

EVALUATING U.S. ENDANGERED SPECIES LEGISLATION— THE ENDANGERED SPECIES ACT AS AN INTERNATIONAL EXAMPLE: CAN THIS BE PULLED OFF? THE CASE OF THE RHINOCEROS AND TIGER

CHARLENE D. DANIEL*

*“ [I]f our current efforts at dealing with species rarefaction continue on for the next fifty years, there will be few species left to preserve. ”*¹

I. INTRODUCTION

“From an ethical standpoint, it may be argued that it is our moral responsibility to conserve wildlife. Not only is it cruel to unnecessarily destroy other living organisms, but it also should be our duty to conserve natural resources and wildlife for the benefit of future generations.”² The Endangered Species Act,³ with its arms reaching from one United States coast to the other, is the United States’ answer to the problem of protecting endangered species. However, what regulations exist to protect endangered species on an international level? The Convention on the International Trade of Endangered Species (CITES or Convention)⁴ answers this question. Signed on March 3, 1973, and entered into force on July 1, 1975, it was created to restrict the trade of endangered species across nations to prevent their rapid and total extinction.⁵

The United States has a great ability to affect endangered species protection on an international level. The United States, as the world’s largest importer of wildlife and wildlife products,⁶ is the world’s leading

* Mrs. Daniel received her B.S. in Political Science with a minor in English from Old Dominion University in 1996, and her J.D. from the College of William and Mary School of Law in 1999.

¹ Michael A. Mares & Ricardo A. Ojeda, *Faunal Commercialization and Conservation in South America*, 34 BIOSCIENCE 589 (1984).

² Meena Alagappan, Comment, *The United States’ Enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 10 NW. J. INT’L L. & BUS. 541, 542 (1990).

³ 16 U.S.C. §§ 1531-1544 (1994).

⁴ The Convention on International Trade in Endangered Species in Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

⁵ See *id.*

⁶ See Joonmoo Lee, Comment, *Poachers, Tigers and Bears . . . Oh My! Asia’s Illegal*

consumer of internationally traded wildlife goods,⁷ and accounts for one-fifth of trade in the wildlife market.⁸ Additionally, the United States contributes twenty percent of CITES' annual funding.⁹ These statistics urge exploration of the role that United States' endangered species *legislation* may play in affecting species protection on an international level. In light of the fact that the United States has one of the most sophisticated CITES implementation programs of all the signatories to the treaty¹⁰-the Endangered Species Act of 1973¹¹-the potential role of the United States is considerable.¹²

There are several reasons why the ESA can serve as an international legislative framework for the protection of species on an international level. First, the United States has "one of the most sophisticated CITES implementation programs."¹³ Second, "analysis of CITES enforcement in this country is likely to be a good indicator of the effectiveness of administratively sophisticated CITES enforcement in general."¹⁴ Third, although the implementation of CITES in the United States did not begin until after ratification, the United States can legitimately claim to have implemented CITES longer than any of the

Wildlife Trade, 16 NW. J. INT'L L. & BUS. 497, 497 (1996).

⁷ See Jeff Barnard, *Beauty Threatens Survival of Many Species*, L.A. TIMES, Jan. 1, 1995, at B1.

⁸ See Jeffrey C. Melick, Note, *Regulation of International Trade in Endangered Wildlife*, 1 B.U. INT'L L.J. 249, 250-251 (1982). The Trade Records Analysis of Fauna and Flora in International Commerce (TRAFFIC) revealed that the United States imported over \$18.5 million worth of live fish and shellfish, over \$5 million worth of live mammals, reptiles, and amphibians, over 750,000 live birds, almost 11 million animal hides and reptile skins, over 700,000 mounted or stuffed animals, and approximately \$8 million worth of ivory articles. See *id.* at 251-52.

⁹ See Catherine L. Krieps, 17 U. PA. J. INT'L ECON. L. 461, 465-66 n.24 (1996) (citing *Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties*, in RESOLUTIONS OF THE PARTIES 19-29, Conf. 9.2 (1994)). The United States contributed \$1,156,062 for the 1996-1997 budget year. See *id.* Japan is the next highest contributor. See *id.*

¹⁰ See Alagappan, *supra* note 2, at 566.

¹¹ 16 U.S.C. §§ 1531-1544 (1994).

¹² "As the largest single source of CITES' funding, and the world's leading consumer of internationally traded wildlife goods, the United States potentially can exercise considerable influence over the implementation of CITES." Krieps, *supra* note 9, at 500 (citations omitted).

¹³ Laura H. Kosloff & Mark C. Trexler, *The Convention on International Trade in Endangered Species: Enforcement Theory and Practice in the United States*, 5 B.U. INT'L L.J. 327, 343 (1987).

¹⁴ *Id.*

other member-parties.¹⁵ Finally, the creation of the ESA established an important precedent for other countries to follow in the implementation of domestic species protection programs.¹⁶

The ESA can serve as a legislative example to party members to CITES that have recently acceded to the treaty.¹⁷ Part II of this note introduces the role that CITES plays as an international instrument and the roles that are assigned to its signatories. Part III discusses Endangered Species Act provisions and the role that it plays in the context of CITES. Part IV suggests statutory limitations that may be placed on particular individuals or syndicates who engage in trading or activity in violation of CITES using the general principles of the ESA as a skeleton. Part V discusses the tiger and the rhinoceros, and the important role that Myanmar and Yemen play in maintaining their existence. Part V also discusses how the ESA can serve as a framework to countries, like Myanmar and Yemen, which have recently acceded to the treaty.¹⁸ Part VI discusses prospective steps for nations to follow as signatories to CITES, and draws a conclusion in the form of a recommendation for critics of CITES.

II. THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES

Over 135 countries are now signatories¹⁹ to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.²⁰ It was enacted to establish an international forum for cooperation among nations who agree to take part in the regulation of international trade of

¹⁵ *See id.*

¹⁶ *See* RICHARD LITTELL, ENDANGERED AND OTHER PROTECTED SPECIES: FEDERAL LAW AND REGULATION 6 (1992).

¹⁷ This note proposes that the ESA may also serve as a legislative example to both party members who have acceded to the treaty but not enacted the legislation necessary to implementation, and to non-party members to CITES in hopes that they may eventually become signatories to the Convention.

¹⁸ Myanmar acceded to CITES on September 11, 1997. Yemen acceded on August 3, 1997. *See* CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora, (visited Mar. 28, 1999) <<http://www.wcmc.org.uk:80/CITES/english/parties1.htm>> [hereinafter CITES ONLINE].

