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Protection of Endangered Gorillas and Chimpanzees in International Trade: Can CITES Help?

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Member of the Class of 1991

I. INTRODUCTION

At least forty thousand primates are traded internationally every year.¹ Of these, at least thirteen thousand are sold illegally.² Smugglers are currently trading live, endangered primates throughout the world,³ and statistics indicate that unless this trade is stopped, certain primates, such as the gorilla and wild chimpanzee, will shortly be extinct.⁴

Over the last twenty years, commerce practices have caused between forty and ninety thousand needless chimpanzee deaths.⁵ The effect of these deaths on the viability of the species is profound. Field surveys estimate the current world chimpanzee population at less than 250,000 individuals.⁶ In Western Africa, where over one million chimpanzees

* B.A., University of California, Berkeley, 1987. Special thanks is extended to Dr. Geza Teleki for his valuable assistance and commentary.

1. *World Trade in Wildlife*, TRAFFIC (U.S.A.), Oct. 1990, at 1. All the numerical figures presented in this paper represent only those animals traded with documentation. Large numbers of animals move without documentation, so these numbers are rough minimal estimates at best. Many more animals have actually been traded than can be represented by the statistics in this Note. Telephone interview with Geza Teleki, Chairman of the Committee for the Conservation and Care of Chimpanzees [CCCC] (Feb. 13, 1991).

2. This figure is consistent with and reflective of the fact that about one-third of all U.S. imports are illegal. Fuller, Hemley & Fitzgerald, *Wildlife Trade Law Implementation in Developing Countries: The Experience in Latin America*, 5 B.U. INT'L L.J. 287, 290 (1987) (citing Division of Law Enforcement, U.S. Fish & Wildlife Service, U.S. Dep't of the Interior, *Wildlife Import Statistics*). Worldwide trade figures are likely to be similar.

3. See *infra* text accompanying notes 107-09, 120, 123, 130 for examples of recent smuggling activity.

4. *Primate Trade*, TRAFFIC (U.S.A.), Mar. 1989, at 1 [hereinafter *Primate Trade*].

5. CCCC, CHIMPANZEE SURVIVAL: A CRISIS FOR GLOBAL CONCERN 1 (1990) [hereinafter CCCC, CHIMPANZEE SURVIVAL]. Forty to ninety thousand chimpanzees have not actually been taken from Africa. Rather, this figure represents the total extermination rate accompanying trade, and includes the mothers who have been killed but were never intended to be, and never have been, traded.

6. *Id.*

used to live, now a mere 10,000 survive.⁷ There are only 300 to 350 wild mountain gorillas left in the entire world,⁸ one-third living in the impenetrable forest in Uganda, and the other two-thirds living in the Virunga Volcanoes near the borders of Uganda, Rwanda, and Zaire.⁹ There are fewer than 100,000 lowland gorillas, starting in the far east of Nigeria, and living in Cameroon, Gabon, Zaire, Equatorial Guinea, and the Congo Republic.¹⁰

Although the chimpanzee and the gorilla are the two animals most closely related to humans on this planet, we are pushing them towards extinction for commercial reasons. Genetically, chimpanzees have a ninety-nine percent overlap with humans; they also have similar psychological and behavioral patterns.¹¹ For instance, they can learn, and can communicate with humans and other chimpanzees through sign language.¹² Tragically, these similarities give rise to a high demand for these live primates, and consequently, zoos pay large sums of money for live gorillas, and biomedical research companies pay large sums for chimpanzees.¹³ These monetary incentives provide smugglers ample cause to pursue the trading of these species.¹⁴

However, the methods of trading chimpanzees and gorillas have drastically depleted the populations of both species, and are economically

7. *Id.*

8. Butynski, *The Impenetrable Forest-Refuge for the Mountain Gorilla*, INTERNATIONAL PRIMATE PROTECTION LEAGUE [IPPL] NEWSL., Nov. 1987, at 9.

9. There are other gorillas in captivity in zoos across the world. *Id.*

10. Telephone interview with Shirley McGreal, Chairwoman of IPPL (Feb. 19, 1991).

11. CCCC, CHIMPANZEE SURVIVAL, *supra* note 5, at 2.

12. *Id.* Though this Note focuses on extinction, and not welfare, it is important to note that chimpanzees and gorillas can also suffer as can humans, and so should be treated with compassion. Scientists have stated that there are "not one but four species of the genus *Homo* exist[ing] on earth today—the gorilla, *Homo gorilla*; the two chimpanzees, *Homo troglodytes* and *Homo paniscus*; and the human, *Homo sapiens*." *People for the Ethical Treatment of Animals*, PETA NEWS, Spring 1987, at 1. Jeremy Bentham wrote that "[i]t may one day come to be recognized that the number of the legs, [or] the villosity of the skin . . . are reasons . . . insufficient for abandoning a sensitive being. . . . The question is not, Can they talk? but, Can they suffer?" *Id.* at 4 (emphasis in original). It is important to prevent the unwarranted mistreatment of these highly advanced animals who indeed do have a tremendous capacity for suffering. Unfortunately, there is not room to do this subject justice in this Note.

13. See *infra* text accompanying notes 25-26 for sample prices paid for chimpanzees and gorillas. Chimpanzees and gorillas are traded for different purposes: biomedical research companies are largely responsible for the chimpanzee trade, while zoos are responsible for gorilla trading. Most zoos trading gorillas are found in the developing Third World countries, though certainly not all. Japan, Spain, and Eastern Europe also have imported gorillas into their zoos. Telephone interview with Shirley McGreal, Chairwoman of IPPL (Feb. 19, 1991).

14. See *Primate Trade*, *supra* note 4, at 1.

inefficient. Normally, ten chimpanzees die before one is delivered.¹⁵ Smugglers typically target nursing infants one to two years old for trade.¹⁶ To retrieve the infant, poachers will shoot the mother and seize the child.¹⁷ Since chimpanzees move together, four to five adult chimpanzees are often murdered to capture a single offspring.¹⁸

Furthermore, at least ninety percent of captured animals die en route to their trade destination because of abhorrent packing conditions.¹⁹ They suffer lingering and painful deaths from freezing, overheating, dehydration, starvation, or suffocation because they are locked in small crates with their feet and hands bound together during transportation on airplanes or ships.²⁰

Moreover, the new double incentive to receive both money and food from a chimpanzee increases population depletion. In Africa, primate species have traditionally been hunted for food. Now, the monetary incentive for poaching greatly increases the likelihood of an endangered primate's death.²¹ Hunters can receive twice the profit they used to get from killing primates solely for food;²² now poachers can shoot mothers for food and also sell the mothers' infants to dealers.²³ As the Committee for the Conservation and Care of Chimpanzees has explained, "these cash incentives . . . increase decimation of exactly that segment of chimpanzee society which is most essential to survival."²⁴

This accelerated population depletion is occurring because individual primate dealers profit so greatly from trading chimpanzees and gorillas. A primate dealer will spend a maximum of 1000 U.S. dollars delivering a live chimpanzee or gorilla from Africa to another country.²⁵ The dealer will be paid 20,000 to 50,000 dollars per chimpanzee, and will receive much more for a gorilla.²⁶ Thus, a dealer will earn at least 24,000

15. CCCC, STATUS REPORT: THE CHIMPANZEE TRADE 1 (1990) [hereinafter CCCC, CHIMPANZEE TRADE].

16. *Id.*

17. *Id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. CCCC, CURRENT THREATS TO THE SURVIVAL OF CHIMPANZEES IN EQUATORIAL AFRICA 29 (1987) [hereinafter CCCC, CURRENT THREATS].

22. *Id.*

23. *Id.*

24. *Id.*

25. The dealer will spend \$100.00-\$400.00 acquiring the animal, and will spend a few hundred dollars shipping the animal overseas. Telephone interview with Geza Teleki, Chairman of CCCC (Nov. 29, 1990).

