Chapter 10:
Discussion and Conclusions

Introduction:
As discussed in earlier chapters, a MEA is a complex attempt at managing diverse, sovereign viewpoints towards a larger global good. CITES is no exception. With 183 member countries and working on a process of consensus, it has certainly not been easy for CITES to hold its ground.

Here I shall attempt to highlight certain aspects of CITES implementation through a series of key questions.

Has CITES been significant for the conservation of the species?
The above question can perhaps be better rephrased as, “Would the species in question be better off or worse in the absence of CITES?” One of the key problems identified for CITES is that the Convention tends not to take account of differences in wildlife populations and management regimes in different countries. Furthermore, from the global perspective of the CITES, it is more difficult to address the diverse local-level dynamics of human–wildlife conflicts in different locations (Duffy 2013). This has implications for impact at the grass root level against CITES actions.

Again, as has been mentioned elsewhere in this document, improved conservation status of the species in question is not necessarily an accurate or adequate measure of the effectiveness of CITES. In the present case, the status of one of the three species studied- Star tortoise has actually been downgraded from Least Concern to Vulnerable on the IUCN Red List. There is no change in the conservation status of the other two species despite decades of work by CITES and its partners.

It can be argued here that it has actually been the CITES process and the alarm bells set by it that have led to the reassessment of the status of the Star tortoise and sharpened focus on its plight. For Red sanders, the suspension of
trade and other actions triggered by CITES, including the Non Detrimental Finding (NDF) process have improved our knowledge of the species and its trade dynamics and are helping shape our collective response to it. Countries which are part of the trade flow of the species are working more closely together, seized timber is being sent back to the country of origin and in general wildlife law enforcement agencies today are better placed to respond to such challenges of trade.

Tigers and African elephants are perhaps two species that have generated the most heated debates at CITES forums. There is a wealth of information across the globe at various CITES platforms including the CoPs and the Standing Committee on deliberations on the fate of wild tigers and steps to control/regulate their illegal trade. That CITES has set up a Tiger Enforcement Task Force (TETF), as also undertaken a combination of technical and political missions to a number of tiger range and consumer States shows the importance CITES places at this “Flagship Species of Conservation” (CITES 2007). The efforts of the CITES missions led to perhaps the most significant outcome of CITES, with respect to tigers: China prohibited the domestic use of tiger parts and derivatives in 1993.

The significance of this step needs to be reiterated. CITES is an international convention that focuses on “International Trade”. Yet, yielding to global public opinion, expressed largely through the CITES process, a country with a known history of widespread utilisation of wildlife products and derivatives including tigers has put in place a domestic ban on such trade. Even more important, this ban has held for over 30 years know, despite clear signals that the powers that be would like it to be “reviewed” and possibly diluted/deleted.

In 1999, the Standing Committee instructed the Secretariat to organize further technical missions. Consequently, a technical mission team, consisting of the CITES Secretariat, law enforcement officials and TRAFFIC staff members, visited 14 tiger range and consumer States. Subsequently, Secretariat staff, either alone or in conjunction with enforcement officers and TRAFFIC, have
visited other range States. In total, the Secretariat has visited 12 of the 14 countries where tigers are believed to still be present in the wild. (CITES CoP14 Doc. 52).

These missions have helped strengthen local capabilities and on occasion, directly brought about effective action on the ground. They have also helped raise awareness levels on the plight of the species across the globe.

In light of the above, it can be concluded that CITES has played a significant role in the conservation of the species in study. The degree of such role will continue to be a matter of question. In that respect, I submit that CITES has performed to its mandate, perhaps not wholly or in full measure, but certainly very substantially.

Are all species equal in CITES or some more equal than others??

At the very outset, CITES Appendices are itself a differential platform for species. On another level, even a cursory glance around the spectrum of conservation science, welfare and media will demonstrate that some species are indeed more equal than others. They receive more conservation funding, are focus of more research and receive more media attention. They also end up dominating public perception and discourse (Feber 2017). A very good example in the Indian context would be the fate of the Great Indian Bustard (GIB) *(Ardeotis nigriceps)*. The species is listed in Schedule I of the Indian Wildlife (Protection) Act, 1972, in the CMS Convention and in Appendix I of CITES, and as Critically Endangered on the IUCN Red List and the National Wildlife Action Plan (2002-2016 and 2017-2031). It has also been identified as one of the species for the recovery programme under the Integrated Development of Wildlife Habitats of the Ministry of Environment and Forests, Government of India (WWF 2017). Wild populations of this bird are estimated to be only about 200 individuals, or just about 5% of that of wild tigers. Conservation challenge for GIBs *inter alia* includes trans-border hunting. Yet, it would appear that the species lies forgotten for CITES.
“Can CITES do justice to the 33,000 species under its umbrella?”.

It is evident that it cannot be so. The very nature of Appendices establish that needs of species are placed at different levels, requiring a differentiated response. Critics have argued that adding more species to the CITES Appendices is also an acknowledgement of failure of the CITES process. This would further be compounded by the possibility that once listed, most species would continue to be there on the statute, without any consequent conservation action and/or any hope of being down listed as a consequence of improvement of their conservation status. This is also in part because the CITES process is driven by consensus and thus, once a decision is made, the threshold of majority voting ensures that subsequent changes are not easy.

