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***Approaches to sustainable use: CITES non-Detriment  
Findings and CBD Sustainable Use principles***

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## ***Approaches to sustainable use: CITES non-Detriment***

### ***Findings and CBD Sustainable Use principles***

Alison M. Rosser and Stuart R. Harrop<sup>1</sup>

#### **1. INTRODUCTION**

The current portfolio of active international instruments that deals with the conservation of natural resources has evolved during a period in excess of sixty years. This process has been one of *evolution* rather than *co-evolution* and thus the portfolio consists of a number of largely unrelated and uncoordinated components. In an ideal world it would be reassuring to believe that the often-radical difference between the separate constituents of international conservation law follows the development of our understanding of the human relationship with the natural world. However, this would only explain a part of the arbitrary and somewhat chaotic development of the law. The rest of the matter is a mix of politics reflecting as it does a redistribution of power between epistemic communities.<sup>2</sup> Consequently the instruments are structurally different, operate from perspectives and with priorities that may now be politically or philosophically outdated, are not linked into a cohesive strategy or relate to a global condition that has now passed. Thus the portfolio contains, *inter alia*, the convention

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<sup>1</sup> Durrell Institute of Conservation and Ecology, University of Kent, Marlowe Building, Canterbury, Kent, UK, CT2 7NR. Alison Rosser wishes to acknowledge the Workshop on CITES CBD Synergies at Vilm in 2004 which provided the stimulus for further developing these ideas see PROMOTING CITES-CBD CO-OPERATION AND SYNERGY - PROCEEDINGS OF THE WORKSHOP 20-24 APRIL 2004, AT VILM, GERMANY (GISELA STOLPE AND WILTRUD FISCHER ED. 2004); and the IUCN SPECIES PROGRAMME.

<sup>2</sup> See, by way of example, the history of the development of the International Whaling Commission described in: Stuart R. Harrop, *From Cartel to Conservation and on to Compassion: Animal Welfare and the International Whaling Commission*, 6 J. INT'L WILDLIFE L. & POL'Y 79-104 (2003).

that created the International Whaling Commission designed at the end of the Second World War<sup>3</sup> and intended to maintain an orderly market in whale products now moulded and shaped by the dynamism of international politics and the power of international NGOs; CITES<sup>4</sup> precisely regulating the international trade effects on endangered species but pre-dating the WTO<sup>5</sup>'s multilateral trade regime; Ramsar<sup>6</sup> focusing on some of the most crucial ecosystems (wetlands) and yet operating a comparatively weak legislative regime that is easily capable of frustration<sup>7</sup>. Beyond this conservation legislation is mixed, in some instances, with other related priorities, as with the World Heritage Convention<sup>8</sup> with its particular narrow focus. In some instances key areas of regulation are relegated to soft law such as UNESCO's Man and Biosphere programme that creates an enlightened zoning system around core protected areas designed to preserve both raw nature and the positive aspects of the human relationship with the natural world. Individually each of these instruments merit praise and are also subject to criticism. However, the key problem may not be the pros and cons of individual instruments but the level of interconnectedness between a regime which ultimately should be striving to turn back the tide of the destruction of the natural environment, to sustain our use of it for present and future generations and to also secure the aesthetic and spiritual benefits that a pristine natural world has always provided for humankind.

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<sup>3</sup> International Convention for the Regulation of Whaling with Schedule of Whaling Regulations, Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 19\849, 161 U.N.T.S. 361.

<sup>4</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243, ELR Stat. 40336.

<sup>5</sup> World Trade Organisation created by the Uruguay Round of Multilateral Trade Negotiations.

<sup>6</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitat signed in Ramsar, Iran 2 February 1971.

<sup>7</sup> Among RAMSAR's weaknesses, the member states are required to designate only one site and provisions permit removal from designation in certain circumstances.

Perhaps this lack of coherence derives from the nature of the subject and its level of priority within international politics. No doubt those who worked so hard to achieve the individual components would explain the position in the context of the battles fought and would give wise counsel against working to harmonise the entire portfolio lest the whole pack of cards collapses. The level of priority extended to conservation legislation can be clearly seen by comparing the quality and coherence achieved within the WTO portfolio- where a higher global prioritisation and clearer focus has ensured that there is a highly coherent, structurally consistent and interrelated set of agreements within the World Trade Organisation's portfolio. Each agreement reflects its interdependence with the others and ultimately derives from the principles within the original *General Agreement On Tariffs And Trade 1947*. All this being based on economic theories that shift much faster than the scientific theories that are supposedly the basis for international conservation legislation.

On the other hand the manner in which coherence is to be achieved in conservation is to rely on institutional and NGO pressure to shape, mould and, sometimes contrive fluidity into, the existing portfolio.

Within the portfolio of international conservation agreements two particular instruments have been chosen for analysis.