26. *Id.* For example, the Guadalajara Zoo in Mexico paid \$130,000.00 for two wild-caught gorillas exported from Equatorial Guinea in June 1989. *Update on Mexican Gorillas*,

dollars per primate. This money will generally be tax exempt because payments are made to Swiss banks.²⁷ Stringent imposition of trade restrictions will help curb the double incentive to poach because dealers will be less able to successfully complete transactions, will thus derive less profit from smuggling, and will then be less inclined to offer incentive to poachers to capture wild primates. The World Health Organization (WHO) and the Ecosystem Conservation Group (ECG)²⁸ issued the following policy statement in 1981 in favor of strictly enforcing trade restrictions for endangered primates:

The WHO strongly recommends that (1) endangered, vulnerable and rare species be considered for use in biomedical research projects only if they are obtained from existing self-sustaining captive breeding colonies. . . . (2) species categorized as status unknown or indeterminate also not be considered for use in such research projects until adequate data indicate that they are not endangered. . . .²⁹

This statement is significant because the WHO, as the representative of worldwide sentiment, thereby implies that the preservation of chimpanzees and gorillas outweighs the importance of research using wild primates. The threat of imminent extinction of the wild chimpanzee and gorilla coupled with economically inefficient trade results, further supports the need to protect these animals.

Protection of endangered species is a relatively new concept. Prior to the 1970s, the vast majority of international trade in flora and fauna went unregulated, since the international community had not yet unified in an attempt to control trade in this area.³⁰ Any domestically enacted regulations of international wildlife trade had been ineffective on an international scale,³¹ and consequently the international community unified to create the Convention on International Trade in Endangered Species (CITES)³² in 1973. CITES was created recognizing that wild

IPPL NEWSL., Dec. 1989, at 9. The Chiba City Municipal Zoo in Japan paid \$575,000.00 for two poached gorillas imported from Spain in 1987. *Smuggled Gorillas Sold for World Record Price*, IPPL NEWSL., Apr. 1990, at 14.

27. Telephone interview with Geza Teleki, Chairman of CCCC (Nov. 29, 1990).

28. The ECG includes UNESCO, UNEP, FAO, and IUCN.

29. WORLD HEALTH ORGANIZATION, POLICY STATEMENT ON USE OF PRIMATES FOR BIOMEDICAL PURPOSES (1981).

30. Telephone interview with Geza Teleki, Chairman of CCCC (Feb. 13, 1991). See also S. Lyster, INTERNATIONAL WILDLIFE LAW 239-40 (1985).

31. See Note, *International Trade in Endangered Species Under C.I.T.E.S.: Direct Listing vs. Reverse Listing*, 15 CORNELL INT'L L.J. 107, 108 (1982).

32. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243 [hereinafter CITES].

fauna must be protected "for this and the generations to come."³³

To promote protection, CITES regulates trade at varying levels of stringency: the treaty heavily regulates international commercial trade in species threatened with extinction, but more leniently regulates trade in species whose survival is not yet, but may become, threatened.³⁴ Although CITES has been characterized as one of the most successful treaties for the conservation of wildlife,³⁵ circumvention of the agreement remains a significant problem.

This Note will examine the trade of endangered chimpanzees and gorillas in the context of CITES. It will explore the circumvention of CITES in both member and nonmember countries, and will suggest methods for improving the implementation of the treaty.

II. THE CITES TREATY

A. Treaty Provisions

The CITES treaty classifies species into one of three appendices. This classification determines the extent of the trade restrictions for each species.³⁶

Species classified under Appendix I are those currently threatened with extinction; they receive the most protection CITES affords.³⁷ Appendix I also includes those genera for which distinguishing a rare individual species from other members of the nonthreatened genus is difficult.³⁸ This prevents traders from passing off a rare species as a more common one. Appendix I includes all gorillas (*Gorilla gorilla*) and wild

33. *Id.* Preamble, 27 U.S.T. at 1090, 993 U.N.T.S. at 245.

34. S. Lyster, *supra* note 30, at 240.

35. Heppes & 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) (citing S. Lyster, *supra* note 30, at 240).

36. CITES, *supra* note 32, art. II, 27 U.S.T. at 1092, 993 U.N.T.S. at 245-46.

37. *Id.* art. III, 27 U.S.T. at 1093-95, 993 U.N.T.S. at 246-47. For further information about Appendices I, II, and III, see generally Fuller, Hemley & Fitzgerald, *supra* note 2, at 289; Favre, *Tension Points Within the Language of the CITES Treaty*, 5 B.U. INT'L L.J. 247 (1987) [hereinafter Favre, *Tension Points*]; Heppes & McFadden, *supra* note 35, at 229; Thomssen & Brautigam, *CITES in the European Economic Community: Who Benefits?*, 5 B.U. INT'L L.J. 269 (1987); McFadden, *Asian Compliance with CITES: Problems and Prospects*, 5 B.U. INT'L L.J. 311 (1987); Note, *International Trade in Wildlife: How Effective is the Endangered Species Treaty?*, 15 CAL. WESTERN INT'L L.J. 111, 118 (1985); Kosloff & 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, 330 (1987); D. Favre, *INTERNATIONAL TRADE IN ENDANGERED SPECIES* 31-73, 105-20, 139-47 (1989).

38. S. Lyster, *supra* note 30, at 243.

chimpanzees (*Pan troglodytes*).³⁹

Appendix II of CITES protects species that may become threatened with extinction unless trade is strictly regulated. It extends coverage whenever there exists an "indication" that such a result is possible.⁴⁰ A comprehensive list of Appendix II species was created at CITES' inception. However, the Scientific Authority of each party⁴¹ is responsible for determining when the export of a species should be limited "in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I. . . ."⁴²

Appendix III allows a CITES member to protect any species in danger of extinction in its country, by allowing the member to require a permit for the species' exportation. For example, if Kenya decided that it wanted to protect the zebra, it could place the zebra within Appendix III protection. This would not protect the zebra within Kenya itself, but any other country wishing to import a zebra from Kenya would first need to acquire a CITES export permit from the Management Authority of Kenya. This provision helps countries gain international cooperation to prevent the exploitation of certain species.⁴³

Article VII, section 4 further distinguishes the categorization of animal species. It states that if specimens of Appendix I animals, normally prohibited from commercial trade, are bred in captivity, they are eligible for trade as Appendix II species.⁴⁴ This controversial distinction weakens CITES' effectiveness considerably, as will be discussed further in a later section.

CITES operates on both an international and a domestic level. Internationally, the CITES Secretariat monitors trade reports submitted by each nation. Article XI of CITES requires the parties to meet at least once every two years, unless the Conference decides otherwise, to review past implementation and recommend treaty improvements.⁴⁵

In its domestic administration scheme, CITES requires every party to appoint authorities within the country to monitor imports and ex-

39. CITES, *supra* note 32, app. I.

40. S. Lyster, *supra* note 30, at 244; CITES, *supra* note 32, art. IV, 27 U.S.T. at 1095-97, 993 U.N.T.S. at 247-48.

41. The Scientific Authority is explained *infra* at text accompanying note 46.

42. CITES, *supra* note 32, art. IV, para. 3, 27 U.S.T. at 1095-96, 993 U.N.T.S. at 247.

43. *Id.* art. V, 27 U.S.T. at 1097-99, 993 U.N.T.S. at 248.

