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Why Chinese Wildlife Disappears as CITES Spreads

JOHN COPELAND NAGLE*

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) proves that popularity does not assure success. CITES is one of the oldest and most popular international environmental treaties. Yet after twenty-three years and the approval of over 125 nations, wildlife continues to become extinct and endangered at an unhindered rate. Why?

The explanation for this paradox can be found by comparing the state of wildlife in China and the United States. Both countries are parties to CITES. Their efforts to enforce CITES are very different, but they both reveal the limitations of the current treaty regime. Chinese environmental law has developed rapidly during the past decade, but China still struggles with the enforcement of its new environmental statutes and with integrating environmental issues into the rapid economic development occurring throughout the country. China's protection of endangered species reflects the same dichotomy: Recently several poachers were executed for killing endangered pandas and elephants, yet trade in tiger and rhinoceros parts continues largely unabated.¹ The same kind of ambivalence can be seen in the United States, even though American environmental law is far more developed, both in practice as well as in existing statutes. Indeed, the U.S. Endangered Species Act has become one of the most controversial environmental statutes to enforce because of the demands it places on private parties.

CITES has achieved a greater degree of legal protection for endangered wildlife. That wildlife continues to disappear results from three causes in particular: the limited reach of CITES, the failure to fully enforce CITES where it applies, and the ambivalent attitude toward protecting rare wildlife. This article examines each of these three problems, and explores possible solutions to them.

I. OVERVIEW OF CITES

CITES regulates international trade in wildlife and plants by establishing three levels of protection that depend on the extent of the threat faced by a

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1. See *infra* notes 43-58 and accompanying text.

species.² Appendix I provides the highest level of protection for listed species, dead or alive, allowing exports only when a permit is obtained. It applies to "all species threatened with extinction which are or may be affected by trade."³ Trade in species listed on Appendix I "must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances."⁴ Appendix II permits but regulates trade for listed species. It applies to species that may become threatened with extinction if trade is not strictly regulated and to other species that must be protected to accomplish previous goals.⁵ Appendix III includes species identified by their native country as needing special protection.⁶ Species can be added, deleted or moved from one appendix to another by a two-thirds vote of the parties during their biannual meeting.⁷ Additionally, CITES allows a nation to enter a specific reservation from the treaty's provisions for particular species.⁸

CITES encourages parties to use their own domestic laws to penalize trade in endangered species.⁹ Indeed, the treaty specifically authorizes nations to impose stricter domestic requirements concerning such trade.¹⁰ CITES also directs each party to designate appropriate management and scientific authorities responsible for implementing the treaty and issuing permits.¹¹

II. LAW AND WILDLIFE IN CHINA

"China's biodiversity ranks eighth in the world and first in the northern hemisphere."¹² Over 100,000 species of animals and nearly 33,000 plant species exist in 460 different types of ecosystems. Many of these species are threatened or endangered. Nearly one quarter of the 640 species listed on CITES's Appendix I are found in China.¹³ Indeed, three native Chinese species are among the top ten most endangered species in the world according to the World Wildlife Fund.¹⁴

2. For an overview of CITES, see DAVID S. FAVRE, *INTERNATIONAL TRADE IN ENDANGERED SPECIES: A GUIDE TO CITES* (1989).

3. Convention on International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* Mar. 3, 1973, art. II, cl. 1, 27 U.S.T. 1087, 1092, 993 U.N.T.S. 243, 245 [hereinafter CITES].

4. *Id.*

5. *See id.* art. II, cl. 2.

6. *See id.* art. II, cl. 3.

7. *See id.* arts. XV & XVI.

8. *Id.* art. XXIII.

9. *Id.* art. VIII, cl. 1.

10. *See id.* art. XIV, cl. 1.

11. *Id.* art. IX.

12. CHINA'S AGENDA 21: WHITE PAPER ON CHINA'S POPULATION, ENVIRONMENT, AND DEVELOPMENT IN THE 21ST CENTURY 171 (1994) [hereinafter AGENDA 21]; *see also* WHAT'S NEW IN CHINA: PROTECTING RARE ANIMALS (1986) [hereinafter PROTECTING RARE ANIMALS] (monograph detailing China's efforts to preserve its rarest species).

13. *See* AGENDA 21, *supra* note 12, at 173.

14. *See World Wildlife Fund Lists 10 "Most Wanted" Species*, XINHUA GEN. OVERSEAS NEWS SERV., Mar. 1, 1993 (noting that the list includes the Siberian tiger, the giant panda, and the Asiatic black bear).

