

## DRAFT DISCUSSION PAPER

### A Gap Analysis of International Legal Protection for Great Apes

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May 14, 2004

#### I. Introduction

This paper summarizes the status of great apes under selected multilateral environmental agreements (MEAs) with the goal of identifying whether existing MEAs adequately protect great apes<sup>1</sup> or whether a new legal regime is needed. For that purpose, it analyzes the strengths and weaknesses of the most relevant biodiversity-related agreements or multilateral efforts for great ape conservation:

- Convention concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention).<sup>2</sup>
- Convention on the Conservation of Migratory Species of Wild Animals (CMS)<sup>3</sup>
- Convention on Biological Diversity (CBD)<sup>4</sup>
- African Convention on the Conservation of Nature and Natural Resources (African Convention)<sup>5</sup>
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>6</sup>

Table 1 summarizes the core provisions of these agreements that are discussed in much more detail in Sections II-VI.

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<sup>1</sup> Gorillas (*Gorilla gorilla* and *Gorilla beringei*), Bonobos (*Pan paniscus*), Chimpanzees (*Pan troglodytes*) and Orangutans (*Pongo pygmaeus* and *Pongo abelii*).

<sup>2</sup> Convention concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, [27 UST 37](#), TIAS No. 8226 (entered into force Dec. 17, 1975)[hereinafter World Heritage Convention].

<sup>3</sup> Convention on the Conservation of Migratory Species of Wild Animals, June 3, 1979, *reprinted in* 19 I.L.M. 15 (entered into force 1983) [hereinafter CMS].

<sup>4</sup> Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (1992) [hereinafter “CBD”].

<sup>5</sup> African Convention on the Conservation of Nature and Natural Resources, Sept. 15, 1968, 1001 U.N.T.S. 4, O.A.U. Doc. CAB/LEG/24.1, *available at* <http://www.africa-union.org> [hereinafter African Convention].

<sup>6</sup> Convention on International Trade in Endangered Species of Wild Flora and Fauna, Mar. 3, 1973, art. III, 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975)[hereinafter CITES].

**Table 1. Summary of Relevant Provisions of Biodiversity-Related Conventions for Great Ape Conservation**

Agreement	Core Provisions
<b>African Convention</b>	<ul style="list-style-type: none"> <li>• Lists all great apes as protected species.</li> <li>• Ban hunting or other “taking” of protected species.</li> <li>• Has no institutions, such as COP or Secretariat.</li> <li>• New “revised” convention not yet in force.</li> </ul>
<b>CBD</b>	<ul style="list-style-type: none"> <li>• Has comprehensive provisions for species and habitat protection.</li> <li>• Includes no truly binding obligations.</li> <li>• Provides useful planning provisions to integrate conservation and sustainable use into all sector planning.</li> <li>• Requires annual reporting, including on implementation of obligations concerning conservation and sustainable use of biodiversity.</li> <li>• Its financial mechanism, the GEF, is funded at US\$3 billion for 2002-2006. These funds are divided among four program areas, including biodiversity conservation.</li> <li>• Provides useful principles for Protected Areas and an Ecosystem Approach to conservation and sustainable use.</li> <li>• Has established a working group to address, among other things, bushmeat trade.</li> </ul>
<b>CITES</b>	<ul style="list-style-type: none"> <li>• Bans international trade for primarily commercial purposes in Appendix I Appendix I species (species threatened with extinction and may be affected by trade).</li> <li>• Includes all great ape species in Appendix I.</li> <li>• For Appendix II species (not now threatened but may become so), exports may not be detrimental to the survival of the species. This finding routinely not made appropriately.</li> <li>• Has no provisions for protecting habitat.</li> <li>• Includes exceptions to trade ban for scientific research.</li> <li>• Has established a bushmeat working group to find solutions to national and international bushmeat trade.</li> </ul>
<b>CMS</b>	<ul style="list-style-type: none"> <li>• Applies only to migratory species.</li> <li>• For Appendix I species (“in danger of extinction”), bans “taking” and trade and requires habitat protection.</li> <li>• Includes <i>Gorilla gorilla beringei</i>* in Appendix I. (* presumably now <i>Gorilla beringei beringei</i>).</li> <li>• For Appendix II species, permits development of management structures tailored to a specific group of species. The convention provides a framework for these agreements, but that framework is very flexible.</li> <li>• For Appendix II species, Adoption of separate agreement usually results in the creation of a separate institutional structure, including a Secretariat and scientific committee.</li> <li>• May include species in both Appendix I and Appendix II.</li> </ul>
<b>WHC</b>	<ul style="list-style-type: none"> <li>• Applies only to sites, not species, of “universal and outstanding value.”</li> <li>• Includes general obligation to conserve listed sites, but provides no specific conservation obligations, such as ban on “taking” of species within a listed site.</li> <li>• 11 existing sites include great ape populations; 7 of those sites are now included on the List of World Heritage in Danger.</li> <li>• Has little funding (\$7.2 million for 2004-2005), relative to number of Parties and listed sites.</li> </ul>

This paper concludes that none of these MEAs adequately conserves great apes from all of the various threats to their survival: logging, bushmeat hunting and trade, habitat destruction and fragmentation, and civil strife. While no single problem applies to all the covered agreements, the major problems include (1) inadequate habitat or other protection to great apes, (2) inadequate institutional or scientific support, or (3) adequate financial support.

Nevertheless, each agreement includes certain elements that may assist in the development of a separate legal regime for great ape conservation or a new legal regime that applies more broadly to species of special conservation concern or interest. For example, the concept of “universal or outstanding value” which underlies the listing of cultural and natural heritage sites under the World Heritage Convention provides a useful framework for a new legal regime for species that “fall through the cracks” of existing MEAs. CMS requires the creation of separate agreements or memoranda of understanding for certain migratory species, a process that allows governments to tailor conservation measures to the specific threats to and life histories of a species or group of species.

## **II. World Heritage Convention**

### **A. Overview of the World Heritage Convention**

The World Heritage Convention currently has 178 Parties that designate cultural and natural sites for protection.<sup>7</sup> The Convention’s World Heritage List includes 754 properties determined by the World Heritage Committee (Committee) to be of “universal outstanding heritage” and part of “the world [natural and cultural] heritage of mankind as a whole.” Of these sites, 582 are cultural sites, 149 natural sites, and 23 mixed properties. Eleven World Heritage sites already host great apes; seven are included in the List of World Heritage in Danger.<sup>8</sup>

Each Party must submit a list of sites within its jurisdiction for possible inclusion that it recognizes as having global importance and which it obliges itself to protect.<sup>9</sup> The Committee, composed of representatives from 21 of the Parties (largely political appointees), reviews nominations and selects those of outstanding universal value. This process differs from most other MEAs in which any Party may propose a species for protection, regardless of whether it is a range state, and the Parties as a whole vote to adopt the proposal.

The Committee’s operational guidelines define narrowly the kind of biodiversity site that can be included, giving as examples “*superlative natural . . . formations*,” such as “the most important ecosystems”; or “*the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive*” (emphasis in original).

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<sup>7</sup> See the World Heritage Convention’s website at <http://whc.unesco.org/pg.cfm>.

<sup>8</sup> Memo from Lucas Ritchie to Chris Wold, April 8, 2004.

<sup>9</sup> See World Heritage Convention, *supra* note 2, at arts. 3-5, 11.

## **B. Conservation Obligations**

The Convention is valuable in that including a site in the World Heritage List gives it special international legal status that can enhance protection, and also makes it eligible for multilateral funding of protective measures. It is progressive in that it affirms the interest of all of humanity in places of universal heritage even though they are within the sovereign jurisdiction of a single state. Interest in the Convention has tended to come mostly from the cultural side, and the rigorous criteria for selecting sites ensures that the World Heritage List will never comprehensively protect biodiversity. Nevertheless, unusual richness in biodiversity can qualify a site for inclusion in the List, and a site's presence in the List helps protect the biodiversity within the site.

As discussed below, the World Heritage Convention is ill suited to protect species, such as the great apes given its focus on sites and the institutions that support the convention. Review of the Committee's 2003 decisions on State submissions suggests that the decision to inscribe, defer, or reject an area is usually based on the quality of the surveys and plans provided, the area's ability to protect the key features of the area, and other technical factors.<sup>10</sup> For example, a Brazilian submission for inscription of Serra da Capivara National Park was rejected because the area was deemed insufficient for protection of the Caatinga biome; Brazil was encouraged to submit a larger area that would provide protection.<sup>11</sup>

Once a site is included in the List, the host government is charged with the site's protection. The Convention itself imposes few substantive requirements. Parties must do their "utmost" to protect and conserve listed sites.<sup>12</sup> They must also "endeavor, in so far as possible, and as appropriate for each country" to establish services and training for the protection, conservation and presentation of cultural and natural heritage; and to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.<sup>13</sup> A State Party is precluded from taking "any deliberate measures" that might directly or indirectly damage listed sites.<sup>14</sup>

## **C. Institutional Structure**

The United Nations Educational Scientific and Cultural Organization (UNESCO) administers the Convention. Among other tasks, it assists Parties in preparing a site for submission. The Convention pioneered the concept of a multilateral fund to support implementation, establishing a World Heritage Fund (administered by the Committee) to assist countries needing help maintaining and protecting sites. Parties pay into the fund in an amount equal to 1% of UNESCO dues.

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<sup>10</sup> 27 COM 8C.