44. S. Lyster, *supra* note 30, at 260.

45. See *id.* at 241; CITES, *supra* note 32, art. XI, 27 U.S.T. at 1104-05, 993 U.N.T.S. at 251-52.

ports. Each nation has at least one Management Authority, who grants import and export permits, and one Scientific Authority, who determines if trade is detrimental to the survival of the potentially traded species.⁴⁶

CITES controls international trade through a permit system. Permits are granted by a Management Authority, as designated in article IX of the treaty, and permit awards must strictly comply with the explicit conditions and restrictions on trade contained in the appendices.⁴⁷

Traders of Appendix I species must obtain permits from both the exporting and importing countries. CITES states that an export permit may be granted only when all of the following conditions are met: 1) the Scientific Authority of the exporting nation advises that the export is not detrimental to the survival of the exported species; 2) the Management Authority of the export state is satisfied that the specimen was not obtained in contravention of domestic laws; 3) the Management Authority is satisfied that a living specimen has been prepared sufficiently to minimize the risk of injury or cruel treatment; and 4) the Management Authority is satisfied that the importing nation has granted an import permit.⁴⁸ CITES conditions the granting of import permits for Appendix I species upon satisfaction of all of the following requirements: 1) the importing state's Scientific Authority has advised that the import will not be detrimental to the survival of the species; 2) the Scientific Authority of the importing state is satisfied that the recipient of the living specimen is equipped to properly house the specimen; and 3) the Management Authority of the import state is satisfied the specimen will not be used primarily for commercial purposes.⁴⁹ Although Article I of CITES lists definitions of terms used in the treaty, no definition of the word "commercial" is given. This Note will later examine how the Parties have interpreted "commercial," and how "commercial" should be used within the meaning of the treaty.

Less stringent permit requirements apply to trade involving Appendix II specimens. First, the trader need only secure an export permit from the country of origin; no import permit is necessary. Second, in contrast to Appendix I specimens, Appendix II specimens can be traded for commercial purposes.⁵⁰

To monitor shipments in and out of each nation more effectively, article VIII, section 3 urges each CITES party to designate special ports

46. Kosloff & Trexler, *supra* note 37, at 334.

47. S. Lyster, *supra* note 30, at 240.

48. CITES, *supra* note 32, art. III, para. 2(d), 27 U.S.T. at 1093, 993 U.N.T.S. at 246.

49. *Id.* art. III, para. 3(c), 27 U.S.T. at 1094, 993 U.N.T.S. at 246.

50. *See id.* art. IV, para. 2, 27 U.S.T. at 1095, 993 U.N.T.S. at 247.

of exit and entry for all exports and imports of wildlife. Thus far, very few parties have exercised this suggestion, and allow trade through all ports. The United States, however, has designated nine ports to be used solely for wildlife importation and exportation. Evidence in the United States suggests that limiting the number of ports available for wildlife trade facilitates the discovery of smuggling activity.⁵¹

In an effort to thwart the forgery of permits, the Secretariat offered to supply interested governments with security stamps in June 1984. These stamps were designed to be placed on export permits by the Management Authority of the exporting nation. With the extra stamp, officials believed it would be more difficult for a smuggler to change information about the specimen on the permit, and pass the animal off as an unendangered species or a captive-bred specimen.⁵² However, few members use the stamps, and thus the results have been negligible.

Nevertheless, the International Air Transport Association (IATA) requires that animals being shipped be precisely identified.⁵³ The air waybill used for shipment of any animal should accurately reflect the CITES permit description of the animal. The lack of matching descriptions, or an apparent inconsistency between the air waybill description and the actual shipped animals are signposts of illegal activity, since an animal in a crate should be that same animal described on the air waybill and the CITES export and import permits.

CITES parties do not need permits to trade listed species with non-party states.⁵⁴ Members trading with nonmembers accounts for an estimated thirty percent of all wildlife transactions.⁵⁵ Such trade is not prohibited under CITES.

CITES offers little guidance in setting appropriate penalties for people convicted of illegal trade.⁵⁶ There is no concerted international

51. S. Lyster, *supra* note 30, at 267.

52. *Id.* at 255.

53. *Update on the Cameroun Gorilla Shipment*, IPPL NEWSL., July 1987, at 2, 3. The IATA is an international organization that has members as does CITES. The IATA creates shipping standards and provides shipping crates that conform to these standards for shipping live animals. IATA members have an obligation to follow the standards set forth by IATA. *Id.*

54. Article X of CITES governs trade with nonparties, and states that "[w]here export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any party." CITES, *supra* note 32, art. X, 27 U.S.T. at 1104, 993 U.N.T.S. at 251.

55. Heppes & McFadden, *supra* note 35, at 241.

56. S. Lyster, *supra* note 30, at 264.

scheme in CITES to penalize smugglers. Penalties are left to the individual governments.⁵⁷ However, Article VIII of CITES provides for confiscation of live or dead specimens illegally traded. Live specimens must be returned to their state of export or be sent to rescue centers or appropriate holding places.⁵⁸ However, the CITES provisions for replacing illegally traded specimens are inadequate for primates. Often primates cannot be reintroduced into the wild because they will be rejected and attacked by the native primates.⁵⁹

B. Methods of Compliance

Many CITES members implement the terms of the treaty by enacting legislation consistent with treaty provisions. These acts are patterned after CITES, usually enumerating lists of certain species that cannot be exported or imported.⁶⁰ National laws foster adherence to CITES, since national acts carry enforceable penalties for violations.⁶¹

In 1973 the United States enacted the Endangered Species Act (ESA) to implement CITES.⁶² The United States is the world's largest importer of primates, importing 16,000 to 18,000 live animals yearly, primarily for research purposes.⁶³ Because of its influence in primate trade as the largest importer, the U.S. actions can serve as a model for other

57. Article VIII of CITES provides that the "Parties shall take appropriate measures to enforce the provisions of the present Convention. . . . These shall include measures: (a) to penalize trade in, or possession of, such specimens, or both; and (b) to provide for the confiscation or return to the State of export of such specimens." CITES, *supra* note 32, art. VIII, para. 1, 27 U.S.T. at 1101, 993 U.N.T.S. at 250.

58. *Id.* art. VIII, para. 4, 27 U.S.T. at 1102, 993 U.N.T.S. at 250. Article 1 defines specimen as "any animal or plant, whether alive or dead." *Id.* art. I(b), 27 U.S.T. at 1090, 993 U.N.T.S. at 245.

59. See S. Lyster, *supra* note 30, at 265-66, for a brief discussion of confiscation dilemmas. See also D. Favre, *supra* note 37, at 230.

60. See, e.g., Endangered Species Act [ESA], Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified at 16 U.S.C. §§ 1531-1544 (1976)).

61. For example, in Australia, illegal bird importers were sentenced to five years imprisonment for violating CITES, which was the maximum punishment under Australian law. In the United States, the falsification of a CITES document relating to polar bears received ten months imprisonment and a \$50,000.00 fine under U.S. law. CITES Secretariat, *Proceedings of the Seventh Meeting of the Conference of the Parties*, Oct. 9-20, 1989, CITES Doc. 7.20, Annex 3, at 39-40 (1989) [hereinafter CITES Doc. 7.20].

62. ESA, Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified at 16 U.S.C. §§ 1531-1544 (1976)). Article VIII of CITES imposes upon each party the obligation of passing domestic legislation to implement CITES. CITES, *supra* note 32, art. VIII, para. 1, 27 U.S.T. at 1101, 993 U.N.T.S. at 250. However, CITES does not demand any particular model of legislation be adopted. The language of the treaty is general, and specific legislation is left up to each member country. See D. Favre, *supra* note 37, at 214-15.

63. *Primate Trade*, *supra* note 4, at 2. See also *U.S. Imports of Wildlife*, TRAFFIC (U.S.A.), Mar. 1989, at 1.

countries; the ESA, as a national act, can be a guideline for countries wishing to implement similar legislation. The ESA lists a series of endangered species distinct from, but overlapping those listed in CITES.⁶⁴ It includes fifty-eight primate species and five subspecies as endangered.⁶⁵

Until March 12, 1990, the ESA listed all chimpanzees as threatened, but not endangered.⁶⁶ Despite even that designation, however, two species of chimpanzees, *Pan paniscus* and *Pan troglodytes*, were also listed on an exceptions list created independently of the ESA.⁶⁷ The exception stated that any of these chimpanzees "which were held in captivity in the United States on the effective date of the final rulemaking (November 18, 1976), or their progeny born after that date, or the progeny of such specimens legally imported into the United States after that date, are exempt from the prohibitions of the ESA, including import and export."⁶⁸ This exemption has nullified many of the protections afforded the chimpanzee by CITES and the ESA, since many chimpanzees which should be classified Appendix I under CITES can be traded without restriction.⁶⁹

The U.S. Fish and Wildlife Service upgraded wild chimpanzees to the Endangered Species list on March 12, 1990.⁷⁰ Also, Congress enacted legislation making it illegal to use public funds for overseas projects using wild-caught chimpanzees.⁷¹ However, captive populations of the chimpanzee remain classified as threatened, and are still covered by the exemption "allowing activities otherwise prohibited."⁷² Captive-born chimpanzees can still be traded for pets, entertainment, and exhibitions, despite these trades being commercial activities and thus being counter to CITES.⁷³

The ESA's import and export provisions prohibit any trade of wildlife which violates CITES. The ESA outlaws possession of specimens traded in violation of CITES, and condemns the exportation, importation, sale, or shipment of any species listed by CITES during the course

64. Kosloff & Trexler, *supra* note 37, at 345.

65. *Primate Trade*, *supra* note 4, at 2.