The giant panda is the most famous of those three species. Only one thousand pandas are left in the wild, and their numbers are still declining, albeit at a reduced rate. The threats to their survival include the loss of bamboo and habitat, a relatively small number of young pandas, genetic inbreeding, inability to survive in captivity, and poaching.¹⁵ Additionally, the black rhinoceros has suffered a ninety-five percent drop in population since 1970 so that only 2,000 are alive today.¹⁶ Finally, the Indo-Chinese tiger is the most endangered. Estimates of the number of Indo-Chinese tigers alive in the wild range from 50 to 500, and, with two of the four native Chinese tiger species already extinct, many fear that this tiger could disappear by the end of the century.¹⁷ Other notable Chinese species that are endangered include the Yangtze alligator, the white flag dolphin, the crested ibis, and certain Mongolian horses.¹⁸ China continues to discover new wildlife today.¹⁹

The development of Chinese wildlife law mirrors the development of Chinese environmental law (and Chinese law) generally. Interest in both the environment and the law lagged until the 1970's; not surprisingly, there was little Chinese environmental law. The People's Congress approved the Law on Environmental Protection, the first general Chinese environmental statute, in 1978.²⁰ Article 15 of that law prohibits hunting and exploitation of rare wildlife. In 1982, several provisions regarding environmental protection were added to China's constitution. Article 9 provides for state ownership of natural resources, ensures state protection of natural resources, and prohibits appropriation or damage of natural resources.²¹ Article 26 provides that "the State protects and improves the living environment and the ecological environment, prevents and remedies pollution and other public hazards."²² By 1994, China had enacted twelve national statutes, twenty national administrative regulations, and more than 260 standards regulating the environment.²³

These environmental statutes are implemented by numerous government

15. See, e.g., GEORGE SCHALLER, *THE LAST PANDA* (1995) (describing the status of the panda in China).

16. See Andrew J. Heimert, Note, *How the Elephant Lost His Tusks*, 104 YALE L.J. 1473, 1502 (1995).

17. See Joonmoo Lee, Note, *Poachers, Tigers and Bears. . . Oh My! Asia's Illegal Wildlife Trade*, 16 NW J. INT'L. L. & BUS. 497 (1996); Julie Cheung, *Implementation and Enforcement of CITES An Assessment of Tiger and Rhinoceros Conservation Policy in Asia*, 5 PAC. RIM L. & POL'Y J. 125, 133 (1995); *Imminent Extinction of Tigers, Rhinoceros, Predicted in Environmental Group Report*, BNA INT'L ENV'T DAILY, Nov. 3, 1994, available in Lexis, Environ Library, BNAIED File [hereinafter *Imminent Extinction*].

18. See, e.g., Xu Hongfa & Robert H. Giles, Jr., *A View of Wildlife Management in China*, 23 WILDLIFE SOC'Y BULL. 18, 20-23 (1995); *Number of Key Endangered Wild Animals Rises*, XINHUA GEN. OVERSEAS NEWS SERV., May 17, 1993.

19. See *New Subspecies of Brown Bear Discovered in Xinjiag*, XINHUA NEWS AGENCY, Aug. 22, 1996.

20. See Environmental Protection Law of the People's Republic of China (for trial implementation) (1979), reprinted in LESTER ROSS & MITCHELL A. SILK, *ENVIRONMENTAL LAW AND POLICY IN THE PEOPLE'S REPUBLIC OF CHINA* 285-90 (1987).

21. P.R.C. CONST. art. 9 (1982).

22. *Id.* art. 26.

23. See AGENDA 21, *supra* note 12, at 15.

agencies. China's National Environmental Protection Agency (NEPA) promulgates and enforces environmental standards, oversees and reports on progress in meeting environmental goals, and serves as the lead agency for environmental enforcement. The Import & Export Office of Endangered Species in the Ministry of Forestry is responsible for CITES permits. China has proposed the creation of an Office for the Protection of Biodiversity to oversee the central government's efforts to protect wildlife and plants.²⁴ Provincial and local environmental protection agencies enforce statutes within their jurisdictions. Numerous nongovernmental agencies, universities and others promote biodiversity in coordination with the government's own efforts.²⁵

