-control’ category, which is typically presented for contrast with those that rely on ‘economic incentives’,52 represents an analytical schematic which is much more meaningfully applicable at the domestic level, where it seems to have originated.53 At the very least, it must be recognized as offering gravely diminished explanatory power when translated into the international arena, especially where conservation is concerned, for the reality is that relatively few treaty regimes seem capable of being fitted comfortably or convincingly into these pre-cast moulds. For the most part, indeed, biodiversity-related treaties seem to be less concerned with ‘commanding and controlling’ than with ‘committing and cajoling’, and for good measure tend to incorporate significant additional elements within their agenda – the aspirations to ‘elucidate and educate’ and ‘foster and facilitate’ being among the most obvious that come to mind. In the light of this multiplicity of missions, they must necessarily embrace a range of techniques and tactical approaches, among which the deployment of economic devices of one sort or other is likely to feature to a greater or lesser extent depending upon the context. This is, in fact, already largely recognized both in the mainstream literature and in the overarching legal regime.54 It is therefore

46 Thus, South Africa, Zimbabwe and Namibia were never involved at all, while Botswana and Lesotho both signed but never ratified. Only Swaziland became a party (being, in fact, the second State to ratify). It is of interest to note, however, that South Africa has very recently signed and ratified the 2003 revision. 47 It seems that the travaux préparatoires themselves were not formally published at the time, though an overview of them was prepared shortly afterwards. See H. Mitchell, History of CITES (1977) – an unpublished report prepared for the Fund for Environmental Studies, Bonn, Germany.
48 The sixth draft apparently recognized ‘the need for each national authority to engage in land-use planning which avoids unnecessary destruction of the eco-systems and/or the habitats of threatened or endangered plants and animals’. Ibid., at 20.
49 Note in this regard the 1900 London Convention, n. 43 above, Article IX: 1933 London Convention, n. 44 above, Article IX; 1968 OAU Convention, n. 47 above, Article IX; International Convention for the Protection of Bird (Paris, 18 October 1950; in force 17 January 1963), Article 3.
50 It seems that the travaux préparatoires had, not surprisingly, found it impossible to address it in sufficient depth or detail.51 As a result, they had achieved very little. Unlike habitat conservation, which can be pursued to considerable effect on a purely unilateral basis, the regulation of trade must almost by definition be a cooperative exercise. Accordingly, the strategy which led to the adoption of CITES as a separate instrument had much to commend it, and certainly cannot be interpreted as indicative of any lack of appreciation of the importance of habitat conservation. In sum, any meaningful appraisal of the effectiveness of the Convention must necessarily take into account the fact that it is, and was only ever intended to be, a single element within a much broader network of conservation instruments operating at the national, regional and global levels.

This leads on to the claims that have been made with respect to the nature and structure of the CITES regime itself. One preliminary difficulty here concerns the distinction conventionally drawn between the twin models of regulatory approach which supposedly constitute the principal options available for international environmental management. In particular, it should be recognized that the formal allocation of legal regimes to a ‘command-and-control’ category, which is typically presented for contrast with those that rely on ‘economic incentives’,52 represents an analytical schematic which is much more meaningfully applicable at the domestic level, where it seems to have originated.53 At the very least, it must be recognized as offering gravely diminished explanatory power when translated into the international arena, especially where conservation is concerned, for the reality is that relatively few treaty regimes seem capable of being fitted comfortably or convincingly into these pre-cast moulds. For the most part, indeed, biodiversity-related treaties seem to be less concerned with ‘commanding and controlling’ than with ‘committing and cajoling’, and for good measure tend to incorporate significant additional elements within their agenda – the aspirations to ‘elucidate and educate’ and ‘foster and facilitate’ being among the most obvious that come to mind. In the light of this multiplicity of missions, they must necessarily embrace a range of techniques and tactical approaches, among which the deployment of economic devices of one sort or other is likely to feature to a greater or lesser extent depending upon the context. This is, in fact, already largely recognized both in the mainstream literature and in the overarching legal regime.54 It is therefore

54 See P. Sands and J. Peel, n. 52 above; Rio Declaration on Environment and Development, found in Report of the UN Conference on

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difficult to escape the conclusion that the so-called ‘command-and-control model’ represents something of a straw man in this context, or perhaps more accurately a house built of straw, and so designed, perhaps, precisely so as ensure its analytical vulnerability to being blown down with only the most modest investment of huffing and puffing, with a view to something more ideologically amenable being constructed in its place.