<sup>11</sup> 27 COM 8C.15

<sup>12</sup> World Heritage Convention, *supra* note 2, at art. 4.

<sup>13</sup> *Id.* at art. 5.

<sup>14</sup> *Id.* at art. 6(3).

The fund, however, is very small: US\$ 7.2 million are available in 2004-2005 for 178 countries and 754 sites.<sup>15</sup> Moreover, those limited funds are distributed for a variety of purposes: preparatory assistance, technical cooperation, training, emergency assistance, and assistance for educational, information and promotional activities.<sup>16</sup> Each of these types is subject to limits. For example, preparatory assistance is capped at \$30,000 per request.<sup>17</sup>

The Convention has four institutions that assist in evaluating sites for inclusion in the list. The International Council of Museums (ICOM) promotes the conservation, investigation and analysis of culturally and historically significant objects.<sup>18</sup> ICOM is organized into many subgroups, which focus on some aspect of museums (committees include, for example, literary museums and ethnic museums). A conservation committee is dedicated to the conservation of “culturally and historically significant sites,” and not natural sites or species.<sup>19</sup> At the last triennial meeting of the Executive Council in 2001 (most ICOM councils and assemblies meet every three years), the Treasurer announced a balance of €60.114, hardly adequate to provide stable funding for great ape conservation.<sup>20</sup>

The International Council on Monuments and Sites (ICOMOS) promotes the conservation of cultural property, as defined by the World Heritage Convention. It refers all natural issues to the International Union for the Conservation of Nature (IUCN). The IUCN is well known among those who will attend the May meeting and as such is not discussed here.

The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) also promotes cultural, as opposed to natural, preservation, as well as cultural diversity. Nonetheless, its Strategic Directions suggests that it wishes to “have the value of cultural conservation recognized as being of similar importance to, and closely linked with, that of nature or environmental conservation.”<sup>21</sup> For example, ICCROM’s attention to natural-cultural linkages is exemplified in its focus on towns and human settlements, such as the Cinque Terra towns in Italy that were recently included in the World Heritage List as cultural heritage). ICCROM also promotes sustainable development, although this focuses on combating poverty without destroying cultural sites. Nonetheless, it would certainly stretch ICCROM to embrace great ape conservation.

#### **D. Application of World Heritage Convention to Great Apes**

**Existing Site-Based Model.** There are many problems, and a few benefits, to using the World Heritage Convention as a tool for great ape protection or conservation of other

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<sup>15</sup> See 27 COM 11. Many nations are in arrears in their payments to the Fund, 27 COM 11.3(1), and these contributions are a major source of income to the Fund. See, 27 COM 11, Table 1. The fund is expected not to increase, but to decrease, 27 COM 11.1(2).

<sup>16</sup> Operational Guidelines 94-111, available at <http://whc.unesco.org/nwhc/pages/doc/main.htm>.

<sup>17</sup> *Id.* at para. (i).

<sup>18</sup> See ICOM Statute, article 3, available on-line at <http://icom.museum/statutes.html> (citing museums, the promotion of museums, and museology).

<sup>19</sup> See <http://icom-cc.icom.museum/Home/>.

<sup>20</sup> 101st Session of the Executive Council, 6-7 June 2002, Paris (France), available on-line at [http://icom.museum/ex-101\\_eng.html](http://icom.museum/ex-101_eng.html).

<sup>21</sup> <http://www.iccrom.org/eng/about/strategic.htm>.

species. Although several populations of great apes live within existing World Heritage sites, these sites do not sufficiently protect great ape populations. The four great apes are subdivided into many distinct species and subspecies. For each of these distinct genetic types, there are further distinct populations occupying different habitats in different countries. If the goal is to conserve this ecological and genetic diversity across the geographic ranges of each of the great apes, then populations and their supporting habitats must be protected for each of these types. Further, because political and ecological events in the future create great uncertainties for any one of these populations, and since most are currently declining, a wise conservation strategy would designate replicates for these distinctive genetic and ecological types of each great ape taxon, so that risk is spread among several eggs in each of these conservation baskets representing each “type” of great ape. Therefore, a sound conservation strategy would designate protective status for a dozen to several dozen populations of each of the four great apes.

To illustrate this risk, seven of the eleven sites that include great apes are listed as World Heritage in Danger.<sup>22</sup> The danger list is designed to inform the international community of conditions that threaten the very characteristics for which a site was originally inscribed on the World Heritage List.<sup>23</sup> Article 11(4) of the Convention instructs that the list “may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers.”<sup>24</sup> The properties on the danger list that contain great ape populations face several risks. Endemic to most of the sites are threats of deforestation due to logging and construction of logging roads. Intensive poaching that fuels the bushmeat trade also presents numerous concerns. And most seriously, the social unrest and armed conflict presently occurring in some great ape range states has led to staff evacuation and ape habitat destruction at many of these listed sites. According to the UNEP World Conservation Monitoring Centre, the four ape-containing World Heritage sites that have eluded danger list inscription face many of the same threats as the listed properties.

Additionally, existing World Heritage sites do not cover a large enough land area to sufficiently protect great apes. In fact, existing sites occupy less than 3% of great apes’ estimated

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<sup>22</sup> The seven sites included in list of World Heritage in Danger are: Comoe National Park, Virunga National Park, Kahuzi-Biega National Park, Garamba National Park, Salonga National Park, Okapi Wildlife Reserve, and Rwenzori Mountains National Park.

<sup>23</sup> UNESCO, *The List of World Heritage in Danger* [hereinafter *Danger List Report*], at <http://whc.unesco.org/kit-dangerlist.htm> (last visited Apr. 2, 2004).

<sup>24</sup> The may include a World Heritage site on the danger list when it is “threatened by serious and specific danger” and “major operations are necessary for the conservation of the property.” the *Operational Guidelines for the Implementation of the World Heritage Convention (Operational Guidelines)*, para. 80. Dangers to the site can be “ascertained” (referring to “specific and imminent” threats) or “potential” (when a property is faced with major threats “which could have a deleterious effects” on its World Heritage values). *Id.* at para. 83. A Party may request for a site to be included on the list or any Committee member or the Secretariat can nominate a property for inclusion. *Id.* at para. 80. Inscription of any site on the danger list requires the Committee to develop and adopt, in consultation with the concerned Party, a corrective program for the site. *Id.* at para. 86. Additionally, the Committee “shall allocate a specific, significant portion of the World Heritage Fund” to assisting sites on the List of World Heritage in Danger. *Id.* at para. 91. The Committee is also required to “review at regular intervals” the state of properties on the danger list. *Id.* at para. 92. If the Committee determines that a site is no longer under threat, it is required to remove the property from the list. *Id.* Currently, only 33 properties are inscribed on the List of World Heritage in Danger. See *Danger List Report*, *supra* note 23.

geographic range.<sup>25</sup> Moreover, no sites exist in several significant range states that are Parties to the World Heritage Convention. For example, Gabon is home to more than half the world's estimated population of naturally occurring central chimpanzees and over 35% of the wild western lowland gorilla population, yet the country does not have a single World Heritage site. Similarly, Rwanda is home to 40% of the world's population of mountain gorillas but has no World Heritage sites.<sup>26</sup>

The inadequacy of World Heritage sites in preserving viable great ape populations is mirrored by other efforts that focus only on protecting ape habitat rather than apes themselves. A recent study estimates that 84 conservation areas,<sup>27</sup> covering 64,210 sq. miles, currently bear the chief responsibility for protecting great apes.<sup>28</sup> That means that all the world's recognized ape-containing conservation areas combined cover less than 6% of the great apes' geographic range. Additionally, the mean size of conservation areas in which great apes can be found is 1,042 sq. miles.<sup>29</sup> With average ape density ranging from 0.77–2.60 apes/ sq. mile, the average ape-containing conservation area is home to between 800 and 2,700 great apes.<sup>30</sup> Scientists contend that these small, insular populations “are highly susceptible to extinction due to random catastrophes, erosion of genetic variability, [and numerous forms of human disturbance].”<sup>31</sup> Supporting that contention, a 2000 survey involving 24 conservation areas where there is a dedicated ape research presence determined that 96% of great ape populations in those protected areas were declining.<sup>32</sup> Results also indicated that apes are regularly hunted within 62% of those areas.<sup>33</sup>

**Species-centered Approach under Existing Site-based Framework.** The World Heritage Convention does not lend itself well to the interpretation that a species is World Heritage under the definitions of cultural and natural heritage in Articles 1 and 2 of the Convention or the Operational Guidelines. Obviously, great apes are not cultural sites as they are not monuments, buildings, or sites. The criteria for natural sites are similarly oriented towards sites, not species. Any amendment to incorporate species into the World Heritage regime requires additional ratification by the Parties; those who do not ratify the amendment are not bound by it.<sup>34</sup>

The question is whether the inclusion of great ape habitat provides an adequate surrogate for “World Heritage Species” designation. One criterion for listing natural sites includes “habitats for in-situ conservation of biological diversity, including those *containing* threatened

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<sup>25</sup> This paper uses current scientific studies to estimate the total geographic range of great apes at 1,251,696 sq. miles. The total land area protected by existing World Heritage sites is 33,012 sq. miles.

<sup>26</sup> See UNESCO, World Heritage List, at <http://whc.unesco.org/en/list>.

<sup>27</sup> “Conservation areas” means national parks, game reserves, game control areas, and nature reserves. The estimated number of conservation areas includes the World Heritage sites described above.