Chinese wildlife law has developed along with Chinese environmental law more generally. Endangered wildlife is now protected by Chinese law.²⁶ The Ministry of Forestry established the first list of Rare and Precious Species of China in 1969. A 1983 State Council circular orders that "[a]ll economic activities that affect the breeding and survival of endangered wildlife in their main nesting area should be banned."²⁷ The 1984 Forestry Law prohibits the hunting of animals in protected areas.²⁸ A general wildlife protection law was enacted in 1989.²⁹ As of 1990, the List of State's Mainly Protected Wild Animals contained ninety-six animals; killing any species on that list is prohibited.³⁰ Over one hundred other species appear on the list of animals to be protected by provincial and local governments; those governments are beginning to enact their own wildlife laws. Most recently, China tightened its wildlife laws in 1993, bowing to pressure from the United States and international environmental groups.³¹

24. See *id.* at 178.

25. See Wang Xi & Robert F. Blomquist, *The Developing Environmental Law and Policy of the People's Republic of China: An Introduction and Appraisal*, 5 GEO. INT'L ENVTL. L. REV. 25, 32, 73 (1992) (describing China's administrative scheme for environmental law).

26. For overviews of the development of Chinese wildlife law, see Xu & Giles, *supra* note 18, at 19; Ye Mingzhao, *Legal Protection of Wild Flora and Fauna*, 20 ENVTL. POL'Y & LAW 216 (1990); see also *Yunnan Adopts New Law on Wild Animal Protection*, XINHUA NEWS AGENCY, July 26, 1996.

27. State Council Circular on the Stringent Protection of Endangered Wildlife § 6 (1983), *reprinted in* ROSS & SILK, *supra* note 20, at 384.

28. Forestry Law of the People's Republic of China, art. 21 (1984) ("It shall be forbidden to hunt wild animals that have been put under state protection in the forest areas. Where hunting such animals is desired for special needs, the matter shall be dealt with in accordance with the relevant laws and regulations of the state."), available in LEXIS, Intlaw Library, Chinal File.

29. See Xu & Giles, *supra* note 18, at 19.

30. See Ye, *supra* note 26, at 217.

31. Compare *Speeds Up International Cooperation on Environmental Protection*, XINHUA NEWS AGENCY, Dec. 22, 1993 (detailing Chinese efforts to protect biodiversity), with *Official Claims US Accusations on Rhinoceros Horn Trade "Unacceptable"*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 14, 1993 (quoting a Chinese official who denied U.S. Secretary of the Interior Babbitt's complaints about wildlife protection in China).

III. THE FAILURES OF CITES

Wildlife continues to disappear in China notwithstanding these laws and notwithstanding CITES. Of course, China is not the only place where wildlife continues to suffer. The legal mechanisms established by CITES fall short of the treaty's goal of assuring that wildlife "be protected for this and the generations to come."³² Three reasons for this deficiency are the failure of CITES to address habitat protection, the failure to fully enforce CITES where it applies, and the ambivalent attitude toward protecting rare wildlife.

A. HABITAT DESTRUCTION

The focus on the commercial trade in endangered species attacks a real threat to wildlife, but it neglects the most common reason why species become extinct, habitat destruction. Nothing in CITES mandates that a party take any steps toward protecting the habitat necessary for the survival of protected species. By targeting trade instead of other environmentally destructive activities, CITES penalizes intentional harm to endangered species while leaving unintentional harm alone.

Habitat loss is the biggest threat to wildlife in China. As in many other countries, rapid economic development and continued population growth exert relentless pressure on previously undeveloped areas that offered habitat to a diversity of wildlife and plants. Chinese forests continue to disappear at an alarming rate, further reducing the habitat needed by wildlife (including the famous pandas) to survive.³³

China's primary response has been the creation of nature reserves. China's Agenda 21 plan aims for 1000 reserves in a nationwide network.³⁴ As of 1991, 708 reserves covered 5.5% of China's land.³⁵ Thirteen of those reserves were for pandas, with plans for at least a dozen more panda reserves and corridors to connect the growing number of scattered reserves.³⁶ The newest such reserve covers 45,000 square kilometers and protects sixty endangered animals and three hundred rare plants.³⁷ By contrast, efforts to establish a tiger reserve have failed

32. CITES, *supra* note 3, pmb1.

33. See AGENDA 21, *supra* note 12, at 173; Wen Huanshu & He Yeheng, *China's Wildlife Yesterday and Today*, in PROTECTING RARE ANIMALS, *supra* note 12, at 4-10.

34. AGENDA 21, *supra* note 12, at 174.

35. See *id.* at 173; see also *Wildlife Protection in Gansu Province*, XINHUA NEWS AGENCY, Aug. 23, 1996 (describing the 33 wildlife nature reserves in Gansu Province in northwestern China). For a general, albeit slightly dated, description of the development of nature reserves in China, see LI WENHUA & ZHAO XIANYING, CHINA'S NATURE RESERVES (1986).