CITES<sup>9</sup> is a highly focused instrument, concentrating exclusively on the regulation of international trade in endangered and threatened species. It is also well drafted in clear

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<sup>8</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by UNESCO, 16 November 1972.

<sup>9</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington, D.C., on 3 March 1973.

language that instantly appeals to lawyers looking for definite powers and precise obligations within an international law instrument. It has very little funding and yet is regarded as a model and effective convention<sup>10</sup> and is continually in the limelight as it makes difficult decisions to permit sustainable trade within the diminishing catalogue of species on earth.

The second convention is the CBD<sup>11</sup>. This is a framework convention and, compared with CITES, has a very different structure and drafting style which is not as precise and is insufficiently detailed to generate a cohesive regime without subsidiary instruments. Indeed the structural approach of the text of the CBD is not too far removed from the relevant chapters of the policy instrument: Agenda 21. The CBD goes far beyond previous conservation instruments by seeking to conserve whole ecosystems, and the inorganic material that supports those ecosystems, as well as the entirety of the diversity of life on Earth. It also deals, to a point, with the issues of traditional peoples in conservation, the inequities of power between developed and developing countries and many other issues. It is the most recent major instrument in the field and yet, despite its over-arching nature, it does not expressly link into the majority of its family of instruments either expressly or structurally.

This article examines the extent to which the CBD and CITES are able to work together in order to achieve coherent and effective conservation policies. The examination necessarily must also take account the shifting sands of international politics partly recognised in the CBD but ever-changing nevertheless. In particular

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<sup>10</sup> SIMON LYSTER, *INTERNATIONAL WILDLIFE LAW* 239 (1985).

<sup>11</sup> The Convention on Biological Diversity concluded at Rio de Janeiro on 5 June 1992. 1760 UNTS 79; 31 ILM 818 (1992)

this analysis, as part of the enquiry, also traces the impact of the development ethos on both conventions and conservation policy as a whole.

### 1.1 The Relationship Between Conservation and Development

Conservation and development are currently uneasy bedfellows<sup>12</sup> but prominent voices are urging that an oversimplification should not lead to an “either-or” solution.<sup>13</sup> In 1982, the conservation community recognized the importance of involving people in conservation and espoused the concept of sustainable use of natural resources to encourage conservation of those resources with publication of *Caring for the Earth*.<sup>14</sup> These policies were developed into a plan for global action in 1992 and adopted by global leaders at the United Nations Conference on Environment and Development as Agenda 21.<sup>15</sup> The environment agenda, was given some substance with the entry into force of the Convention on Biodiversity in 1992, and the donor funding of Integrated Conservation and Development Projects (ICDP) during the 1980’s and 1990’s. Culminating in 2000, in the adoption of the CBD target of reducing the rate of biodiversity loss by 2010.<sup>16</sup> However, in 2000 the global focus changed somewhat with the adoption of the Millennium Development Goals, which focused on poverty reduction by 2015.<sup>17</sup> At this time, ICDPs were coming under scrutiny and often found not to be delivering the environment and socio-economic

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<sup>12</sup> William M. Adams *et al.*, *Biodiversity Conservation and the Eradication of Poverty*, 306 SCIENCE 1146, 1146 (2005).

<sup>13</sup> Kent H. Redford, John G. Robinson, & William M. Adams, *Parks as Shibboleths*, 20 CONS. BIOL. 1, 2 (2006).

<sup>14</sup> IUCN/UNEP/WWF, *CARING FOR THE EARTH, A STRATEGY FOR SUSTAINABLE LIVING*, 1 (1991).

<sup>15</sup> Agenda 21, UN Conference on Environment and Development, UN Doc. A/CONF 151/26. Rev.1 (1992).

<sup>16</sup> Decision VI/26 Strategic Plan of the Convention UNEP/CBD/COP6/20 (2002) at 319.

<sup>17</sup> UN General Assembly, 2005. Resolution Adopted by the General Assembly. 60/1. 2005 World Summit Outcome. UNA Res 60/1.

win-win that had been anticipated.<sup>18</sup> Global delivery of aid also changed at this time as the World Bank and IMF initiated the development of Poverty Reduction Strategy Papers by individual governments to establish their own priorities, in return for less project-driven funding.<sup>19</sup> This focus on human development, was further in evidence at the World Summit on Sustainable Development in 2002 when world leaders agreed the Johannesburg Plan of Implementation designed to speed progress to delivery of the Millennium Development Goals and poverty reduction. Prior to the MDG+5 Meeting in New York, in September 2005, there were calls to re-enforce the importance of the environment in delivering long-term sustainability,<sup>20</sup> but according to Robinson, referring to the outcome from the 2005 World summit, “conservation actions were buried deep in the document”.<sup>21</sup>

As nations strive to implement the Millennium Development Goals, and to reduce poverty, there is a strong need to step back from the retrenchment of biodiversity conservation.<sup>22</sup> It is important that we re-affirm the links between biodiversity conservation and livelihood improvement particularly through sustainable use and review the role of international conventions in delivering these outcomes.