<sup>28</sup> ANDREW J. MARSHALL ET AL., THE PLIGHT OF THE GREAT APES: A GLOBAL SURVEY OF APE POPULATIONS 28–33. (2000).

<sup>29</sup> *Id.* at 32.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.* at 9.

<sup>34</sup> World Heritage Convention, *supra* note 2, at art. 37.

species of outstanding universal value.”<sup>35</sup> While a species cannot readily be “World Heritage,” the species’ threatened status could be used to establish, for example, a “Mountain Gorilla World Heritage Site,” or similar designation that highlights the significance of the area to the species, even though the land itself, and not the ape, is the focal point of the site. A plan to protect great ape habitat should include the whole life-cycle of the ape, its food sources, nesting sites, etc.: “The sites described in paragraph 44(a)(iv) [of the Operational Guidelines] should contain habitats for maintaining the most diverse fauna and flora characteristic of the biographic province and ecosystems under consideration.”<sup>36</sup> That may require setting aside more habitat than range states are willing to protect. A species oriented approach could allow designation of the species without necessarily protecting the entire habitat of the species. Theoretically, a series of great ape habitats could be listed as World Heritage. That would avoid a site-by-site listing process, although it may require greater coordination among range states.

### III. Convention on the Conservation of Migratory Species of Wild Animals (CMS)

#### A. Overview of CMS

Among international agreements, only the Convention on the Conservation of Migratory Species of Wild Animals (CMS)<sup>37</sup> focuses solely on the conservation of migratory species. While CMS is global in scope and open to all States, its unique structure and focus on individual and groups of migratory species have led to a more regional approach to conservation. It creates general conservation obligations to protect endangered migratory species—those species “in danger of extinction throughout all or a significant portion of its range”—included in Appendix I.<sup>38</sup> It also establishes a process for creating specific agreements for the conservation of species listed in Appendix II and other species. A species in Appendix II either has an “unfavourable conservation status” which requires international conservation and management or “a conservation status which could significantly benefit” from international cooperation.<sup>39</sup> Thus, unlike migratory species in Appendix I, Appendix II species do not need to be endangered with extinction before the Parties implement conservation obligations (although a species can be included in both Appendices). On the other hand, Parties have no conservation obligations regarding species included only in Appendix II until they conclude a separate AGREEMENT.<sup>40</sup>

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<sup>35</sup> Operational Guidelines, at para. 44(a)(iv).

<sup>36</sup> Operational Guidelines, at para. 44(b)(iv).

<sup>37</sup> CMS, *supra* note 3.

<sup>38</sup> *Id.* at arts. I(e), II, III.

<sup>39</sup> *Id.* at art. III(1). A species has a “favorable conservation status” if its population is viable over the long term. *Id.* at art. I(c).

<sup>40</sup> CMS distinguishes between “AGREEMENTS” for Appendix II species and “agreements” for species not included in Appendix II. Some confusion has been created over the years concerning the correct way to distinguish these two documents. Firstly, the official text of the CMS, article IV(4) misprints “agreements” as “AGREEMENTS,” an error which was acknowledged in Resolution of the Conference of the Parties, 2.2. See Simon Lyster, *Convention on the Conservation of Migratory Species of Wild Animals*, 29 NATURAL RESOURCES J. 979, 992, n. 42 (1989). In addition, many English versions of CMS, including the one referred to as the official text by the CMS Secretariat on its website, now refer to “AGREEMENTS” as “Agreements.” The official French and Spanish versions of CMS continue to use the old formulation: ACCORDS/accords and ACUERDOS/acuerdos, respectively. See <http://www.wcmc.org.uk/cms/>.



The Parties have placed *Gorilla beringei* in Appendix I. No other great ape is included in either Appendix I or II, no doubt because they are not “migratory” within the meaning of CMS, described below in Section D.

## **B. Conservation Obligations**

Parties that are Range States must “endeavour” to conserve and, where feasible, restore essential habitat of Appendix I species.<sup>41</sup> In addition, Range States also must endeavour to prevent or mitigate obstacles to the migration of the species,<sup>42</sup> and “to the extent feasible,” reduce factors leading to endangerment.<sup>43</sup> Range States also “shall prohibit” the “taking,” including the “capturing” and “harassing,” of Appendix I species.<sup>44</sup> One author interprets this provision as prohibiting the unintentional killing of Appendix I individuals.<sup>45</sup>

Nonetheless, the Parties can “take” Appendix I species, including great apes, for scientific purposes, enhancing the survival of species, traditional subsistence needs, and “extraordinary circumstances.”<sup>46</sup> Although the exceptions appear broad, they must be “precise as to content” and “limited in space and time” and “not operate to the disadvantage of the species.”<sup>47</sup> These exemptions appear to allow for harvesting and ranching to enhance populations, and allow for subsistence harvesting by indigenous and traditional communities. A Party must inform the Secretariat which exceptions it permits.<sup>48</sup>

The CMS encourages a regional approach to conserve Appendix II migratory species, because Range States, as opposed to the Parties as a whole, must “endeavour” to development AGREEMENTS (also called “Article IV agreements”) for the conservation of Appendix II migratory species.<sup>49</sup> In addition, the Parties can conclude AGREEMENTS for distinct population segments rather than the species as a whole.<sup>50</sup> The purpose of an AGREEMENT is “to restore the migratory species concerned to a favourable conservation status or to maintain it in such a status.”<sup>51</sup> AGREEMENTS should cover the whole range of a migratory species,<sup>52</sup> identify the species covered,<sup>53</sup> describe the species’ range and migration route,<sup>54</sup> require each

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<sup>41</sup> CMS, *supra* note 3, at art. III(4)(a).

<sup>42</sup> *Id.* at art. III(4)(b).

<sup>43</sup> *Id.* at art. III(4)(c).

<sup>44</sup> *Id.* at art. IV(5). “Taking” is defined as “taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct.” *Id.* at art. I(1)(i).

<sup>45</sup> Lyster, *supra* note 163, at 988 (stating that “it is fair to conclude that article III(5) imposes a legal duty on Parties that are Range States of the Atlantic Ridley [Kemp’s ridley] to prohibit the use of shrimp trawls in areas where the turtle occurs unless the trawls are fitted with “Turtle Excluder Devices.”).

<sup>46</sup> CMS, *supra* note 3, at III(5).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at art. III(7).

<sup>49</sup> *Id.* at art. IV(3).

<sup>50</sup> “Migratory species” is defined as “the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national boundaries.” *Id.* at art. I(1)(a).

<sup>51</sup> *Id.* at art. V(1).

<sup>52</sup> *Id.* at art. V(2).

<sup>53</sup> *Id.* at art. V(4)(a).

<sup>54</sup> *Id.* at art. V(4)(b).

Party to designate a national authority to implement the AGREEMENT,<sup>55</sup> monitor the effectiveness of the AGREEMENT,<sup>56</sup> and establish procedures for dispute settlement.<sup>57</sup> “Where feasible,” an AGREEMENT “should” also be based on sound ecological principles and include a periodic review of the species’ conservation status, coordinated management plans, information exchange, and suitable habitat networks in relation to migration routes, among other things.<sup>58</sup>

### C. Institutional Structure

The Conference of the Parties meets every three years and is the body that adopts resolutions and amends the appendices. Any Party may propose an amendment. A two-thirds majority of the COP is required to amend the convention or modify the appendices. Art. X and XI. A Standing Committee provides general policy direction, while an advisory Scientific Committee and Working Groups provide advice on scientific and other issues delegated to them. The Secretariat administers CMS and provides institutional support to the Parties.

### D. Are Great Apes “Migratory”?

The reach of the CMS to great apes depends primarily on the definition of “migratory species.” Article I(1)(a) defines “migratory species” to mean:

the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

While the requirement to move “cyclically and predictably” adheres to a more biologically oriented definition of migratory, the requirement to cross one or more national boundaries recognizes the inter-nation element of CMS. To be migratory a population or distinct part of a population does not have to travel far, only regularly cross a national border. Under this definition, a population that predictably crosses national boundaries as it forages for food is probably “migratory,” but a population that straddles a national boundary is not “migratory” absent evidence of particular individuals that follow a pattern of crossing the border. That interpretation is supported by CMS’s requirement that a “significant proportion” of the population or species cyclically and predictably cross borders.

**Gorillas.** *Gorilla beringei* is already included in Appendix I. Because populations of *G. beringei* have continued to decline, perhaps the legal protections provided by the Appendix I listing is insufficient or the political will to implement those protection is lacking. It may be that *G. beringei* would benefit from an Appendix II agreement so that the particular threats to that population could be taken into account. Additional information is needed concerning the migratory behavior of Eastern and Western lowland gorillas to determine whether they cross

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<sup>55</sup> *Id.* at art. V(4)(c).

<sup>56</sup> *Id.* at art. V(4)(d).

<sup>57</sup> *Id.* at art. V(4)(e).

<sup>58</sup> *Id.* at art. V(5).

national borders. At least one subspecies of gorilla that is not listed, the “Cross River” Gorilla (*G. g. diehli*), occurs between Cameroon and Nigeria and may be eligible.