In this vein, it is common to encounter assertions that CITES is an essentially ‘restrictive’ mechanism, founded on the assumption that trade in wildlife is inherently bad for conservation unless proven otherwise. Yet this again seems highly questionable, at least in the absence of effective clarification and contextualization. After all, the various estimates that have been made of the total number of species that exist on the Earth diverge sharply, but all run into the millions, whereas CITES has only ever sought to bring a few tens of thousands within its purview. Furthermore, the vast majority of those may actually be traded perfectly lawfully provided only that certain specified formalities are followed. It is really only with respect to the commercial trade in species that are already endangered that adverse assumptions might be said to be entrenched. On this issue, it should be conceded, the radical critics may possibly have a point, for it does indeed seem conceivable that there might be cases where treating an endangered species as a tradable commodity might represent its only or best chance of salvation. Yet it could with equal justice be countered that CITES has in fact shown admirable flexibility here, whether through the express provision that is made in the text for the accommodation of artificial propagation/captive breeding operations and the separate listing of distinct populations of different conservation status, or though the expanded leeway that has emerged from the practice of the parties. This is scarcely mere serendipity, moreover, since the institutional arrangements of CITES were devised precisely in order that such evolutionary exegesis might occur. Accordingly, those whose favoured projects for commodification have failed to secure approval would perhaps be advised to concentrate on formulating a more persuasive substantive case, rather than endeavouring to present their claim as axiomatic and then attributing its rejection to simple perversity or prejudice on the part of others.

Unfortunately, the latter trap is an easy one to fall into, especially when it can be elevated into a thesis that, in keeping with international conservation policy generally, CITES represents some sort of colonialist imposition, founded upon a ‘preservationist’ perspective that has sought all along to protect nature for its own sake, and at the expense of people. Eventually, one finds even the best-placed commentators proclaiming that ‘protecting biodiversity for its own sake has not worked’. Once again, however, such claims must be subjected to sober scrutiny. In particular, it seems pertinent to inquire what evidence could possibly be found to support the claim that any such philosophy or practice has ever been followed, for the reality seems from the very outset to have been exactly the opposite.

For example, the concerns which motivated the adoption of the 1902 Convention for the Protection of Birds Useful to Agriculture do not really require a great deal of sophisticated divination, and are amply underlined by the fact that many of the avian species we now recognize as most deserving of protection were then deemed ‘noxious’ per se and targeted for persecution. The 1900 African Convention contained very similar provision, and likewise declared its aim to be the conservation of species that were ‘useful to man or inoffensive’. The 1916 migratory birds treaty between Canada and the United States explicitly embraced the same ideals, with the value of birds as a food source thrown in for good measure. All these provisions provide clear testimony to the utilitarian ideals by which these instruments were driven. Other early conservation efforts were directed at the conservation of fish, seals and whales, which were always characterized as resources for exploitation. The first signs of dilution of this resolutely utilitarian philosophy occurred when instruments such as the Western Hemisphere Convention picked up on a theme which had been prominent for some time in American environmental literature, and emphasized the spiritual, aesthetic and recreational values of the wilderness as a motivation for conservation, an idea which was also carried through into the World Heritage Convention. Yet the crucial points to note here are, first, this was only ever an overlay on the existing bedrock of utilitarian motivation, and second, it is every bit as anthropocentric in character as that which went before, merely acknowledging a different category of human needs and interests. The 1979

58 See M. Marvier, P. Kareiva and R. Lalasz, n. 39 above. The second-named author is Chief Scientist for the Nature Conservancy in the United Kingdom.
59 For a fuller account, see M.J. Bowman, P.G.G. Davies and C.J. Redgwell, n. 2 above, Chapter 3.
60 Convention for the Protection of Birds Useful to Agriculture (Paris, 19 March 1902; in force 6 December 1905).
61 1900 London Convention, n. 43 above, preamble.
Bonnie Migratory Species Convention declared its own objective to be to conserve such species ‘for the good of mankind’, and then listed an array of more specific reasons, both utilitarian and other, to do so.

The first explicit indications of concern for wildlife specifically for its own sake, following a veiled and uncertain reference in the 1972 Stockholm Declaration, can be found in the 1979 Bern Convention, which is a conservation instrument of primarily regional application only, and the 1980 World Charter for Nature, which was not legally binding. CITES itself expressly acknowledged only the ‘aesthetic, scientific, cultural, recreational and economic’ values of wildlife, though its substantive provisions arguably range more widely. It was not, in fact, until the Convention on Biological Diversity (CBD) itself that concern for intrinsic values was given explicit legal recognition with potentially global effect, though once again only as an additional motivation to those traditionally recognized. Even then, some legal commentators have sought (albeit unconvincingly) to downplay its significance. Given this residual uncertainty, it was perhaps only with the adoption in 2004 of the CBD’s Addis Ababa Principles and Guidelines on the Sustainable Use of Biodiversity (broadly embraced by CITES itself in Resolution Conf 13.2) that it was expressly recognized that ‘intrinsic and other non-economic values’ should be taken into account in the application of the Convention. Consequently, the assertion that we have all along been protecting wildlife essentially for its own sake seems impossible to reconcile with reality, while the further claim that the disappointing record of our conservation efforts to date can actually be attributed to its lack of anthropocentrism is surely the most baffling of fantasies. Those who wished to argue that anthropocentrism had been pursued in inept or unduly selective fashion would be on much safer ground.