Theoretically, trade in wild species that derives from sustainable harvests can

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<sup>18</sup> Michael P. Wells & Thomas. O. McShane, *Integrating Protected Area Management with Local Needs and Aspirations*, 33 *AMBIO* 513, 514 (2004).

<sup>19</sup> David Craig & Doug Porter, *Poverty Reduction Strategy Papers: a New Convergence*, 31 *WORLD DEV.* 53, 1 (2003).

<sup>20</sup> ANON, *POVERTY-ENVIRONMENT PARTNERSHIP MEETING: THE MDGS AND THE ENVIRONMENT. SUMMARY OF MEETING 2*, at 2 (2004). [http://www.povertyenvironment.net/files/Minutes-6th\\_Meeting\\_PEP.pdf](http://www.povertyenvironment.net/files/Minutes-6th_Meeting_PEP.pdf) Viewed 1/6/07.

<sup>21</sup> John G. Robinson, *Conservation Biology and Real-World Conservation*, 20 *CONS. BIOL.* 658, 658 (2006).

<sup>22</sup> Jon M. Hutton, William M. Adams, & James C. Muromdezi, *Back to the Barriers? Changing Narratives in Biodiversity Conservation*, 2 *FORUM FOR DEV. STUD.* 341, 365 (2005).



contribute to both livelihood generation and conservation.<sup>23</sup> But historically, much trade in wild species has been unsustainable leading over 30 years ago to the establishment of the Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES) designed to create a structure in which trade will be non-detrimental to species survival.<sup>24</sup> Yet, despite these efforts, delivering the goal of sustainable use remains elusive in many cases. The theory of using resources in a biologically sustainable manner to generate incentives to promote conservation is beguilingly simple and intuitive yet the reality is harder to pin down.<sup>25</sup> According to a recent document for the CBD, there are still difficulties at the fundamental level with definitions of sustainable use, making sustainable management challenging.<sup>26</sup> Given these challenges, there is all the more reason for CITES and CBD to tackle the issue of sustainable use together.

## **1.2. The Legal Remit of CITES and CBD**

### *1.2.1 The Legal Remit of CITES*

First, the strict legal remits of both conventions requires examination. In order to set the scene a legal positivist perspective is deployed with full appreciation that, in the international context, politics sometimes requires flexibility beyond the black letter of the law.

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<sup>23</sup> Koen Kusters *et al.*, *Balancing Development and Conservation? An Assessment of Livelihood and Environmental Outcomes of Nontimber Forest Product Trade in Asia, Africa, and Latin America*, 11 *ECOL. & SOCIETY* 20, (2006).

<sup>24</sup> LYSTER, *supra* note 10, at 239.

<sup>25</sup> CURTIS H. FREESE (ED), *HARVESTING WILD SPECIES, IMPLICATIONS FOR BIODIVERSITY CONSERVATION* 3 (1998); JOHN G. ROBINSON & ELIZABETH L. BENNETT, *HUNTING FOR SUSTAINABILITY IN TROPICAL FORESTS* 14 (2000).

CITES precisely defines its remit in Article II. Thus it regulates cross-border trade in species (that are affected or that may be affected by trade) and that are either: threatened with extinction, which may become so threatened without regulation or which must be regulated in order that trade in them is brought under effective control. The categorisation of species, and the level of protection to be extended to them, is effected through appendices to the convention. The language of the text is prohibitive rather than permissive thus Article II.4 states:

*The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.*

Moreover, the convention is predominantly concerned with intervention mechanisms to control trade rather than positive measures to facilitate trade. The prime obligation in Article VIII (*Measures to Be Taken by the Parties*) is for States to enforce prohibition of trade in designated species. In addition, if states are to disagree with the requirements of CITES they can only do this when their measures are stricter than the measures adopted by the convention (Article XIV *Effect on Domestic Legislation and International Conventions*); there is no room to substitute more lenient regimes based on sustainable harvesting of threatened wild species except through reservations. The convention's focus is therefore on an international policing regime to manage trade in species at risk and enforcement of prohibitions and other restrictions on trade.

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<sup>26</sup> CBD, Synthesis of Information Contained in Third National Reports. UNEP/CBD/COP/8/23 (2006) at 6.

The Vienna Convention on the Law of Treaties emphasises the preamble of a convention as a context for interpretation.<sup>27</sup> However, even this part of the text of CITES does not expressly deal with positive schemes to facilitate the sustainable use of wild species and it does not refer to *sustainable use* directly. The concept existed at that time and it was certainly open to the convention's designers to adopt it within the text. RAMSAR signed two years earlier, by example, prescribed a concept of *wise use* which has since been interpreted as synonymous with sustainable use.<sup>28</sup> The only straw to grasp is that the preamble emphasises the need to protect wild fauna and flora *and the natural systems of the Earth* in the express context of inter- and intra-generational equity. But even this component of the concept of sustainable use is in the context of emphasis on *protection* from over-exploitation through international trade rather than utilisation.