The counter argument is that listing on the CITES Appendices is only the first step- a tacit acknowledgement that the species is in trouble and trade in it or its derivatives needs to be regulated in order to give it a fighting chance of survival. Thus, listing is the means to an end- an end that has to be achieved by respective member States, working with partners and should not be seen as an end by itself. Also, trade is only one of the several factors that affect the fate of a species in the wild. As such, placing the sole responsibility of perceived conservation deficiencies of some species on the doorstep of CITES would be facetious and without merit.

How effective is CITES in ensuring “Compliance” by member States?
Quantitative research into the output of a selection of MEAs by UNEP in the period 1992–2007 shows that the COPs are extremely productive and generate an enormous amount of decisions. (Goeteyn and Maes 2011). This is equally true for CITES too, where the CoPs, Standing Committee, Animals and Plants Committees and other platforms churn out a vast number of resolutions, decisions and the like on a regular basis. All these are also rapidly contributing to the continuous evolution of international environmental law. On this criterion alone, it would appear that the process is definitely alive and kicking. However, the reams of paper generated by the CITES process do not clearly reflect the extent to which all of these decisions and recommendations have
been complied with. This is the biggest cause of concern for the CITES process.

**Definition of compliance and compliance mechanisms in international environmental law**

At a conceptual level, non-compliance with MEAs like CITES could be attributed to a variety of factors including but not necessarily limited to capacity issues, communication issues and unclear internal division of competences. Reasons for non-compliance could entail: (1) the authorities responsible for implementation are unaware of the existence of the treaty obligation; (2) lack of political momentum for the implementation of the treaty or unawareness of the need to implement; (3) limited technical, administrative and financial capacity, including insufficient preparation in the law-making process; (4) deficient coordination between the different national authorities involved; (5) lack of clarity of the data provided or the technical knowledge necessary to interpret and implement the data is unavailable to the authorities; (6) lack of monitoring and revision of (the need of) implementation; (7) issues with the interpretation of legal concepts (amongst others, as a result of translations), meaning that it becomes unclear which rules and instruments are to be applied in the implementation of the treaty; (8) incapacity to involve public opinion and a lack of social awareness and pressure; (9) insufficient budget; (10) changes in the economic circumstances; and (11) unforeseen and unpredictable costs that come with the implementation of the treaty obligation (Goeteyn and Maes 2011).

To further understand this process, we would need to revisit the emergence of CITES. When born, CITES was considered far ahead of its times. It aimed to regulate international trade across a wide bouquet of species of wild flora and fauna. While it speaks of science based decisions and sustainable trade, at times there appears confusion as to whether Wildlife trade is a commodity or taboo? The answer to this question is important as the treaty also recognizes that wild resources are the sovereign right of a nation and its people who are also mandated to take such steps as may be needed to conserve them. The diverging strands of this question can be clearly seen during trade
deliberations on some well-known species and groups such as African elephants, whales and some timber.

There are two clear strands of thought with regard to compliance of International agreements. One sees compliance issues more of a “management problem” rather than an “enforcement problem”. This advocates the facilitation and managerial approach to compliance, which involves closely working with defaulting parties to support their efforts to build an appropriate framework to reach full compliance at the earliest. Such support could include sharing of information, technical advice, guidance, capacity building and financial support. The underlying thought is that a country which is party to any such IA is fully willing to comply with its requirements under such IA but is unable to do so on its own due to limitations of capacity and/or resources. Thus, any non-compliance is to be dealt with by managing it by collaboration and cooperation rather than coercion. (Chayes and Chayes, 1995). Punishment is sees as too costly, too political and too coercive. (Downs et al 1996).

The other approach merits that the success of any IA can only be consequent to a strong central authority with powers of coercion. Compliance measures would include punitive steps as a means of discouraging any parties which may be able, yet unwilling for whatever reasons, from compliance (Downes et al 1996).

The international system is a complex social setting, where states, even when they are seemingly acting in isolation on one level, are also on another level positioning themselves in relation to other states (Epstein 2006).

Given that parties to MEA are sovereign states, there is clearly an initial reluctance to use measures like suspension or termination as they would appear harsh, are confrontational in nature and may also be seen as a “loss of face”. Also, that a large number of countries may have less than perfect records and may see themselves also on the receiving end at some point in time may also influence a softer approach towards non-compliance. Finally, the
two words- Politics and Corruption may also have a role to play in such decision-making.

It has also been pointed out that monitoring compliance of any effective International Agreement is costly and that the high cost of such monitoring must be borne by the parties themselves (McEvoy and Stranlund 2009).

The CITES process clearly identifies non-compliance by various tools such as Annual and Biannual Reports, periodic evaluations etc. These are laid out in the public domain. Here the key question emerges- After detection, what?

Despite such clear knowledge, I see a reluctance to take such non-compliance head on by using penal provisions against non-conformists.

Trade bans are one of the powerful tools in the CITES framework. However, it has been pointed out that sanctions work only against economically weak and politically vulnerable countries and unilateral sanctions can be imposed only by the major powers, and as such, their legitimacy as a tool for treaty enforcement is deeply suspect (Chayes and Chayes 1993). Here, it may be pertinent to revisit the list of Countries Subject to a CITES Trade Ban as on 5th February 2017, (See Chapter 7), which only reinforces the point.