¹⁹ As of June 24, 1997, there were 136 countries acting as signatories to CITES. *See* John Crace, *Tinkering with the Ivories*, THE GUARDIAN, June 24, 1997, available in 1997 WL 2387874. There are approximately fifty countries that are not parties to the Convention.

²⁰ *See* CITES, *supra* note 4.

endangered species,²¹ and charges each member nation with the responsibility of protecting them.²² It has been labeled as "perhaps the most successful of all international treaties concerned with the conservation of wildlife."²³

Listed species are categorized in a hierarchical system premised upon the imminence of extinction.²⁴ Each of the three Appendices to the treaty ranks the species according to their rates of extinction. Appendix I species are those which are currently threatened with extinction. They must be subject to "strict regulation in order not to endanger further their survival."²⁵ Appendix II involves the trade of animals that are not yet subject to extinction, but face demise without regulation.²⁶ Appendix III species are those species threatened to the least degree, and are regulated within member nations' jurisdictional limits.²⁷

CITES endorses a permit system in the trade of the species listed in the appendices.²⁸ It is the responsibility of *each* signatory to implement this permit system through the functions of a Management Authority and Scientific Authority.²⁹ The Management Authority grants import, export, and re-export permits and certificates, and also generates data on annual trade.³⁰ A governmental office or agency oversees these responsibilities.³¹

²¹ See *id.*, pmb., 27 U.S.T. 1090, 993 U.N.T.S. 244-45. "Recognizing . . . international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade." *Id.*

²² *Id.* "Recognizing that peoples and states are and should be the best protectors of their own wild fauna and flora . . ." *Id.*

²³ John B. Heppes & Eric J. McFadden, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage*, 5 B.U. INT'L L.J. 229 (1987) (quoting SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 240 (1985)).

²⁴ See Shennie Patel, Comment, *The Convention on International Trade in Endangered Species: Enforcement and the Last Unicorn*, 18 HOUS. J. INT'L L. 157, 165 (1995).

²⁵ CITES, *supra* note 4, art. II(1), 27 U.S.T. 1092, 993 U.N.T.S. 245. These species are those whose threat is immediate. These include the ostrich, the gorilla, the blue whale, and the Nile crocodile.

²⁶ See *id.* art. II(2). These include alligators, tree kangaroos, and non-domesticated cats.

²⁷ See *id.* art. II(3), 27 U.S.T. 1092, 993 U.N.T.S. 246. Examples of these types of species are the White-Lined Bat from Uruguay and the African Green Pigeon from Ghana.

²⁸ Appendix I species are governed by the provisions of Article III. Appendix II species are governed under Article IV, and Appendix III species under Article V.

²⁹ See CITES, *supra* note 4, art. IX(1), 27 U.S.T. 1103, 993 U.N.T.S. 251.

³⁰ See INTERNATIONAL WILDLIFE TRADE: A CITES SOURCEBOOK 5 (Ginette Hemley ed., 1994) [hereinafter CITES SOURCEBOOK].

The Scientific Authority is charged with the responsibility of determining whether trade is detrimental to the survival of a species.³² This responsibility is accomplished with a staff of governmental experts, academia, and zoos.³³ In the United States, the functions of the Management Authority and the Scientific Authority are carried out by the Fish and Wildlife Service.³⁴

A. *Measures to be Taken by Parties*

The treaty requires the parties to take measures to enforce the provisions of the Convention as well as to prohibit the trade of species.³⁵ The provisions of Article VIII impose on each individual party the responsibility of enacting domestic legislation to implement the Convention's terms.³⁶ Considered "the transition between international obligations of States to the criminal laws and regulations that govern the conduct of individual humans,"³⁷ this provision binds the *citizens* of each party to the domestic legislation they enact to implement the treaty. Whereas most states do not automatically bind their citizens under a treaty of international jurisdiction,³⁸ CITES signatories are under the obligation of treaty compliance.

In achieving the goals of preservation of endangered species, the Convention calls for penalties to be imposed upon those who partake in the trade or possession of listed species.³⁹ This responsibility functions as a deterrent to poachers or syndicates who engage in these unlawful activities. Parties also are responsible for confiscating listed species from those who are found to either trade or be in possession of them.⁴⁰ Confiscation may take place in the form of an absolute confiscation to authorities or one that will permit the return of the species (or specimen) back to the country from which it was exported.⁴¹

³¹ See *id.* at 6.

³² See *id.*

³³ See *id.*

³⁴ See 50 C.F.R. § 402.01(B) (1989).

³⁵ CITES, *supra* note 4, art. VIII(1), 27 U.S.T. 1101, 993 U.N.T.S. 250.

³⁶ See *id.* See also, DAVID FAVRE, INTERNATIONAL TRADE IN ENDANGERED SPECIES: A GUIDE TO CITES 214-15 (1989) [hereinafter FAVRE, GUIDE TO CITES].

³⁷ *Id.* at 214.

³⁸ See *id.* at 215.

³⁹ See CITES, *supra* note 4, art. VIII(1)(a), 27 U.S.T. 1101, 993 U.N.T.S. 250.

⁴⁰ See *id.* art. VIII(1)(b).

⁴¹ See *id.* art. VIII(4), 27 U.S.T. 1102, , 993 U.N.T.S. 250.

B. *The Implementation Gap*

In this day and age, there is a growth of interdependence upon states for environmental issues.⁴² Historically, states were sovereign bodies dependent only upon themselves for the implementation of their laws and regulations.⁴³ Becoming a member of any international agreement results in the partial relinquishment of that sovereignty.⁴⁴ The success of CITES depends on the national and political will of each party because the treaty is enforced by its individual members.⁴⁵ Therefore, these measures must not only exist, but they must be effective—effective national legislation is “fundamental to good enforcement.”⁴⁶

The sovereignty of CITES individual members must be imposed upon to activate implementation success. CITES does not provide its signatories with uniform provisions to adopt, nor does it offer “model legislation” for states to ratify.⁴⁷ Because of the distinct domestic laws of the parties, results vary in the implementation of appropriate measures called for by the Convention.⁴⁸ This note, however, proposes that the ESA has the potential to serve as model legislation to other signatories.⁴⁹

III. THE ENDANGERED SPECIES ACT

The Endangered Species Act (ESA)⁵⁰ was enacted in 1973 by Congress in response to the CITES.⁵¹ The ESA has been characterized as one of the most controversial pieces of endangered species legislation, and has been the topic of much criticism.⁵² However, despite criticism, it is

⁴² See David Favre, *Debate Within the CITES Community: What Direction for the Future?*, 33 NAT. RESOURCES J. 875, 899 (1993) [hereinafter Favre, *Debate*].