36. See *China to Build 28 Nature Reserves for Giant Panda*, XINHUA NEWS AGENCY, Sept. 12, 1996; Xu & Giles, *supra* note 18, at 20-21.

37. See *Chinese Model for Environmental Protection*, XINHUA NEWS AGENCY, Sept. 13, 1996 (reporting on the Altun nature reserve in Xinjiang Uygur Autonomous Region in northwestern China).

to date because of the huge amount of land required by wild tigers, the lack of acceptable sites, and the ignorance about the precise needs of tigers.³⁸

The reserves do not solve all of the problems faced by endangered species. Management difficulties and tourist pressures threaten many reserves. Most reserves are simply no hunting zones, not affirmative wildlife management areas. Most reserves do not even possess a list of species that live there. Reserve administrators and employees are often inadequately trained to protect the species in their care.³⁹

Contrast China's habitat protection measures with those of the United States. As in China, national parks and wildlife refuges protect the habitat of many species of endangered wildlife. But the United States goes further. The Endangered Species Act (ESA), as interpreted by the Fish & Wildlife Service and the Supreme Court, forbids private parties from destroying the habitat of endangered species.⁴⁰ That provision has blocked activities ranging from timber sales in the Pacific Northwest that would endanger the northern spotted owl, to housing developments in southern California that would endanger the California gnatcatcher or the Stephens' kangaroo rat. In other words, the ESA protects endangered species from the kinds of routine commercial activities that threaten the habitat of wildlife around the world. Chinese law has no comparable provision, though China has committed to implement similar requirements imposed by the U.N. Convention on Biodiversity.⁴¹

B. CONTINUED TRADE IN ENDANGERED SPECIES

Habitat destruction presents the greatest threat to wildlife in China and elsewhere, but it is not fair to criticize CITES for failing to solve a problem it was never intended to address. CITES is a trade agreement, not a land use agreement. Trade in endangered species persists despite CITES for several reasons. Not all countries are parties to CITES, including countries like Korea, Taiwan, and Yemen that countenance active export and import markets for endangered species.⁴² Other countries are parties to CITES, but they have entered

38. See Xu & Giles, *supra* note 18, at 22.

39. See *id.* at 23-24.

40. Section 9 of the ESA prohibits the taking of endangered species. 16 U.S.C. § 1538(a)(1)(B) (1996). "Take" is defined by the ESA to include "harm" to an endangered species. 16 U.S.C. § 1532(19) (1996). The Fish & Wildlife Service interprets "harm" to include much habitat destruction, see 50 C.F.R. § 17.3 (1997), and the Supreme Court has upheld that regulation as a permissible reading of the statute. See *Babbitt v. Sweet Home Ch. of Communities for a Great Or.*, 115 S. Ct. 2407 (1995).

41. Convention on Biological Diversity, June 5, 1992, art. 8(d), (k), 31 I.L.M. 318 (1992) [hereinafter Biodiversity Convention] (creating duty to protect wildlife habitats and to develop necessary national legislation); see also AGENDA 21, *supra* note 12, at 171 (affirming the Chinese commitment to the Convention).

42. See Convention on International Trade in Endangered Species of Wild Fauna and Flora; Conservation of the Rhinoceros; Twenty-Ninth Meeting of the Standing Committee; Public Meeting, 57 Fed. Reg. 59,122,

reservations excusing themselves from certain provisions of concern. Japan, Norway, and the former Soviet Union have exempted themselves from the CITES restrictions on the whaling trade.⁴³ Several African countries and Hong Kong entered reservations to the placement of the African elephant on Appendix I.⁴⁴ Moreover, CITES's directive to penalize trade in endangered species has not been fully implemented by the parties to the treaty.

The enforcement of CITES in China presents the same problems that confront environmental enforcement generally in China.⁴⁵ China is the world's largest exporter and a leading user of endangered species.⁴⁶ Enforcement becomes even more difficult because of the huge demand for products derived from endangered species. Traditional Chinese medicine uses tiger bones (for arthritis and rheumatism), rhinoceros horns (for fevers), and bear gall bladders. Nearly every tiger part is used as a tonic, an aphrodisiac, gourmet delicacy or for some other purpose.⁴⁷ Chinese pharmaceutical factories use 1,400 pounds of rhinoceros horns annually, the product of about 650 rhinoceros.⁴⁸ Panda pelts sell for as much as \$10,000, tiger bones are priced at \$500 per pound, and a rhinoceros horn can earn as much as \$45,000.⁴⁹ Villagers can earn ten years income from one tiger.⁵⁰ China's enforcement of CITES must contend with such immense pressures to engage in illegal wildlife trade.

