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THE GLOBAL INITIATIVE TO END WILDLIFE CRIME

Frequently asked questions on wildlife trade reforms

“By its very nature, transformative change can expect opposition from those with interests vested in the status quo, but such opposition can be overcome for the broader public good.”

IPBES, Global Assessment Report (2019)

INTRODUCTION

Background and context

In response to the global biodiversity and climate change crises and the need to prevent future wildlife-related pandemics, the Global Initiative to End Wildlife Crime (“the Initiative”) is progressing two interrelated, but not interdependent, objectives, namely to:

1. Create a new global agreement on wildlife crime. How? Through the adoption of a fourth Protocol on wildlife crime under the UN Convention Against Transnational Organised Crime (UNTOC); and
2. Amend existing international wildlife trade laws to include public health and animal health into decision making. How? Through amending the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to include public health and animal health criteria in its decision-making processes (a ‘One Health’ approach).

The Initiative views these two objectives as critical components of the calls for transformative changes, and a shift away from “business as usual”, coming from the [IPBES Global Assessment Report \(2019\)](#), the [IPBES Pandemics Report \(2020\)](#), the [CBD Secretariat Global Biodiversity Outlook 5 Report \(2020\)](#) and the [WWF Living Planet Report \(2020\)](#). These FAQs apply to the Initiative’s second objective.

The Initiative’s proposed amendments to CITES would make it a contemporary agreement that is fit for purpose in a post COVID-19 world and leave a strong legacy for generations to come. If adopted, they would give us, and future generations, the best chance of avoiding future wildlife-related pandemics and the devastating societal and economic impacts associated with them.

Purpose of this document

This document elaborates on the rationale published in the Initiative’s first briefing paper, “[Outline of possible amendments to wildlife trade laws](#)”, by directly responding to some of the questions that have been raised with the Initiative by interested parties. The Initiative greatly appreciates these questions and welcome further questions and dialogue, which can be directed to info@endwildlifecrime.org.

“Responses to the current pandemic provide a unique opportunity for transformative change as a global community.”

Secretariat of the Convention on Biological Diversity, Global Biodiversity Outlook 5 (2020)

QUESTIONS RELATING TO WILDLIFE TRADE REFORMS

Amending CITES to include public and animal health criteria in its decision-making processes

1: Have proposed changes to CITES been laid out in detail?

Yes, with the help of technical and legal support from its Steering Group and a network of pro-bono legal and technical advisors, the Initiative has released a dedicated briefing paper on the process for amending CITES, and the possible content of such amendments (that would build public and animal health criteria into CITES' decision-making processes). The paper is available online [here](#) in Chinese, English, French, Spanish and Vietnamese. The accompanying press releases, accessible on the same link, provide the broader context and rationale.

2: How would these proposed changes to CITES be achieved?

Since 1973 CITES has included a mechanism, under [Article XVII](#), on amending the Convention. Under this Article, amendments to the Convention can be proposed by at least one third of the [Parties to CITES](#) (there are currently 183 Parties to the Convention). These proposals are then considered by an extraordinary Conference of the Parties to the Convention, convened specifically to consider the proposed changes. Ultimately, proposals to amend the Convention, and the decision on whether to accept or reject those proposals, rest with the Parties themselves. To pass, they must be adopted by a two-thirds majority of Parties present and voting (see FAQs no.5 and no.9 for more information). The Initiative is putting forward these possible amendments and encouraging Parties to consider and support them, either as proposed, or in an alternative form.

New Resolutions or Decisions, changes to existing Resolutions, additional guidance for Parties, and the establishment and strengthening of the relationships between CITES and other international bodies such as WHO, OIE, FAO and others, can be made through the established decision-making mechanisms within the Convention as is elaborated upon in the Initiative's [briefing paper](#) and FAQ no.8.

3: Will amendments to CITES be difficult and time consuming to negotiate?

Creating new international laws, or amending or enhancing existing laws, takes time and effort; as we have seen with negotiations on agreements on biodiversity, climate change, and ozone depletion. But this is the wrong question. The question should be whether these reforms are needed to help avoid future wildlife-related pandemics. If the answer to this question is yes, then it is worth the effort. Our current system is not going to prevent the next pandemic. It could, in fact, be raising our potential exposure to zoonotic diseases. The time and effort taken to amend CITES to prevent future wildlife-related pandemics pales in comparison to the impacts of the next possible pandemic.

At the 8th IUCN Congress, held in Nairobi, Kenya, in 1963, IUCN first proposed an international agreement on wildlife trade. Almost ten years later, at the historic 1972 Stockholm Conference on the Human Environment, a call was made for these negotiations to be concluded. This call was heeded and the US Government convened a Plenipotentiary Conference in Washington, DC in 1973 at which the international agreement, known as CITES, was adopted. CITES came into force just two years later, in 1975.