⁴³ See *id.*

⁴⁴ Parties are governed by the provisions they sign.

⁴⁵ See CITES SOURCEBOOK, *supra* note 30, at 5 (1994).

⁴⁶ See Patel, *supra* note 24, at 186.

⁴⁷ See FAVRE, GUIDE TO CITES, *supra* note 36, at 215.

⁴⁸ See *supra* notes 35-37 and accompanying text.

⁴⁹ The ESA is considered “one of the more sophisticated CITES implementation programs.” See Kosloff & Trexler, *supra* note 13, at 343. See also, *supra* notes 13-16 and accompanying text.

⁵⁰ 16 U.S.C. § 1538 (1994).

⁵¹ The legislation implementing CITES is found in 16 U.S.C. §§ 1531(4)(F), 1532(4), 1537(a), and 1538(c). See Alagappan, *supra* note 2, at 549 n.47.

⁵² See generally, Davina Kari Kaile, Note, *Evolution of Wildlife Legislation in the United*

Congress' attempt to play an affirmative role in regulating the use and trade of endangered species.

The ESA represents the "most comprehensive legislation for the preservation of endangered species ever enacted by any nation."⁵³ It was implemented to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species."⁵⁴ Used to protect over 1000 species nationwide,⁵⁵ the purpose of the Endangered Species Act has been to protect endangered species "whatever the cost."⁵⁶ It also announces the policy of all federal agencies and departments to progress in efforts towards the conservation of endangered species.⁵⁷

Pertinent to the implementation of the ESA is the determination of endangered and threatened species. Endangered species are defined as species that are in danger of immediate extinction.⁵⁸ Species in this category are consistent with those found in Appendix I of the CITES.⁵⁹ Threatened species are those with a less immediate risk of extinction,⁶⁰ and are only "likely" to become endangered in the future.⁶¹ The determination of whether a species is endangered or threatened is not arbitrary. Section 4 of the ESA provides guidelines in the evaluation of the status of a species: "(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; (E) other natural or

States: An Analysis of the Legal Efforts to Protect Endangered Species and the Prospects for the Future, 5 GEO. INT'L ENVTL. L. REV. 441 (1993) (analyzing the evolution of wildlife legislation in the United States, including criticisms of the methods prescribed for protecting species).

⁵³ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 180 (1978).

⁵⁴ 16 U.S.C. § 1531(b).

⁵⁵ See 50 C.F.R. 17.11(h) (1998).

⁵⁶ *Tennessee Valley Authority*, 437 U.S. at 184.

⁵⁷ See 16 U.S.C. § 1531(c).

⁵⁸ See *id.* § 1532(6).

⁵⁹ "The ESA lists a series of endangered species distinct from, but overlapping those listed in CITES." Valerie Karno, *Protection of Endangered Gorillas and Chimpanzees in International Trade: Can CITES Help?*, 14 HASTINGS INT'L & COMP. L. REV. 989, 998 (1991).

⁶⁰ See 16 U.S.C. § 1532(20).

⁶¹ See *id.*

manmade factors affecting its continued existence.”⁶²

The Secretary of the Interior⁶³ is bound by the ESA to determine how, or if, a species fits into one of the five criteria.⁶⁴ In making the determination, the Secretary is to rely “*solely* on the basis of the best scientific and commercial data available to him.”⁶⁵ Interestingly, the Secretary is not bound to the jurisdictional boundaries of the United States, and may rely upon the data of any foreign nation or any subdivision or locality of a foreign state—or any area under its jurisdiction—or upon the seas.⁶⁶ This information need not be limited to one type of protection effort.⁶⁷ The Secretary shall also consider any international agreements or agency of any foreign nation.⁶⁸

In evaluating the status of a species, the sole issue at hand is the conservation of global ecosystems.⁶⁹ Therefore, the ESA endorses the prohibition of certain activities in its efforts toward conservation.⁷⁰ These include the importation or exportation of any species into or from the United States; the taking⁷¹ of such species, whether it is located within the United States or its territorial limits, or the high seas surrounding it; the possession sale, delivery, carry, transportation, or shipping of a species; or the sale or offer for sale in interstate or foreign commerce of any such species.⁷²

In setting regulatory prohibitions, Congress sought to limit the activities of any persons who would be in the possession of endangered species or their parts. Because hunting has been identified as a leading

⁶² 16 U.S.C. § 1533(a)(1).

⁶³ The Secretary of the Interior has been designated by Congress as both the Scientific Authority and Management Authority. See LITTELL, *supra* note 16, at 102.

⁶⁴ The functions of the Management Authority and Scientific Authority are to be carried out through the United States Fish and Wildlife Service (FWS). See 50 C.F.R. § 402.01(b) (1989). The FWS consists of two offices: the Wildlife Permit Office and the Office of the Scientific Authority. See Alagappan, *supra* note 2, at 550.

⁶⁵ 16 U.S.C. § 1533(b)(1)(A) (emphasis added).

⁶⁶ See *id.*

⁶⁷ See *id.* The Secretary may rely upon how such foreign nation has elected to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices. See *id.*

⁶⁸ See *id.* § 1533(b)(1)(B).

⁶⁹ See *id.* § 1532(3).

⁷⁰ See *id.* § 1538.

⁷¹ See *id.* § 1532(19). “The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.*

⁷² See *id.* § 1538(a)(1).

cause in species extinction, Congress' goal was to enact prohibitions primarily against hunters.⁷³ Hunting regulations were considered to be an important weapon in the protection of disappearing species.⁷⁴ "Casual" hunters⁷⁵ were also targeted by Congress because endangered species cannot lawfully be imported into the United States although they may have been lawfully acquired.⁷⁶ Tourists can also be prosecuted under the provisions of the ESA for unlawfully importing a species into the United States.⁷⁷

Civil and criminal penalties, ordered based on the severity of a violation, are used to prohibit unlawful violations.⁷⁸ The ESA allows a maximum civil penalty of \$25,000 to be imposed for knowing violators of the acts prohibited in section 9, a maximum of \$12,000 for violations of other sections, and \$500 for any other violation.⁷⁹ Each violator is given a right of vindication through a hearing.⁸⁰ If shown by a preponderance of the evidence that the violator committed an act based on self-defense, no civil penalty will be imposed.⁸¹ However, a good faith belief of protecting oneself, or one's family, or any other individual from bodily harm done by an endangered species must exist.⁸²

Criminal violations have a monetary sanction as well as a term of imprisonment.⁸³ The monetary penalties imposed are stiffer than those of a civil nature. Criminal penalties have a maximum penalty of \$50,000, a term of imprisonment up to one year, or both.⁸⁴ Where a criminal conviction is obtained, the ESA also allows for governmental confiscation of the species.⁸⁵

⁷³ See LITTELL, *supra* note 16, at 32.

