

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

Forty-second meeting of the Standing Committee
Lisbon (Portugal), 28 September-1 October 1999

CROSS-BORDER MOVEMENT OF LIVE ANIMALS

Background

1. This document has been prepared by the Secretariat.
2. Decision 10.142 of the Conference of the Parties is directed to the Secretariat. It states:

Recommendations shall be prepared on the basis of proposals submitted by interested Parties, for consideration by the Standing Committee in 1998, in order to establish:

 - a) *a single simplified procedure for cross-border movements of live animals for exhibition travelling to other States;*
 - b) *an effective and rational system of registration and identification of live animals for exhibition; and*
 - c) *principles and methods for certification of travelling owners supposed to travel to other States under the simplified procedure for cross-border movements of live animals for exhibition.*
3. At the request of the United States of America, the Standing Committee, at its 40th meeting (March 1998) established a working group to develop a draft resolution to deal with this matter. The working group comprised Germany, the Russian Federation, Switzerland, the United States of America (convenor) and the Secretariat.
4. The working group has conducted its work by correspondence and by telephone, discussing a draft resolution that was developed by the United States to replace Resolution Conf. 8.16 on Travelling live-animals exhibitions. The draft was then revised by the United States to take into account the comments made by members of the group. However, the group has been unable to reach agreement and requires advice from the Standing Committee.

Defining the problem

5. The working group believes that one of the main reasons why the Standing Committee has been requested to consider this issue is because a number of circuses have difficulties in moving legally possessed specimens, especially those of Appendix-I species, such as African and Asian elephants, across international borders.
6. The provisions of the Convention that provide for reduced controls for travelling exhibitions of live animals (and specifically circuses) are contained in Article VII, paragraph 7. This provides for import and export/re-export to take place without permits and certificates if the full details of the specimens are registered with the Management Authority of the Party concerned. However, it applies only to pre-Convention specimens and to specimens bred in captivity in accordance with Article VII, paragraph 5, of the Convention.
7. The problem appears to be that most elephants in circuses do not fall into these categories as they are defined.

pre-Convention

8. Some of the elephants involved in trade may have been acquired before the provisions of the Convention became applicable to them. There are likely to be rather few such animals but they may of course be traded in accordance with the provisions of Article VII, paragraph 7.

pre-Appendix I

9. A more significant problem exists for circuses with African elephants that are from populations that were in Appendix II at the time they were acquired and were subsequently transferred to Appendix I. It is obvious that these are not pre-Convention specimens (because at the time they were acquired the provisions of the Convention clearly applied to them) and the Conference of the Parties has decided that there is no derogation applicable to them from the usual trade controls (i.e. there is no equivalence between pre-Convention and pre-Appendix-I). The provisions applicable to specimens in trade are the provisions relating to the appendix in which the species is listed at the time the trade takes place. This decision is recorded in Resolution Conf. 5.11, paragraph h).

bred in captivity

10. The other case of interest relates to elephants (generally Asian elephants) that were bred in captivity from pre-Convention parents. However, these offspring are not considered "bred in captivity" as that term is defined in Resolution Conf. 10.16, since they are usually (if not always) F1 animals and there appears to be no reliable breeding of African or Asian elephants in captivity to the second generation (F2). These offspring could therefore not be considered as "bred in captivity" in CITES terms.

Possible solutions

pre-Appendix I specimens

11. It has been suggested that Resolution Conf. 5.11 could be amended to provide the possibility for live specimens of Appendix-I populations of African elephants that were acquired when the populations were in Appendix II to be treated as pre-Convention or as Appendix II. However, the Secretariat believes that this would be contrary to the Convention, which makes no provision for any derogation for specimens of species transferred from one appendix to another.

specimens 'bred in captivity'

12. For elephants produced in captivity, one option would be to amend Resolution Conf. 10.16 to allow them to be considered as 'bred in captivity'. However, this would not solve the problem because circuses are considered as commercial enterprises and animals bred for use in the circuses are considered as bred for commercial purposes. This means that Appendix-I animals bred by circuses are covered specifically by Article VII, paragraph 4, of the Convention rather than by Article VII, paragraph 5. (The latter paragraph is generally understood not to refer to specimens of Appendix-I species bred for commercial purposes, since paragraph 4 would otherwise be pointless.) Therefore, paradoxically, it appears that Appendix-I animals bred by circuses for their own use are not eligible to be traded under the simplified procedures established for circuses (and other exhibitions). Some members of the working group had doubts about this interpretation. They therefore suggested that the Standing Committee be asked to comment on whether Article VII, paragraph 7, by referring to Article VII, paragraph 5 (and not paragraph 4), effectively excludes Appendix-I species bred in captivity by circuses. If this is the case, the working group suggests that the difficulties faced by circuses with Asian elephants should not (or can not) be solved by reference to the exemptions in Article VII, paragraph 7, for captive-bred specimens.

13. An alternative considered by the working group is for the Conference of the Parties to adopt an interpretation of Article VII, paragraph 2, such that any offspring (or any immediate offspring) of elephants acquired before 1 July 1975 would be considered as pre-Convention specimens, like their parents. (The species could be specified or the scope could be left open.) This would require an amendment to Resolution Conf. 5.11 on Definition of the term “pre-Convention” specimen.
- a) The argument in favour of this is that the Convention makes a general exemption for trade in pre-Convention specimens, and does not require any non-detriment finding to be made for export. The specimens are thus considered quite separate from wild populations. Any progeny of pre-Convention animals should therefore also be considered as separate.
 - b) The argument against this view is that the Convention makes an exemption quite specifically for specimens “acquired before the provisions of the present Convention applied” to them and makes no reference to the offspring of such specimens. If the exemption were interpreted to apply to the offspring of pre-Convention specimens, this would be a broadening of the exemption. The Parties may agree to interpret the Convention more narrowly (i.e. more restrictively) than the plain meaning of the text but not more broadly. In addition, the offspring of pre-Convention specimens may play an important role in the conservation and sustainable use of a species.

Conclusions

14. The working group believes that it is worthwhile to consider replacing Resolution Conf. 8.16 only if the replacement eliminates the difficulties being faced by circuses with respect to trade in African and Asian elephants. However, as is evident from the foregoing, there are serious doubts whether this is possible.
15. Moreover, the working group has no clear picture of the scale of the problem to be tackled, although it appears that some tens of circuses may be involved. The Secretariat seriously doubts whether it is worthwhile to attempt to amend the existing recommendations of the Conference of the Parties just to facilitate the circus trade in elephants.

Action by the Standing Committee

16. The Standing Committee is invited to consider the points above and to provide further guidance to the working group. In particular, the Committee is requested to comment on the question of interpretation raised in paragraph 12 and to advise the working group on the acceptability or desirability of the three possible approaches referred to above, i.e.:
- a) amending Resolution Conf. 10.16 (referred to in paragraph 12 above);
 - b) amending Resolution Conf. 5.11 (referred to in paragraphs 11 and 13 above); or
 - c) taking no action to amend the existing provisions.