66. See ESA, Pub. L. No. 93-205, 87 Stat. 884 (codified at 16 U.S.C. §§ 1531-1544 (1976)).

67. U.S. DEP'T OF THE INTERIOR, FISH & WILDLIFE FACTS: NON-HUMAN PRIMATES, FWS-F-035 (March 1985).

68. *Id.*

69. Telephone interview with Geza Teleki, Chairman of CCCC (Nov. 29, 1990).

70. 55 Fed. Reg. 9129 (1990) (to be codified at 50 C.F.R. pt. 17).

71. Act of Sept. 20, 1988, Pub. L. No. 100-436, § 218, 102 Stat. 1688 (1988). Telephone interview with Geza Teleki, Chairman of CCCC (Nov. 29, 1990); see also, CCCC, CHIMPANZEE TRADE, *supra* note 15.

72. 55 Fed. Reg. 9129 (1990).

73. CCCC, CHIMPANZEE TRADE, *supra* note 15, at 2.

of commercial activity.⁷⁴ Because of the ESA, over 100 million dollars of illegal goods are seized each year. This resounding success is especially noteworthy because the United States employs only fifty-five wildlife inspectors spread among nine designated ports of entry.⁷⁵ These statistics are promising for countries with little money for staff, because they demonstrate that proper inspection techniques, rather than numbers of employees, produce results.⁷⁶

The subsequently enacted Lacey Act provides an even stronger smuggling deterrent than the ESA alone.⁷⁷ The Lacey Act authorizes civil and criminal sanctions for violations of foreign law, by allowing the United States to enforce other countries' wildlife trade laws in the United States.⁷⁸ Under the Lacey Act, a person who imports or exports animals in violation of the laws of a foreign country or of a treaty violates U.S. Federal law.⁷⁹ Violating the Lacey Act is a felony, and thus punishes illegal activity more severely than the ESA. The Omnibus Crime Control Act further increases criminal penalties.⁸⁰ When coupled with the Lacey Act, the Omnibus Crime Control Act provides a maximum criminal punishment of 250,000 dollars for individuals, or 500,000 dollars for others, plus 5 years imprisonment.⁸¹ These harsher penalties are designed to deter illegal trade within the United States.⁸² Furthermore,

74. Kosloff & Trexler, *supra* note 37, at 346-47.

75. *See id.* at 344. Favre says there are twelve designated ports of entry in the United States. For discussion, see D. FAVRE, *supra* note 37, at 228.

76. The case of *Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority*, 659 F.2d 168 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 963 (1981), demonstrates how national legislation can and does implement CITES. In *Defenders*, the court, pursuant to the Endangered Species Act, forbade the U.S. government from exporting bobcat skins pending compliance with CITES' reliable population estimates and kill levels necessary for a nondetriment finding under CITES. Conversely, *Defenders of Wildlife, Inc. v. Endangered Species Authority*, 725 F.2d 726 (D.C. Cir. 1984) shows how national legislation can take away from the implementation of a treaty. The court held there that the ESA had been amended, and now no longer required population estimates and kill requirements for bobcat exports under CITES. *See* Kosloff & Trexler, *supra* note 37, at 353.

77. 16 U.S.C. §§ 3371-3378 (1988).

78. Kosloff & Trexler, *supra* note 37, at 348.

79. *Id.* at 349; Lacey Act § 3(a), 16 U.S.C. § 3372(a) (1988).

80. Omnibus Crime Control Act, Pub. L. No. 98-473, 98 Stat. 1837 (1984), *amended by* Pub. L. No. 99-217, 99 Stat. 1728 (1985) (codified in scattered sections of 18 U.S.C.). The creation of the Omnibus Crime Control Act reflects "a Congressional belief that criminal penalties in many federal statutes were insufficient to act as an effective deterrent to unlawful activity." Kosloff & Trexler, *supra* note 37, at 352. Thus, the act increases the criminal penalties of many federal statutes.

81. 18 U.S.C. §§ 3571(b)-(c), 3581(b) (1988). The Omnibus Crime Control Act was created in 1984 to increase the possible fines for all crimes. For further information about the Omnibus Crime Control Act, see Kosloff & Trexler, *supra* note 37, at 347.

82. *See* Kosloff & Trexler, *supra* note 37, at 347.

these Acts are examples for both CITES and non-CITES members desiring to enact similar national legislation.

In contrast to national legislation, such as the ESA in the United States, citizens of Zambia designed a grassroots activist program to enforce CITES.⁸³ Zambians began a confiscation program for those animals which were protected by CITES yet had been traded in contravention of the treaty. Since the early 1980s Zambian game wardens have confiscated chimpanzees imported and owned in violation of CITES. The game wardens have increasingly focused on apprehending local smugglers and confiscating their captured primates. The program has significantly decreased Zambian smuggling activity.⁸⁴ This campaign has excelled partly because of its postconfiscation procedures. After the chimpanzees are confiscated, a licensed private chimpanzee orphanage takes and cares for the animals in anticipation of their release into a natural habitat sanctuary.⁸⁵ Currently, Zambia is the only African country with an effective confiscation program.⁸⁶

The Zambian confiscation program shows that adherence to CITES can occur at multiple levels. Countries like the United States, that govern themselves with a formal system of laws and courts, find legislation effective. However, for developing countries with less formal governmental control, individuals can actively prevent smuggling. Citizens can support CITES by personally guarding against poachers.

III. CIRCUMVENTION

As of August 1990, 109 countries were party to CITES.⁸⁷ The sheer number of parties is a great achievement. However, smuggling and legal circumvention are still rampant among both members and non-members.⁸⁸

Smuggling of chimpanzees⁸⁹ begins mainly in several countries in

83. *A Visit with Sheila and David Siddle and Their Sixteen Chimpanzees*, IPPL NEWSL., Nov. 1987, at 3.

84. *Id.*

85. The natural habitat sanctuary is a large space resembling the wild, where many orphaned chimpanzees and other animals can reside without actually being released into the total wilderness. For example, the Chimfunshi Wildlife Orphanage in Zambia will eventually have 2000 acres lying within a riverbend into which the chimpanzees can gradually be released. *Id.* at 3-4.

86. *See id.*

87. *CITES Parties*, TRAFFIC (U.S.A.), Aug. 1990 [hereinafter *CITES Parties*].

88. See text accompanying notes 104-06, 120, 123 for examples of smuggling between members and nonmembers.

89. Smuggling of gorillas begins in Cameroun, Gabon, Zaire, Equatorial Guinea, and the Congo Republic, where most gorillas are found.

Africa which have concentrated pockets of chimpanzee populations. The eastern region of Africa houses approximately fifty-two percent of all chimpanzees living on the African continent. In the east, the largest number of chimpanzees, between 70,000 and 110,000, are estimated to inhabit an unsurveyed part of northern Zaire.⁹⁰ Uganda, also in the east, has between 3000 and 5000 chimpanzees.⁹¹ The central region of Africa contains about forty-three percent of the chimpanzee population.⁹² Gabon has between 51,000 and 77,000 chimpanzees; Cameroun contains between 6000 and 10,000 chimpanzees; the Congo has between 3000 and 5000; and Equatorial Guinea has between 1000 and 2000 chimpanzees.⁹³ The western region of Africa is home to five percent of the total African chimpanzees. In the west, Liberia leads in population with 3000 to 4000 chimpanzees.⁹⁴ Guinea has between 2000 and 4000 chimpanzees, and Sierra Leone has between 1500 and 2500 chimpanzees.⁹⁵ Of these countries, only Uganda, Sierra Leone, and Equatorial Guinea are not CITES members.