According to some scientists, if gorillas are considered migratory under CMS, then orangutans and chimpanzees could be as well. That is, they have populations in which social groups and individuals dispersing from populations move across boundaries as they use different parts of their large home ranges. In fact, orangutans seem to contain a significant portion of wide ranging individuals in their populations. The population straddling the border of West Kalimantan and Sarawak would thereby qualify orangutans as “migratory.”<sup>59</sup>

**Chimpanzees.** Several chimpanzee populations may also be “migratory,” as defined by CMS, as chimpanzees range across several countries in both central and eastern Africa. At least two populations of chimpanzee in Tanzania are known to be migratory although this is thought to be an anomaly among chimpanzees.<sup>60</sup> One chimpanzee population straddles the national borders of Ivory Coast, Guinea, and Liberia in the Nimba Mountains.

**Bonobos.** Even if bonobos are migratory in the biological sense, they are not migratory within the meaning of CMS, because they live entirely within the Democratic Republic of Congo.

**Orangutans.** Orangutans live in Malaysia and Indonesia. At least one population of Bornean orangutan straddles Malaysia and Indonesia, but a majority of the range is within Indonesia. In any case, none of the range states of the orangutan is a Party to CMS. Also, CMS would have limited application to orangutans because none of the range states are Parties to the Convention. Theoretically this would not prevent the CMS from listing the Orangutan in Appendix II, but it would be difficult to negotiate an agreement wholly between non-Parties.

## **E. Application of CMS to Great Apes**

The strength of CMS for great ape conservation is its flexibility. Of the 85 Parties to the CMS (as of Feb. 1, 2004), fourteen are great ape range states.<sup>61</sup> Thirteen range states are not Parties, including all three Asian range states of the orangutan.<sup>62</sup> Nonetheless, a country need not be a Party to participate in an agreement concerning an Appendix II species. In fact, CMS

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<sup>59</sup> Email communication from Mark Leighton (May 22, 2004).

<sup>60</sup> Jon A. Sefcek, *Out of Homo and into Pan: Gene Flow and Phylogenetic Relationships within the Genus Pan* (undated), available at: <http://www.u.arizona.edu/~jons/chimpgene.html>, (referring to the work of others providing that two communities of chimpanzees in the Filibanga community of western Tanzania engage in seasonal migrations of over 150km<sup>2</sup> (Kano, 1971). These communities are normally “on the move and migrate whenever resources are scarce. Conventionally this large of a ranging pattern has been thought to be an anomaly, restricted to these populations that live in these arid-type climates.”

<sup>61</sup> Article 1(1)(h) of CMS defines “range state” to mean: “in relation to a particular migratory species means any State . . . that exercises jurisdiction over any part of the range of that migratory species, or a State, flag vessels of which are engaged outside national jurisdictional limits in taking that migratory species. The fourteen range states that are party to CMS are Benin, Burkina Faso, Cameroon, Democratic Republic of Congo, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Mali, Nigeria, Senegal, Togo, and Uganda.

<sup>62</sup> Angola, Brunei, Burundi, Central African Republic, Equatorial Guinea, Gabon, Indonesia, Liberia, Malaysia, Rwanda, Sierra Leone, Sudan, Tanzania.

encourages non-range states to participate in the creation and implementation of agreements created for Appendix II species. Thus, formal ratification of CMS is not needed to obtain their participation. The United States, for example is a non-Party to CMS but has signed memoranda of understandings relating to Appendix II sea turtles.

These agreements for Appendix II species can be tailored to the specific needs of the region and each species. The Convention itself doesn't impose any firm obligations (most obligations are prefaced by "endeavor to" and qualified by "as feasible and appropriate"). However, the Agreements (of which there are 6, none covering apes) or Memoranda of Understanding (of which there are 7, none covering apes) can impose firmer obligations on the signatories. In addition the COP can adopt resolutions clarifying the Parties duties vis-à-vis Appendix I species. Another strength is that there is likely greater institutional experience with developing and implementing conservation measures within the CMS than, for example, in the World Heritage Convention.

A potential weakness of the CMS is that it needs to create a new institutional framework, including a new secretariat, for each agreement. It thus introduces extra administrative costs and delay into the process. However, the advantage of having limited, regional involvement, and additional flexibility, in each agreement may outweigh those costs.

As to the great apes in particular, the main problem is that, except for the gorilla, a significant portion of ape populations as a whole do not regularly cross national borders. This is particularly true for orangutans and bonobos. Nonetheless, the "agreement" structure of the CMS could be profitably combined with the conceptual breadth of the World Heritage Convention to provide a good model for conservation of great apes as well as other species.

#### **IV. Convention on Biological Diversity**

##### **A. Overview of CBD**

The Convention on Biological Diversity (the CBD) seeks to conserve and sustainably use biological diversity.<sup>63</sup> Great apes and all other species are elements of biological diversity, which is defined as "the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic systems ... and includes diversity within species and between species and ecosystems."<sup>64</sup> The CBD contains no provisions specific to the protection of great apes or any other species, but its articles do provide planning and habitat protection mechanisms to protect biological diversity on both a national and regional level. Nonetheless, other habitat and species protection treaties, such as CITES and the CMS, are much more specific.<sup>65</sup>

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<sup>63</sup> *Id.* at art. 1. A third objective is to share equitably the benefits from the use of genetic resources. *Id.*

<sup>64</sup> *Id.* at art. 2.

<sup>65</sup> See Chris Wold, *The CBD and Existing International Environmental Agreements: Opportunities for Synergy* (1995)(describing the need for institutional collaboration between the CBD and other agreements)(on file with author).

The CBD currently has 188 Parties, including all but one of the range states of the great apes.<sup>66</sup> Parties are required to submit National Reports to assist the Conference of the Parties (COP) in tracking the Convention's implementation.<sup>67</sup> The Secretariat has made two calls for National Reports, but six great ape range states have yet submit their reports.<sup>68</sup> A review of the National Reports suggests that the great ape range states have not used the CBD extensively to protect their great ape populations. The range states mention primates when describing their natural biodiversity, but they generally do not describe how they implement the CBD with respect to great apes.<sup>69</sup> Nonetheless, the CBD offers the potential for great ape conservation through its thematic programs for forests, protected areas, and ecosystem approaches to conservation.

## **B. Conservation Obligations**

The CBD establishes planning and monitoring obligations for the protection of biological diversity. For example, Parties must, "as far as possible and as appropriate," prepare national plans,<sup>70</sup> integrate conservation and sustainable use into plans and policies,<sup>71</sup> and identify and monitor components of biological diversity important for conservation and sustainable use.<sup>72</sup> Parties also must prepare environmental impact assessments for projects that are likely to have a significant adverse impact on biological diversity.<sup>73</sup> While these provisions may encourage better planning of logging activities<sup>74</sup> and comprehensive monitoring of great ape populations, each Party is ultimately responsible for implementation.

The CBD also requires Parties, "as far as possible and as appropriate," to protect ecosystems, habitat, and minimum viable populations of species in their natural surroundings.<sup>75</sup> The CBD requires Parties to maintain minimum viable populations (not merely a level above endangerment) and relates to all threats (not merely over-exploitation). On the other hand, all its obligations must be implemented "as far as possible" and "as appropriate." The highly qualified nature of these obligations makes the extent of a Party's obligations unclear.

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<sup>66</sup> Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Indonesia, Ivory Coast, Liberia, Malaysia, Mali, Nigeria, Rwanda, Senegal, Sierra Leone, Sudan, Togo, Uganda, United Republic of Tanzania are Parties. Brunei is not. CBD, *Parties to the Convention on Biological Diversity*, Feb. 13, 2004, available at: <http://www.biodiv.org/world/Parties.asp>

<sup>67</sup> CBD, *supra* note 4, at art. 26.

<sup>68</sup> Angola, Ghana, Ivory Coast, Nigeria, Sierra Leone, and Sudan have not turned in any reports. CBD, *National Reports of CBD*, <http://www.biodiv.org/world/reports.aspx?type=all&alpha=A> (last updated January 16, 2004).

<sup>69</sup> A project outside the scope of this discussion paper should assess the National Reports and National Strategy and Action Plans of each range State, analyze how each State's programs protect great apes, and examine the role of the CBD in those programs.

<sup>70</sup> CBD, *supra* note 4, at art. 6(a).

<sup>71</sup> *Id.* at art. 6(b).

<sup>72</sup> *Id.* at art. 7.

<sup>73</sup> *Id.* at art. 14.

<sup>74</sup> Forest logging is one of the acknowledged causes of decline of great ape populations. Not only does it impact the Ape's habitat, but logging roads also open up an entrance for humans into wilderness, making hunting of bush meat much easier.

<sup>75</sup> CBD, *supra* note 4, at art. 8(d).

Parties also are asked to establish protected areas to conserve biological diversity<sup>76</sup> and management guidelines for these areas.<sup>77</sup> Parties also must manage biological resources<sup>78</sup> within or outside protected areas to ensure their conservation and sustainable use,<sup>79</sup> restore degraded ecosystems,<sup>80</sup> promote the recovery of threatened species,<sup>81</sup> and maintain legislation to protect threatened species.<sup>82</sup> Again, these obligations are qualified with troublesome language that makes the extent of the obligation ambiguous. Nonetheless, Parties have *some* obligation to protect great apes as threatened species and as components of biological diversity.

The CBD specifically protects customary uses of biological resources in accordance with traditional cultural practices, provided that they are compatible with conservation and sustainable use principles.<sup>83</sup> In addition, Parties must “respect, preserve and maintain” the practices of indigenous and local communities.<sup>84</sup> Thus, States must recognize these rights when developing measures to protect great apes which could have implications for regulating bushmeat consumption and trade.

