

OP-ED

# CITES – a flawed convention that does wildlife conservation no favours

By Rowan Martin • 23 October 2019



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**The Convention on International Trade in Endangered Species, (CITES) needs to be radically revised if it is to meet the ever-changing needs of African wildlife conservation.**


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In the closing plenary session of the most recent meeting of the Conference of the Parties to CITES (CoP18, Geneva, 26 August 2019), a declaration was made by nine members of the Southern African Development Community (SADC) – namely Botswana, the Democratic Republic of the Congo, Eswatini, Mozambique, Namibia, South Africa, Tanzania (spokesperson for the group), Zambia and Zimbabwe. The declaration expressed grave concerns with the implementation of the convention and over the anti-sustainable use and anti-trade ideology that came to light during the polarised discussions on African charismatic large mammals. 

The SADC members emphasised the effectiveness of their conservation models and stated that they would reconsider whether there are any meaningful benefits from their continued membership in CITES. The full text of the declaration is available in an article by Ivo Vegter (<https://www.dailymaverick.co.za/opinionista/2019-09-03-developing-world-does-not-need-the-patronising-eco-colonialism-of-cites/?utm...03/09/2019>) in *Daily Maverick* (3 September 2019).

What I question in this article is the suitability of CITES in its present form to function as the single treaty regulating all international trade in wild species of fauna and flora. The first statement in the SADC declaration expresses the grave concern which the SADC parties to CITES have “... *with regard to the implementation of this Convention*”.

I will argue that the problem does not lie in “implementation” per se – it lies in the flawed structure of the treaty itself.

To understand the flaws we need to examine the shared history of CITES and the US Endangered Species Act (ESA). The ESA was signed into law by President Richard Nixon on 28 December 1973.

The text of the CITES convention was agreed at a meeting of 80 countries in Washington DC on 3 March 1973 and the treaty entered into force on 1 July 1975. In many ways, CITES is no more than a pale shadow of the ESA.

Both the ESA and CITES:

- Have a focus on individual species and are preoccupied with species extinction;
- Rely on a simplified system of attaching labels to species (the ESA labels are “Endangered” or “Threatened” and the CITES labels are “Appendix I” or “Appendix II”. The solutions to wildlife population declines are “hard-wired” to their listings);
- Insist that listing decisions be based on “best available science” – with the emphasis being on biological science rather than economics. Neither can accommodate the science of complex systems – there is a blind faith in reductionist science;

- Treat the issue of human livelihoods as secondary to biological criteria;
- Are unable to accommodate the notion of beneficial trade; and
- Both suffer from the conviction that their listings afford “protection” to species.

I will elaborate on these six points in the text that follows.

My own involvement in CITES dates back to the time when Zimbabwe acceded to it in 1981. At the time of acceding, Zimbabwe entered a reservation against the listing of the Nile crocodile (*Crocodylus niloticus*) on Appendix I of CITES in accordance with Article XXIII and maintained the reservation until its crocodile population was transferred to Appendix II at CoP4 in Botswana in 1983.

In 1985 I carried out a consultancy for the CITES secretariat (<https://www.dropbox.com/s/4pnacbn1h1exkdy/Ivory%20Quota%20SystemE05-22-01.pdf?dl=0>) to establish a quota system for the export of ivory from Africa (CITES CoP5 Inf.5.3 *available from the author*). My role was that of providing the range states with the methodology needed to estimate their own quotas. The quota system was adopted at CoP5 in Buenos Aires in 1985 (Resolution Conf. 5.12).