There are, however, examples of very stringent enforcement of wildlife laws in China. The government recently executed several poachers for killing endangered pandas.⁵¹ Five poachers were sentenced to death in 1994 after they killed

59,124 (1992); see also Shennie Patel, Note, *The Convention on International Trade in Endangered Species: Enforcement and the Last Unicorn*, 18 HOUS. J. INT'L L. 157, 200 n.282 (1995) (noting that Yemen is heavily involved in the illegal rhinoceros trade even though the country has agreed to adhere to CITES).

43. See Catherine L. Krieps, Note, *Sustainable Use of Endangered Species Under CITES: Is it a Sustainable Alternative?*, 17 U. PA. J. INT'L ECON. L. 461, 504 n.57 (1996).

44. See Philippe J. Sands & Albert P. Bedecarre, *Convention on International Trade in Endangered Species: The Role of Public Interest Non-Governmental Organizations in Ensuring the Effective Enforcement of the Ivory Trade Ban*, 17 B.C. ENVTL. AFF. L. REV. 799, 800, 817 (1990).

45. For an overview of environmental enforcement in China, see John Copeland Nagle, *The Missing Chinese Environmental Law Statutory Interpretation Cases*, 5 N.Y.U. ENVTL. L. J. 517, 536-41 (1996).

46. See *Imminent Extinction*, *supra* note 17 (citing a report released by the Environmental Investigation Agency).

47. See Dale Faulken, *Demand for Chinese Remedies Threatens Indian Tiger*, REUTERS WORLD SERV., Oct. 22, 1996.

48. See John Ward Anderson, *Poachers Felling World's Tigers, Rhinoceros; Carnage Overwhelms Conservation Efforts in India, Nepal*, WASH. POST, Nov. 29, 1994, at A1.

49. See *id.*; Lena H. Sun, *Can Giant Pandas Survive the Effort to Save Them?; Human Greed, Rivalry Dim Species' Future*, WASH. POST, Dec. 27, 1993, at A1; Brad Knickerbocker, *Illegal Trafficking in Wildlife Persists*, CHRISTIAN SCI. MONITOR, Mar. 8, 1993, at 15.

50. See Patel, *supra* note 42, at 195 (asserting that an entire tiger can be sold for \$65,000 on the black market).

51. See Pan Wenshi, *New Hope for China's Pandas*, 187 NAT'L GEO. 100, 105 (Feb. 1995); see also *Traffickers of Panda Pelts Sentenced to Death*, XINHUA NEWS AGENCY, Sept. 13, 1996 (reporting that two men convicted of possessing giant panda and golden-haired monkey pelts had received death sentences that would

sixteen elephants in a nature reserve in Yunnan province and then engaged in a fierce gun battle with police.⁵² Last year nineteen hotels and restaurants on Hainan Island were closed and fined \$34,000 for serving rare wildlife.⁵³ China has promised to step up such efforts to punish those who kill endangered species for financial gain. China has also acted to prohibit patented medicines from containing ingredients taken from endangered species.⁵⁴

The extent of China's wildlife trade indicates that such zealous enforcement remains the exception, not the rule. Critics question China's resolve to end its trade in endangered species. China resisted international calls for the destruction of existing rhinoceros horn stocks.⁵⁵ It declined to attend the ministerial meeting of the Global Tiger Forum, established in 1994 by the world's fourteen tiger countries to protect endangered tigers throughout Asia.⁵⁶ It advanced a proposal to the meeting of CITES parties that would create a farm to raise tigers in order to satisfy the demand for tiger parts, though that idea was withdrawn after environmentalists objected.⁵⁷ Its limited efforts to stop that trade have subjected China to international criticism. For example, in 1993 the United States and other CITES parties threatened to sanction China for failing to control the trade in tiger and rhinoceros parts.⁵⁸ That the United States decided not to penalize China was viewed as an exercise in diplomacy unrelated to China's actual progress in enforcing the treaty.

In the United States, enforcement officers have a wider range of statutory tools at their disposal. Trade in endangered wildlife is barred by the ESA, the Lacey Act and other laws.⁵⁹ These statutes protect wildlife around the world — including Chinese wildlife — when they are used to block the importation of

be suspended for two years pending a review of their cases); Xu & Giles, *supra* note 18, at 23 (reporting that two people were executed in Guangzhou in 1993 for selling panda hides).