Parties also have an obligation to cooperate on matters beyond the national jurisdiction of any country and other matters of “mutual interest.”<sup>85</sup> Parties also must encourage the use of bilateral, regional, or multilateral agreements to control activities that are likely to have significant adverse impacts on biodiversity in another country’s jurisdiction or on the high seas.<sup>86</sup> If one country’s citizens are engaging in bushmeat trade or armed conflict in another country, this provision could be used to encourage multilateral agreements controlling those activities. While more likely related to migratory species and species beyond the jurisdiction of any State, this provision could potentially apply to flagship species such as the great apes.

Ultimately, the CBD is not designed to address a target group of animals. Nor does it require Parties to undertake concrete steps to protect species or habitat. However, it does provide the foundation for a range of projects, such as national and transnational cooperative plans with some incidental protection for great apes and legislation to protect great apes as threatened species.

### C. Institutional Structure

The CBD maintains a Secretariat and the COP meets annually. In addition, the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA), an intergovernmental scientific advisory body<sup>87</sup> responds to specific questions put forth by the

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<sup>76</sup> CBD, *supra* note 4, at art. 8(a).

<sup>77</sup> *Id.* at art. 8(b).

<sup>78</sup> “Biological resources” include genetic resources, organisms, or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity. *Id.* at art. 2.

<sup>79</sup> *Id.* at art. 8(c).

<sup>80</sup> *Id.* at art. 8(f).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at art. 8(k).

<sup>83</sup> *Id.* at art. 10(c).

<sup>84</sup> *Id.* at art. 8(j).

<sup>85</sup> *Id.* at art. 5.

<sup>86</sup> *Id.* at art. 14(c).

<sup>87</sup> *Id.* art. 25.

Conference of the Parties (COP) and assesses the implementation of the CBD and the status of biodiversity.

The Global Environment Facility (GEF), the funding mechanism for the CBD, disperses funds to implement the elements of the national biodiversity conservation plans prepared by the Parties. In contrast to the \$7.2 million in the World Heritage Fund for two years, donor countries recently pledged \$3 billion to fund GEF operations between 2002 and 2006.<sup>88</sup> Although the GEF funds projects that address biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants, that budget still far exceeds that of any other multilateral funding source for biodiversity-related projects.

#### **D. Application of the CBD to Great Apes**

At present, the CBD includes nothing that *requires* Parties to protect great apes. Nor has great ape protection been a focus of the COP or the SBSTTA. Nonetheless, the CBD has developed several ideas, such as an ecosystem approach, that may benefit great apes either as part of an individual Party's conservation and sustainable use efforts or as a component of a separate multilateral legal regime for great apes. For example, the Parties are developing strategies, if not obligations, to protect forest ecosystems.

In addition, the CBD's ecosystem approach is a forward-thinking management tool that can be adopted to great ape conservation. SBSTTA's background research on non-timber resources is also helpful for putting the plight of the great apes in a greater context. Also, the Convention is starting to work with other international environmental conventions and organizations, which bodes well for its openness to working with a World Heritage Species Protocol. Although the CBD is itself an insufficient forum for addressing the plight of the great apes, it would be a valuable partner to a World Heritage Species Protocol.

**Forests.** At the sixth meeting of the Conference of the Parties (COP6) in 2002, the Parties focused on forest biodiversity.<sup>89</sup> Among the many documents produced for the meeting by the SBSTTA and COP, the work most relevant to great apes has been on non-timber forest resources. Within the SBSTTA, a liaison group on non-timber forest resources was formed at the request of the COP in decision VI/22. The liaison group's 2003 report addresses the problem of bushmeat (meat from wild animals) within the context of the greater problem of unsustainable

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<sup>88</sup> Global Environment Facility, *What is the GEF?*, [www.gefweb.org](http://www.gefweb.org) (last viewed April 8, 2004).

<sup>89</sup> In April of 2004, the CBD met with the UN Convention to Combat Desertification (UNCCD) and the UN Framework Convention on Climate Change to hold a workshop on "Forests and Forest Ecosystems: Promoting Synergy in the Implementation of the Three Rio Conventions." The workshop will serve as a forum for the three conventions to determine how they can get a "firmer convergence of [their] strategic approaches." UNCCD, *Workshop on Forests and Forest Ecosystems: Concept Note*, <http://www.unccd.int/workshop/docs/concept-eng.pdf> (last viewed April 4, 2004). The COP has also undertaken a preliminary assessment of the Convention's programme of work for forests and the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests proposals of action. CBD, *Thematic Programmes of Work: Progress Reports on Implementation and Consideration of Proposals for Future Action: Forest Biological Diversity; Biological Diversity of Dry and Sub-Humid Lands; and Agricultural Biological Diversity - Note by the Executive Secretary*, November 27, 2003, UNEP/CBD/COP/7/11, p. 3.

harvesting of non-timber forest resources.<sup>90</sup> The report identifies the two main threats to non-timber forest resources as the loss and degradation of habitat because of commercial and industrial activities and the unsustainable harvesting of non-timber resources for local self-consumption and trade.<sup>91</sup> The report goes on to list characteristics that must be properly addressed to ensure sustainable harvesting of “bushmeat and other important non-timber forest resources”: lack of ownership of wildlife, mobility of the animals which leads to low levels of ownership, non-recognition of user rights, criminalization of use, difficulty of monitoring forest animals, and low barriers to participate in the exploitation of the resource.<sup>92</sup> The report also notes that armed conflict is a strong factor in unprecedented harvesting of bushmeat, and that the market price of bushmeat does not acknowledge its scarcity and the cost of replacement.<sup>93</sup> Alternative sustainable livelihoods are suggested for local communities, and the need to develop tools for community-based monitoring of non-timber forest resources is highlighted.<sup>94</sup> The report ends with several recommendations: consolidate protected area networks; take into account protected areas in land-use and infrastructure planning; consult relevant scientific, local, and indigenous knowledge in planning population management; recognize and strengthen the role of local people in inventory, research, monitoring, and impact assessment processes, and management; develop local level and landscape level appropriate and economically viable monitoring systems; integrate non-timber forest resources uses into forest management; conserve through cultivation or farming of wildlife; and raise the awareness of the importers, exporters, manufacturers, and retail buyers.<sup>95</sup>

This report demonstrates the strengths and weaknesses of the CBD. First, it is an example of the thorough research of the SBSTTA ad hoc groups; they are excellent at highlighting major policy issues and social problems in a clear and succinct fashion. Second, it is an example of the pace of work done under the Convention. This report was actually produced very quickly; it was requested in 2002 and produced by the end of 2003. And yet, in the 2004 proposal to amend the questionnaire on forests in the next National Report, non-timber resources are not mentioned.<sup>96</sup> Under this proposal, the COP will not be gathering data on the non-timber resource management or status of the Parties. Official decisions have not yet been made from the seventh meeting of the COP (COP7) in 2004, but at this point it appears that the work of the liaison group will have no practical results in the near future.

Finally, it is clear from the report that the CBD is committed to both conservation *and* “sustainable use.” Under the heading “Examples of policies, enabling legislation, and strategies that promote sustainable use of, and trade in, non-timber forest products, particularly bushmeat and related products,” the report urges effective property rights and benefit-sharing legislation

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<sup>90</sup> CBD, *Sustainable Use: Development of Practical Principles, Operational Guidance, and Associated Instruments-Addendum: Proposals for the Prevention of Losses Caused by Unsustainable Harvesting of Non-Timber Forests Resources*, October 7, 2003, UNEP/CBD/SBSTTA/9/9/Add.2.

<sup>91</sup> *Id.* at 3.

<sup>92</sup> *Id.* at 4.

<sup>93</sup> *Id.* at 5.

<sup>94</sup> *Id.* at 7.

<sup>95</sup> *Id.* at 9.

<sup>96</sup> CBD, *Guidelines for the Third National Report: Addendum - Proposals for the Review of Implementation of the Expanded Programme of Work on Forest Biological Diversity*, December 9, 2003, UNEP/CBD/COP/7/17/Add.7.



and market access.<sup>97</sup> Any implementation of great ape conservation through the CBD must take into account the convention's goals of conservation and sustainable use, because it is doubtful that any of the great apes can be sustainably used. Nonetheless, if a World Heritage Species Protocol decides not to consider "sustainable use" as an option in management planning, the "use" focus of the CBD would not prevent the two from working together.

**Protected Areas.** Protected areas have been another focal point for the CBD. Approximately 11% of the Earth's land surface is protected, but those systems "are not representative of the world's ecosystems, nor do they adequately address conservation of critical habitat types, biomes and threatened species."<sup>98</sup> The SBSTTA has aided the COP by reviewing and analyzing current methods and approaches for planning and managing protected areas.<sup>99</sup>

Based on SBSTTA's research, COP7 adopted Decision VII/28 on Protected Areas. The proposed program of work, designed to establish and maintain effectively managed and ecologically representative systems of protect areas, includes many relevant principles for existing World Heritage Sites and potentially for species governed by the World Heritage Species Protocol. The following are the goals that might be helpful in designing a Protocol:

*Goal 1.1—To establish and strengthen national and regional systems of protected areas integrated into a global network as a contribution to globally agreed goals.* This goal sets a tight timeline—2006 to 2010 for terrestrial ecosystems—for designating, expanding, and integrating protected areas. If the deadline of 2010 (for most actions) is taken seriously, great apes and many other species would benefit tremendously.