The evolution and development of CITES has taken place with much ingenuity, without a large-scale re-drafting of the text, to build a working regime that irons out inherent difficulties and that brings CITES into line with present, global aspirations.

### 1.2.2 *The Legal Remit of CBD*

The CBD is radically different to all the preceding conventions in the field of conservation and it certainly bears little textual, conceptual or structural resemblance to CITES. By the ordinary and natural meaning of its remit, use of natural resources is

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<sup>27</sup> Done at Vienna on 23 May 1969. See Article 31.2.

<sup>28</sup> Article 3.1 RAMSAR- defined in 1987 by the parties as: *the sustainable utilization of wetland resources in such a way as to benefit the human community while maintaining their potential to meet the needs and aspirations of future generations.*

positively promoted (albeit restricted within the ambit of inter- and intra-generational equity).<sup>29</sup> Its extensive remit includes:

*the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources (Article 1 CBD)*

With such a wide agenda, rigorously negotiated and finally signed within the pomp and circumstances of the Rio Earth Summit, it is hardly surprising that the type of focused, prescriptive approach epitomised by CITES is not a feature of the convention.

The CBD does not deal comprehensively with all conservation mechanisms but instead deals with the problem holistically emphasising in situ mechanisms all placed squarely within the concept of sustainable use and the political paradigm emphasising development. Whereas conventions taking a protected area approach find immediate synergies (Article 8 CBD), neither national nor international trade are mentioned expressly in the text even though the issue of international trade is a key component of the challenges faced by biological diversity. However, general, indirectly relevant provisions are included in the text, such as exhortations for states to: cooperate to conserve and sustainably use biodiversity (Article 5); identify the need for urgent conservation measures (Article 7.b) and *adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity*

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<sup>29</sup> The CBD acknowledges that humanity needs to *use* natural resources. The preamble to the CBD states that....*sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of .....genetic resources .... are essential.*

(Article 10.b). Some of these provisions would be a sound basis for a departure from the prescriptive rather than pro-active approach, if they were to be present in appropriate form in CITES. One provision in the CBD in particular emphasizes the carrot rather than the stick approach where states are required to:

*as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity* (Article 11 (Incentive Measures)).

In the proceedings leading up to the negotiation of the CBD the process was slowed down by a number of prime concerns including a fear from some quarters that conventions such as CITES would be negatively affected. Perhaps this explains why this opportunity for cohesion was lost. The CBD does not expressly link into other conservation conventions except indirectly to the relevant provisions of UNCLOS and other conventions dealing with marine conservation (Article 22.2). Moreover the text expressly states that its provisions:

*...shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.* (Article 22.1)

Beyond complex arguments revolving around the supervening provisions clause in the Vienna Convention on the Law of Treaties<sup>30</sup> there may be a role for this Article in

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<sup>30</sup> *Supra* note 27 See Article 30 (Application of successive treaties relating to the same subject matter).



impacted by detrimentally international trade. Furthermore, the CITES goal has now been endorsed as target 4.3 of the CBD.<sup>33</sup>

The membership of the two conventions is similar, but with a few notable exceptions. As of May 2007, the CBD has the larger membership with 190 Parties and seven countries non-Party, compared with a CITES membership of 171 Parties. Thus, the majority of countries are signatories to both Conventions and only, Andorra, the Holy See, and Iraq have not acceded to either convention. Notably, the CITES Parties of Brunei Darussalam, Somalia, and the United States are not signatories to CBD.

A comparison of the approach of the two conventions emphasises that the newer of the two conventions, the CBD has expressly adopted the ecosystem approach to management and also recognises the importance of socio-economic considerations in its approach.<sup>34</sup> All CBD decisions are currently adopted by consensus at biennial meetings of the Conferences of Parties on recommendations from the Scientific and Technical Body (SBSTTA). To date the majority of decisions have dealt with establishing national frameworks and provided an opportunity to collect and analyse data on the existing state of biodiversity, develop indicators which will assist in measuring progress in future; and plan what action might be taken in future. In effect, these early stages of CBD implementation have seen the development of an environmental audit and action plan.<sup>35</sup> Importantly, the Convention does have a financial mechanism, the Global Environment Facility, which through the

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<sup>33</sup> CBD, Decision VII/ 30 – Strategic Plan: Future Evaluation of Progress UNEP/CBD/COP/7/21 (2004) at 385.

<sup>34</sup> CBD, Decision V 6: Ecosystem Approach UNEP/CBD/COP/5/23 (2000) at 103.