52. See *China Sentences Elephant Poachers to Death*, U.P.I., Dec. 21, 1994.

53. See *Hainan Cracks Down on Wildlife Poaching*, XINHUA ENG. NEWSWIRE, Nov. 3, 1995.

54. See Fiona Holland, *Animal Parts Loophole to Close; Conservation Officials Move to Ban Use of Endangered Species in Prepackaged Chinese Medicines*, S. CHINA MORNING POST, Aug. 4, 1996, at 4. "Patented" Chinese medicines are those processed and packaged for distribution abroad. See Cheung, *supra* note 17, at 131.

55. See *Babbitt Takes Step Toward Trade Sanctions Against China, Taiwan for CITES Violations*, BNA INT'L ENV'T DAILY, Sept. 8, 1993, available in Lexis, Envir Lib, BNAIED File.

56. See M. G. Srinath, *India, China Sign Deal to Save the Tiger from Chinese Medicine*, DEUTSCHE PRESSE-AGENTUR, Mar. 2, 1995, available in LEXIS, World Library, DPA File.

57. See Albert S. Liu, *The Failure of CITES to Save the Tiger: Building a Cultural Framework for Environmental Treaties* (Dec. 15, 1995) (unpublished manuscript, on file with author) (citing George Nobbe, *Grave Threats to Tigers*, WILDLIFE CONSERVATION, Mar.-Apr. 1993, at 78).

58. See Tom Kenworthy, *China and Taiwan Warned on Endangered Species*, WASH. POST, Sept. 8, 1993, at A21.

59. See generally DAVID S. FAVRE, *WILDLIFE LAW* 9-1 to 9-24 (2d ed. 1991) (describing sources of U.S. law regulating the trade in protected wildlife); Patel, *supra* note 42, at 173-81 (describing U.S. enforcement of CITES); Robert S. Anderson, *The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking*, 16 PUB. LAND L. REV. 27 (1995); Jennifer Zoe Brooks, *A Survey of the Court Enforcement of International Wildlife Trade Regulations Under United States Law*, 17 WM. & MARY J. ENVTL. L. 145 (1993).

endangered species from China. For example, in 1995 a federal judge sentenced a Chinese citizen to twenty-one months in prison for smuggling a tiger skeleton, pills made from rhinoceros horns and bear bile flakes worth \$800,000.⁶⁰ Yet, funding constraints hinder enforcement. The 104th Congress engaged in a contentious debate over the funding of environmental programs in general, and wildlife programs in particular.⁶¹ Eighty-one Fish & Wildlife Service inspectors are responsible for 70,000 international wildlife shipments annually.⁶² The illegal wildlife trade persists in part because the United States has been unwilling to devote the resources necessary to stop it.

In addition to penalizing the individuals engaged in the illegal wildlife trade, the United States can sanction countries that fail to control such trade. The Pelly Amendment allows the President to impose trade sanctions on countries that violate CITES.⁶³ Taiwan received such a penalty in 1994; that China did not probably says more about our delicate relationship with China than it does about the state of environmental enforcement there.⁶⁴

The United States has also acted to regulate the exhibition of endangered species. A policy proposed by the Fish & Wildlife Service would establish guidelines for U.S. zoos that seek to borrow pandas from China. According to the policy, the pandas to be displayed cannot have been intentionally removed from the wild, at least eighty percent of the profits from the exhibition must go to Chinese conservation projects, and the U.S. zoo must coordinate with Chinese conservation projects.⁶⁵ Again, the purpose of the policy is to assure that endangered species are not harmed by seemingly benign activities.

C. ATTITUDES TOWARD ENDANGERED SPECIES

The success of CITES depends on the way in which people view endangered species. China's attitude toward wildlife today reveals the same ambivalence

60. See *Animal Parts Smuggler Sentenced to 21 Months*, S.F. CHRON., Apr. 5, 1995, at A22.

61. See H.R. REP. NO. 104-173, at 23 (1995) (Appropriations Committee recommending that the Fish & Wildlife Service receive \$53 million for endangered species activities in 1996 instead of the \$77 million requested by the agency and the \$69 million appropriated in 1995); see also 141 CONG. REC. H6944 (daily ed. July 13, 1995) (statement of Rep. McDermott) (accusing the Republicans of "using the appropriations process as a devious back door strategy to silently eliminate the ESA by no longer funding its activities").