⁷⁴ See *id.*

⁷⁵ See H.R. CONF. REP. NO. 740, 93rd Cong., 1st Sess. 27 (1973), *reprinted in* 1973 U.S.C.C.A.N. 3001, 3005.

⁷⁶ See LITTELL, *supra* note 16, at 42.

⁷⁷ See *generally*, U.S. Fish and Wildlife Serv. v. Goel, DOI Dkt No. Boston 79-7 (ALJ ID, June 13, 1979) (holding that inquiries into the Customs Service office was not enough effort in the determination of a wildlife product's suitability for import).

⁷⁸ See 16 U.S.C. § 1540.

⁷⁹ See *id.* § 1540 (a)(1).

⁸⁰ See *id.*

⁸¹ See *id.* § 1540(a)(3).

⁸² See *id.*

⁸³ See *id.* § 1540.

⁸⁴ See *id.* § 1540(b)(1).

⁸⁵ See *id.* § 1540(e)(4)(A), (B).

IV. HEADING TOWARD THE SOLUTION

In becoming a member to the Convention, countries will not only need to adopt legislation to comply with the provisions of CITES, but will also need their own strong legislation.⁸⁶ There can no longer exist the exploiter rationale of thinking: "Wildlife are a resource for economic gain. Exploitation should occur now while I can make the money, before anyone else can use the wildlife. The future will take care of itself. My personal interests exceed any interests of the species or individual animals that I will kill or capture."⁸⁷ Ways of thinking need to change to that of an environmentalist where the existence of all species should be assured, "notwithstanding the interests of humans in preserving species."⁸⁸ Why the discussion of the importance of the ESA and its provisions? In reaching the environmentalist way of thinking, the ESA can provide a structure for newly acceded countries to follow in resolving two issues that create problems in CITES implementation—poaching and smuggling.⁸⁹

A. Poaching

Poaching is a major problem for most endangered species.⁹⁰ The ESA contains a provision that will bring any form of poacher to justice by defining the term "person" without ambiguity.⁹¹ Under the ESA, a

⁸⁶ See CITES, *supra* note 4, art. VIII(1), 27 U.S.T. 1101, 993 U.N.T.S. 250.

⁸⁷ Favre, *Debate*, *supra* note 42, at 878.

⁸⁸ *Id.* at 880.

⁸⁹ When applying a statute from one country to another sociopolitical forces need to be taken into account (e.g., infrastructure, cultural differences). See John Turner & Jason C. Rylander, *Conserving Endangered Species on Private Lands*, 32 LAND & WATER L. REV. 571, 574 (1997) (quoting Steven L. Yaffee, *The Northern Spotted Owl: An Indicator of the Importance of Sociopolitical Context*, in ENDANGERED SPECIES RECOVERY: FINDING THE LESSONS, IMPROVING THE PROCESS 70-71 (Tim W. Clark et al., eds., 1994)).

⁹⁰ In fact, one of the main ideas in creating CITES was to provide some kind of international protection to animals with declining numbers and put an end to poaching. See Sudhir Chopra, *Introduction: The Convention on the International Trade in Endangered Species of Wild Fauna and Flora*, 5 B.U. INT'L L.J. 225, 226 (1987); Philip Weinberg, Symposium on International Environmental Law, *International Protection of Endangered Species: The Steps that Should Be Taken*, 3 TOURO J. TRNASNAT'L L. 89, 92 (1992); Ian MacKensie, *African Countries Declare War on Poachers*, REUTERS, June 22, 1994, available in LEXIS, NEWS Library, ARCNWS File. But with some nations not being party to CITES, this end cannot be effectively accomplished.

⁹¹ Poachers are known to hunt both individually and in syndicates. See Julie Cheung,

“person” may include “an individual, corporation, partnership, trust, association, or any other private entity.”⁹² It includes government employees, agents, departments, and instrumentalities of the federal government, of any state—or a part of that state—or any foreign government.⁹³ The language of this section also includes a residual clause for any entities that are subject to the jurisdiction of the United States.⁹⁴ By adopting similar language into their endangered species legislation, newly acceded states will be able to prosecute or hold liable any person or entity for poaching. This all-inclusive language will bring to justice many that may be excluded if the language applied only to individuals.

The illegal pursuits of poachers can also be stopped with manpower and equipment.⁹⁵ Specifically, an “intelligence service” that can enforce the provisions of domestic regulations within a country and at its borders is necessary to bring poachers to justice and monitor the numbers of species.⁹⁶ Such a system may result in the capture and prosecution of nearly all poachers. The encouraged use of substitute materials on the common market is another way to stop poachers.⁹⁷ If there is a decline in demand for endangered species and their parts as more nations move toward species conservation, the role that poachers play in contributing to the depletion of these species may become non-existent.

B. Prohibitions and Enforcement on Smuggling

Despite the large numbers of parties to CITES, there is still a significant amount of illegal wildlife smuggling⁹⁸ that occurs between parties and non-parties to the Convention.⁹⁹ What can be done to eradicate illegal smuggling? CITES relies on the active efforts of its signatories to

Comment, *Implementation and Enforcement of CITES: An Assessment of Tiger and Rhinoceros Conservation Policy in Asia*, 5 PAC. RIM L. & POL'Y J. 125, 134 (1995).

⁹² 16 U.S.C. § 1532(12) (1994).

⁹³ *See id.*

⁹⁴ *See id.*

⁹⁵ *See* Karin Davies, *Rhino Population is Charging Back from Brink of Extinction*, L.A. TIMES, Aug. 18, 1996, at A4.

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ *See Illegal Wildlife Trade Flourishing, says CITES*, DEUTSCHE PRESSE-AGENTUR, June 12, 1997 [hereinafter *Illegal Trade*].

⁹⁹ *See* SARAH FITZGERALD, *INTERNATIONAL WILDLIFE TRADE: WHOSE BUSINESS IS IT?* 15-24 (1989).

enforce its resolutions.¹⁰⁰ The key to the problem, therefore, is to enact efficient and effective legislation to accomplish this end.