Immediately following the implementation of the quota system, the results appeared promising. In the 10 years prior to 1985 perhaps 1,000 tonnes of ivory were being exported annually from Africa. Barbier (<https://www.dropbox.com/s/7f3mad992bh4bme/Barbier%20et%20al%201990.pdf?dl=0>) *et al.* (<https://www.dropbox.com/s/7f3mad992bh4bme/Barbier%20et%20al%201990.pdf?dl=0>) (1990) (<https://www.dropbox.com/s/7f3mad992bh4bme/Barbier%20et%20al%201990.pdf?dl=0>) show that from 912 tonnes of ivory leaving Africa in 1985 (immediately before the inception of the quota system), the legal trade dropped to 805 tonnes in 1986, 331 tonnes in 1987 and 142 tonnes in 1988. This improvement was not good enough for the parties to CITES and the entire elephant population of Africa was transferred to Appendix I at CoP7 in Lausanne 1989. 🗨️

Inevitably, it led to Botswana, Namibia and Zimbabwe taking reservations against the listing, which they maintained until their elephant populations were transferred back to Appendix II in 1997. South Africa did not enter a reservation but its elephant population was transferred to Appendix II in 2000. I will return to the Lausanne CoP after the next item in order to preserve the chronological order of my involvement in CITES.

In 1987 I did a consultancy for CITES on the status of leopards (<https://www.dropbox.com/s/xzk5s1zt1op5njs/E06-26.pdf?dl=0>) in sub-Saharan Africa which was presented at CoP6 in Ottawa. The study found that leopards were surprisingly abundant throughout Africa and did not merit their listing on Appendix I (done at CoP1 in Bern in 1976). In the discussion of my report, the delegate from France stated angrily that he did not care how abundant leopards were:

“France does not want to see any trade in leopard skins.” Brigitte Bardot’s campaign against women wearing fur coats made of spotted cat skins had clearly got to him.

But the lesson is clear – many of the CITES parties are not interested in scientific criteria for listing species on CITES appendices.

The Lausanne CoP (1989) was perhaps the first CITES meeting where the massive impact of the animal rights NGOs became obvious. As delegates approached the conference hall (the Palais de Beaulieu) they were forced to walk through a tunnel of protesters dressed as elephants, waving placards and shouting slogans. Their presence extended into the main forum of the meeting.

I was part of the Zimbabwe delegation when the vote was held on the proposal to list the African elephant on Appendix I. Prior to the vote, Zimbabwe had proposed a secret ballot because of the extreme pressures being exerted on some of the parties to agree to the ivory trade ban. The Zimbabwe proposal was rejected, and the significance of this requires discussion.

Under the rules of procedure at that time, any proposal seeking a secret ballot had to be voted upon by the full quorum of the CoP and required a simple majority to be accepted. This made it very difficult to obtain a secret vote. Certain parties (eg the US and Australia) were opposed on principle to secret voting on environmental matters. However, the secret voting problem (<https://www.dropbox.com/s/6yj7t452ipqddb/Secret%20Voting.pdf?dl=0>) was solved at CoP9 in 1994. There still remains the vote-rigging problem described by Emmanuel Koro (<https://www.mahohboh.org/cites-curse-or-blessing-for-wildlife-rich-but-poverty-stricken-sadc-countries/%20>).

It was decided to hold a “roll-call” vote because of the gravity of the issue. The procedure for such a vote entailed using a random number to select the first country to vote and the chair of the session would then call out the name of the country that had to say “Yes” if it supported the listing on Appendix I or “No” if it opposed it. The sequence of voting thereafter followed the alphabetical order of the countries after the first one. The outcome was predictable – and could be described as a “monstrous tragicomic scene (<https://www.dropbox.com/s/8dex4jotpmlotm4/Monstrous%20tragicomic%20scene.pdf?dl=0>)”.

Vanuatu, a small Pacific island nation with a population of fewer than 300,000 persons, was selected to vote first. The chair called its name and in clarion tones, Vanuatu shouted ‘Yes’. At that moment the scales fell from my eyes and I was suddenly able to understand the truth. This was a lunatic democratic express careering off the tracks. Vanuatu has no elephants and would not be accountable for the subsequent costs of protecting and managing Zimbabwe’s elephants without an income from ivory. It is doubtful whether Vanuatu would have reached this decision in the absence of the intensive lobbying that took place at the meeting.

After the vote, I wandered the corridors of the Palais, exchanging views with key persons at the CoP. I asked them if they were happy with the decision. None were. I asked them whether they would be willing to participate in a “think-tank” in Zimbabwe if I could find the funding and organise it in such a way that the results of the meeting remained “off-record”. Most of them said yes and the meeting was held in 1991. The agenda for the meeting was simply to identify the shortcomings of CITES.