CITES itself acknowledges that, enforcement of its statutes has long proved to be a problem among Parties. Even those Parties (mostly consumer ones) that are relatively well resourced are unable to enforce the provisions of the Convention and police effectively the large volumes of wildlife traded across their borders (CITES (2004). CoP13 Doc. 24 (Rev.1).

The CITES process also, atleast in theory, treats all member States at the same level and thus suffers from a lack of differentiated responsibilities. This is again critical as, for historical reasons different countries have different capacity to respond to the demands placed upon them by the Convention from time to time. This aspect of non-compliance needs to be acknowledged and
addressed. This is further aggravated by a lack of incentives for compliance and a corresponding lack of disincentives for non-compliance.

As the present study shows, there are very clear evidences of some member States misusing the provisions of the convention. Yet, despite such violation and non-compliance, there is very little action to deter them and any other potential violators. This must remain one of the weakest aspects of CITES.

The dynamics of wildlife crime and hence the needs of wildlife law enforcement are constantly changing- Is CITES equipped and/or ready for this role?

Recent times have seen the emergence of several other MEAs focused on biodiversity conservation and its challenges. While trade regulation remains a very important element of any efforts towards conservation of wild flora and fauna, the broad canvas of some of the other MEAs pose a challenge for CITES to keep reinventing itself in the modern world to stay increasing relevant. At its outset, while wildlife trade was largely seen through a prism of black and white, with limited gray scales, if at all, today the scene has changed. Wildlife trade involves people, some at the lowest tier being poorest of the poor, and any regulation on such trade impacts such people in several ways. Today, issues like livelihood concerns, poverty alleviation, access and benefit sharing have begun to appear on the CITES radar (Mathur A., 2009).

This has taken on a new momentum after the adoption of the UN Millennium Development Goals (UN, 2008). At the 13th and 14th Conferences of the Parties (held in October 2004 and June 2007) CITES passed decisions that accepted an obligation to take into account impacts on the livelihoods of the poor (Dickson, B. 2008).

With several MEAs jostling to occupy centre stage, there is a considerable risk of duplication, gaps, and even conflict between them and their member States. “Rivalry between secretariats” of such MEAs may only exacerbate the problem (Gillespie, A. 2002). This is leading to situations of what is described as
“Forum shopping” where member states try to chose the best forum suited for their purpose, to deal with questions of management and legal and illegal trade in certain species. This is perhaps best exemplified by the ongoing debate between CITES, the International Convention for the Regulation of Whaling and even the World Trade Organization with regard to the management of cetaceans.

CITES and its linkages with other environmental regimes:
Since the UN Stockholm Conference on the Human Environment in 1972, much effort has gone in towards establishing Multilateral Environmental Agreements (MEAs). In a world as connected as today, environmental regimes like CITES or similar MEAs cannot exist in isolation. First, regimes are connected because they often share institutional architecture, deal with different aspects of the same problem, frame issues using similar legal and policy principles, and are subject to attempts to coordinate across issues by groups of nations, NGOs and international agencies. (Ward 2006). Thus, the interrelationships of such MEAs often have a significant bearing on their effectiveness.

While there has been significant progress on various environmental issues, leading to much higher levels of awareness, there are considerable challenges in making them universally effective. According to some, one problem may be the single-issue focus of international environmental regimes (Ward 2006), of which CITES is a classic example.

Nation states, by agreeing to be members of such MEAs, aim to gain from mutual cooperation while such membership also has significant influence on their perception of their interests and of good behaviour (after Young, 1999; Hasenclever, Mayer & Rittberger, 1997: 136-211). Thus, membership of such an MEA for nations signifies both interdependence as well as a legally accepted acknowledgement to take into account the concerns of other member nations. Such regimes may be nested in some legal and institutional architecture that relates to a family of issues (Vogler, 1995: 37; Young, 1999: 223 | P a g e
A cluster of different regimes may deal with different aspects of the same problem (Young, 1999: 184-185).

CITES has been very much aware that as a trade focused MEA, its interactions and linkages with other MEAs are crucial to its success.

Thus, the CITES Strategic Vision: 2008-2020 (CITES Resolution Conf. 16.3 (Rev. CoP17) clearly has a goal that aims to contribute to significantly reducing the rate of biodiversity loss and to achieving relevant globally-agreed goals and targets by ensuring that CITES and other multilateral instruments and processes are coherent and mutually supportive. The strategic vision document also has specific references to contribute to the achievement of the World Summit on Sustainable Development (WSSD) target of significantly reducing the rate of biodiversity loss by 2010. At its 16th meeting (Bangkok, 2013), the Conference of the Parties extended the validity of the Strategic Vision and Action Plan from 2013 to 2020 and included amendments to contribute to the achievement of the Strategic Plan for Biodiversity 2011-2020 and the relevant Aichi Biodiversity Targets adopted by the Parties to the Convention on Biological Diversity, and to the relevant outcomes of the United Nations Conference on Sustainable Development.

The Conference of the Parties to CITES also lays out its commitment, within the context of its mandate, issues such as contributing to the UN Millennium Development Goals relevant to CITES.

The Convention on Biological Diversity (CBD):
In response to ever growing threats to the earth’s natural resources, the United Nations Environment Programme (UNEP) convened the Ad Hoc Working Group of Experts on Biological Diversity in November 1988 to explore the need for an international convention on biological diversity. Soon after, in May 1989, it established the Ad Hoc Working Group of Technical and Legal Experts to prepare an international legal instrument for the conservation and sustainable use of biological diversity. The experts were to take into account
"the need to share costs and benefits between developed and developing countries" as well as "ways and means to support innovation by local people".