*Goal 1.2—To integrate protected areas into broader land- and seascapes and sectors so as to maintain ecological structure and function.* This goal requires the use of the ecosystem approach and the concept of ecological networks.

*Goal 1.5—To prevent and mitigate the negative impacts of key threats to protected areas.* This goal calls for effective mechanisms by 2008 for preventing and/or mitigating negative impacts of key threats to protected areas. This lofty goal needs more concrete and helpful implementation activities than the ones given, such as "develop policies" and "ensure enforcement of urgent measures" to halt the illegal exploitation of resources from protected areas. The Executive Secretary is suggested to use clearing-house mechanisms of case studies showing best practices and lessons learned. Such information dissemination would be helpful in trying to combat bushmeat hunting, illegal logging, and other causes of great ape decline.

*Goal 2.2—To enhance and secure involvement of indigenous and local communities and relevant stakeholders.* This goal sets 2008 for full and effective participation of indigenous and local communities. Again, this goal is vital for the success of great ape conservation, due to the remote areas in which the bushmeat trade originates.

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<sup>97</sup> *Id.* at 5-6.

<sup>98</sup> CBD, *Protected Areas (Articles 8(A) to (E))*: Draft Decision Submitted by the Chair of Working Group I, February 20, 2004, UNEP/CBD/COP/7/L.32.

<sup>99</sup> See SBSTTA, *Protected Areas: Addendum - Review of methods and approaches for the planning, establishment and management of protected areas and protected area networks*, Sept. 6, 2003, UNEP/CBD/SBSTTA/9/6/Add.1.

*Goal 3.4–To ensure financial sustainability of protected areas and national and regional systems of protected areas.* The suggested supporting activities of the Executive Secretary are the most useful for our purposes here. Activities include convening a meeting of donor agencies and other relevant organizations to discuss options for mobilizing new and additional funding, compiling and disseminating case-studies, and reviewing and disseminating studies on the value of ecosystem services provided by protected areas.

*Goal 3.5–To strengthen communication, education and public awareness.* This goal suggests, among other things, identifying core themes that will achieve specific end results, such as compliance by users, or better understanding of the value of indigenous knowledge by governments and NGOs.

**Ecosystem Approach.** The concept of protected areas is very similar to the concept behind the World Heritage Convention; individual, special places are preserved. The CBD’s “ecosystem approach” seeks to integrate the management of land, water, and living resources to promote conservation and sustainable use.<sup>100</sup> With humans as an “integral component” of many ecosystems, the CBD’s approach focuses on the management of species and habitats, but also considers economic and social considerations. Further, the term “ecosystem” can be any functioning unit at any scale, from a puddle or wetland to a regional system of interconnected rivers or an entire biosphere.

COP2 adopted the ecosystem approach as the “primary framework” for action under the CBD.<sup>101</sup> Through Decision VII/11, COP7 considerably elaborated the ecosystem approach. The following principles of the ecosystem approach could potentially be used in setting up a World Heritage Species Protocol. The plight of the great apes (and many other “special” species) is a problem that goes beyond simply setting aside a bit of habitat; it requires developing a sustainable solution that incorporates the human communities that share ecosystems with the species.

*Principle 1–The objectives of management of land, water and living resources are a matter of societal choice.* Ecosystems should be managed for their intrinsic values and for the tangible or intangible benefits for humans. Societal choices should be expressed as clearly as possible. Although many individuals consider that great apes must be protected purely for their intrinsic value, a scheme for protection will not work if the economic, cultural, and social needs of the indigenous peoples and local communities are not recognized. To this end, it is vital to involve all stakeholders in clearly articulating, defining, and agreeing upon the goals of management, defining problems, and making choices.

*Principle 2–Management should be decentralized to the lowest appropriate level.* This principle seeks management at a level closer to the ecosystem to ensure greater responsibility, ownership, accountability, participation, and use of local knowledge.

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<sup>100</sup> COP, Decision V/6: *Ecosystem Approach*, 2000, COP V/6.

<sup>101</sup> COP, Decision II/8: *Preliminary Consideration of Components of Biological Diversity Particularly Under Threat and Action Which Could Be Taken Under the Convention*, 1995, COP II/8.

*Principle 4—Recognizing potential gains from management, there is usually a need to understand and manage the ecosystem in an economic context.* According to this principle, any ecosystem-management program should (a) reduce those market distortions that adversely affect biological diversity; (b) align incentives to promote biodiversity conservation and sustainable use; and (c) internalize costs and benefits in the given ecosystem to the extent feasible.

Because of market distortions and externalization of costs, the voices of stakeholders with a strong interest in an ecosystem are often marginalized. Again, the role of economics and “use” in the World Heritage Species Protocol is going to be a defining issue. Currently, bushmeat is grossly undervalued on the market, and the costs of habitat destruction are almost entirely externalized. Under the CBD, practical economic valuation methodologies would be applied to ecosystem goods and services (for example, the presence of a keystone species such as the gorilla or other great apes in an ecosystem). Even if the Protocol decides not to manage the selected species in an economic context, it must seek to understand other ways for those who use the land to gain benefits from this and to ensure equitable sharing of costs and benefits.

*Principle 8—Recognizing the varying temporal scales and lag-effects that characterize ecosystem processes, objectives for ecosystem management should be set for the long term.* This principle acknowledges the difficulty in trading short-term gains for long-term benefits. Nonetheless, adaptive management should take into account the lag between management actions and their outcomes, and monitoring systems should be designed to detect long-term, low frequency changes in ecosystems.

*Principle 9—Management must recognize that change is inevitable.* Ecosystems change, including species composition and population abundance. Instead of focusing on fixed outcomes (increasing the number of great apes in specified populations by a certain amount), management objectives of a Protocol should focus on maintaining natural ecological processes. Care must be taken in implementing this provision in the context of great apes. While change may be inevitable, a focus on maintaining minimum viable populations of great ape populations may be a better focus given the diversity of threats to already low population levels for most populations.

*Principle 10—The ecosystem approach should seek the appropriate balance between, and integration of, conservation and use of biological diversity.* Again, this is a controversial principle with regard to great apes and other species potentially covered by a World Heritage Species Protocol. It is included here because the rationale makes the following point: there has been a tendency in the past to manage components of biological diversity either as protected or non-protected; we need to shift to more flexible situations, where conservation and use are seen in context and the full range of measures is applied in a continuum from strictly protected to human-made ecosystems.

*Principle 12—The ecosystem approach should involve all relevant sectors of society and scientific disciplines.* Most problems of biodiversity management are complex, with many interactions, side-effects and implications, and therefore should involve the necessary expertise and stakeholders at the local, national, regional and international level, as appropriate. Discovering solutions to the crisis facing great apes will require multidisciplinary professional and scientific expertise.

The plight of the great apes is intimately connected with the fate of the human communities that share their ecosystems. The CBD's work with the ecosystem approach lays the groundwork that should be considered for great ape conservation.

## **V. African Convention**

### **A. Overview of the African Convention**

The African Convention on the Conservation of Nature and Natural Resources (African Convention)<sup>102</sup> entered into force on June 16, 1969. As of March 11, 2004, 38 countries have signed the African Convention and 29 countries have ratified it. Two-thirds (seventeen of twenty-four) of the African range states for great apes have ratified the African Convention.<sup>103</sup>

The African Convention was one of the world's first multilateral environmental agreements. The fundamental principle of the African Convention requires Parties to "undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people."<sup>104</sup> The African Convention allows for listing of Protected Species<sup>105</sup> and has provisions to regulate international traffic in specimens and trophies.<sup>106</sup> It demands that Parties "conserve fauna resources and use them wisely, manage populations and habitats, [and] control hunting."<sup>107</sup>

The African Convention *could*<sup>108</sup> be a mechanism to protect the great apes. A large percentage of range states are Parties to the African Convention and the great apes are listed as "protected species," which are deemed to be highly regulated species. Additionally, there are other provisions of the African Convention, such as those created to conserve habitat, which may provide protection for the Apes.

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<sup>102</sup> African Convention, *supra* note 5.

<sup>103</sup> These countries are: Burkina Faso, Cameroon, Central African Republic, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Gabon, Ghana, Liberia, Mali, Nigeria, Rwanda, Senegal, Sudan, Tanzania, Togo, and Uganda. Five other range states have signed, but not ratified, the African Convention, including: Benin, Burundi, Gambia, Guinea, and Sierra Leone. Only three of the range states have neither signed nor ratified: Angola, Equatorial Guinea, and Guinea Bissau.

<sup>104</sup> African Convention, *supra* note 5, at art. II.

<sup>105</sup> *Id.* at art. VIII.

<sup>106</sup> *Id.* at art. IX.

<sup>107</sup> United Nations Environment Program (UNEP), Africa Environment Outlook: Past, Present and future Perspectives, *available at* <http://www.unep.org/aeo/013.htm>.

<sup>108</sup> Although providing legal protection for great apes, this Convention has not been effectively implemented and may not be without generous international assistance to Parties.

## B. Conservation Obligations

As with CITES and CMS, the African Convention classifies species of conservation concern. Class A Protected Species are “threatened with extinction, or which may become so.”<sup>109</sup> The Convention prohibits the “taking” of these species, which include the gorilla, chimpanzee, and bonobo<sup>110</sup>:

Species in Class A *shall be totally protected throughout the entire territory of the Contracting States*; the hunting, killing, capture or collection of specimens shall be permitted only on the authorization in each case of the highest competent authority and only if required in the national interest or for scientific purposes.<sup>111</sup>

This provision could provide strong protection for the listed great apes as technically any taking of the listed apes within the borders of a Party is illegal. The exceptions are potentially problematic, however. Is logging “in the national interest”? Is the use of chimpanzees for AIDS and behavioral research considered “for scientific purposes”?