As enacted, the ESA prohibits the importation and exportation of endangered or threatened species, and enforces CITES where illegal importation of endangered species take place.¹⁰¹ In prohibiting certain acts involving an endangered or threatened species, the ESA does more than sanction illegal imports and exports. The actual possession of an animal or any of its subsequent parts is a direct violation of ESA and is subject to severe penalties.¹⁰² Thus, those who are involved in illegal possession will be subject to penalties that are imposed by either the law, or by legislation.

Any taking of a species falls under this prohibition.¹⁰³ For a nation to implement a strict prohibition, it must broadly define the term taking. The definition of taking established in the ESA accomplishes just that. The ESA defines a taking of a species to mean to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."¹⁰⁴ Using this definition from the ESA as a skeletal model, an implementing state may infer that any person who is found in possession of any parts of a listed species for sale, delivery, or transport, will be subject to the highest penalty allowed. Therefore, the *act* of obtaining such parts is implicitly a part of a taking of a species,¹⁰⁵ and the purpose of the taking is irrelevant.

V. THE NEXT STEP

The next step in ensuring global protection of endangered species is to ensure that the CITES itself is being implemented in all respects. Therefore, countries must conduct an analysis of the types of species that they may have an interest in trading. The individual Management Authorities and Scientific Authorities of each nation must implement permit offices and develop data on the numbers of species in the trade market, as well as in the wild. Communication between the authorities and the Secretariat¹⁰⁶ to CITES must occur on a regular basis to ensure that

¹⁰⁰ See Lee, *supra* note 6, at 504.

¹⁰¹ See generally 16 U.S.C. § 1538 (1994).

¹⁰² See *id.* § 1538(d).

¹⁰³ See *id.* § 1538.

¹⁰⁴ *Id.* § 1532(19).

¹⁰⁵ See *id.* § 1538.

¹⁰⁶ The Secretariat consists of a Secretary General, professional officers, and support staff. See Daniel Vice, *Implementation of Biodiversity Treaties: Monitoring, Fact-Finding,*

compliance with the treaty takes priority over the interests of wealthy consumers.¹⁰⁷

Wildlife inspectors must be employed to conduct searches at the designated ports of entry of traded species.¹⁰⁸ The number of these inspectors required can be determined by the Authorities and need not be based upon the amount of imported specimens. For example, in the United States only fifty-five wildlife inspectors search the nine designated ports of entry.¹⁰⁹ These inspectors historically have been effective in cracking down on trade, with the seizure of millions of dollars of illegal specimens.¹¹⁰

Parties to the Convention must continue the global communication efforts that take place in meetings and conferences. The ultimate goal of these meetings should be uniformity in the implementation of the Convention. To illustrate, Article VIII(1)(a) of the Convention authorizes party members to take steps in assessing penalties on those who engage in trade that violates CITES provisions, but provides no specifics on how to implement such as an enforcement program.¹¹¹ With no specific penalty endorsed by the Convention, inconsistent sentences and minimal fines have been imposed by individual nations interpreting this provision.¹¹² Generally speaking, criminal sentences and civil fines have been small in comparison with the value of the endangered species on the black market.¹¹³ Steps should be taken to ensure that the same violation results in the same penalty regardless of where the violation occurs.

The Convention provides for the resolution of disputes before the Permanent Court of Arbitration.¹¹⁴ One scholar suggests that this clause

and Dispute Resolution, 29 N.Y.U.J. INT'L L. & POL. 577, 600 (1997).

¹⁰⁷ Poaching and smuggling occurs as a result of the demands of wealthy consumers. See *infra* note 137 and accompanying text.

¹⁰⁸ "Wildlife laundering" occurs where "animals or plants are exported to a non-CITES state with weak border controls, and then re-exported back to a CITES state with forged documents from the country with weaker controls." Vice, *supra* note 106, at 608.

¹⁰⁹ See Kosloff & Trexler, *supra* note 13, at 344.

¹¹⁰ See *id.*

¹¹¹ See CITES, *supra* note 4, art. VIII(1)(a), 27 U.S.T. 1101, 993 U.N.T.S. 250.

¹¹² See Christina Crawford, *Conflicts Between the Convention on the International Trade in Endangered Species and the GATT in Light of Actions to Halt the Rhinoceros and Tiger Trade*, 7 GEO. INT'L ENVTL. L. REV. 555, 558 (1995); Kevin D. Hill, *The Convention on the International Trade in Endangered Species: Fifteen Years Later*, 13 LOY. L.A. INT'L & COMP. L.J. 231, 237 (1990).

¹¹³ See Vice, *supra* note 106, at 604; FITZGERALD, *supra* note 99, at 326.

¹¹⁴ See CITES, *supra* note 4, art. XVIII, 27 U.S.T. 1114-15, 993 U.N.T.S. 256.

was added as a formality, comparable to formal clauses added in a contract.¹¹⁵ However, due to the ever-changing nature of the international court justice systems, this viewpoint may not be entirely true.¹¹⁶ The language of the Convention reads that when a dispute between two or more members of the Convention arises, negotiation techniques should be utilized in reaching a solution.¹¹⁷ However, with non-party nations becoming parties to the Convention, this forum for arbitration may become obsolete as fewer issues not governed by CITES will be presented to the Court. Even now, the Permanent Court of Arbitration has not heard any disputes between member parties to CITES.¹¹⁸

The Permanent Court can, however, be used as a forum to implement uniformity where the Secretariat may make claims of non-compliance for reporting requirements. The judges, who serve as a panel of individual jurists, are selected by each of the party-members to the arbitration and may be able to bring the Secretariat some relief.¹¹⁹ Serving in this function, the Court can bring parties to the Convention to justice at a forum where the arbitration award would be binding.¹²⁰ Meetings and

-
- (1) Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.
 - (2) If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

Id.

¹¹⁵ See FAVRE, GUIDE TO CITES, *supra* note 36, at 318.

¹¹⁶ The International Court of Justice is another international forum for parties to seek relief. See generally, SHABTAI ROSENNE, THE WORLD COURT: WHAT IT IS AND HOW IT WORKS (1995). However, due to the fact that the Convention specifically lists the Permanent Court of Arbitration as a forum in reaching dispute resolution, ICJ jurisdiction over Convention issues is unlikely.

¹¹⁷ See CITES, *supra* note 4, art. XVIII(1), 27 U.S.T. 1114, 993 U.N.T.S. 256.

¹¹⁸ See THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS: A SURVEY OF EXISTING LEGAL INSTRUMENTS 93 (Peter H. Sand ed., 1992) [hereinafter SURVEY]; DAVID HARLAND, KILLING GAME: INTERNATIONAL LAW AND THE AFRICAN ELEPHANT 72 (1994).