By February 1991, the Ad Hoc Working Group had become known as the Intergovernmental Negotiating Committee. Its work culminated on 22 May 1992 with the Nairobi Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity.

The Convention was opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (the Rio "Earth Summit"). It remained open for signature until 4 June 1993, by which time it had received 168 signatures. The Convention entered into force on 29 December 1993, which was 90 days after the 30th ratification. The first session of the Conference of the Parties was scheduled for 28 November – 9 December 1994 in the Bahamas. Currently, CBD has 196 parties. (www.cbd.int accessed on 22nd Oct 2017).

The CBD is a broad ‘framework’ Convention that sets out general principles and commitments on an extensive range of issues related to biodiversity. (Cooney 2001).

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are 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, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. (http://www.cbd.int/doc/legal/cbd-en.pdf Accessed on 22nd Oct 2017).

CITES and CBD have also entered into a Memorandum of understanding (http://www.cites.org/common/disc/sec/CITES-CBD.pdf accessed on 22nd Oct 2017).
This MoU includes the following key articles:

- Institutional co-operation with each other by the secretariat of each Convention to facilitate the participation, at meetings of the Convention, of the Secretariat of the other.

- Exchange of information and experience by instituting procedures for regular exchange of information in their respective fields of action and in preparing the documents required for each Convention.

- Co-ordination or programmes of work in preparation of the relevant parts in their respective work plans and by facilitating the reporting process of Contracting Parties under both Conventions.

- Joint conservation action including developing work plans for the implementation of joint activities such as research, training and public awareness activities with a view to encouraging integration and consistency between national strategies, plans or programmes under the Convention on Biological Diversity and plans or programmes under the convention on International Trade in Endangered Species of Wild Fauna and Flora. The Parties to this Resolution Conf. 16.4 of CITES on Cooperation of CITES with other biodiversity-related conventions, while recognising the Strategic Plan for Biodiversity 2011-2012, developed and adopted by the Conference of the Parties to the Convention on Biological Diversity at its 10th meeting in Nagoya, Japan, stresses that effective implementation of CITES is needed to implement the Strategic Plan for Biodiversity 2011-2012 and to achieve the Aichi targets.

CITES and the CBD are the products of very different political forces, negotiated 20 years apart in the context of very different perceived threats to biodiversity (Cooney 2001). This difference in timing is important as it lays down the context in which these MEAs have evolved. CITES does not have any difference amongst nation states as parties; rich or poor, neither does it place a developmental or economic context to the challenge of dealing with
wildlife trade issues. Thus, the cost of implementing the convention, which can be considerable for many countries, which may be very rich in biological resources, yet economically less developed. These costs could be by way of the actual framework of the control and command regime advocated by CITES or by way of forgoing opportunities of trading in species that now occur on CITES appendices.

By contrast, CBD’s Strategic Plan for Biodiversity 2011-2020, including the Aichi Biodiversity Targets emphasise that positive incentives for the conservation and sustainable use of biodiversity are developed and applied, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention. CBD also strongly emphasises for the provision of adequate, predictable and timely financial support to developing country Parties, especially the least developed countries, small island developing States and the most environmentally vulnerable countries, as well as countries with economies in transition, through contributions from developed country Parties as well as through the Global Environment Facility. (http://www.cbd.int/sp/implementation/ accessed on 22nd Oct 2017).

While it has also been suggested that CITES could become a formal Protocol to the CBD, the relationship between CITES and CBD has been described as an “imperfect overlap’. In practicality, such an outcome would be difficult to achieve, including for reasons of a functional autonomy of CITES vis a vis as one hierarchically subordinate to CBD.

The International Tropical Timber Organization (ITTO)
ITTO is an intergovernmental organization promoting the conservation and sustainable management, use and trade of tropical forest resources. It was established under the auspices of the United Nations in 1986 amidst increasing worldwide concern for the fate of tropical forests.
The ITTO facilitates discussion, consultation and international co-operation on issues relating to the international trade and utilization of tropical timber and the sustainable management of its resource base.

ITTO’s origins can be traced back to 1976 when a long series of negotiations that led to the first International Tropical Timber Agreement (ITTA) began at the fourth session of the United Nations Conference on Trade and Development (UNCTAD). These negotiations led to the first ITTA in 1983. Subsequent successors to this agreement have been concluded in 1994 and 2006.

From inception, ITTO is seen as unusual in the family of intergovernmental organizations. This is mainly because while like all commodity organizations it is concerned with trade and industry, like an environmental agreement it also pays considerable attention to the sustainable management of natural resources. While focusing on the world tropical timber economy and the sustainable management of the resource base, it simultaneously encourages the timber trade and the improved management of the forests. In addition, it contains provisions for information sharing, including non-tropical timber trade data, and allows for the consideration of non-tropical timber issues as they relate to tropical timber.

Salient features of ITTO include:

- an equal partnership in decision-making, policy formulation and project development between producing members (tropical developing countries) and tropical timber consuming members (mostly temperate developed countries);
- the active participation of civil society and trade organizations in meetings and project work;
- the formulation and implementation of projects in producing member countries, using mostly local expertise;
• frequent meetings of its governing body (the International Tropical Timber Council), meaning a comparatively rapid pace of debate, decisions and action.