The African Convention also includes supplemental support for the ban on “taking Class A species such as the great apes. First, Article VII requires Parties to “adopt adequate legislation on hunting [and] capture”<sup>112</sup> and specifically prohibits certain hunting techniques, such as the use of drugs or poisons and the use of fire arms capable of firing more than one round at each pull of the trigger.<sup>113</sup> If hunters of great apes use any of the listed methods, their actions should be illegal according to domestic legislation. If a Party has not adopted such domestic legislation, they are in breach of their obligations under this article.

Second, Article IX creates a regime to regulate the international trade in specimens and trophies. Like CITES, the African Convention requires the issuance of an export permit before it can be legally imported into another country.<sup>114</sup> Third, Article X requires that Parties “maintain and extend” conservation areas “in order to ensure conservation of all species and particularly of those listed.”<sup>115</sup>

Although not allowing reservations to listings of species, Article XVII of the African Convention explicitly provides exceptions to limit the obligations of Parties: “The provisions of this Convention shall not prevent Contracting States (a) in time of famine, (b) for the protection of public health, [and] (c) in defence of property.”<sup>116</sup>

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<sup>109</sup> African Convention, *supra* note 5, at art. VIII (1).

<sup>110</sup> African Convention, annex, List of Protected Species.

<sup>111</sup> *Id.* at art. VIII(1)(a) (emphasis added). The African Convention establishes a two-tiered listing of species. Species listed in Class A may not be taken while species listed in Class B may be taken “under special authorization granted by the competent authority.” *Id.* at art. VIII(1)(b).

<sup>112</sup> *Id.* at art. VII(2).

<sup>113</sup> *Id.* at art. VII(2)(c).

<sup>114</sup> *Id.* at art. IX(2)(b)-(c).

<sup>115</sup> *Id.* at art. X(1)(b).

<sup>116</sup> *Id.* at art. XVII(2).

As one of the greatest threats to great ape habitat is human conflict, a large question left unresolved by the African Convention is whether war may be included as an exception to limit the obligation of Parties. The revised convention, described in Section E below, specifically answers this with Article XV (on Military and Hostile Activities), which requires Parties to “take every practical measure, during periods of armed conflict, to protect the environment against harm.” Nevertheless, this provision (if it ever enters into force) will most likely be mere aspiration. The reality of a nation facing armed conflict does not lend itself to effective species or habitat protection.

### **C. Institutional Structure**

The African Convention has neither a Conference of the Parties (COP) nor a Secretariat to implement the provisions of the convention. As a result, many countries have ratified the African Convention without taking any affirmative steps to implement it. The Parties, recognizing the need for a COP and a Secretariat, have provided for these bodies in the revised African Convention,<sup>117</sup> which is not yet in force.

### **D. Application of the African Convention to Great Apes**

The African Convention has several appealing advantages. First, all great apes are already protected as “Class A” species which triggers a range of concrete, binding obligations. Those binding obligations make it stricter than the CBD and, because it includes habitat obligations, broader than CITES’s narrow focus on international trade. For species conservation provisions, such as the listing of a species, the Convention precludes reservations, a legal mechanism for opting out of a convention’s requirements for a particular species or obligation.<sup>118</sup> Moreover, it is a regional agreement that, with fewer Parties to consider, may help to make great ape conservation measures easier to revise, implement, and enforce.

Despite some clear advantages, the disadvantages of the African Convention clearly outweigh any benefits it might have for great ape protection. In fact, the United Nations Environment Program (UNEP) uses the African Convention as a textbook example of where a convention has not been properly implemented. UNEP notes that, “[i]n some cases, important biodiversity conventions have not carried much effect, due to lack of appropriate administrative arrangements, or lack of a financial mechanism. An example in this regard is the African Convention on the Conservation of Nature and Natural Resources.”<sup>119</sup>

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<sup>117</sup> The African Convention was substantially revised July 11, 2003 at a meeting of the African Union. To date, nineteen nations have signed the Convention, but none have ratified it. It will most likely take significant resources and time before the revised African Convention enters into force. For a brief description of the Revised Convention, see Section V(E). A copy of the revised convention is *available at* [http://www.africa-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/nature%20and%20natural%20resource.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/nature%20and%20natural%20resource.pdf).

<sup>118</sup> African Convention, *supra* note 5, at art. XX(1).

<sup>119</sup> UNEP, Partnership for the Development of Environmental Laws and Institutions in Africa, *Handbook on the Implementation of Conventions Related to Biological Diversity in Africa*, Chapter Six, 6.2.1(b), *available online at* <http://www.unep.org/padeli/publications/handbook62.htm>.

Nevertheless, some Parties may be implementing the mandates of the African Convention indirectly. For instance, Uganda has created a system of national parks and uses eco-tourism initiatives, such as chimpanzee and gorilla tracking, to promote the conservation of great apes within its borders.<sup>120</sup> Uganda's national parks could fall under the provisions of the African Convention, as national parks are defined in Article III (Definitions) and could fall under the jurisdiction of Article X (Conservation Areas). Local initiatives, such as those being carried out in Uganda, could provide viable means to protect great apes and therefore should be thoroughly researched before undertaking a project at the international level.

## **E. The Revised African Convention**

Because of the shortcomings of the African Convention, it has been undergoing a revision process since 1983.<sup>121</sup> With the help of the International Union for the Conservation of Nature and Natural Resources (IUCN) and the United Nations Environment Programme (UNEP), the African Union (formally called the Organization of African Unity) finished the revisions of the treaty and adopted it as a body<sup>122</sup> in July of 2003. As of May 2004, it has not entered into force.

Although affirming the previous African Convention's fundamental purpose and some of its provisions, the Revised African Convention substantively changes the landscape for natural resource protection in the region. The new provisions focus mostly on sustainable development and sustainable use of natural resources. For example, the Parties must "adopt and implement measures necessary to achieve the objective of this Convention...with due regard to ethical and traditional values." Moreover, the Parties obligation "to enhance environmental protection" must be undertaken "with a view to achieving ecologically rational, economically sound and socially acceptable development policies and programmes." The focus has shifted to protecting people and development from necessarily preserving nature for nature's sake. This shift in focus follows a solid decade of sustainable development consciousnesses, especially on the part of UNEP and the IUCN. It is therefore not surprising that the revised African Convention took this different approach. This fundamental change in the focus of the treaty must be taken into account when considering the revised convention's use to protect great apes.

On the other hand, Article IX obligates Parties to "maintain and enhance species and genetic diversity of plants and animals" and pay "particular attention . . . to socially, economically and ecologically valuable species, which are threatened." Parties must also "identify areas of critical importance for the survival of species of fauna and flora which are threatened." The revised African Convention thus maintains its focus on habitat conservation as an effective and necessary means to preserve faunal resources.

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<sup>120</sup> See <http://www.uwa.or.ug/kibale.html> (describing the eco-tourism initiatives of Kibale National Park).

<sup>121</sup> *Report of the Interim Chairperson on the Revision of the 1968 African Convention on the Conservation of Nature and Natural Resources*, African Union Doc. EX/CL/50 (111) at 1, available at <http://www.african-union.org>. The text of the revised convention referred to in this paper was obtained from this document.

<sup>122</sup> The revised African Convention was adopted by the Assembly of the Union. This body functions similar to the General Assembly of the United Nations. The African Convention still needs to be signed and ratified by nations to enter into force.

However, the revised convention has eliminated the prohibition of taking protected species. Instead, Parties must “adopt legislation regulating all forms of taking, including hunting [and] capture . . . with a view to ensuring the use of any population is sustainable.” Such regulation may include “temporary or local prohibitions of exploitation, as needed to restore satisfactory population levels.” While prohibitions against taking threatened species remain a valid discretionary method of regulation, the difference between the existing and revised conventions is significant.

The revised African Convention requires Parties to “take every practical measure, during periods of armed conflict, to protect the environment against harm.” While this article may be in effect merely aspirational, it reflects an awareness that military combat poses serious threats to the natural environment.

Moreover, the revised Convention develops a modern institutional framework. Article XVI requires “access to justice in matters related to protection of the environment and natural resources,” which could potentially allow citizens the right to challenge government decisions. At the convention level, the revised convention establishes a Conference of the Parties (COP), and a Secretariat to administer the convention. Parties must also submit reports on the status of their implementation of the convention. The lack of reporting mechanisms and administrative oversight was a key criticism of the previous African Convention and this article will do a great deal to address some of those criticisms.

Overall, most of the changes to the African Convention are positive in terms of the possibilities for great ape protection. If African nations take the mandate of the Assembly seriously and quickly ratify, the convention will become an effective tool for species protection in the region.

## **VI. CITES**

### **A. Overview of CITES**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in species of conservation concern and which are or may be affected by trade. It does not regulate domestic trade or require Parties to protect habitat. Based on a combination of biological<sup>123</sup> and trade data,<sup>124</sup> the Parties assess a species’ vulnerability and

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<sup>123</sup> The necessary biological information includes the species’ population size and geographic range. CITES, *supra* note 6, at art. II (1), (2); CITES, Resolution Conference 9.24, adopted at the Ninth Meeting of the Conference of the Parties (1994).