62. See *Fiscal Year 1996 Budget Request for Law Enforcement for the U.S. Fish and Wildlife Service, Hearings Before House Subcomm. on Interior and Related Agencies of the Comm. on Appropriations*, 104th Cong. (1995) available in 1995 WL 455247 (Prepared Testimony of John G. Rogers, Deputy Director, U.S. Fish and Wildlife Service, Dep't of the Interior).

63. 22 U.S.C. § 1978. The compatibility of such trade sanctions with international trade law remains a controversial question. See generally LAKSHMAN D. GURUSWAMY ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK 862-906 (1994) (collecting sources).

64. See Patel, *supra* note 42, at 197-98 & 199 n.272.

65. Proposed Policy on Giant Panda Permits, 60 Fed. Reg. 16,487 (1995). For one of the first applications of the policy, see Tony Perry, *Panda Express Hits San Diego at Last Zoos: Shi Shi and Bai Yun Arrive Under Escort as Part of 12-Year Research Program*, L.A. TIMES, Sept. 11, 1996, at A3.

found in the country's attitude toward the environment in general.⁶⁶ Chinese leaders now characterize the environment as a top priority. Premier Li Peng told the U.N. Conference on Environment and Development held at Rio de Janeiro in 1992 that China intended to "make environmental protection one of our basic state policies and make unremitting efforts towards this end."⁶⁷ China has invested billions of dollars for environmental causes, and it receives billions more from other countries and international organizations such as the World Bank. The money received from foreign sources for preservation of the panda demonstrates the point.

Despite the policies of the Chinese government, the demand for the products of endangered species by Chinese citizens remains high. Years of teaching traditional Chinese medicine and delicacies is hard to reverse. It is difficult to convince a billion people to take aspirin instead of rhinoceros horn pills. "Many Chinese still believe that wildlife species are endowed with magical powers capable of curing a myriad of ills, and are angered by pressure from countries such as the United States to ban the sale of endangered species."⁶⁸ Likewise, many still see tigers as pests, just as many ranchers fear the re-introduction of wolves and bears into the western United States.

China has traditionally relied on exhortational campaigns to change people's conduct. Such an educational focus appears in China's Agenda 21 plan, which calls for media teaching about biodiversity, the promotion of public events such as World Earth Day and Bird Loving Week, and the use of a Panda Exhibition.⁶⁹ One recent program to protect the five thousand remaining *grus nigricollis*, a rare type of crane, is designed to "make the youth conscious of animal protection before they become poachers."⁷⁰ Such efforts have helped convince 99% of the Chinese people that environmental pollution and ecological destruction are at least "fairly serious" issues.⁷¹ In particular, anyone who harms a panda must face "the censure of an angry public."⁷² All agree, however, that more environmental education needs to be done. The greatest problem exists in rural areas where people ask why wild animals can no longer survive on their own, and where

66. For a discussion of the development of Chinese views of the environment, see Nagle, *supra* note 45, at 521-22.

67. Li Peng, *Preface to AGENDA 21*, *supra* note 12, at 3; see also Nagle, *supra* note 45, at 522 n.19 (collecting sources demonstrating the commitment of China's leadership to environmental issues).

68. Daniel C.K. Chow, *Recognizing the Environmental Costs of the Recognition Problem: The Advantages of Taiwan's Direct Participation in International Environmental Treaties*, 14 STAN. ENVTL. L.J. 256, 291 n.190 (1995).

69. AGENDA 21, *supra* note 12, at 179.

70. *Chinese Scientists Bid to Save Endangered Crane*, XINHUA NEWS AGENCY, Apr. 24, 1996 (quoting Zhang Fan, director of the Yunnan Province nature and culture conservation center seeking to protect the crane).

71. See Wang & Blomquist, *supra* note 25, at 32 (citing 1990 poll conducted by the Central People's Broadcasting Station and the China Institute of Social Surveys).

72. Ri Nong, *Saving the Pandas*, in PROTECTING RARE ANIMALS, *supra* note 12, at 18.

menus proclaiming "Rare Wild Animals Are Served" still appear in restaurants and hotels.⁷³

The United States is generally perceived as more committed to protecting biodiversity. Congress passed the ESA with overwhelming bipartisan support in 1973, and it is routinely described as the strongest environmental statute.⁷⁴ Yet the United States still struggles with its attitude toward endangered wildlife. In 1995, Congress imposed a one-year moratorium on the addition of any new species to the list of endangered species.⁷⁵ Budget cuts threaten the enforcement of ESA, and several proposed bills would introduce more flexibility into wildlife protections, especially on private land.⁷⁶

IV. THE FUTURE OF CHINA'S WILDLIFE

The experience with CITES proves that restrictions on trade alone will not save endangered wildlife. Stopping trade in endangered animals is important, but it cannot be treated as the only step necessary to assure the preservation of biodiversity. Habitat protection is key. So, too, are efforts to control pollution that adversely affects wildlife or their habitats.