A salutary antidote to such delusions, perhaps, is to consider the one context into which considerations of intrinsic value have almost never intruded at all — namely the sustainable exploitation of fish stocks: indeed, it even seems odd to speak of conserving ‘fish’ if the quarter-masterly qualifier ‘stocks’ is not added. Although this area of conservation endeavour is arguably the one which has been closest to the heart of governments, and has accordingly generated the greatest number of treaty regimes, over the longest time, it has also been conspicuously and comprehensively the least successful. In the broader fisheries context, which embraces marine mammals also, it is noteworthy that ongoing declines in whale populations were only arrested once full regard was paid in practice to the downgrading of the profitability of the whaling industry from an overriding objective to merely a relevant consideration. The one regime to have achieved undeniable success in this area, moreover — that concerning the northern fur seal — was one in which the biological propensities, interests and needs of the target species itself were given prominent consideration from the outset.

Finally, the claims regarding imperialism and lack of respect for sovereignty also seem wide of the mark. They have tended to focus specifically on the unilateral use by certain parties of the power under Article XIV.1(a) of CITIES to adopt stricter domestic measures than the Convention itself stipulates. Yet such powers are relatively common in environmental treaties and are in any event merely a counter-balance to the power to make reservations, as well as other weaknesses and loopholes in the system. Provided they are exercised in good faith and in furtherance of the Convention’s objectives, and consistently with other treaty obligations, no formal infringement of sovereign rights can possibly arise, since all parties have consented to this option in advance. The power to refuse a particular transaction.

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65 Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979; in force 1 November 1983) (‘CMS’).
67 Convention on the Conservation of European Wildlife and Natural Habitats 1979 (Bonn, 19 September 1979; in force 1 June 1982) (‘Bern Convention’). For a fuller account, see see M.J. Bowman, P.G.G. Davies and C.J. Redgwell, n. 2 above, at 64–68.
69 See, e.g., P. Birnie, A.E. Boyle and C.J. Redgwell, International Law and the Environment, 3rd edn (Oxford University Press, 2009), at 618, which emphasizes references in the text to ‘biological resources’. This overlooks the fact, however, that the conservation obligations apply primarily to biological diversity at large, rather than biological resources. For a discussion of the relationship between CITES and the CBD, see R. Caddell, ‘Inter-Treaty Cooperation, Biodiversity Conservation and the Trade in Endangered Species’, 22:3 Review of European, Comparative and International Environmental Law (2013), 264.
70 Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity; Annexed to CBD Decision VII/12, Sustainable Use (20 February 2004).
71 Thus it is not uncommon to see references to a ‘crisis in global fisheries’. R. Barnes, ‘Fisheries and Marine Biodiversity’, in: M. Fitzmaurice, D.M. Ong and P. Merkouris, n. 3 above, 542, at 542. See further M.J. Bowman, P.G.G. Davies and C.J. Redgwell, n. 2 above, Chapter 5.
72 See further see M.J. Bowman, P.G.G. Davies and C.J. Redgwell, n. 2 above, Chapter 6.
75 CMS, n. 63 above, Article 12.3, Bern Convention, n. 65 above, Article 12.
is, after all, no less an attribute of sovereignty than to authorize one. Proposals to list additional species without the prior consent of range States are not intrinsically objectionable either, since conservation is a matter of ‘common concern’, but the establishment of a requirement of prior consultation was unquestionably an extremely salutary reform to the system.76

**CONCLUSIONS**

If there is a lesson to be drawn from all this, it is surely that, while the vagaries of human nature are such that our conservation endeavours are never likely to achieve spectacular success, a balanced approach, which acknowledges a wide array of values and seeks to pay due regard to all them, is the one which offers the greatest prospect of rational progress in the long term. Emerging scholarship in other fields suggests that this principle may in fact be one which holds good across the broad spectrum of human activities.77 The international law of biological diversity has taken the best part of 125 years to reach even a muted acknowledgment of this pluralistic thesis, and has scarcely even begun to implement it on a systematic basis. Yet there are already those that seek to turn the clock back, and reinvent the wheel of motivational theory in the form of a crudely crafted rolling stone of unabashed anthropocentrism. It is anyone’s guess who might end up crushed beneath its weight. This is clearly not the direction in which we need to travel. With regard to CITES in particular, the narrative that is now required is surely one of painstaking, context-specific, interdisciplinary research into projects and programmes that are likely to yield the greatest long-term prospects of conservation success, followed by the continued adaption of the Convention’s highly malleable regulatory framework to their delivery.78 A crucial requirement is that international lawyers themselves should be fully involved in this work. Far too much time has been wasted on tales of the second CITES – the mythical beast that only stalks the imagination of those who lack the flexibility or vision to embrace the full range of issues at stake.

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