<sup>124</sup> To list a species on any of the Appendices, trade information is relevant, but proof that a species already is in trade is not required. The Parties can list a species if it “may be” affected by trade. CITES, *supra* note 8, at art. II(1). The Parties can list a species in Appendix II if it will become threatened unless trade is restricted. *Id.* at art. II(2); *See also* CITES, Resolution Conference 9.24, para. (b), adopted at the Ninth Meeting of the Conference of the Parties (1994)(stating that a species “may be” affected by trade if “there is a *potential* international demand for specimens”)(emphasis added). For the text of CITES resolutions, *see* <http://www.cites.org>.



determine in which of three appendices to place the species.<sup>125</sup> This placement determines the extent to which international trade is permitted in the species.

For example, unless a specific exception applies, CITES prohibits all international trade for “primarily” commercial purposes in species in Appendix I, which includes species that “are threatened with extinction and are or may be affected by trade.”<sup>126</sup> Because of the significant role that trade has played in driving some species toward extinction, the Parties have interpreted “primarily commercial purposes” very broadly to include “any transaction that is not wholly non-commercial.”<sup>127</sup> Because most trade in many species includes a commercial component, an Appendix I listing effectively halts all legal trade in that species.

For Appendix II species, those species that may become threatened,<sup>128</sup> trade is permitted provided the trade will not be detrimental to the survival of the species.<sup>129</sup> Species are listed in Appendix III solely on the basis of a decision by the country of origin and carries only minor trade restrictions.<sup>130</sup>

CITES permits the listing of “species”, defined as “any species, subspecies, or geographically separate population thereof.”<sup>131</sup> The Parties have listed all populations of great apes in Appendix I.<sup>132</sup> As a result, Parties cannot permit trade for primarily commercial purposes in an great apes or “specimens” of great apes, including live or dead animals as well as any readily recognizable parts and derivatives of species.<sup>133</sup>

## **B. Conservation Obligations**

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<sup>125</sup> CITES, *supra* note 6, at arts. II, XV, XVI. A “species” is defined to include geographically separate populations. Thus, vulnerable members of a species can be protected while trade in healthier populations is allowed. *Id.* at art. I(a).

<sup>126</sup> *Id.* at art. II(1). This list of approximately 800 species includes the African elephant, black rhino, orangutan, and monkey-puzzle tree, as well as all species of great apes. See CITES website, at: <http://www.cites.org/eng/app/index.shtml>; 50 C.F.R. §23.23 (providing a list of all species included in the Appendices to CITES).

<sup>127</sup> CITES, Resolution Conference 5.10, adopted at the Fifth Meeting of the Conference of the Parties (1985).

<sup>128</sup> Appendix II species are those that “although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.” CITES, *supra* note 6, at art. II(2)(a). It also includes species that look like, or have parts that look like, other listed species or their parts. *Id.* at art. II(2)(b). Appendix II may contain as many as 35,000 species, including the pygmy hippopotamus, American alligator, and several hundred species of orchids. See 50 C.F.R. §23.23 (providing a list of all species included in the Appendices to CITES).

<sup>129</sup> CITES, *supra* note 6, at arts. IV(2)(a), IV(6)(a).

<sup>130</sup> Appendix III lists species that a country has identified as “subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade.” CITES, *supra* note 6, at arts. II(3), V. A recent resolution recommends that a Party first ensure that it has adequate regulations to prevent or restrict exploitation of the species at issue and that its national enforcement measures are adequate to implement the regulations. CITES, Resolution Conference 9.25, adopted at the Ninth Meeting of the Conference of the Parties (1994).

<sup>131</sup> CITES, *supra* note 6, at art. 1(a).

<sup>132</sup> See CITES Appendices I, II, and III (valid from Oct. 16 2003), *available at* <http://www.cites.org/eng/append/appendices.shtml>; see also 50 C.F.R. § 23.23 (providing a list of all species included in the Appendices to CITES and the date on which they were included).

<sup>133</sup> CITES, *supra* note 6, at art. I(b).

CITES establishes a permit system to monitor and regulate international trade in species that are or may be threatened with extinction.<sup>134</sup> The permit system is central to CITES' ability to prevent the loss of species due to commercial trade. The permit requirements for species depend on the appendix in which they are listed. Generally, trade in Appendix I specimens is prohibited for commercial purposes and requires both an import and export permit.<sup>135</sup> Trade in Appendix II species is prohibited if it will be "detrimental to the survival of the species" and requires only an export permit.<sup>136</sup> Trade in Appendix III species requires a certificate of origin or similar document.<sup>137</sup>

Trade in an Appendix I species requires an import permit. A trader must obtain the import permit from the country of import prior to exporting the species.<sup>138</sup> These provisions are intended to deter traders from killing wildlife, exporting it, and then shopping for a permit and a buyer. Because all great apes are included in Appendix I, CITES applies to all great apes, regardless of where any individual or part thereof is obtained.

To obtain an import permit, the country of import must determine that:

- (1) the import is for purposes which are not detrimental to the survival of the species for which the permit is sought;
- (2) the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (3) the specimen is not to be used for primarily commercial purposes.<sup>139</sup>

The "primarily commercial purposes" finding is the most important one for protecting Appendix I species, especially since the Parties defined "primarily commercial purposes" to include "any transaction that is not wholly non-commercial."<sup>140</sup> For great apes, almost all legal international trade has stopped, although some trade continues for research purposes.

In addition, the export of an Appendix I specimen (and in the event that a great ape population is transferred to Appendix II), an export permit is required. Before granting an export permit, the country of export must determine that:

- (1) the export will not be detrimental to the survival of the species;
- (2) the specimen was not obtained in contravention of the laws of that State;
- (3) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (4) an import permit has been granted for an Appendix I species.<sup>141</sup>

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<sup>134</sup> CITES, *supra* note 6, at arts. III, IV, V.

<sup>135</sup> *Id.* at art. III(3), III(5).

<sup>136</sup> *Id.* at art. IV.

<sup>137</sup> *Id.* at art. V.

<sup>138</sup> *Id.* at art. III(2)(d).

<sup>139</sup> *Id.* at arts. III(3), III(5).

<sup>140</sup> CITES, Resolution Conference. 5.10, adopted at the Fifth Meeting of the Conference of the Parties (1985).

<sup>141</sup> CITES, *supra* note 6, at arts. III(2), IV(2).

The conditions for a re-export permit are the same as those for an export permit, except that the re-exporting country is not required to determine that the export will not be detrimental to the survival of the species.<sup>142</sup> The non-detriment finding in paragraph (1) above is the primary tool for ensuring that exports of Appendix I and II specimens is sustainable. It is well known, however, that most Parties are unable to fund adequate staff to ensure that the appropriate scientific inquiry is undertaken to make a scientifically valid non-detriment finding.<sup>143</sup>

### C. Institutional Structure

CITES has a well developed institutional structure with a Secretariat that administers the convention. The COP meets every 2-3 years. Moreover, the Animals and Plants Committees, with regional representation, meet regularly between COPs to address issues delegated to them by the Parties.

Moreover, CITES has established a Bushmeat Working Group to identify the scope of problems, and identify solutions to national and cross-border bushmeat trade.<sup>144</sup> This working group is composed of interested range and donor States, and the group's work will be on a case-study area comprising Cameroon, the Central African Republic, the Congo, the Democratic Republic of the Congo, Equatorial Guinea and Gabon.

The working group reported that it:

has made significant progress toward developing regular communication among the six Central African directors of wildlife and protected areas and has fulfilled its initial mandate in terms of Decision 11.166. The Group has developed an action plan, secured funding to implement the plan, and identified logistical support through IUCN for housing the regional coordinator. With the funding available for priority activities during the period 2002-2004, it aims to develop databases of trade in bushmeat, harmonize legislation related to wildlife exploitation and trade, collate information for a regional perspective on bushmeat trade, provide law enforcement training, and raise awareness among the general public in Africa regarding the consumption and exploitation of wildlife. It is expected that these actions will culminate in a set of recommended solutions that can be willingly implemented by range States.<sup>145</sup>

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<sup>142</sup> *Id.* at arts. III(4), IV(5). This provision was omitted because the “no detriment finding” was made when the specimen was originally exported. The Parties assumed, perhaps incorrectly, that re-exports would cause no additional harm to a species.

<sup>143</sup> For an Appendix III species, the country of export need not make any findings related to the biological status of the species; it must ensure that the species was caught legally and will be shipped humanely. *Id.* at art. V(2). If a specimen listed in Appendix III originates from a country that has not itself listed the species, a “certificate of origin” is required. *Id.* at art. V(3). If an Appendix III species is being re-exported, a “re-export certificate” stating that the specimen is being re-exported is required. *Id.* at art. V(4).

<sup>144</sup> CoP12 Doc. 62, para. 6.

<sup>145</sup> *Id.* at para. 12.

#### **D. Application of CITES to Great Apes**

The permit provisions of CITES and its prohibitions against trade in Appendix I species are important for any comprehensive approach to protect great apes. Moreover, the Parties have shown a willingness to address domestic bushmeat trade through the bushmeat working group.

Nonetheless, CITES regulates only one threat to great apes—international, and to some degree domestic, trade. CITES does not regulate domestic trade, including subsistence uses. Nor does it, or can it, protect habitat and logging activities. Thus, despite the importance of CITES, other measures also are necessary to conserve great apes.