However, CITES members often evade the treaty by refusing to enact national controls for listed species. Guinea and Zaire, though CITES members,⁹⁶ provide no internal protection for wild chimpanzees.⁹⁷ Liberia and Guinea, both CITES members since 1981, are two of the top exporters of all wild chimpanzees, despite the fact that under CITES' Appendix I classification of wild chimpanzees, very few, if any, of these animals should be traded.⁹⁸ Guinea is also notorious for being a base for smuggling chimpanzees into Sierra Leone for reexport overseas.⁹⁹ Since Sierra Leone is not a CITES member, traders may export legally once a species enters the country.

Of the twenty-one nations inhabited by chimpanzees, six are not CITES members.¹⁰⁰ Non-CITES countries trade live animals without having to account for them to the CITES Secretariat. Not surprisingly,

90. CCCC, ACTION PLAN FOR CHIMPANZEE CONSERVATION IN AFRICA 1-3 (1989) [hereinafter CCCC, ACTION PLAN]. Northern Zaire has not been thoroughly surveyed, and so may contain fewer than 20,000 chimpanzees. *Id.*

91. *Id.* at 3.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Guinea has been a CITES member for eight years; Zaire has been a member for thirteen years.

97. CCCC, CURRENT THREATS, *supra* note 21, at 1, 17b.

98. *See id.* at 32.

99. *See id.* at 33.

100. *See CITES Parties, supra* note 87; CCCC, ACTION PLAN, *supra* note 90, at 3.

in these countries much of the chimpanzee population has been depleted. For example, Sierra Leone and Uganda are not CITES parties.¹⁰¹ In Sierra Leone, very few chimpanzees remain. Since the 1970s up to 270 chimpanzees have been exported annually from Sierra Leone alone.¹⁰² In Uganda, only an estimated three thousand to five thousand chimpanzees remain in an area where tens of thousands of chimpanzees once lived.¹⁰³ The leading importers of primates from these countries are all CITES members: Canada, France, Japan, the Netherlands, Taiwan, the United Kingdom, and the United States.¹⁰⁴ These countries generally import chimpanzees for biomedical research, and gorillas for zoos. These nations are able to import these endangered animals despite CITES because scientific research and zoological captivity are not regularly considered commercial uses under CITES. Actually, the CITES provisions allow these countries to import large numbers of animals with little difficulty, once the animals have been smuggled into a non-CITES country. There are many other reasons that chimpanzees and gorillas are traded despite CITES, and this Note will next examine those reasons.

A. Loopholes

CITES has several loopholes which allow violations of the treaty to occur easily. These violations range from smugglers changing CITES papers to governments blatantly ignoring CITES instructions. Understanding the methods through which CITES is evaded helps to formulate solutions to the evasions, and eradicate smuggling.

First, the distinction between Appendix I and Appendix II animals is critical for gorillas and chimpanzees, and opens up possibilities for captive breeding lies. Because CITES reclassifies trade of gorillas and chimpanzees bred in captivity as Appendix II transactions, smugglers can bypass CITES Appendix I restrictions.¹⁰⁵ Many smugglers claim that an animal was bred in captivity when in fact the animal has been captured in the jungle. Such lies rapidly deplete the endangered wild populations.

Frequently a live primate is smuggled into a country, kept for a period of time, and then reexported with papers stating that the animal was bred in captivity. Trader Ingemar Forss described such an occurrence when he wrote to a comrade, "we now have another zoo in East Europe where they are willing to keep quarantine and to change the papers later

101. See *CITES Parties*, *supra* note 87.

102. CCCC, *CURRENT THREATS*, *supra* note 21, at 34.

103. CCCC, *ACTION PLAN*, *supra* note 90, at 3.

104. *Primate Trade*, *supra* note 4, at 2.

105. See D. FAVRE, *supra* note 37, at 186-201.

on."¹⁰⁶ Captive breeding claims occur frequently because CITES allows commercial trade of captive-bred primates, and dealers take advantage of this permission.

Recently, a "captive-breeding lie" was detected in Poland. The International Primate Protection League, an organization dedicated to the preservation and well-being of primates, discovered what it described as "the Polish Connection."¹⁰⁷ Polish zoos were obtaining endangered primates smuggled in from Africa, Asia, and South America.¹⁰⁸ These zoos harbored the animals that had survived the journey, and later reexported them as captive-bred.¹⁰⁹ CITES provokes this form of evasion by allowing captively bred animals to be classified as Appendix II species.

Another problem with CITES is its amorphous definition of "commercial trade."¹¹⁰ Because this phrase is extremely vague, the individual responsible for determining whether an animal is to be used for commercial purposes has a great influence on trade.¹¹¹ For example, it is unclear under the terms of the treaty whether importing gorillas for zoos constitutes a commercial purpose. Therefore, if a Management Authority of a country decides that a zoo is not a "commercial" institution, but is run for scientific value, an animal may be traded to that country. At the Fifth Conference of the Parties in 1985, CITES members decided that the term "commercial purposes" "should be defined by the country of import as broadly as possible so that any transaction which is not wholly 'non-commercial' will be regarded as 'commercial.'"¹¹² However, this definition still leaves great discretion to the importing official responsible for ascertaining that the species imported is not used for primarily com-

106. *The "Polish Connection,"* IPPL NEWSL., Mar. 1989, at 4 [hereinafter *The "Polish Connection"*].

107. *Id.*

108. *See id.* at 3.

109. *See id.* Poland became a CITES member in March 1990 and must now account to the CITES Secretariat for any violations of the treaty. *CITES Parties*, *supra* note 87, at 2. Another example of a captive breeding lie occurred when two gorillas were imported from Spain to Japan in May 1987 under the guise of being captive bred. Although these gorillas were later found to be wild caught, the Japanese Management Authority, in replying to the CITES Secretariat, believed the gorillas should be sent to a Japanese zoo for breeding. CITES Doc. 7.20, *supra* note 61, Annex 6, at 45. For more details on this incident, see also *id.* at 11.

110. *See* D. FAVRE, *supra* note 37, at 82-86.

111. Favre, *Tension Points*, *supra* note 37, at 247, 264-65.

112. CITES Secretariat, *Proceedings of the Fifth Meeting of the Conference of the Parties*, Apr. 22-May 3, 1985, CITES Doc. 5.33, at 145 (1985). See also Favre, *Tension Points*, *supra*, note 37, at 247, 264-67, for a more detailed discussion of the 5th Conference proceedings and the adopted resolution further defining "commercial purposes."

mercial purposes.¹¹³ Since commercial purposes are undefined, the provision loses much of its strength. Even more leeway is given for trade of Appendix II species, since they can be traded commercially under Appendix II quite easily. Thus, the two loopholes of captive breeding and vaguely defined commercial purposes work together to produce devastating results. Since there are more opportunities to trade under Appendix II, population exhaustion occurs more rapidly if an animal is called captive-bred, is then classified Appendix II, and can then be traded for a vaguely defined "commercial purpose."

Furthermore, CITES' language promulgates subjective decision-making.¹¹⁴ CITES allows a country to grant an export permit if the Scientific Authority of that country determines "such export will not be detrimental to the survival of that species."¹¹⁵ Such a determination is quite subjective, and subjectivity leaves ample room for corruption to enter into the decision-making process.¹¹⁶ For instance, if precise numbers about the population of a species are unavailable to the Scientific Authority, that individual may be persuaded to guess what he or she believes is the appropriate figure. The decision to export an African chimpanzee or gorilla could be colored by monetary promises or political pressure imposed by the importing country.