This led to the spate of proposals presented by the SACIM states (Botswana, Malawi, Namibia and Zimbabwe) to CoP8 in Kyoto, Japan, in 1992.

Included in these proposals was one extolling the benefits of trade (<https://www.cites.org/sites/default/files/document/E-Res-08-03-R13.pdf>) which was adopted after considerable resistance from parties that opposed trade on principle. Another SACIM draft resolution proposing new criteria for listing species on the appendices (<https://www.cites.org/sites/default/files/eng/cop/08/doc/E-50.pdf>) was provisionally adopted (Com.8.11), subject to revisions to be made before the next CoP. This resolution attempted to take into account the benefits of trade and the paragraph below appears in its preamble.

“14. A fundamental assumption in most interpretations of the Convention is that trade has primarily negative effects on conservation. In 150 Resolutions approved by the Conference of the Parties nowhere is it stated that trade may have benefits for conservation. Trade is seen as something to be tolerated while species are abundant, increasingly restricted as species are threatened, and finally prohibited when they are endangered with extinction (this philosophy is also enshrined in the US Endangered Species Act). It is challenged in the draft resolution Doc. 8.48 (Rev.) which lists a number of types of trade which contribute positively to species survival, regardless of their status with respect to extinction.”

The revised resolution (Conf.9.24) was adopted at CoP9 in Fort Lauderdale, US, and has since been amended at CoPs 12, 13, 14, 15, 16 and 17; and amended by the secretariat in compliance with decision 14.19 and with the decisions adopted at the 61st meeting of the standing committee. It has successfully eliminated all considerations of beneficial trade, introduced the precautionary principle and become a paradise for bureaucrats.

In a conversation with Nigel Leader-Williams (<https://www.geog.cam.ac.uk/people/leader-williams/>) at a workshop in London in 1991 when IUCN was considering the new criteria to be proposed for listing species on the CITES appendices, we both agreed that it is one thing to describe the biological status of a species but quite another matter to decide what would be the best way to rectify that status if it is not to our liking. We deplored the current situation where species were frequently listed on Appendix I when the global status of the species was secure but subpopulations in some range states were declining. If a species is not globally endangered then it does not belong on Appendix I.

We also agreed that science had not yet arrived at any definitive method for evaluating the likelihood of extinction – “Prediction is very difficult, especially if it’s about the future,” as Niels Bohr, Nobel Laureate in Physics and father of the atomic model, said, ca 1920.

At the close of CoP8 in Kyoto, I had a conversation with Harry Messel (<https://www.dropbox.com/s/1nqhtsez5ie2qro/Passing%20of%20science%20star%20Professor%20Harry%20Messel%20.pdf?dl=0>) who was one of the drafters of the original CITES Treaty in 1973. I asked him whether, if he was doing the same task again, he would do it the same way. His reply was:

“Hell no, Rowan. You have to understand that in 1973 we knew very little about the extent of trade in wildlife... we suspected it was having an impact. If I were rewriting the articles of CITES now, I would get rid of the appendices altogether and move the entire treaty on to a quota system. We have seen how successful this has been in destroying the illegal trade in crocodiles.”

So, I set my sights on proposing a review of the treaty at CoP9 (Fort Lauderdale) in 1994. To this end, I prepared a document titled “CITES II – The Second Convention on International Trade in Endangered Species of Wild Fauna and Flora (<https://www.dropbox.com/s/q8q2mfpzgxorp/CTS-II%202016.pdf?dl=0>)”. It incorporated Messel’s ideas on moving CITES towards a quota system and dispensing with the appendices.

Because I knew that it would automatically generate an adverse reaction at the CoP, I circulated it privately to those parties that had strong views on sustainable use. Because of Zimbabwe’s radical reputation at CITES, Canada agreed to present the proposal. The motion to undertake a review of the effectiveness of the convention was carried and the consultancy was awarded to Environmental Resources Management (UK, linked to Price Waterhouse Coopers) by the standing committee (SC36.5 Summary Report).