The governing body of the ITTO is the International Tropical Timber Council, which is composed of all the Organization's members. ITTO has two categories of membership: producing and consuming. Annual contributions and votes are distributed equally between these two groups, which are called caucuses. Within each caucus, the dues and votes of individual members are calculated based on tropical timber trade and, in the case of producers, also on the extent of tropical forests within the country. (http://www.itto.int/about_itto/ accessed on 22nd Oct 2017).

CITES, by its Resolution Conf. 14.4 has spelt out in detail the modalities of cooperation between CITES and ITTO regarding trade in tropical timber. This acknowledges that CITES can play a positive role in promoting the conservation of timber species through trade in accordance with the requirements of Articles III, IV and V of the Convention. It also recognises that the objectives of the International Tropical Timber Agreement (ITTA), 1994, include providing an effective forum for consultation, international cooperation and policy development with regard to all relevant aspects of the world timber economy and promoting trade in tropical timber from sustainable sources.

CITES makes note of the important role that the International Tropical Timber Organization (ITTO) has played and continues to play with respect to international trade in tropical timber species and recommends that CITES Parties that are also party to ITTA, 1994, or its successor agreement, bring to the attention of the International Tropical Timber Council any concerns regarding the effects of international trade on tropical timber species. It also welcomes the work of ITTO in promoting transparent markets, trade in tropical timber from sustainably managed tropical forests and, in that context, promoting forest law enforcement; (http://www.cites.org/eng/res/14/14- 04C15.php accessed on 22nd Oct 2017).
The ITTO-CITES Program for Implementing CITES Listings of Tropical Timber Species is a multi-year collaborative project between ITTO and CITES jointly implemented by the two Secretariats since 2007 with financial support of the European Union through the European Commission together with other ITTO donors that provides specific assistance to countries throughout the tropics to design forest management plans, forest inventories, provide guidelines and case studies for making “Non Detriment Findings” (NDFs) for CITES listed tree species, and to develop and disseminate tools for timber identification. This project, plays an important role in implementing the recommendations of the CITES Mahogany Working Group (MWG) and CITES Plants Committee on mahogany and other tropical tree species such as ramin and afrormosia listed in CITES Appendix II.

The CITES Secretariat and International Tropical Timber Organization (ITTO) have in January 2013, launched a report entitled Tracking sustainability: review of electronic and semi-electronic timber tracking technologies. This report has been produced within the framework of the joint ITTO-CITES Programme for Implementing CITES Listing of Tropical Timber Species and is part of the ITTO Technical Series (TS-40). Timber tracking technologies are relatively new and are gaining increasing importance as a result of changing consumer behaviour and market demands. The report is a practical guide to using these rapidly evolving technologies.

The number of tree species included in the CITES Appendices has grown from 18 in 1975 to more than 350 today, with close to 200 of these used and traded for timber. Interest in including timber species in the CITES Appendices has particularly increased since the beginning of the 1990s and amplified in the last few years. CITES listing of close to 200 new timber species was to be proposed at the 16th meeting of the Conference of the Parties to CITES (Bangkok, 3-14 March 2013). (http://www.cites.org/eng/news/sundry/2013/20130131_CITES_ITTO_timber_tracking.php accessed on 22nd Oct 2017).
ITTO as an IGO provides valuable inputs to the CITES process and the mutual relationship seems to be much valued.

The International Whaling Commission (IWC)
The International Whaling Commission is an Inter-Governmental Organisation tasked with the conservation of whales and the management of whaling. It is set up under the International Convention for the Regulation of Whaling signed in 1946. The Commission has a current membership of 89 Governments from countries around the World.

The Convention includes a Schedule which, amongst other things, sets out catch limits for commercial and aboriginal subsistence whaling and also lays down various regulations including for capture of whales, management of stocks, supervision and control of whale catching operations, seasons for factory ship and land station etc. ([http://iwc.int/iwcmain](http://iwc.int/iwcmain) accessed on 22nd Oct 2017).

Whereas the International Convention for the Regulation of Whaling (ICRW) provides for the conservation and management of whale stocks, many whale species are also listed on CITES appendices, by virtue of which CITES regulates international trade in whales and whale products. As international organizations providing for different types of regulations regarding the same species, it is imperative that the two organizations co-operate as closely as possible.

Article XV of the text of the CITES Convention, regarding Amendments to Appendices I and II stipulates that, when a proposal for a marine species is received for consideration by the Conference of the Parties, the Secretariat must consult “inter-governmental bodies having a function in relation to those species” for their comments on the proposal. This information is to be provided to the Parties.

For whale species, the IWC is the most appropriate forum towards this.
In 1978, the International Whaling Commission (IWC) passed a resolution requesting that CITES "take all possible measures to support the International Whaling Commission ban on commercial whaling for certain species and stocks of whales as provided in the Schedule to the International Convention on the Regulation of Whaling". The CITES Parties responded, at the second meeting of the Conference of the Parties in 1979, by adopting Resolution Conf. 2.9, which recommends that "the Parties agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." (http://www.cites.org/eng/cop/11/doc/15_02.pdf accessed on 22nd Oct 2017).