B. Noncompliance

Another serious problem with CITES is that it fails to ensure reporting on the national level. The Wildlife Trade Monitoring Unit found that at least forty-five percent of all CITES transactions involving animals go unreported.¹¹⁷ Each party to CITES is required to submit complete documentation for all trade of listed flora and fauna.¹¹⁸ However, these reports are often not submitted or are submitted incomplete.¹¹⁹

Governments, as well as private parties, such as zoos, share responsibility for illegal trade. In 1985 the CITES Secretariat received copies of

113. See CITES, *supra* note 32, art. III, para. 3(c), 27 U.S.T. at 1094, 993 U.N.T.S. at 246, for language about satisfaction.

114. David Favre, professor at Detroit College of Law, has advocated this position. Favre, *Tension Points*, *supra* note 37, at 263.

115. CITES, *supra* note 32, art. III, para. 2(a), art. IV, para. 2(a), 27 U.S.T. at 1093, 1095, 993 U.N.T.S. at 246.

116. Favre, *Tension Points*, *supra* note 37, at 263.

117. S. Lyster, *supra* note 30, at 269.

118. CITES, *supra* note 32, art. VIII, paras. 6(b), (7), 27 U.S.T. at 1103, 993 U.N.T.S. at 250, 251.

119. See, e.g., CITES Doc. 7.20, *supra* note 61, at 7 (stating that "Among the obligations . . . still not being observed . . . [is] to make an annual report on the operations of international trade of listed specimens. . . .").

export documents supposedly issued from the Lao People's Democratic Republic government.¹²⁰ These documents represented animals, including primates, as being captive-bred. When the Secretariat inquired, Lao denied that any captive breeding existed in that country.¹²¹ Some CITES member countries also accept reexport certificates that are suspect or incomplete, supporting the captive breeding scam.¹²² Thus, careful scrutiny of each permit by Management Authorities and customs officials is imperative to combat such illicit trade.

Parties also circumvent CITES by altering or forging the CITES permit. For example, a supposed CITES export permit for three gorillas came from Cameroun, despite gorillas being classified as an Appendix I species, and thus could not be commercially traded under CITES.¹²³ The Cameroun permit bore an official-looking stamp, was signed, and listed the Taipei Zoo as the recipient.¹²⁴ As the CITES Secretariat later observed, the permit and stamp had been removed from another valid CITES transaction.¹²⁵ Whether the permits were forged or given to a smuggler by an unauthorized government agent is still unclear.¹²⁶ Cameroun, a CITES member, could not trade these gorillas under CITES.¹²⁷ Two of the gorillas died en route.¹²⁸

Individuals also alter the CITES certificate's statement of the animal's origin. Smugglers commonly state on an export permit that an animal originated from a different country than the one where it was actually captured. Fortunately, such misrepresentations are readily detectable. In 1988 for example, a chimpanzee was smuggled from Uganda to Dubai, one of the United Arab Emirates. The paperwork indicated the animal originated in Zaire, but lacked a Zairean export permit or Ugandan reexport permit.¹²⁹ In fact, Zaire prohibits chimpanzee exports, so Uganda should not have honored an export permit in any case.¹³⁰

120. CITES Secretariat, *Proceedings of the Sixth Meeting of the Conference of the Parties*, July 12-24, 1987, CITES Doc. 6.19, at F.3 (1987) [hereinafter CITES Doc. 6.19].

121. *See id.*

122. *See* McFadden, *supra* note 37, at 316.

123. *Update on the Cameroun Gorilla Shipment*, *supra* note 53, at 2.

124. *Id.*

125. CITES Doc. 6.19, *supra* note 120, at A.2.

126. *Update on the Cameroun Gorilla Shipment*, *supra* note 53, at 2.

127. *CITES Parties*, *supra* note 87, at 1.

128. *Update on the Cameroun Gorilla Shipment*, *supra* note 53, at 2.

129. *Gorilla and Chimpanzee Poaching in Uganda*, IPPL NEWSL., Mar. 1989, at 1, 4. The chimpanzee was seized at Entebbe Airport and sent to Entebbe Zoo for care. *The "Polish Connection," supra* note 106, at 17.

130. *See The "Polish Connection," supra* note 106, at 17.

Countries also circumvent CITES by granting permits in blatant violation of the treaty. Governments have allowed trade despite CITES provisions, and often claim extraordinary circumstances. For example, twenty chimpanzees were traded from Sierra Leone to Austria in spite of CITES regulations.¹³¹ Immuno AG Pharmaceutical imported the chimpanzees for use in biomedical research.¹³² Prior to the importation, the Secretariat had specifically advised Austria not to import the animals, as the trade would violate CITES.¹³³ The Secretariat later concluded that the export documents did not meet the requirements of articles VI and X,¹³⁴ and the importer lacked a Management Authority declaration that the specimen would not be used primarily for commercial purposes.¹³⁵ The Austrian Ministry of Trade ignored the Secretariat, and granted an exceptional permit for import without following normal CITES procedures.¹³⁶

Similarly, in 1987 the United Kingdom, after expressly requesting the Secretariat's opinion, authorized an import of gorillas from the Congo after the Secretariat disapproved of the trade.¹³⁷ Though the Secretariat deemed the trade detrimental to the survival of the species in the wild,¹³⁸ Great Britain declined a request to reconsider.¹³⁹

Finally, governments overlook invalid CITES permits and undermine CITES' effectiveness. Political pressure and monetary inducements spur authorities to be inattentive towards unauthorized or invalid documents. Despite certain countries' notoriety for issuing inaccurate documents, some governments nevertheless accept deficient paperwork. The

131. CITES Doc. 6.19, *supra* note 120, at A.1.

132. *See id.* For more information about Immuno AG, see text accompanying notes 141-49.

133. CITES Doc. 6.19, *supra* note 120, at A.1.

134. The text of pertinent sections of Articles VI and X is the following: Article VI: "2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted. 3. Each permit shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority. . . ." CITES, *supra* note 32, art. VI, 27 U.S.T. at 1098-99, 993 U.N.T.S. at 248-49. Article X: "Where export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party." *Id.* art. X, 27 U.S.T. at 1104, 993 U.N.T.S. at 251.

135. CITES Doc. 6.19, *supra* note 120, at A.1.

136. News & Notes, *Chimpanzees Cause Controversy*, TRAFFIC (U.S.A.), Feb. 1987, at 25.

137. CITES Doc. 6.19, *supra* note 120, at A.3.

138. *Id.*

139. *See id.*

following letter, written in Poland before Poland became a signatory to CITES, attests to the ease of obtaining a false CITES permit:

Poland is not a CITES member and no import permit is necessary. Then they (the animals) will be supplied with a CITES export permit stating that they were bred in Wroclaw Zoo. This is very easy in Poland, you could even send a giant panda with such a permit because nobody in the Ministry cares about that—they are just issuing permits on request without checking anything.¹⁴⁰

Governments should not look away from known forged documents, but should halt the importer and confiscate the animals.

C. Legal Circumvention of CITES

Many companies try to circumvent the goals of CITES by legally exploiting the treaty's loopholes. Members of CITES have contracted to uphold the treaty's goals of preservation, not merely to uphold the treaty's technical wording. Legal maneuvers to circumvent the treaty's provisions violate CITES' goals as much as do illegal activities. Both types of conduct equally threaten the preservation of endangered plants and animals. The Immuno AG pharmaceutical case dramatizes the problem of legal circumvention. Immuno AG, an Austrian based pharmaceutical company, operated a research laboratory in Austria. Once Austria ratified CITES, Immuno AG planned to move its laboratory facilities to a non-CITES country.¹⁴¹ Shirley McGreal, Chairwoman of the International Primate Protection League, reported a statement made by the Austrian consul in Sierra Leone that Immuno AG would establish "a chimpanzee research facility in Sierra Leone . . . 'to avoid the problems involved with the importation [to Austria] of live chimpanzees.'"¹⁴² By creating a research facility within a country that is already home to wild chimpanzees, a company can evade CITES altogether since trade will not be necessary.