<sup>35</sup> see CBD National Reports 1-3. <https://www.cbd.int/reports/list.aspx?type=all&alpha=T> viewed 1/6/2007.

implementing agencies assists developing country Parties to meet the aims of the Convention. The Convention works only by encouragement, rather than a sanctions mechanism for non-progress. In addition there is the opportunity to negotiate protocols to the Convention for management of more specific issues, for example the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

In terms of approach, CITES is species focused, listing species for which trade regulation is necessary in the Appendices to the Convention.<sup>36</sup> As one of the older MEAs, CITES is characterized as adopting a largely command and control approach in that, at least in the past, relied on regulation to achieve its objectives, rather than using market-driven approaches.<sup>37</sup> Even though CITES refers to the role of the species in its ecosystem, it is not generally viewed as taking an ecosystem approach to management. Nor have socio-economic factors been a high priority, historically.<sup>38</sup> CITES decisions, when not adopted by consensus, require a two thirds majority of Parties voting to adopt amendments to the Appendices; Resolutions and Decisions. Furthermore in cases of non-compliance the Standing Committee of the Convention can encourage Parties to act multilaterally and refuse imports.<sup>39</sup> External oversight of progress within the Convention is provided by the COP review of various reports. Currently, external influence over national decision-making is possible through mechanisms such as the Review of Significant Trade (Appendix II listed species), the National Legislation project and Secretariat Missions on specific issues (occasionally Appendix I listed species) that in turn advise the Standing Committee who may then

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<sup>36</sup> WIJNSTEKERS, *supra* note 32 iper://E-volution.aeh|5 viewed 1/6/2007.

<sup>37</sup> *Economic Incentives and Trade Policy* CITES CoP12 Doc 18 (2002) at 1.

<sup>38</sup> JON M. HUTTON & BARNABUS DICKSON, *ENDANGERED SPECIES, THREATENED CONVENTION. THE PAST, PRESENT AND FUTURE OF CITES* (eds), xvi (2000).



make recommendations to individual parties. Unlike the CBD and other recently negotiated conventions, CITES has no financial mechanism to assist Parties in implementing aspects of the Convention.

### **3. DEFINING SUSTAINABLE USE in CBD and CITES TERMINOLOGY**

The concept of sustainable use underpins the operation of the CBD. As has been stated it is not included in the CITES Convention text as an express, supervening principle. However, apart from the reference to inter- and intra-generational equity in the preamble, a comparison of the CITES non-detriment finding with the definition of sustainable use in the CBD indicates differences in the detail which translate into similarities in intent.<sup>40</sup> The CBD definition encompasses all components of biodiversity, precludes long-term population declines and builds in the needs of future generations. In contrast CITES does not have a definition of sustainable use *per se* but requires that exports will not be detrimental to the survival of the species or to its role in the ecosystem. By components of biodiversity, the CBD refers to more recent definitions that encompass genes, populations and species as well as ecosystems. Although CITES does not articulate these components of biodiversity, it is evident that to ensure the survival of species, CITES Parties must also be confident that trade will not lead to detrimental effects on the components of biodiversity necessary to

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<sup>39</sup> ROBERT W. G. JENKINS, *The Significant Trade Process: Making Appendix II Work*, in ENDANGERED SPECIES, THREATENED CONVENTION. THE PAST, PRESENT AND FUTURE OF CITES 47, 53 (JON M. HUTTON & BARNABUS DICKSON eds., 2000).

<sup>40</sup> CITES and CBD concepts of sustainability: the CBD defines sustainable use as “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining the potential to meet the needs and aspirations of present and future generations” (CBD Article 2). CITES Non-detriment findings require that, exports of Appendix II specimens must be deemed to be non-detrimental to the survival of the species (CITES Art IV paragraph 2); and exports must be monitored so as to ensure the role of the species in the ecosystem (CITES Art IV paragraph 3).

ensure species survival and ability to adapt to any future environmental change. The CBD emphasis on the needs and aspirations of present and future generations, is lacking in the text of the CITES non-detriment finding, but the reference to generational equity in the CITES preamble ensures that the concept is common to both conventions.

The term sustainable use, although widely used, is often misunderstood, according to recent CBD documents.<sup>41</sup> Some of the confusion arises from the fact that although use can be shown to be unsustainable, it is impossible to prove conclusively that a particular use is sustainable as we cannot reliably predict the future.<sup>42</sup> In addition, the term sustainable use is often used to capture two separate concepts.<sup>43</sup> On the one hand it can be used to refer to biological sustainability as in the CBD definition. On the other hand, sustainable use is also used to capture the notion of a conservation strategy in which use of natural resources provides incentives to conserve specific resources – this is more accurately referred to as incentive driven conservation.

### **3.1. Comparison of CITES and CBD Guidance on Sustainable Use**

Guidance and recommendations on implementing the two conventions are provided to the parties through CBD Decisions and CITES Resolutions, (with twice as many CBD Decisions in force as CITES Resolutions). However, guidance provided to Parties by the CBD on aspects of sustainable use covers a broader range of issues than that

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<sup>41</sup> CBD *supra* note 26, at 6.

