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CITES Conference of the Parties 17: Coup or Cop-out?

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Senior Lecture in Law, Dr Simon Sneddon writes:

Yesterday (Tuesday) saw the closing on the 17th Conference of the Parties (CoP) meeting for signatories of the Convention on the International Trade in Endangered Species of Fauna and Flora (CITES) in Johannesburg, South Africa.

CITES is the name commonly given to both the Convention itself, signed in 1975, and the organisation which administers and monitors implementation and compliance with the Convention.

Before considering the success of otherwise of CoP17, it is worth giving a bit of context for the Convention itself.

The origins of the CITES Convention probably begin in 1936 when Dr John C Philips (founder of the American Committee for International Wildlife Protection) arranged for a study of the species of mammal which had either become extinct in the recent past, or appeared to be in danger of doing so in the near future. The study was intended to be:

“invaluable to the work of the Committee in helping to determine those species of mammals most urgently in need of protection and, at the same time, to estimate factors that might have caused the extinction of species.”^[1]

(http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn1)

Work on the study (carried out by Drs Allen and Harper) began in mid-1937, almost the same day that William Temple Hornaday died. Hornaday, the one-time Director of the Bronx Zoo, had written in 1913:

“the existing legal system for the preservation of wild life is fatally defective. There is not a single state in our country from which the killable game is not being rapidly and persistently shot to death, legally or illegally, very much more rapidly than it is breeding, with extermination for the most of it close in sight. This statement is not open to argument; for millions of men know that it is literally true. We are living in a fool’s paradise.”^[2]

(http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn2)

Hornaday’s work influenced Allen and Harper’s study, and also the negotiations towards the 1940 Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (the Western Hemisphere Convention), which was signed at the Pan American Union,^[3] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn3) in Washington, DC. This Convention was only technically binding on a

small number of states, and was further weakened by the lack of any enforcement mechanisms. In fact, the 12-Article Convention lacks any mechanism for enforcement at all, which has led Lyster.^[4] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn4) and later Rogers and Moore,^[5] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn5) to describe it as a sleeping, or paper treaty.

If the Western Hemisphere Convention was not the resounding success that it could have been, it did mark a concrete step towards multinational agreements to increase the protection for species, whether vulnerable or not.

The idea of a global list of endangered species of flora and fauna was proposed in 1963 by the naturalist Peter (later Sir Peter) Scott, and the first attempt at such a list appeared in the World Wildlife Fund's first report in 1964.^[6] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn6) Two years later, the two-volume Red Data Book was published as a specialist text for the IUCN (International Union for the Conservation of Nature)^[7] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn7) and, in 1969, the first version of the book which was intended for a wider readership was produced by Fisher et al in 1969.^[8] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn8) Writing in 1987, Scott argued that the groundwork for his ideas was done by, *inter alia*, Hornaday, Allen and Harper,^[9] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn9) and the link is made clearer when it is understood that IUCN and WWF founding director Harold Coolidge Jr., wrote the forewords both for Allen's 1942 publication and the IUCN's 1969 Red Book.

Out of the same IUCN environment which had spawned the Red Book, came a resolution at the IUCN General Assembly in Nairobi in 1963 which called for the creation of "a global convention on the import, export and transit of endangered species or their skins or trophies."^[10] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn10)

The IUCN's call for an *international* agreement was answered a decade later when the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed in Washington in May 1973. CITES entered into force in July 1975 after 10 ratifications and since then membership has grown to 180 parties.

The Convention identifies in the preamble that "international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade"^[11] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn11) and those species are listed in three Appendices to the Convention. Appendix I^[12] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn12) lists the species that are at most risk of extinction, Appendix II^[13] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn13) lists those which are at some risk and Appendix III^[14] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn14) those which are at risk in particular jurisdictions.

CoP17 is the latest in a series of meetings which consider, amongst other things, whether to move species between Appendices. Since CoP1, in Berne in 1976, the approach has been to err on the side of caution (or indeed, the precautionary principle) when changing the designation of species, because:

"[If CITES were to] err in prematurely removing a plant or animal from protection, or lowering the level of protection afforded, the result [could] be the permanent loss of the resource"

At CoP17, some dramatic moves were agreed, and others were not. A full list of proposals can be found here (https://cites.org/sites/default/files/eng/cop/17/Proposals_for_amendment_of_Appendices_I_II.pdf (https://cites.org/sites/default/files/eng/cop/17/Proposals_for_amendment_of_Appendices_I_II.pdf)).

The eight species of Pangolin, and African Grey Parrot were moved to Appendix 1, which entitles them to much greater protection and far stronger restrictions on trade.