The review was a damp squib. The consultants avoided looking at the highest level issues such as the articles of the treaty wherein I believe the major problems of the convention lie. To attack CITES in this way would also call the ESA into scrutiny and this was unpalatable to the US. The US had used its privileged position to have its own advisers attached to the consultants and this prejudiced the study from the outset. One of the most significant findings (or lack of findings) in the review was that the consultants found no species that had unequivocally benefited from their listings on the CITES appendices.

CITES went on to develop an “Action Plan (for Improving the Effectiveness of the Convention) (<https://www.dropbox.com/s/13ouswz3ehpz6oy/Action%20Plan%20Comment.pdf?dl=0>)” which was adopted at CoP11 in Kenya (Doc.11.12.1) – six years after CoP9. The action plan introduces no radical changes but places emphasis on “capacity-building” and improved law enforcement. Implicit in this is the notion that developing countries will benefit from training by northern hemisphere experts... yet more neo-colonialism.

I was sufficiently disillusioned with CITES by the year 2000 that I vowed to have nothing more to do with it. I had wasted nearly two decades trying to improve the treaty to no avail.

Then, in 2011, the CITES secretariat invited bids for a consultancy to do a study on a *Decision-Making Mechanism for a Process of Trade in Ivory* (DMM study). The study arose from Decision 14.77 made at CoP14 (The Hague) in 2007. The remuneration was sufficient to make me break my vow in the paragraph above.

I assembled a team of experts to carry out the work and the final report was submitted to the secretariat in May 2012 (five years after the decision at the Hague).

I presented the final report (<https://www.cites.org/sites/default/files/eng/com/sc/62/E62-46-04-A.pdf>) to the 62nd standing committee meeting in Geneva in July 2012 and fielded comments from the parties and observers. My analysis (<https://www.dropbox.com/s/vofc376f5ub9bjg/DMM%20Comments%20copy.pdf?dl=0>) of the discussion and the events from 2007 to 2016 reaches the conclusion that, “SADC must expect that all attempts to pursue a legal ivory trade through the present CITES mechanisms will fail.”

One important finding from the DMM study was that regional commissions recognised by CITES (eg the International Whaling Commission) appear to be functioning well. These institutional arrangements go some way to reducing the scale mismatches identified in the DMM and increase the likelihood of local participation in decision-making, buy-in and compliance. If SADC were to set up its own treaty for management of elephants and trade in ivory, it could reasonably expect such a treaty to be recognised by CITES and its member states should be able to distance themselves from the more annoying aspects of CITES and exercise their sovereign rights. However, given the many flaws in CITES, the SADC countries might prefer to leave the treaty.

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Adaptive Management (<https://www.dropbox.com/s/vbk4y2nj86m7i4l/Adaptive%20Management.pdf?dl=0>) is the best methodology for achieving sustainable use. Ruitenbeek and Cartier (2001) (<https://www.dropbox.com/s/r5fjgzfm1qvetyj/Invisible%20wand.pdf?dl=0>) remark that it is the only method for dealing with complex systems and observe that “we have become a culture of control freaks”.



CITES has never been able to accommodate adaptive management.

I remember an occasion at one of the CITES CoPs when the US was haranguing the elephant range states for not counting their elephant populations often enough to set accurate hunting quotas. Peter Dollinger (<https://www.dropbox.com/s/33qmx1hwcr97b7t/Dollinger.pdf?dl=0>) spoke up:

“The distinguished delegate from the United States is exhorting the African states to carry out more population counts. I would point out to him that Switzerland has been managing its deer population very competently for the past 600 years. We have not yet counted them.”

CITES is mistakenly seen as a protective device – but it does not, in fact, protect species. That can only be done by the range states (leaving aside marine species). The limited tool at its disposal is the prohibition of legal international trade between its parties. If Western importing nations were requested by range states to assist in prohibiting or limiting trade in certain species, the treaty would be fulfilling its original purpose. But if the importing states decide unilaterally that trade is undesirable, this exceeds the reasons for coming together to form a treaty.