At its 59th annual meeting held during May 28-31, 2007, in Anchorage, Alaska., the IWC, through Resolution 2007-4, reaffirmed the important role of CITES in supporting the IWC's management decisions with regard to the conservation of whale stocks and the importance of continued cooperation between CITES and IWC.http://www.cites.org/common/cop/14/inf/E14i-57.pdf

However the equation between CITES and the IWC could be described as an uneasy one. The tension between CITES and the IWC is expressed in a draft resolution submitted by the UK on 28/05/2007 during the 14th CoP at the Hague that requests contracting governments to respect the relationship between the two conventions and not to seek the transfer of cetacean species from CITES Appendix I while the moratorium remains in place. http://www.cites.org/common/cop/14/inf/E14i-44.pdf

In actuality, it is not so much a conflict between two MEAs but between countries trying to take advantage of the best playing field that suits their current agenda.

Article VIII of the IWC convention text states that “Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of
its nationals a special permit authorizing that national to kill, take and treat
whales for purposes of scientific research subject to such restrictions as to
number and subject to such other conditions as the Contracting Government
thinks fit, and the killing, taking, and treating of whales in accordance with the
provisions of this Article shall be exempt from the operation of this Convention.
Each Contracting Government shall report at once to the Commission all such
authorizations which it has granted. Each Contracting Government may at any
time revoke any such special permit which it has granted.

Without going in further detail, it is evident that the provisions of the IWC may
be seen as in conflict with the mandate of CITES. The IWC acknowledged the
divergence in opinions even amongst its own members when The ‘Future of
the IWC’ process established at the Commission’s 59th Annual Meeting in 2007
agreed to:

• Encourage continuing dialogue amongst Contracting Governments
  regarding the future of the International Whaling Commission

• Continue to build trust by encouraging Contracting Governments to
  coordinate proposals or initiatives as widely as possible prior to their
  submission to the Commission

• Encourage Contracting Governments to continue to co-operate in taking
  forward the work of the Commission, notwithstanding their different
  views regarding the conservation of whales and the management of
  whaling.

**International Criminal Police Organization (ICPO-INTERPOL):**
The International Criminal Police Organization (ICPO-INTERPOL) is the
world’s largest police organisation, with 190 member countries. It is
responsible for providing and developing mutual assistance between all the
criminal police authorities across different countries. Interpol has an
Environmental Crime Program and a Wildlife Crime Working Group to initiate
targeted responses to such crime.
In 1976, the 45th session of the General Assembly of ICPO-Interpol urged the National Central Bureaus of Interpol to assist in cases involving illegal trafficking in specimens of wild fauna and flora, by either taking enforcement action or, where appropriate, asking other authorities to intervene. The 62nd session of the General Assembly (1993) of ICPO-Interpol also recommended that the members of ICPO-Interpol urge their governments to do their utmost to ensure that measures are taken to control the illegal wildlife trade;

The first meeting of the ICPO-Interpol Sub-Group on Wildlife Crime in February 1994 recommended that among the main objectives of the Sub-Group should be the dissemination of information on illegal wildlife trade and the making of appropriate recommendations to the CITES Secretariat and to bodies responsible for the enforcement of laws for the protection of wild fauna and flora;

Resolution Conf. 9.8 (Rev.), adopted at the ninth meeting of the Conference of the Parties (Fort Lauderdale, United States of America) and amended at the tenth meeting (Harare, Zimbabwe, June 1997), directs the CITES Secretariat to pursue closer international liaison between the Convention's institutions, national enforcement agencies, and existing intergovernmental bodies, particularly the World Customs Organization and ICPO-Interpol;

The ICPO-Interpol and the CITES Secretariat have entered into a Memorandum of Understanding in 1998 to strengthen the co-operation between them and to jointly draft and implement measures to improve collaboration, co-operation and information exchange between Police authorities and CITES Management Authorities. http://www.cites.org/common/disc/sec/CITES-Interpol.pdf
ICPO Interpol currently runs four long-term projects to protect threatened animal and plant species:

- **Project Leaf (Law Enforcement Assistance for Forests)** – to combat illegal logging and other forest crime. Led by INTERPOL and the United Nations Environment Programme, it supports enforcement operations, provides training and tactical support and improves intelligence gathering.

- **Project Predator** – to improve conservation efforts of the world’s remaining Asian big cats, through enhanced communication of intelligence, development of a global picture of the criminal activity threatening Asian big cats, disruption of criminal networks, and apprehension of criminals.

- **Project Scale** – to detect and combat fisheries crime. It assesses the needs of vulnerable member countries, conducts region- or commodity-specific law enforcement operations, develops the Fisheries Crime Working Group, enhances expertise, and expands INTERPOL’s international marine enforcement network.

- **Project Wisdom** – to combat elephant and rhinoceros crime and the illegal trade in ivory. It seeks to conserve these species through international operations, intelligence led policing, increased public awareness and training of local police to effectively fight this type of crime.

It is also a very active participant of the ICCWC.