The facility projected using sixty to eighty chimpanzees per year. Given the number of chimpanzees, McGreal explained that ". . . cheapness of wild-caught chimpanzees appears to be a motivating factor for the Immuno Company. . . ."¹⁴³ McGreal also commented that [an] Immuno official . . . stated that captive breeding of chimpanzees was not an eco-

140. *The "Polish Connection," supra* note 106, at 1, 7.

141. *Immuno AG v. Moor-Jankowski*, No. 23545-84, slip. op. at 23 (App. Div. N.Y. Jan. 17, 1989).

142. *Id.* at 4.

143. *Id.*

nominally viable proposition."¹⁴⁴

Immuno AG filed a libel action in December 1984 against numerous defendants, including Shirley McGreal and Dr. Jan Moor-Jankowski, for the publication of an article about Immuno AG in the *Journal of Medical Primatology*.¹⁴⁵ In holding that Immuno AG was attempting to circumvent CITES,¹⁴⁶ The New York appellate court hearing the libel action, acknowledged that:

[i]t was, after all, true that the strict import and export restrictions imposed by CITES threatened to cut off Immuno's supply of wild caught chimpanzees for use in its Austrian laboratories. . . . [I]t was fair to conclude that Immuno wished to get around the CITES restrictions and was situating the facility in Sierra Leone with that purpose in mind.¹⁴⁷

The *Immuno AG* appellate decision recognizes the current legal circumvention problem. Immuno AG is a private company, and is not itself accountable to the CITES Secretariat. However, when Immuno AG's actions occur within a country that is a party to CITES, that country is responsible for the imports or exports resulting from Immuno AG's actions. While a company such as Immuno AG may outwardly present itself as adhering to the commitment to uphold CITES, it undermines CITES' purpose. A company's relocation for the purpose of catching wild endangered animals does not help preserve a species. The company can escape trade restrictions, and still pay no heed to protectionist policy.

Trapping wild chimpanzees in Africa for research within Africa does not directly violate the trade prohibitions of CITES. However, it evades CITES' purpose of saving these animals from extinction just as pervasively as does outright illegal activity. The consequence, whether

144. *Id.*

145. Moor-Jankowski is professor of medical research at the New York University Medical School and Director of New York University Medical School's Laboratory for Experimental Medicine and Surgery in Primates. He is also Director of the World Health Organization Collaborating Center for Hematology of Primate Animals and is the Editor-in-Chief of the *Journal of Medical Primatology*. As Editor, he published in the *Journal* a letter to the editor by Shirley McGreal criticizing Immuno AG's proposed plan to build a research facility in Sierra Leone. Subsequently, Immuno AG filed a libel lawsuit in the United States against numerous individuals, including McGreal and Moor-Jankowski. Immuno AG's complaint against these two was eventually dismissed. *See id.* at 23. Immuno AG has filed over 60 lawsuits (many in Europe) against people who wrote about or were connected with the publication of writings about Immuno AG's proposed plans. None have prevailed in court, except for one suit which was won on a technicality. Telephone Interview with Geza Teleki, Chairman of CCCC (Feb. 13, 1991).

146. *Immuno AG v. Moor-Jankowski*, slip op. at 27.

147. *Id.*

trading outside the country's borders occurs or not, is primate population depletion; CITES precisely seeks to prevent this result.

Dr. Moor-Jankowski has expressed concern that Immuno AG's project conflicted with the WHO's policy regarding the use of endangered species in biomedical research.¹⁴⁸ Dr. Moor-Jankowski has said that "Immuno's attempt to circumvent treaty restrictions on trade in endangered species would reflect poorly on others . . . engaged in biomedical research using chimpanzees. . . ."¹⁴⁹

The United States National Institute of Health (NIH) has also explored the legal circumvention of CITES. James Wyngaarden, the Director of NIH, confirmed that the government agency is considering doing AIDS research in Africa and the Soviet Union because U.S. law bans the importation of chimpanzees.¹⁵⁰ Chimpanzees can be experimentally infected with HIV-1 taken from human AIDS patients, and can thus be used to test the effects of vaccines.¹⁵¹ However, no chimpanzee has become very ill from HIV, and so the effects of disease-combatting drugs cannot be tested.¹⁵² Nevertheless, despite the lack of scientific success with the chimpanzee, and despite the harm done to the animal, Wyngaarden noted that:

NIH scientists want more chimpanzees than are available, but are thwarted by the U.S. Endangered Species Act and the fourteen-year-old Convention on International Trade in Endangered Species. . . . We clearly don't want to get into an international fracas over seeming to subvert rules that apply in this country. . . but . . . we're taking a lot of looks at Africa.¹⁵³

Currently in the United States, only those chimpanzees already in the country, or those being bred in captivity within the country, are legally allowed to be used for research.¹⁵⁴ However, illegal importation occurs regularly. While the Fish and Wildlife Authority maintains that no chimpanzees have been imported for biomedical research since 1976, Dr. Teleki, Chairman of the Committee for the Conservation and Care of Chimpanzees, has documents from Sierra Leone indicating that 406 chimpanzees were exported in 1975, 1976, and 1978, and were imported

148. *Id.* at 7.

149. *Id.*

150. U.S. Humane Society, *HSUS Works to Prevent the Taking of Chimpanzees From the Wild*, HSUS NEWS, Fall 1988, at 1 [hereinafter *HSUS Works*].

151. *The Chimp Connection*, ANIMAL KINGDOM, Jan.-Feb. 1989, at 42.

152. *Id.*

153. *HSUS Works*, *supra* note 150, at 1.

154. 55 Fed. Reg. 1930 (1990).

into the United States. The Fish and Wildlife Authority and the Secretariat of CITES have no record of the transactions.¹⁵⁵ CITES can be, and is, circumvented by individuals not documenting trade transactions.

D. Reservations

Countries also legally circumvent CITES by making excessive reservations to the treaty. When a country first becomes a CITES member, it has the option of "reserving out" certain species which it can still trade with either non-CITES members, or other CITES members with the same species reservation.¹⁵⁶ A country can similarly "reserve out" species during its membership at specified times. CITES becomes ineffective if a country makes too many reservations. For example, Japan, one of the principal importers of primates, has made fourteen reservations in Appendix I species alone. Moreover, it significantly trades with Mexico, not a CITES member, and often seems to support trade in contravention of CITES.¹⁵⁷ Evading the spirit of the treaty in this manner is being a member in name only.

Despite all the aforementioned loopholes and circumvention problems, there is hope for effective enforcement of CITES. The following proposal suggests ways in which the loopholes can be closed, and circumvention can be halted.

IV. PROPOSAL

Solutions for protecting the wild chimpanzees and gorillas do exist. Altering CITES itself, changing international attitudes about enforcing the treaty, and curtailing smuggling will help prevent circumvention.

A. Close Loopholes

First, Article VII, section four of CITES should be repealed; downgrading animals from Appendix I to Appendix II because they are captive bred should cease. Species should remain classified as Appendix I animals even if they are bred in captivity. Animals should be traded commercially only when their population figures as a whole are sufficient to reach Appendix II classification. This places the burden on the Scientific Authority, who must be equipped to know the facts and to monitor populations of species, rather than on an import official who can only

155. *On Death Row*, DISCOVERY CHANNEL MAG., Oct. 1990, at 37.

156. CITES, *supra* note 32, art. XVI, 27 U.S.T. at 1113-14, 993 U.N.T.S. at 255-56.

157. McFadden, *supra* note 37, at 314. See also *The CITES Infractions Report*, IPPL NEWSL., Dec. 1989, at 13.

speculate about captive breeding in any one country. This change will guarantee that even smugglers' lies about captive breeding will not destroy a species.