There is ample evidence from the stricter domestic legislation being invoked by importing countries to suggest that the treaty is not working. It is unsatisfactory to quote the “precautionary principle” as an antidote to the above statement, because it cannot be critically tested – to argue that a species, if removed from Appendix II and so denied the “protection” of CITES, might become threatened is to use “Catch-22”. If the CITES parties will not allow the hypothesis to be tested, it cannot be falsified.

In 2016, Zimbabwe submitted a proposal to CoP17 in South Africa to remove the annotation affecting the listing of its elephant population on Appendix II which was preventing trade in ivory. In the overview to this proposal, Zimbabwe queried what the parties understand by the term “experimental trade” (CITES Doc. 11.31.1 is titled “Experimental Trade in Ivory” and the title reoccurs on other documents). The entire edifice of constraints contained in the annotation is anti-experimental – which is not good science.

This could have been addressed by allowing Zimbabwe the opportunity to trade in the manner proposed and, hence, provide an experimental control for the present system that is not working. However, the parties rejected the proposal.

Humans have evolved a basic toolbox which enables them to cope with the exigencies of daily living: they follow the basic principles of commerce and have conditioned responses to a wide range of stimuli. Yet they are frequently expected to abandon this toolbox when considering conservation. It has done no favour to the cause of conservation that the use of wild animals and their environments has been placed in a “special category” that departs from the conventional manner in which people handle their day-to-day decisions (Murphree and Martin 2016 (<https://www.dropbox.com/s/5lighqz2ldvn8sg/Shifting%20Paradigms.pdf?dl=0>), page 8).

Ian Parker (<https://www.dropbox.com/s/mbcvsgjqkalduib/ISC%20Parker.pdf?dl=0>) (pers.comm.) makes a number of insightful observations about CITES that are relevant to my postulation that the fundamental problems of CITES lie in its structure. There are plenty of trading treaties in the world set up for agricultural commodities and minerals that function very well. The general pattern of these treaties is that each commodity has its own treaty (eg wheat, maize, cotton, tobacco) and it is the traders that shape the functioning of the treaty.

The situation in CITES where environmentalists and academics who understand very little of the mechanics of trade presume to draw up rules for international commerce would be unthinkable for agricultural commodities. The number of wild fauna and flora species that are traded internationally far exceeds the number of agricultural commodities. So, the use of a single treaty (“one size fits all”) such as CITES is ambitious in the extreme.

Hank Jenkins (<https://www.dropbox.com/s/i7atuza8aqw2frf/Robert%20'Hank'%20Jenkins%20AM.pdf?dl=0>), commenting on the recently ended CITES CoP 18 in Geneva, remarked, “Thank God threatened wildlife DOESN’T need CITES because, if they did, they would be EXTINCT!”

This quote from Marshall Murphree (1997) (<https://www.dropbox.com/s/bcbfpjdtco64ofs/MWM%201997.pdf?dl=0>) is an appropriate note on which to end this article: “International environmentalism has failed to reverse the negative trends in the resource/demand ratio of our equation. Part of the answer lies in issues that are not politically expedient for powerful segments of its constituency. But part of the answer also lies in the inadequacies of its conventions, its instruments of

collective international husbandry and management of the resources themselves. Manifestly, these have not adequately produced the effects for which they were created and their design, their implementation and the role we assign to them bear re-examination.

“They are extremely costly in time, effort and money and, unless they can be made to work, we should throw them out and start again.” **DM**

*Rowan B Martin was head of research at the Zimbabwe Wildlife Department from 1987 to 1997. He developed the first community wildlife management programmes in Zimbabwe in the 1980s (Campfire). He is a founder member of the African Elephant and Rhino Specialist Group; a member of the IUCN Sustainable Use Specialist Group and chair of the southern African branch; represented Zimbabwe in the CITES forum; and carried out a number of consultancies for the CITES secretariat. He is a wildlife consultant and has prepared management plans for elephants and rhinos and restructured wildlife departments in Botswana, Mozambique, Namibia and South Africa.*

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