¹¹⁹ See MICHLA POMERANCE, THE UNITED STATES AND THE WORLD COURT AS A 'SUPREME COURT OF THE NATIONS': DREAMS, ILLUSIONS AND DISILLUSION 34 (1996).

¹²⁰ In order for this to be effective, the Permanent Court of Arbitration must be granted more than compulsory jurisdiction status—it should be the forum for the Secretariat to obtain relief.

conferences are forums that should not be eliminated, but their power as an enforcement body is very weak.¹²¹ The Secretariat passes compliance resolutions that are not being enforced by the parties.¹²² In a court of arbitration, the parties would be bound to the findings of the judges.¹²³

In striving for uniformity in Convention compliance and implementation, the Court may also be able to use examples of efficient legislation as a backdrop for countries that have problems with their domestic legislation.

The signatories to the Convention have set the goal of protecting species for this generation and the generations to come.¹²⁴ The ultimate next step is making sure that that purpose is achieved—"whatever the cost."¹²⁵

VI. THE NEED FOR CHANGE: THE CASES OF THE RHINOCEROS AND THE TIGER

The tiger and the rhinoceros are two examples of animals that are currently on the endangered species list of CITES.¹²⁶ Acting in compliance with CITES, the United States included both the tiger and the rhinoceros as species to be protected under the ESA.¹²⁷ As a result, the United States has generally prohibited all trade in wild rhinos and rhino products,¹²⁸ and all trade in tigers and tiger products.¹²⁹ The ESA allows for the imposition of monetary fines as well as terms of imprisonment for knowing violations of ESA regulations.¹³⁰

This section discusses the plight of the tiger and rhino, and illustrates how the ESA can serve to narrow the gap in CITES implementation to help diminish the decline of tiger and rhino

¹²¹ See *Illegal Trade*, *supra* note 98.

¹²² See SURVEY, *supra* note 118, at 82-83.

¹²³ See CITES, *supra* note 4, art. XVIII(2), 27 U.S.T. 1114-15, 993 U.N.T.S. 256.

¹²⁴ See *id.* pmb., 27 U.S.T. 1090, 993 U.N.T.S. 244-45.

¹²⁵ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184 (1978).

¹²⁶ See CITES, *supra* note 4, app. I, 27 U.S.T. 1118-1131, 993 U.N.T.S. 257-64.

¹²⁷ See 50 C.F.R. § 17.11.

¹²⁸ See FITZGERALD, *supra* note 99, at 107-09. The only exception is the Southern White Rhinoceros. This subspecies can be legally imported into this country as a non-commercial hunting trophy, subject to certain conditions. See *id.*

¹²⁹ See 50 C.F.R. § 17.11.

¹³⁰ See 16 U.S.C. § 1540(b) (1994); Robert J. Shaw, Note, *Nabbing the Gourmet Club: Utilizing RICO Enforcement and Punitive Provisions to Curb the International Trade of Endangered Species*, 42 N.Y.L. SCH. L. REV. 283, 286 (1998).

populations. Specifically, this section addresses the role that the ESA can play in providing a structure for countries that need to adopt the requisite legislation as signatories to the Convention.

A. *The Tiger*

“The tiger, *Panthera tigris*, the largest and most awesome of the big cats, exudes grace, beauty and an uncanny ability to disappear and re-emerge from the shadowy outlines of its forest habitat. Tragically, unless immediate measures are taken to save the tiger, it will disappear and never re-emerge again!”¹³¹

Such pleas are common among those who are trying to save the endangered tiger. As an Appendix I species, the tiger has been subject to strict regulations in trade and is rarely authorized in trade save in extraordinary circumstances.¹³² Unfortunately, having the tiger listed as an Appendix I endangered species does not completely protect the tiger from harm. Without the requisite legislation to protect this species, parties to CITES are actually inflicting harm upon it.

This century has marked a dramatic change for the tiger. Ninety-five percent of the tiger population has been extinguished since the turn of the century.¹³³ Statistics taken on the tiger show that in the early twentieth century, approximately 100,000 tigers roamed India, Indochina, and other parts of Asia.¹³⁴ However, the count is now down to less than 6,000 tigers with that number decreasing each day.¹³⁵

Studies examining the rapid extinction rates point to the medicinal practices of Asian cultures as a culprit.¹³⁶ The tiger and its parts are alleged to have healing and rejuvenating properties.¹³⁷ Asian folklore prescribes the use of tigers and their parts for the following reasons: tiger brain to cure laziness and pimples; tiger blood for strengthening the

¹³¹ Teoh Teik Hoong, *Spirit of Jungle Faces Extinction*, THE NEW STRAITS TIMES, Jan. 27, 1988, available in 1998 WL 3967025.

¹³² CITES, *supra* note 15, art. II(1), 27 U.S.T. 1092, 993 U.N.T.S. 245.

¹³³ See Statement of Dr. Terry Maple, President-Elect, American Zoo and Aquarium Associations (AZA), before the Subcommittee on Fisheries Conservation, Wildlife and Oceans, ASSOCIATED PRESS POLITICAL SERVICE, Feb. 6, 1998, available in 1998 WL 7383701.

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ See Cheung, *supra* note 91, at 131-33; Hoong, *supra* note 131.

¹³⁷ See Cheung, *supra* note 91, at 132.

constitution and willpower; tiger testes for tuberculosis of the lymph nodes; tiger teeth for rabies, asthma and sores on the penis; and tiger nose for epilepsy and children's convulsions.¹³⁸

Major market forces affect the demand for tigers and their parts. One significant market force is the sheer volume of poaching and illegal trade. Where the demand for tigers and their parts is high, poachers are readily available. Poachers have wealthy Asian customers who are able to pay top dollar for these parts.¹³⁹ In fact, poachers can make one year's salary in trading one tiger on the black market.¹⁴⁰ Another problem is a result of the depletion of tiger bone stockpiles in China.¹⁴¹ An increase in demand for tiger bone has resulted in wealthy consumers turning towards other Asian nations for relief.¹⁴² One other source of the continuing depletion of tigers is due to the destruction of the forest habitats where they reside.¹⁴³

Prior to its accession to CITES on September 11, 1997,¹⁴⁴ Myanmar posed a severe risk to the survival of the tiger in the wild. In 1994, Myanmar did not have any laws enacted designed to promote the conservation of the tiger.¹⁴⁵ In fact, the military junta ruling Myanmar, the State Law and Order Restoration Council (SLORC), had authorized the Thailand lumber industry to cut timber in Myanmar.¹⁴⁶ These rights were purchased from the SLORC as a result of the ban placed on the cutting of Thai timber by the Thai government because of the near depletion of the

¹³⁸ See Hoong, *supra* note 131. See also, Crawford, *supra* note 112, at 561 ("Tiger bone is said to be effective in treating ulcers and burns, rheumatism, heart ailments, liver disorders, and for alleviating fever and fortifying the bones.").