As a less drastic measure, if article VII, section four is maintained, the Management Authority responsible for changing the status of an animal from Appendix I to Appendix II because of captive breeding should notify each CITES member of its action immediately. Expedient worldwide communication of all specific downgradings due to captive breeding is imperative and feasible. Customs officials in all countries must know which animals are classified Appendix I, and which animals are deemed Appendix II. International communication will help eliminate the phenomenon of Appendix I animals passing through customs as supposed captively bred Appendix II species as a result of an inspector's lack of knowledge. To further combat captive breeding lies, both the exporting and the importing countries should be held responsible for ensuring that Appendix I species are not traded.¹⁵⁸

Second, the parties should provide a more complete definition of "commercial purposes." This will clearly establish which trades are legal within the meaning of CITES. Most importantly, the parties should determine that zoos, which are often run for someone's profit, are commercial entities; endangered gorillas thus should not be traded to these institutions.

Third, CITES should establish an objective numerical standard which the Scientific and Management Authorities must follow when deciding whether trade will harm a species' chance of survival. This will eradicate subjective judgments that are perhaps based on motivations other than protecting the endangered animal, such as monetary reward

158. The Japanese government, when discussing its importation of gorillas from Spain, claimed that "it is the M.A. of exporting country to judge the specimens as captive-bred and so that should be the responsibility of exporting country in CITES procedure, if the fact that the specimens [sic] is not captive-bred, is found afterwards." CITES Doc. 7.20, *supra* note 61, Annex 6, at 46. This is precisely not the attitude needed to protect chimpanzees and gorillas. Rather, both importers and exporters should cooperate in preventing the trade of Appendix I species. The Secretariat, in his recommendations, made several suggestions which would help alleviate Appendix I illegal trading:

g) that when the Management Authority is in possession of the necessary information it should indicate on any export permit or re-export certificate for live Appendix I specimens bred in captivity:

- a) references to the owners of the parents;
- b) the identity of the parents (the marking reference where appropriate); and
- c) whether a biological 'finger print' test has been carried out.

Id. Annex 1, at 36. The Secretariat also recommended that "[p]arties . . . ask for the Secretariat's advice before accepting importation of Appendix I live specimens declared as bred in captivity . . ." *Id.* at 11. This will help curtail captive breeding lies as well.

or political acceptance. This objective standard can be based on numbers of each remaining species, and trade can be prohibited if the population numbers descend below appropriate levels.

B. Enforce Compliance

To ensure objective decisions, the Secretariat should require more diligent national reporting of trade. The Secretariat should also require each nation to monitor the numbers of Appendix I species both existent in, and annually traded from the country. As the Secretariat observed, "the impact of trade on listed species cannot be judged without timely submission of complete and accurate annual reports."¹⁵⁹ Countries should incur international penalties for improperly reporting or misrepresenting population numbers. Implementing trade sanctions as international penalties will always be a delicate political maneuver, especially since the countries trading animals will most likely be trading commodities as well. However, the countries involved in CITES must at some point either express their dedication to the treaty, or acknowledge their lack of commitment to saving endangered animals from extinction. There is little room left for political compromise in this area, since the number of these animals continues to decrease, and these species are still headed towards total disappearance from this planet. If countries are serious about saving the endangered species, trade sanctions are an effective tool for communicating the message that circumvention of CITES will not be tolerated. The most recent Presentation of Alleged Infractions from the CITES Secretariat reports that countries still are failing to meet their obligation to make an annual report on international trade of listed specimens (Article VIII-7a).¹⁶⁰ Both the Secretariat and CITES members should continue to pressure all countries to adequately fulfill their reporting commitment.

Moreover, each nation should work towards establishing its own legislation, or improving their existing legislation and penalty system to better comply with CITES trade restrictions. The Secretariat stated that he "considers that most Parties do not have sufficient national legislation to fully and properly implement the Convention in all aspects."¹⁶¹ Also, the Secretariat observed that states are not taking "the measures necessary for the application of the Convention[,] particularly the legal sanctions (article VIII-1)."¹⁶² Legislation and penalties are imperative to

159. CITES Doc. 6.19, *supra* note 120, at H.3.

160. CITES Doc. 7.20, *supra* note 61, at 7.

161. *Id.*

162. *Id.*

ensure that the treaty is enforced in all member nations. Pressure to create legislation should be exerted immediately on those member countries lacking trade regulations or sanctions in effect.

Efforts to reduce trade in endangered species should extend beyond the scope of CITES. For example, the United States, as a world leader, should include not only chimpanzees captured in the wild, but also captive-bred chimpanzees on its endangered species list. The upgrading of all chimpanzees would be a statement to the world that chimpanzees need to be protected; it would also reduce international trade since lies about captive breeding would no longer be effective in the United States. Many more companies would not legally be able to export from or import into the United States chimpanzees who supposedly had been captive-bred.

To prevent forgery, the Secretariat should devise a more effective permit strategy. Each export permit number should match the number written on the import permit. Alternatively, for Appendix I species, one designated customs official at the site of export could contact a designated person at the importing station to verify that codes match. Adding these intermediary steps should help detect smuggling before the animal is exported and most likely killed in transport. Also, following CITES optional suggestions about retaining special ports for imports and exports would help curtail smuggling. The United States has had success with this plan,¹⁶³ and the parties should make this a mandatory provision in the treaty.

Furthermore, CITES parties must make greater efforts to educate officials. Customs control workers and Scientific and Management Authorities must be trained to recognize the methods used in the smuggling of chimpanzees and gorillas. These authorities are the key to realizing the goals of CITES; they issue the permits, and watch the animals enter and exit countries. With training, they will be better prepared to recognize forged papers and search for smuggled animals. Management Authorities should know which nations harbor captive breeding, and which nations may supply suspect permits for specific species. Scientific Authorities must know, perhaps by referring to a current list, the population number of any species in any country requesting an export or import permit. Customs officials must understand the techniques used for smuggling packages and crates, and must be aware of the suspicious circum-

163. See *supra* text accompanying note 51.

stances commonly indicating smuggling.¹⁶⁴ This knowledge and training can only help prevent violations of the treaty.

Towards this end, CITES should establish continuing education funds for training both national and international staff. Customs officials from every CITES nation should undergo an intensive training program in typical smuggling methods, so they can quickly detect illegal trade. Also, CITES should fund national programs teaching Scientific Authorities how to monitor population numbers. CITES should further create a fund solely for the expedient disbursement of information detailing smuggling and population figures to every CITES nation, so that the necessary information is always current.

CITES members can also reduce smuggling through economic means. If the wealthier members are willing either to impose sanctions upon countries that allow smuggling, or to extend financial incentives to countries that seek to prevent smuggling, circumvention could be significantly reduced. Also, deterrence would be strengthened if member countries enforced stricter national penalties for discovered illegal or forged CITES papers. These offenses should be criminalized. Countries often impose economic sanctions on other countries to discourage various behaviors, and this would be one appropriate time for such sanctions.

Finally, CITES should institute activist protection groups in each nation, similar to Zambia's example. Individuals in the protection groups can be paid citizens of each country who are familiar with the terrain of the land and are dedicated to the preservation of endangered species. These groups can monitor and defend the Appendix I endangered species. Specialized units can be formed to discover smuggled primates. These activists, coupled with the foregoing external support, can prevent the endangered species populations from becoming extinct.

V. CONCLUSION

CITES, though somewhat effective, continues to be circumvented in a variety of ways. Illegal circumvention benefits only the smuggler, and perhaps the rare recipient of an animal that has survived transport. Complying with CITES, and restricting trade now, will facilitate trade for future generations while also ensuring the survival of animal populations. If rampant smuggling and killing continue, no endangered species will be left to trade or roam the planet. Awareness is the first step towards an international solution. Understanding how traders circumvent

164. For examples of some forms of smuggling, see text accompanying notes 107-09, 120, 123.

CITES is crucial, since the continued survival of gorillas and chimpanzees depends upon effective enforcement of the treaty. Countries can more easily take actions designed towards effectuating CITES' intent when they are conscious of the problems that occur. Though the populations of gorillas and chimpanzees continue to decline, the strict implementation of CITES coupled with the halt of smuggling can still save them from extinction.