**The International Consortium on Combating Wildlife Crime (ICCWC):**
The ICCWC is the combined effort of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ICPO-INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank, and the Customs Cooperation Council (known as the World Customs Organization (WCO)),

It was established in response to the growing realisation that illegal wildlife trade may demonstrate very real threats to the national security and the bio-security of States. The ICCWC has also made note of the involvement of organized crime, and sophisticated techniques and structures, in the illegal harvesting, smuggling and subsequent unlawful sale of wildlife and wildlife products, and that the association of general crimes such as conspiracy, fraud, counterfeiting, money-laundering, racketeering, violence and corruption are regularly encountered by wildlife law enforcement officers;

Noting that the member States and Parties of CITES, ICPO-INTERPOL, UNODC, World Bank and WCO have expressed a desire that the agencies liaise together more closely, ICCWC members have agreed to work collaboratively to support national law enforcement agencies, and regional wildlife law enforcement agreements, bodies and networks in responding to transnational wildlife crimes through, inter alia, the provision of our available expertise and resources, and to raise awareness of wildlife crimes and other related violations in the wider law enforcement community.


Other Partnerships:
CITES also has formal partnerships with other institutions such as the United Nations Environment Programme (UNEP), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (SBC), the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on the Conservation of Migratory Species of Wild Animals (CMS), FAO, UNCTAD, World Customs Organisation, Lusaka Task Force Agreement, Commission for the Conservation of Antarctic Marine Living Resources, Department for Environment, Food and Rural Affairs (DEFRA) of the United Kingdom, U.S. Fish and Wildlife Service Office of Law Enforcement/Clark R. Bavin National Fish & Wildlife Forensic Laboratory USA, TRAFFIC International, WAZA - the World Association of Zoos and Aquariums, Royal
An Ideal Legal Framework:
The ESA and the WLPA and the lessons from them have been dealt with in some detail in a previous chapter. Considering that India’s umbrella wildlife conservation legislation, the Wildlife (Protection) Act 1972 is being considered for a review, it would be pertinent to list some of the desired changes such a review would do well to consider:

i. Given the global acknowledgement of illegal wildlife trade as a form of organised transnational crime, it strongly recommended that the WLPA 1972 (and IFA 1927) should include statutory protection to forest officers and staff engaged in protection of forests and wildlife under Section 197 of the Criminal Procedure Code, as is available for police.

ii. The issue of carrying and use of firearms by forest and wildlife staff also needs to be uniformly codified across the country. In many states, forest officers are expected to apply for personal licenses for carrying government issues firearms, which is not appropriate.

iii. There is also a serious need to rethink about and rationalize the number of schedules under the WLPA. Currently we have six, with one for plants, one for vermin and the others for animals, including birds. There is very little distinction between Schedules II, III and IV while there is a separate set of sections applicable to species listed in Part II of Schedule II because of the threats to them on account of trade.

The following is suggested:

Schedule I: Species threatened by extinction; could also include any species which are under serious threat due to illegal trade

Schedule II: Species under a lesser degree of threat as compared to Schedule –I but still in need of statutory protection.

Schedule III: This would include flora species with special protection
needs

Schedule IV: This would include all species listed in Appendix I and II of CITES as well as those listed on Appendix III by India. The list would be linked to the CITES Appendices directly so that any amendments to the CITES Appendices would automatically apply here.

iv. The listing and delisting of species on the various schedules of the WLPA are shrouded in an element of mystery for the public. In today’s world in order to bring about greater transparency in such decision making as well as seek greater public participation, it is suggested that a mechanism be put in place for seeking suggestions, including from field managers, scientists and common people for listing and delisting of species, as well as for their upgradation and downgradation across Schedules. Any such proposal received should be dealt with in a time bound manner, inviting information from all concerned, after which an expert group could take a call, for reasons to be recorded in writing and placed in the public domain. In cases requiring urgent intervention, the Ministry may initially list a species for a period of two years, within which the review as mentioned above, may be carried out retrospectively.

v. Merely listing a species in the schedule does not do much for its conservation. All listings in the Schedules will be compulsorily subject to a technical and scientific review after a specified period, say 10 years.

vi. For violations of the WLPA, while there is a provision of fines or imprisonment, there is no mention of civil damages (as under the law of Torts). Thus, individuals and companies must be made liable for damages arising out of their actions deemed negligent but not necessarily intentional or even criminal. This would be in addition to their liability under various existing provisions of the WLPA.

vii. Given the potential adverse impact of many industrial and other activities there is a need to build in a compensation, restitution and restoration regime within the Wildlife (Protection) Act, 1972 to ensure that in addition to criminal penalties there is appropriate civil liability of the violators to meet costs towards the above.
viii. The existing provisions of the WLPA, depend too much on the individual wisdom of one person i.e. the Chief Wildlife Warden. However, for being designated the CWLW, no specific qualifications or experience in wildlife is laid down. Similarly, the WLPA lays down that the State Govt may appoint Wildlife Wardens and any such officers as required to assist the CWLW. Many states have declared Deputy Chief Wildlife Wardens, Assistant Wildlife Wardens etc. but their specific roles and responsibilities are nowhere defined. That renders such a designation largely ornamental. Also, all powers to be utilised by such officials are to be delegated by the respective central or state government, as may be the case (Sec 3,4 of the WLPA). Two things should be considered here: The WLPA should also define specific roles of officers other than the CWLW. As and when any person is appointed to discharge any role under the WLPA, the order should not only carry the designation (eg Hon. WLW, Deputy Chief WLW, AWLW etc.) but also his/her specific roles as best defined.