CITES also shows that strong enforcement of wildlife legislation is necessary. Stringent legislation accomplishes little if it is not (or cannot be) enforced. Developing countries like China need to establish institutional structures that are capable of enforcing environmental norms. They also need money. The international agreements reached at Rio de Janeiro in 1992 promise funding for protecting wildlife,⁷⁷ and China insists upon it.⁷⁸

73. See Ye, *supra* note 26, at 219.

74. See, e.g., Jerry L. Anderson, *The Environmental Revolution at Twenty-Five*, 25 RUTGERS L.J. 395, 405 (1995) (observing that the ESA "is often cited as the most powerful environmental law"); Ike C. Sugg, *Caught in the Act: Evaluating the Endangered Species Act, Its Effects on Man and Prospects for Reform*, 24 CUMB. L. REV. 1, 2 (1993) (asserting that the ESA "is widely considered to be the most powerful environmental law in the nation").

75. See Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995, Pub. L. No. 104-6, 109 Stat. 73, 86 (1995). Congress authorized the President to lift the moratorium in April 1996, see Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 104th Cong., 2d Sess., § 2901(c), 110 Stat. 1321, 1321-159 (1996), and President Clinton immediately decided to do so. See Suspension of the Proviso Limiting Implementation of Subsections (a), (b), (c), (e), (g), or (i) of the Endangered Species Act of 1973 (16 U.S.C. § 1533) contained in the Omnibus Consolidation Rescissions and Appropriations Act of 1996 (H.R. 3019), 61 Fed. Reg. 24,667 (1996).

76. See, e.g., S. 768, 104th Cong., 1st Sess. (1995); H.R. 2275, 104th Cong., 1st Sess. (1995); S. 1364, 104th Cong., 1st Sess. (1995). For analysis of each of the bills, see J.B. Ruhl, *Section 7(a)(1) of the "New" Endangered Species Act: Rediscovering and Redefining the Untapped Power of Federal Agencies' Duty to Conserve Species*, 25 ENVTL. L. 1107, 1153-59 (1995).

77. Biodiversity Convention, *supra* note 41, arts. 20-22, 31 I.L.M. at 830-32.

78. See generally Cai Shouqiu & Mark Voigts, *The Development of China's Environmental Diplomacy*, 3 PAC. RIM L. & POL'Y J. S-17, S-33 to S-35 (1993).

Perhaps most importantly, CITES demonstrates the need to cultivate public support for wildlife protection. Public support is needed to get good legislation, and good legislation needs continued public support to be effective. China's educational efforts recognize this connection. Recent U.S. steps have been aimed at educating the Chinese communities in the United States. Last October, the Fish & Wildlife Service began an educational campaign to promote alternatives to the use of endangered species in Chinese medicine. The agency placed advertisements in the Asian language media in Los Angeles after noting that six of nine Asian product stores visited in the city carried rhinoceros- and tiger-based products.⁷⁹

This educational effort requires the proponents of biodiversity protection to articulate the reasons for saving endangered wildlife. Such a debate is ongoing in both the United States and China, with different kinds of reasons taking center stage in each country. The story of Noah has inspired a debate in the United States about our duty to protect endangered species.⁸⁰ Presumably another metaphor will be needed to serve as the catalyst for thinking about wildlife in China. CITES cannot preserve biodiversity: The fate of endangered species in China (and elsewhere) depends on the value that people attach to wildlife.

79. See Peter Y. Hong, *Remedy to Extinction; Education Effort Targets Use of Tiger, Rhinoceros Parts in Asian Medicines*, L.A. TIMES, Oct. 20, 1995, at B3.

80. Compare Bruce Babbitt, *Between the Flood and the Rainbow: Our Covenant To Protect the Whole of Creation*, 2 ANIMAL L. 1, 3, 8 (1996) (arguing that Noah should serve as an example for us to protect all species), with 142 CONG. REC. H1002-05 (daily ed. Jan. 31, 1996) (statement of Rep. Chenoweth) (objecting to Secretary Babbitt's speech and complaining that "this religious vision is not shared by every American and no American should be forced to promote a religious vision contrary to their own beliefs").