¹³⁹ See Cheung, *supra* note 91, at 132. "Although synthetic substitutes have been found, consumers are not likely to settle for such a different alternative to the traditional means by which they satisfied their traditional tastes as long as there are still tigers in existence." Lee, *supra* note 6, at 511.

¹⁴⁰ See *Asian Countries Move to Protect Tigers*, AGENCE FRANCE PRESSE, Nov. 14, 1994, available in LEXIS, ASIAPC Library, AFP File.

¹⁴¹ See Stephen Mills, *Both Chinas Get Pellied*, 11 BBC WILDLIFE 57, 57 (1993).

¹⁴² See *China Purrs*, 327 ECON. 36, 36 (1993). The demand for tiger has increased asking prices and the incentive to hunt.

¹⁴³ See Cheung, *supra* note 91, at 133. See *infra* notes 145-148 and accompanying text.

¹⁴⁴ See CITES ONLINE, *supra* note 18.

¹⁴⁵ See Cheung, *supra* note 91, at 159 n.190.

¹⁴⁶ SLORC is now known as the State Peace and Development Council (SPDC). See James Fahn, *Little the World Can Do to Help Burma's Forests*, NATION, Dec. 17, 1998, available in 1998 WL 21410398. See also, Thomas K. Ragland, Note, *Burma's Rohingyas in Crisis: Protection of "Humanitarian" Refugees Under International Law*, 14 B.C. THIRD WORLD L.J. 301, 303 (1994).

Thai forest.¹⁴⁷ Tigers were, therefore, rejected from their habitats due to the reduction of Burmese forests.¹⁴⁸

The tigers that were hunted within Myanmar's borders were smuggled across the border for sale in Thailand,¹⁴⁹ where the sale of tigers and tiger parts occurred in a thriving and demanding open market.¹⁵⁰ Consequently, Thailand was a party member to the CITES.¹⁵¹ The importance of Myanmar becoming a party to CITES is crucial not only for the protection of tigers located within its borders, but for other members of CITES to comply with the treaty that they have signed. Perhaps with Myanmar stepping toward conservation by acceding to CITES, other members will become more conscious of the importance of species protection and take their positions as signatories more seriously. Additionally, perhaps a decline in the demand of tiger parts will result as more substitutes are used and the CITES parties impose more restrictions on poaching, smuggling, and the roles of wealthy consumers.

The feasibility of the SLORC implementing domestic regulations to protect tigers is not known. In 1990, multiparty elections were held by the SLORC where eighty percent of the population voted for a democratic form of government.¹⁵² Since the elections, the SLORC has not surrendered governmental control to the elected party, but has arrested, tortured or executed almost all of the elected representatives, and has embarked on a mission to destroy any opposition to its rule, including its citizens who rally for democracy.¹⁵³

As Myanmar makes its transition into democratic rule, the role of the ESA will become more important. To illustrate, the ESA is designed to allow individuals and environmental groups to sue for an injunction against any violator of ESA regulations.¹⁵⁴ With its military regime suppressing the political freedom of its citizens, major changes within Myanmar's political structure must occur for the *full* protection of any endangered species within its borders.

¹⁴⁷ See Fahn, *supra* note 146.

¹⁴⁸ See Cheung, *supra* note 91, at 133.

¹⁴⁹ See Fitzgerald, *supra* note 99, at 39.

¹⁵⁰ See *id.*

¹⁵¹ See CITES ONLINE, *supra* note 18. Thailand ratified the CITES on January 21, 1983. See *id.*

¹⁵² See Ragland, *supra* note 146, at 303.

¹⁵³ See *id.* at 303-04.

¹⁵⁴ See 16 U.S.C. § 1540(g)(1)(A).

B. *The Rhinoceros*

The rhinoceros is also on the Appendix I endangered species list of the Convention.¹⁵⁵ In late 1970, the statistics reported approximately 73,000 rhinos in the entire world, but today fewer than 11,000 are reported to exist.¹⁵⁶ The bulk of the loss of this species is reported as occurring between 1970 and 1987, where 85 percent of the entire rhino population disappeared.¹⁵⁷

“Uncontrolled poaching by well-armed, organized poaching syndicates has severely affected all five species of [the] rhinoceros.”¹⁵⁸ Of the 11,000 rhinos that exist today, one-fifth of them are found in Asia.¹⁵⁹ The demand for the rhinoceros stems from the value that has been placed upon its horn.¹⁶⁰ A two-pound rhino horn can bring in as much as \$45,000.¹⁶¹ The horns themselves are made up of the same types of fibers that are found in the hooves of horses and in human fingernails, and can easily be shaved, carved, slivered, or ground.¹⁶²

The horn and its powder allegedly have the same types of rejuvenating and healing powers as that of the tiger. It has been used for the healing of a wide variety of ailments from high blood pressure to impotence.¹⁶³ Specifically, it has been prescribed for rheumatism, hemiplegia, paralysis, convulsion, epilepsy, influenza, fever, rashes, ulcers, nosebleeds, insomnia, and eye diseases.¹⁶⁴ “Cures” have also been

¹⁵⁵ See CITES, *supra* note 15, app. I, 27 U.S.T. 1118-1131, 993 U.N.T.S. 257-64.

¹⁵⁶ See FITZGERALD, *supra* note 99, at 105.

¹⁵⁷ See *id.* (citing Esmond Bradley Martin, *Status of Rhino Populations and Associated Trade in Rhino Products*, report prepared on behalf of the African Elephant and Rhino Specialist Group of the International Union for Conservation of Nature and Natural Resources Species Survival Commission, Proceedings of the Sixth Meeting of the Conference of the Parties, Ottawa, Canada, July 12-24 1987 (Lausanne, Switzerland: CITES Secretariat, 1989), Doc 6.25, annex 1.

¹⁵⁸ See Cheung, *supra* note 91, at 134.

¹⁵⁹ See Patel, *supra* note 24, at 200.

¹⁶⁰ See Cheung, *supra* note 91, at 134; Bod Drogin, *Zimbabwe is Losing Rhino War*, L.A. TIMES, Sept. 22, 1994, at 1.

¹⁶¹ See John Ward Anderson, *Poacher's Felling World's Tigers, Rhinos*, WASH. POST, Nov. 24, 1994, at A1.