Where there is political will, international negotiations can move expeditiously. We now know what needs to be done to ensure we take a 'One Health' approach to the trade in certain wild animals to minimise the risk to human and animal health. Now is the time to make CITES a contemporary and relevant Convention for a post-COVID-19 world.

4: Does 'opening up' CITES risk some countries proposing other changes that might weaken the Convention?

This is the most frequently asked question of the Initiative. The concern is not with the proposed amendments, but whether 'opening up' the Convention could lead to other, unrelated amendments.

International negotiations are unpredictable, and the Initiative has looked closely at this issue. In doing so, the Initiative has engaged internationally renowned CITES law and policy experts, as well as studied past practice and existing publications, and all have led to the same conclusion: that an extraordinary Conference of the Parties to CITES, convened under Article XVII of the Convention, would only be mandated to consider the amendment proposals put forward by the one third of Parties proposing them.

The Initiative is of the view that, if other Parties wanted to propose further unrelated amendments to CITES, they would not be able to 'piggy back' on what one third of Parties had proposed. They would have to go through the same process, as outlined under Article XVII, and secure support from at least a third of the Parties for their (different) proposals.

Further, though it is possible that Parties could offer proposed amendments to the Convention during the debate at the extraordinary Conference of the Parties, proposed amendments that are not germane to the amendments under consideration should be ruled out of order by the Chair of the meeting.

Ultimately, the interpretation of the Convention is a matter for the Parties. Any proposals submitted by Parties to amend the Convention will require a two-thirds majority vote to be carried. Any concerns about possible additional amendments being proposed should be viewed in this context.

5: Would it be safer to create a Protocol or Addendum under CITES, rather than change the existing text of the Convention?

The Initiative warmly welcomes the debate over the best way to ensure that a 'One Health' approach is taken to wildlife trade. Amongst those organisations and individuals active in the discussion, there is common ground that we cannot leave the system as it is. Changes are needed, and these changes must include reforms to the current international legal framework for regulating wildlife trade. This imperative was recently reinforced through the [IPBES Pandemics Report](#) and [the COVID-19 Response and Recovery Policy Paper](#).

The suggestion that there be a Protocol to CITES has emerged in response to concerns that amending CITES to take a 'One Health' approach could 'open up' the Convention to other changes that are not seen as desirable (see FAQ no.4). The Initiative is of the opinion that only the proposed amendments submitted by one third of Parties can be considered by an extraordinary Conference of the Parties to CITES, while further noting that any amendments require a two-thirds majority to pass.

In the Initiative's view, a Protocol is another way of seeking to amend the Convention, but without touching the Convention text itself. At first glance such a proposal appears appealing but, when examined in detail, it presents its own unique set of challenges.

First, there is no established mechanism for creating Protocols within the text of CITES (as there is, for example, in the framework Conventions on [biodiversity](#), [climate change](#), and [ozone protection](#)). CITES is not a framework Convention; rather, it is a technical and targeted Convention that did not anticipate Protocols. That does not mean there cannot be an agreement called a Protocol negotiated by the Parties to CITES. The Parties could resolve to launch a negotiating process to do so, as could UNGA, or States themselves, as was the case with the creation of CITES. It would not, however, be a Protocol under the Convention, such as exist under conventions on biodiversity, climate change, and ozone depletion.

Whatever process was adopted, such a Protocol would be a separate and distinct legal instrument. As such, any Protocol would sit alongside CITES. Its interrelationship with CITES would need to be included within the Protocol.

There is no existing trigger or agreed process for such a negotiation, and it could take many years to initiate and negotiate. There would be no guarantee of buy-in from CITES Parties, and the Protocol could include provisions that go beyond taking a 'One Health' approach. As a stand-alone legal instrument, it may conflict with current CITES requirements, rather than integrate with them, such as the use of the existing permitting and compliance systems. This contrasts with the well-established and well-known route of amending CITES, which has a clear process and would embed the changes within the existing CITES framework.

As stated above, the Initiative welcomes all ideas for institutionalising a 'One Health' approach to wildlife trade. However, in its view, the Protocol option is a less effective, less efficient, and potentially more risky means of 'amending' CITES without the benefit of utilizing the existing CITES mechanisms of governance, compliance and accountability.

6: Has the Initiative considered any other options as to how to advance a 'One Health' approach to wildlife trade?

The Initiative has considered: i) the creation of a new Protocol under the CBD; and ii) a new Agreement under WHO. In considering these alternatives, our conclusion has been re-affirmed: the most efficient and effective way to achieve this agreed objective is through making amendments to CITES itself. CITES is the more viable option because it is a legally binding instrument regulating trade in wildlife, whereas these agreements are not.

For further rationale, please refer to the joint opinion piece published in *Scientific American* by the former Director of the US Fish and Wildlife Service, Dan Ashe, and the former Secretary-General of CITES, John E Scanlon AO, titled ['A Crucial Step Toward Preventing Wildlife-Related Pandemics'](#).