Lions, however were not uprated from Appendix II to Appendix I, despite dramatic falls in the number of wild lions. Instead a plan of increased protection and “a condition to restrict the trade in bone to captive breeding operations in South Africa – with national export quotas”[15] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn15) was adopted.

A proposal by South Africa and Zimbabwe for an ivory trade mechanism (essentially a licence to trade stockpiles of ivory) was thankfully rejected by CoP17, despite heated debate and pressure from the host nation. As I have written elsewhere (LINK (<http://blogs.northampton.ac.uk/law/2014/01/27/environmental-organised-crime/>)) any legal trade in ivory stimulates demand for ivory, which can only then be met by illegal ivory. This would have relegated both CoP17 and the African elephant to oblivion, so I salute that decision.

On the whole, I would echo the sentiments of the WCS VP of International Policy, Susan Lieberman:

“I strongly believe this was among the most successful CoP ever for wildlife.”[16] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftn16)

[1] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref1) Coolidge, Jr., H.J., 1942, *Foreword* in Allen G. M., *Extinct and Vanishing Mammals of the Western Hemisphere with the Marine Species of all the Oceans*, Lancaster PA: American Committee for International Wild Life Protection Special Report Number 11, p viii

[2] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref2) Hornaday, W.T., 1913, *Our Vanishing Wild Life: Its Extermination and Preservation*, New York, NY: Charles Scribner's Sons, p ix

[3] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref3) The Pan American Union became the Organisation of American States in 1948 with the signature of the Charter of the Organization of American States in Bogotá, Colombia.

[4] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref4) Lyster, S., 1985, *International Wildlife Law: An Analysis of International Treaties Concerned with the Conservation of Wildlife*, Cambridge UK: Grotius Publications.

[5] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref5) Rogers, K., and Moore, J., 1995, Revitalizing the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere: Might Awakening a Visionary but “Sleeping” Treaty be the Key to Preserving Biodiversity and Threatened Natural Areas in the Americas? 36 Harv. Int'l L.J. 465

[6] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref6) Scott, P., Preliminary List of Rare mammals and birds including those thought to be rare but of which details information is still lacking, in Scott, P., ed., 1964, *The Launching of a New Ark: The First Report by the World Wildlife Fund*, London: Collins, pp155-237

[7] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref7) IUCN, 1966, *Animals and plants threatened with extinction*, Cambridge, UK: International Union for the Conservation of Nature and Natural Resources

[8] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref8) Fisher, J., Simon, N., and Vincent, J., 1969, *The Red Book: Wildlife in Danger*, Cambridge, UK: International Union for the Conservation of Nature and Natural Resources.

[9] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref9) Scott, P., Burton, J., and Fitter, R., 1987, *Red Data Books: The Historical Background*, in Fitter, R., and Fitter, M., eds., *The Road to Extinction: Problems of Categorizing the Status of Taxa Threatened with Extinction* A Symposium held by the Species Survival Commission, Madrid 1984, Cambridge, UK: International Union for the Conservation of Nature and Natural Resources, p3.

[10] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref10) Burhenne-Guilmin, F., 2008, Biodiversity and International Law: Historical Perspectives and Present Challenges: Where Do We Come From, Where are we going? in Jeffery, M., Firestone, J., and Bubna-Litic, K., Biodiversity, Conservation, Law + Livelihoods: Bridging the North-South Divide, Cambridge, UK: IUCN Academy of Environmental Law Research Studies, p28

[11] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref11) Convention on the International Trade in Endangered Species of Wild Fauna and Flora

[12] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref12) CITES Article II(1): "Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances."

[13] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref13) CITES Article II (2): "Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

[14] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref14) CITES Article II (3): "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade."

[15] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref15) Department of Environmental Affairs, 2016, Press Release: Minister of Environmental Affairs, Dr Edna Molewa on outcomes of CITES CoP17, Sandton Convention Centre, Johannesburg, Gauteng Province, Republic of South Africa, at <http://www.gov.za/speeches/minister-edna-molewa-outcomes-cites-cop17-5-oct-2016-0000> (<http://www.gov.za/speeches/minister-edna-molewa-outcomes-cites-cop17-5-oct-2016-0000>)

[16] (http://blogs.northampton.ac.uk/law/2016/10/05/cites-conference-of-the-parties-17-coup-or-cop-out/#_ftnref16) <http://voices.nationalgeographic.com/2016/10/04/cites-cop17-concludes-on-the-side-of-wildlife/> (<http://voices.nationalgeographic.com/2016/10/04/cites-cop17-concludes-on-the-side-of-wildlife/>)

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