<sup>42</sup> ROBINSON & BENNETT, *supra* note 25, at 14.

<sup>43</sup> John M. Hutton, & Nigel Leader-Williams, N. 2003. *Sustainable Use and Incentive-driven Conservation: realigning human and conservation interests*, 37 ORYX 215 (2003).

provided under CITES.<sup>44</sup> CBD guidance endorses the Ecosystem Approach, in which people are recognized to be an integral part of many ecosystems. The Ecosystem Approach recommends: that benefit-sharing be enhanced; that management actions are carried out at the appropriate scale, with decentralization to the lowest level; and that inter-sectoral co-operation is ensured.<sup>45</sup> In practice, the ecosystem approach is typified by its involvement of and recognition of human activity; in contrast to CITES' perceived focus on wild species conservation.<sup>46</sup> In addition, the CBD has recently adopted The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity which provide more specific guidance to assist Parties.<sup>47</sup> The fourteen principles themselves provide a framework for advising governments, indigenous and local communities, resource managers, the private sectors and other stakeholders about how they can ensure that their uses of biodiversity components will not lead to the long-term decline of biological diversity

CITES guidance on the making of non-detriment findings is limited, and largely focuses on the biological aspects of those determinations. Resolution Conf. 10.3 on the Designation and Role of Scientific Authorities contains a paragraph that recommends *inter alia* that findings are based on scientific review of information on population status, distribution, population trends, harvest and trade. While the

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<sup>44</sup> Guidance on sustainable use from CBD includes: The Ecosystem Approach - 12 principles (Decision V-6); Addis Ababa Guidelines and Principles of Sustainable Use - 14 principles within ecosystem approach (Decision VII-12); and requirements under the Programmes of Work to collect and analyse case studies to draw lessons on sustainable use. Guidance relevant to sustainable use for CITES parties includes resolutions on: The Role of Scientific Authorities (Res. Conf. 10.3); Recognition of the Benefits of Trade (Res. Conf. 8.3 (Rev. CoP13); National Reporting Guidelines (Res. Conf. 11.17 Rev. COP 13); as well as requirements for: Artificial propagation (Res. Conf. 9.19 (Rev. CoP13) & 11.11 (Rev. CoP13)), Captive breeding (Res. Conf. 12.10 (Rev. CoP13)), and Ranching (Res. Conf. 11.16).

<sup>45</sup> CBD *supra* note 34, at 104.

<sup>46</sup> Pers obs, (2004).

<sup>47</sup> CBD Decision VII-12. *Sustainable Use: The Addis Ababa Principles and guidelines for the Sustainable Use of Biodiversity* (CBD Guidelines) UNEP/CBD/COP/7/21 (2004) at 177.

reporting requirements (Resolution Conf. 11.17 Rev. COP13) require trade monitoring but do not overtly link this with monitoring trends in harvest and offtake. More recently, a checklist has been developed as a means of highlighting information that might be reviewed when assessing the likely impact of exports.<sup>48</sup> In addition, Parties agreed at COP 14 to convene a workshop and further develop guidance on assessing the likely sustainability or otherwise of exports for trade. Guidance on the use of incentive measures and other socio-economic considerations is promoted through Resolution Conf. 8.3 on Recognition of the Benefits of Trade which indicates that trade can be beneficial to conservation.

A comparison of the CBD guidance (Principles of the Ecosystem approach and the Addis Ababa Principles of Sustainable Use), with the topics covered in the CITES non-detriment finding checklist indicates that the CITES guidance falls within that of the CBD.<sup>49</sup> The majority of topics covered by the CITES non-detriment finding checklist fall neatly within the adaptive management section of the Sustainable Use Principles and the requirement to balance use and conservation as espoused under the ecosystem approach. The main difference between the CBD and CITES guidance lies in the treatment of socio-economic factors which have been somewhat controversial in the CITES forum. At the daily decision-making level, and at recent discussions of the Animals Committee and the COP, socio-economic factors do not appear to be primary concerns. Indeed, the complex issues of benefit sharing and use of incentives to promote conservation are thought by some CITES Parties to be more appropriate for discussion in the CBD forum. The non-detriment finding checklist includes

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<sup>48</sup> ALISON M. ROSSER & MANDY HAYWOOD (COMPILERS). GUIDANCE FOR CITES SCIENTIFIC AUTHORITIES: CHECKLIST TO ASSIST IN MAKING NON-DETRIMENT FINDINGS FOR APPENDIX II EXPORTS (2002).

reference to tenure and socio-economic issues – but largely as an indicator of likelihood for sustainability – on the basis that where stakeholders are involved in management decisions then use is likely to be more sustainable. At COP13 Parties recognized the need to discuss how livelihood concerns can be brought into CITES but rather than adopting the Addis Ababa Principles per se have noted that some of the principles may be useful.<sup>50</sup>

## **3.2 Encouraging CBD and CITES Progress Towards Sustainable Use**

As a framework convention, CBD aims to encourage promotion of sustainable use through development of indicators and national reporting. In contrast CITES has developed several independent review processes that aim to support parties in their implementation of the convention. An examination of the various reporting and review mechanisms will highlight the importance of collaborative action in the work of the two conventions at the national level.