¹⁶² See FITZGERALD, *supra* note 99, at 105.

¹⁶³ See Esmond Bradley Martin & Chrysee Bradley Martin, *Horns of a Dilemma*, 3 BBC WILDLIFE 127-131 (1985); Fitzgerald, *supra* note 99, at 105-06.

¹⁶⁴ See Tom Milliken, *The Evolution of Legal Controls on Rhinoceros Products in Hong Kong: An Asian Model Worth Considering*, 25 ORYX 209, 209 (1991).

reported from other rhino parts including the hide, bones, meat, penis, blood and, shockingly, urine.¹⁶⁵

Rhino horns have also been used as a type of adornment for Yemeni men. These men use rhino horns for the sheaths, or handles, of daggers,¹⁶⁶ and hand carve them into attractive designs.¹⁶⁷

The primary cause of the severe decline in the population of rhinoceros is the demand for their horn in medicinal practices and ornamentation.¹⁶⁸ However, the reduction in its habitat, due to depletion of the rain forest and the rhino flood plain, has also contributed to the decline in numbers.¹⁶⁹

Yemeni men use the horns of rhinoceroses as sheaths for daggers.¹⁷⁰ Traditionally, it was a status symbol of for the wealthy, but eventually became affordable to others due to high wages earned in the Saudi Arabian oil fields.¹⁷¹ To satisfy the demand for rhino horn, approximately four tons of rhinoceros horn were shipped into Yemen in the 1970s.¹⁷² This number declined in the early 1980s to 1.5 tons, until 1982 when Yemen outlawed the importation of the horn.¹⁷³ To adapt to the ban on the imported horn, substituted products have been used in the construction of the sheaths. For example, antelope horn can be used,¹⁷⁴ water buffalo horn, or even wood.¹⁷⁵ Plastic and semi-precious stones, such as agate, are also reported as substitutes for sheaths.¹⁷⁶

Although Yemen has created laws to outlaw the importation of rhino horn prior to its accession to CITES, it still needs to adopt legislation provided for in Article VIII.¹⁷⁷ In creating this legislation, the former political instability of Yemen between its two republics needs to be considered. It has scars from battles of both socialist and military

¹⁶⁵ See FITZGERALD, *supra* note 99, at 105-06.

¹⁶⁶ See Weinberg, *supra* note 90, at 98.

¹⁶⁷ See FITZGERALD, *supra* note 99, at 111.

¹⁶⁸ See Cheung, *supra* note 91, at 135.

¹⁶⁹ See *id.*

¹⁷⁰ See Weinberg, *supra* note 90, at 98.

¹⁷¹ See Karin Davies, *Rhino Population is Charging Back from Brink of Extinction*, L.A. TIMES, Aug. 18, 1996, at A4.

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ See Weinberg, *supra* note 90, at 98.

¹⁷⁵ See Davies, *supra* note 171.

¹⁷⁶ See *id.*

¹⁷⁷ See CITES, *supra* note 4, art. VIII, 27 U.S.T. 1101-03, 993 U.N.T.S. 250-51.

regimes.¹⁷⁸ In 1990, the two republics of Yemen united resulting in the formation of a coalition government.¹⁷⁹ In 1994, a civil war ensued between bureaucracies, armies, and rulers where the socialist order was driven from power.¹⁸⁰ As a result of the war, Yemeni society has reembraced Islam and tribalism as part of its political and social ideology.¹⁸¹ In addition, the Yemeni constitution has been amended and parliamentary elections have taken place.¹⁸²

With the political shift from socialism to a more democratic form of government, incorporating legislation such as the ESA seems to be more possible. Although Yemen has prohibited the importation of rhino horn, strict prohibition of poaching or smuggling within its borders is necessary to provide an increase in the number of rhinos in the wild.

In its recognition of the importance of the preservation of the rhino, the accession of Yemen to CITES will demonstrate to other party-members that substitutes can be used to continue cultural practices without jeopardizing the existence of the rhino, while still in compliance with the provisions of CITES. This will narrow the gap between CITES implementation and cultural distinctions.

VII. CONCLUSION

The Convention on International Trade in Endangered Species has played a significant role in achieving world conservation and preservation efforts of species that are listed on an endangered species list. However, one of the major problems is a lack of legislative participation of its members.¹⁸³ Academics have commented on the problems of international agreements, and even the problems that occur as a result of a nation being

¹⁷⁸ See SHEILA CARAPICO, CIVIL SOCIETY IN YEMEN: THE POLITICAL ECONOMY OF ACTIVISM IN MODERN ARABIA 20 tbl. 2.1 (1998). Yemen was divided between the Yemen Arab Republic and the People's Democratic Republic of Yemen. *See id.*

¹⁷⁹ *See id.*

¹⁸⁰ *See id.* at 56.

¹⁸¹ *See id.* at 59.

¹⁸² *See id.* at 20 tbl. 2.1, 191. The elections were held in 1997. *See id.* at 194-98.

¹⁸³ A majority of the parties have not even enacted legislation in compliance with the Convention. *See* CYRILLE DE KLEMM, GUIDELINES FOR LEGISLATION TO IMPLEMENT CITES 5 (1993). As of 1993, Australia, Austria, Belgium, Denmark, France, Germany, Hong Kong, Malta, the Netherlands, New Zealand, Switzerland, the United Kingdom, the United States, and Zimbabwe were the only parties that had enacted the legislation required to effectively implement CITES. *See id.*

a signatory party to an agreement;¹⁸⁴ but no solutions have been provided. This note proposes that the Endangered Species Act, despite criticism, can function as model legislation to narrow the gap of CITES implementation.

In achieving this end, international attempts to make a worldwide change in environmental species protection issues need to have a strong backing by individual nations.

Although the international community can do much to facilitate and streamline its own processes that impact or affect the potential for countries to achieve international environmental goals, it is also necessary to pay close attention to strategies that individual countries and their domestic environmental bodies can command to increase their capacity and ability. Implementation success rests on a series of domestic efforts. It is here that international and domestic environmental goals intersect because the achievement of both rest on the same foundation.¹⁸⁵

It is only through "collective enterprise and mutual sacrifice" that CITES' goals in international protection can be realized. Overexploitation is inevitable without legislation to enhance the effectiveness of conservation efforts and to control the levels of trade and consumption of endangered species.

¹⁸⁴ See Ruth Greenspan Bell, *Developing a Culture of Compliance in the International Environmental Regime*, 27 *Envtl. L. Rep. (Envtl. L. Inst.)* 10,402 (1997).

¹⁸⁵ See *id.* at 10,410.