ix. The WLPA 1972 is silent on the issue of specific provisions for identification and protection of wildlife corridors. Presently, corridors including Eco Sensitive Zones are being demarcated and declared under provisions of the EPA. Considering that the WLPA is the umbrella legislation on this theme, it should be self sufficient in these. There is a need to bring about greater synergy between the provisions of Wildlife (Protection) Act, 1972 and other related laws such as the Environment (Protection) Act, 1986 together with its various notifications such as Ecologically Sensitive Area, Coastal Zone Regulations, Environment Impact Assessment and related notifications. Unless wildlife conservation issues are looked within the broader context of environmental decision making, wildlife habitats and species will continue to be lost.

x. Illegal Wildlife Trade is a major threat to the safety and security of our wild species and their habitats. As mentioned above, wildlife crime is globally being acknowledged as a form of Transnational Organised Crime with linkages to other forms of organised crime such as terrorism, human trafficking and trafficking of narcotic drugs and arms. Such organised crime needs an organised response. Thus, illegal wildlife trade or any such attempt needs to be distinguished as a crime calling for a higher degree of punishment.
xi. In case of regulation of trade in specified plants and their derivatives, especially those that have a long standing tradition of use, cultivation and a ready market, it is seen that while the regulatory provisions are enacted, the administrative provisions that may facilitate cultivation and marketing of the species and thus easing up on collection from the wild, are missing. The immediate effect is that the legal trade goes underground, thus dealing a double blow to conservation as well as closing a good livelihood option for local communities.

xii. The WLPA 1972 needs to urgently include a new chapter in consistence with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The terms, phrases and definitions etc. in the Chapter would have the same meaning as these have in the Convention. As one of the earliest members of the Convention, it is a much needed step for India to bring in relevant legislation to facilitate implementation of CITES. This would mean also providing a legal role to the Management Authority(ies) and Scientific Authority(ies) as required under CITES provisions.

xiii. While PAs are crucial for our biodiversity, wild animals do not follow human-made boundaries. A significant number of our wildlife populations, including that of many threatened and endangered species, are found outside our Protected Area network, in areas including Reserved Forests, Revenue Forests and Lands, Village Forests and commons, Private Forests and Lands, and Community Areas. Such lands can also act as corridors, connecting wildlife habitats. It is seen that such areas are extremely vulnerable both from the perspective of high mortality of wildlife as also very high human-wildlife conflict. Human-wildlife conflict is a growing challenge, which is increasingly alienating a large number of people living around PAs/forests because of their inability to adequately deal with species that threaten human life or property including standing crops. Decisions with respect to hunting/trapping of atleast a few species which are clearly recognised as threats (such as bluebull, wild pig) found outside PAs or forest areas on private lands should be made very liberal. We should acknowledge that we cannot protect everything, everywhere and the attempt to do so is leading to adverse public opinion amongst local communities who see themselves as bearing the immediate direct costs of conservation which is seen as an “urban centric hobby”. There is thus a need
for a comprehensive policy on management of wildlife outside PAs.

xiv. Linking policy documents with legal instruments: Linkages of related policy documents such as the National Wildlife Action Plan (NWAP) should also be made to the WLPA wherever appropriate and applicable. The NWAP (2017-2031) is a step in the right direction.

In conclusion
Ensuring compliance is and will continue to be a challenge for CITES in a rapidly changing world. The CITES process must also address issues such as livelihood opportunities, access and benefit sharing of biological resources and implications of human-wildlife conflicts.

Wildlife crimes have come of age. The changing face of wildlife crime is also a huge challenge, with illegal wildlife trade increasingly being acknowledged as a form of Transnational Organised Crime. Organised crimes merit an organised response. A 21st century crime cannot be fought with a 20th century mindset or 19th century tools. CITES must thus engage more and with specialists including from the field of crime mitigation and forensic science.

The human dimensions of wildlife trade also need to be addressed. When CITES speaks of science based decisions, the assumption is that such science refers to the ecology of the species in question. This must change and social science must also contribute to the decision making process under the convention. In the present day, politicians are rarely elected for protecting the environment, but rather for what they do to improve the economy, human security and human health. Therefore, if we are to successfully promote the importance of conserving biodiversity to decision-makers and the wider public, we need to link biodiversity loss to the issues of most concern to current decision-makers, i.e. the economy, security and human health. (Watson 2005). The linkages indicated in the NWAP(2017-2031) with the Sustainable Development Goals must be strengthened to promote human well being while also promoting development and conserving the environment.
In recent times, CITES has taken up many new and significant initiatives, including becoming a part of the Global Tiger Initiative (GTI) and the establishment of the ICCWC. It has made considerable efforts to reach out and establish close linkages with a series of other MEAs, IGOS and the like. This collaboration is to generate synergy amongst the aims and objectives of CITES and its partner(s) while also helping keep CITES relevant in changing times. While the relationship has not always been clear and free of friction, it has also to do between the differences in focus between the partners, as also their mutual aim to protect their individual significance. It can be safely concluded that the CITES process has benefitted from such partnerships and seems better placed to deliver on its aims and objectives with them.

In a world where environmental protection is increasingly being seen as a global public good, the success of CITES should emerge from the fact that member states/parties consider compliance to be important for the future and general well being of member states and their people. That, in effect will be the ultimate litmus test of the effectiveness of this global treaty as it faces up to the challenges of tomorrow.