### **3.2.1 Reporting**

Globally, countries are now striving towards the MDG and the CBD 2010 biodiversity goal and progress should eventually be measurable through comparisons of CBD biannual reports. However, national reporting has proved somewhat challenging, three sets of CBD national reports have been required since 1992, but submission rates have been fairly low (Table 1). The most recent set of reports were originally due to be

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<sup>49</sup> *Addis Ababa Principles and Guidelines for Sustainable Use of Biodiversity* CITES COP14 Doc.13.1 (2007) at 2.

<sup>50</sup>, *id* at 2.

submitted by May 2005 but by November 2005 only 45 had been received.

Difficulties encountered by Parties in submitting reports in a timely fashion include a lack of financial and human resources.<sup>51</sup> In addition, final reporting formats are regularly revised and the number of programmes and themes that require reporting is large. Demonstrable progress towards the Targets, will require improvements in submission rates that in turn will require appropriate and pragmatic reporting schedules and assistance.

### 3.2.2 *Indicators and Reviews*

The CBD has been developing a set of indicators to assess progress towards the 2010 biodiversity target, but has yet to finalize those for measuring sustainable use. The shared CBD Target 4.3 (that no species will be endangered by international trade) relates specifically to international trade and arguably largely to CITES-listed species. However, it has already been conceded that measurements of progress towards this target will not be simple to develop.<sup>52</sup> A review of changes in the status of CITES-listed species over time (other than those listed for look alike reasons) might provide a starting point, but will be subject to a variety of influences.

In contrast to the CBD focus on indicators, CITES parties have reviewed progress towards non-detrimental trade through the CITES *Significant Trade Review*. In this process the Animals and Plants Committees regularly review trade levels in Appendix II listed species and may recommend various management options to individual range

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<sup>51</sup> CBD, *supra* note 26, at 6.

<sup>52</sup> UNEP-WCMC & IUCN, *Report of the Sustainable Use Indicators Workshop, 16-17 January 2006*. [http://www.iucn.org/themes/ssc/susg/docs/Report\\_SU%20Indicators\\_Jan2006.pdf](http://www.iucn.org/themes/ssc/susg/docs/Report_SU%20Indicators_Jan2006.pdf) viewed 1/6/07, 1,1.

States to improve the basis on which non-detriment findings are made (See CITES Resolution Conf. 12.8). In the past, countries having difficulty in implementing the non-detriment provisions have repeatedly been the focus of different species reviews,<sup>53</sup> more recently a country–focus has been developed.

### 3.2.3 *Priority Issues for Collaborative Action*

Given the overlap in aims and approach to sustainable use of the two conventions, collaborative implementation could help to reduce the workload and improve delivery on targets. By comparing the priorities of the two Conventions, it may be possible to identify areas in which collaboration could produce visible change. The ecosystem approach espoused by the CBD is challenging to implement as we are far from fully understanding ecosystem functioning and the CITES species focus may prove helpful as the role of the flagship species in promoting conservation of ecosystems has received some success.<sup>54</sup>

At the geographic level, both Conventions have prioritized subsets of countries for assistance, CBD Parties have provisions to assist developing countries and CITES has already identified a group of mega-diverse exporting countries that would benefit from capacity building assistance. At the thematic level, sustainable use is a central feature of each of the CBD thematic work programmes many of which encompass CITES listed species (marine and coastal biodiversity, forest biodiversity, island biodiversity, the biodiversity of inland waters, dry and sub-humid lands and mountain

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<sup>53</sup> IUCN, TRADE MEASURES IN MULTILATERAL ENVIRONMENTAL AGREEMENTS, submitted to The Economics, Trade and Environment Unit, UNEP, 1, 70 (2000).

<sup>54</sup> David S. Wilcove & Robert B. Blair, *The Ecosystem Management Bandwagon*, 10 TRENDS ECOL. EVOL. 345, 345 (1995).

biodiversity) (See Table 2). Each of these thematic work programmes also has a number of different activities, which involve various aspects related to sustainable use of resources, such as: assessments of the state of biodiversity; development of indicators; incorporation of sustainable use considerations into national biodiversity strategies and action plans; and compilation and analysis of case studies to produce examples of best practice. Many of these CBD activities are compatible with the work of CITES national Scientific Authorities, for example, the making of non-detriment findings, requires that some systems of national species management and harvest assessment must be in place. Such species management requires assurances that conservation measures are available and these may include protected area programmes, programmes of community based management, or incentive driven conservation. In addition, a number of the cross-cutting issues that are embedded in the thematic programmes are relevant to the management of international trade (e.g. biosafety; access to genetic resources; traditional knowledge, innovations and practices; intellectual property rights; indicators; taxonomy; public education and awareness; incentives; and alien species). Clearly programmes that fall under the CBD express remit do contribute to a country's ability to make robust non-detriment findings for CITES exports. Consequently, developing an integrated approach to meeting convention requirements in relation to sustainable use at the national level makes sense.