7: Would these changes detract from the existing business of CITES?

Under the proposed changes, the workload of the Convention, including its Parties and Secretariat, would increase. As noted in FAQ no.3 these changes are, however, necessary to ensure we take a 'One Health' approach to wildlife trade to help avoid future wildlife related pandemics. Further, by amending CITES, it puts the CITES Parties in the driver's seat, rather than having additional workload thrust upon the Parties through separate agreements or mandates.

By taking on this strengthened mandate, CITES becomes a more relevant and contemporary agreement, leading efforts to prevent future wildlife trade-related pandemics. As such, one would expect the Convention to attract new funding sources, including from health budgets, to enable such work to be carried out. Rather than fragmenting CITES, or detracting from its existing mandate or directing resourcing elsewhere, institutionalising a ‘One Health’ approach to wildlife trade within the Convention would strengthen CITES, its processes, and its financing.

Furthermore, interrelated reforms being put forward by the Initiative to embed combatting wildlife crime, including illegal wildlife trade, into the international criminal law framework (see briefing paper [here](#) for a possible new Protocol under UNTOC to address wildlife crime), would reduce some current burdens on CITES, allowing it to focus more effort on its traditional work.

8: Could you achieve a ‘One Health’ approach under CITES by adopting new Decisions and Resolutions, enhancing existing partnerships, and creating new ones?

Since its establishment in the 1970s, the Convention has evolved within the context of its mandate. In some cases, such as efforts to tackle ‘illegal wildlife trade’ and to address some domestic trade issues, it has stretched (but not broken) this mandate. The Parties could, and should, adopt new (or amended) Decisions and Resolutions on taking a ‘One Health’ approach to wildlife trade and enhance and further expand upon its partnerships with relevant organisations (as is outlined in the briefing paper). This could include enhancing the existing cooperative agreements with the [OIE](#) (from 2015), [IATA](#) (from 2015), and [UNCTAD](#) (from 2015), amongst others.

However, to institutionalise such an approach into CITES decision-making processes, and to make it legally binding, changes are needed to the Convention itself. It is only the Convention text, including its Appendices, that is legally binding on Parties and form part of what is often called ‘hard law’.

Resolutions interpret the Convention and the application of its provisions. Resolutions are generally intended to provide long-standing guidance while Decisions are typically time-bound actions directed to a specific CITES body, such as its Committees and Secretariat. Both are important tools for the evolution and implementation of the Convention. They are not legally binding on Parties and are regarded as being part of ‘soft law’, but there is an expectation they will be implemented.

The experience from the 2002-2004 SARS pandemic shows that memories are short, and measures taken to address that pandemic were relaxed over time. We need to institutionalise these changes to take a ‘One Health’ approach to wildlife trade to ensure they endure.

9: Didn’t the last amendment to CITES take decades to enter into force?

On a question of process, once amendments are adopted, they do not automatically come into force. Amendments enter into force once two thirds of Parties accept the amendments. At that point, the amendments come into force for those Parties that have accepted them, and they will automatically apply to any new Parties. Further, once the amendments come into effect, those Parties that accepted them will require their implementation from the other Parties they engage with (whether they have accepted them or not).

As outlined in FAQ no.2, amendments to the Convention can be proposed by at least one third of the Parties, which are then considered by an extraordinary Conference of the Parties to the Convention, convened specifically to consider the proposed changes.

There have been two such extraordinary meetings of the Conference of the Parties to CITES. The first extraordinary meeting was held in Bonn on 22 June 1979, where the CoP adopted the “financial amendment” to Article XI.3 (a). The second extraordinary meeting of the CoP took place in Gaborone, Botswana, on 30 April 1983, at which the CoP adopted an amendment to Article XXI regulating the accession to the Convention by regional economic integration organizations. These were procedural amendments, and the Gaborone amendment took close to three decades to come into force.

However, one cannot compare procedural amendments such as these to the substantive amendments being proposed in response to the worst pandemic of our lifetimes and to prevent future such pandemics. The political and public interest in such amendments is altogether on another scale. As outlined above, where the political will exists, international negotiations can move rapidly. On 3 March 1973, the CITES text was adopted. It came into force on 1 July 1975, just over two years later. By the end of the decade there were more than fifty Parties to the Convention.

GLOSSARY

CBD Convention on Biological Diversity

CITES The Convention on International Trade in Endangered Species of Wild Fauna and Flora

FAO Food and Agriculture Organization

IATA International Air Transport Association

IPBES Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services

IUCN International Union for Conservation of Nature

OIE World Organisation for Animal Health

The Initiative The Global Initiative to End Wildlife Crime

UNCTAD The United Nations Conference on Trade and Development

UNGA United Nations General Assembly

UNODC United Nations Office on Drugs and Crime

UNTOC The United Nations Convention against Transnational Organized Crime

WHO World Health Organisation

WWF World Wildlife Fund