At the taxonomic level, specific CITES Resolutions call on Parties to take action for certain taxa. So, for Appendix I-listed species there are resolutions that deal with combating illegal trade in Tigers, Rhinos and Elephants and for Appendix II-listed taxa there are resolutions on the conservation and trade of: Sturgeon, Saiga, Asian



Freshwater Turtles and Tortoises, Sharks, Musk deer, and Tibetan Antelope. Many of these species can be viewed as flagship species in that, ecosystem-based measures for *in situ* conservation will benefit many other species. Meanwhile, some of the activities recommended in the CITES Resolutions such as action planning, national management for sustainable use and incentive led conservation, might equally be viewed as activities to be carried out within the CBD programmes of work.

Consequently, these taxa that have already been highlighted by the international community, might provide a focus for CITES and CBD to collaborate and stimulate both national and international activities to deliver sustainable management. In turn, such collaborative cross-cutting projects developed by national CBD and CITES authorities could be eligible for support by the Global Environment Facility.

Synergy between CITES and CBD should be guaranteed, in theory, by communication within Parties at the national level but, in reality, coherent government is often a challenge. Environmental issues are generally divided between departments of Agriculture, Forestry, Fisheries, Water and Wildlife which may in turn report to separate Ministries. The CITES Authorities generally fall within wildlife departments that are concerned with conservation whilst other departments, such as Forestry and Fisheries were originally mandated to manage extractive commercial use of natural resources. Thus the approaches and concerns of separate departments may be somewhat different, highlighting an important role for the national CBD Focal Points in bringing the concerns of different departments under one unifying Convention.

#### **4. CONCLUSIONS**

Sustainable Use, as a concept underpins both CBD and CITES. Although the approaches of the Conventions differ somewhat in line with their historic precedents and their respective structural approaches, their overall aims are compatible in many respects. CBD as the newer convention is still in the process of establishing baselines, meanwhile CITES has developed into an active and effective conservation tool. CITES' aims and approach can be seen as providing an effective means to implement certain aspects of the CBD mandate, whilst certain activities that help to ensure that trade will be non-detrimental fall more easily under the CBD. By comparing priorities of the two Conventions, Parties may find a means to develop specific projects that will address the concerns of both Conventions and contribute directly to achieving the 2010 and CITES targets.

The CBD adoption of the Addis Ababa Principles of Sustainable Use and the emphasis by CITES on making robust non-detriment findings provide a focus for developing synergistic activity. Collaborative work on sustainable use at the national level could encompass, capacity building, development of best practice, development of wildlife trade policy, investigation of incentive measures; as well as taxa focused projects that combine national management, monitoring and enforcement with international oversight of trade. In turn, such collaborative work on sustainable use linking implementation of the two Conventions may contribute to both conservation and development.

**Table 1 A comparison of the submission rates of the first three CBD National Reports as reviewed in the synthesis reports prepared by the CBD Secretariat.**

<b>National Report</b>	<b>Due by</b>	<b>Secretariat Synthesis report</b>	<b>Synthesis/Submission rate</b>
1 <sup>st</sup>	May 1998		
		CoP 4 (May98)	86/170 = 51%
2nd	May 2001		
		CoP 6 (April 2002)	62/180 = 34%
		CoP 7 (Feb 2004)	104/187 = 56%
3rd	May 2005		
		CoP 8 (March 2006)	45/188 =24%

Source: CBD Synthesis reports on national reporting:  
 UNEP/CBD/COP/4/11/Rev.1, 30 April 1998.  
 UNEP/CBD/COP/6/INF/10, 5 March 2002  
 UNEP/CBD/COP/7/INF/2, 10 December 2003  
 UNEP/CBD/COP/8/23\*, 19 January 2006

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\* Reposted for technical reasons.

**Table 2. A comparison of priorities for CBD and CITES using CBD thematic areas and CITES species resolutions as indicators of priority.**

<b>CBD thematic areas</b>	<b>CITES species resolutions</b>
Forests	Asian Big Cats; Some Asian Rhino; Bushmeat species, Elephants
Marine & Coastal	Sharks, (Sea Cucumbers)
Inland waterways	Sturgeon; Asian Freshwater Turtles & Tortoises
Mountains	Musk deer; Tibetan Antelope; Asian Big Cats
Dry & sub-humid lands	Saiga; African Rhinos, Elephants
Island biodiversity	
Agricultural biodiversity	

Source: CBD Handbook (see <http://www.cbd.int/handbook/default.shtml>) and CITES resolutions (see <http://www.cites.org/eng/res/index.shtml>).