

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



Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Strategic matters

COOPERATION BETWEEN PARTIES AND PROMOTION OF MULTILATERAL MEASURES

1. This document has been prepared by the Secretariat at the request of the Standing Committee.

Background

2. At its 54th meeting (SC54, Geneva, October 2006), the Standing Committee considered document SC54 Doc. 37 (Rev. 1) on Stricter domestic measures. Committee members commented on the transparency, appropriateness and usefulness of certain existing measures as well as the right to protect native fauna and flora and to address suspected instances of illegal trade. They also noted the necessity to justify such measures on environmental grounds, to avoid potential negative consequences and to assure consistency with WTO rules. The Committee "requested that the Secretariat submit a discussion document on stricter domestic measures for consideration" at the present meeting but "agreed that the Secretariat should not submit proposals to amend the references to stricter domestic measures in existing Resolutions".
3. The focus of the present document has been adjusted to take into account the discussions at SC54 and the CITES Strategic Vision for 2008-2013 (see document CoP14 Doc. 11). As a result, the document now addresses not only stricter domestic measures but also reservations, international cooperation and multilateral measures. In particular, it takes into account the following provisions:

Objective 1.3 *National wildlife trade policies are consistent with policies and regulations adopted at the international level.*

Indicators

The Resolutions of the Conference of the Parties are implemented by all Parties in a consistent manner.

Multilateral CITES processes have been further developed that reduce the need by Parties for recourse to stricter domestic measures and reservations.

Parties have coherent positions on environment and wildlife trade in international fora.

4. The introductory section to Objectives 1.1-1.8 of the Strategic Vision for 2008-2013 states that:

The proper functioning of the Convention depends to a great extent on the commitment of Parties to comply with and implement the Convention and its principles. While Parties have responsibility for conservation and management of their own fauna and flora, it is desirable that national legislation be coherent with international multilateral environment instruments and contain transparent provisions that are readily accepted and understood by all stakeholders.

5. Material contained in the present document is largely structured around the indicators listed in paragraph 3 above, with primary emphasis being placed on international cooperation and multilateral measures. The first section of the document addresses the nature of CITES multilateral and bilateral processes that have been adopted by Parties to facilitate and achieve implementation of the Convention. The second section looks at the way in which Parties have exercised their rights to adopt stricter domestic measures and to enter reservations under the Convention. Finally, the third section explores the potential for promoting the use of international cooperation and CITES multilateral processes to reduce recourse to stricter domestic measures and reservations. The document should not be seen as an exhaustive review of the ways in which Parties have promoted or might promote cooperation and multilateral measures. It is simply an initial attempt to look at the subject and to provide a basis for thought and discussion.

Multilateral and bilateral processes

The text of the Convention

6. All international agreements adopted by States represent a delicate balance that is reached between national sovereignty and international cooperation. The latter is not possible without giving up some of the former. The strength and effectiveness of an international agreement often depend on the degree to which States have relinquished their sovereign rights in order to deal with a shared issue or concern.
7. Like other treaties, CITES reflects a consensus and a compromise reached by the States that negotiated it – as well as those that later adhered to its provisions. In the preamble to the Convention, it is recognized “that peoples and States are and should be the best protectors of their own wild fauna and flora” (i.e. a national sovereignty clause) and “that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade” (i.e. an international cooperation clause).
8. Among other things, the text of the Convention embodies agreement on: definitions; principles; permits, certificates, procedures and conditions for trade; exemptions or special procedures; compliance and enforcement measures; treaty bodies; trade with States not party to the Convention; amendments; and means to resolve any disputes. Various CITES multilateral processes stem directly from these Convention provisions while others have their roots in practical experience with the Convention.
9. As part of the ‘package deal’ reached by States, presumably aimed at attracting more adherents, the Convention allows for two sorts of divergence from its terms: stricter domestic measures, which are more restrictive than the Convention [see Article XIV, paragraph 1(a)] and reservations, which are less restrictive than the Convention (see Article XXIII, Article XV, paragraph 3 and Article XVI, paragraph 2). CITES also allows for denunciation, through which a Party can completely withdraw from the Convention (see Article XXIV). This provision has been used on only one occasion, and the concerned Party later returned to the Convention.

Resolutions of the Conference of the Parties

10. While the Convention is a legally-binding instrument which provides the basis for international cooperation, Resolutions adopted by the Conference of the Parties might be considered as ‘soft law’ that serves the same function. Although they are not discussed in detail below, Decisions of the Conference of the Parties and decisions and recommendations by the permanent committees constitute another layer of multilaterally-agreed measures aimed at furthering the objectives of the Convention.
11. CITES Resolutions, which provide interpretative guidance on the provisions of the Convention, assist Parties in achieving a common understanding about and consistent implementation of the Convention. In particular, a number of Resolutions have been adopted to clarify the exemptions and special procedures provided in Article VII of the Convention. There is not always uniform implementation of these Resolutions, however. Resolution Conf. 13.7 on Control of trade in personal and household effects provides a definition of the exemption, but additional multilateral efforts are underway to ensure that all Parties apply the exemption in an even manner (see document

CoP14 Doc. 45). Ongoing efforts to clarify concepts such as 'introduction from the sea' and 'non-detriment findings' may result in new resolutions providing guidance on both their interpretation and implementation. Supplemental information on Resolutions as a basis for international cooperation is contained in Annex 1 (English only).

12. Parties have also used Resolutions to minimize the impact of differing unilateral approaches that have been taken towards implementation of the Convention. For example, countries are encouraged under one Resolution to consult before adopting stricter domestic measures on exotic species. In addition, Parties adopted the CITES Strategic Vision through 2007 as "a broad framework designed to provide a unified focus to the Parties in their implementation of the Convention". In the first paragraph of that Strategic Vision, it is recognized that CITES trade mechanisms "require strong national capacity backed by good cooperation at national, regional and global levels".

Bilateral trade between Parties

13. Besides its role as an instrument for multilateral cooperation, the Convention facilitates bilateral cooperation between exporting and importing countries as they take decisions related to individual shipments in trade. Exporting and importing countries have equal, though somewhat differentiated, responsibilities for trade in specimens of Appendix-I species. Exporting countries have primary responsibility for determining the level of trade in specimens of Appendix-II and -III species, however, with the role of importing countries shifting to one which is supportive in nature. Resolution Conf. 12.3 (Rev. CoP13) on Permits and certificates provides guidance to both exporting and importing countries on how to take (and consult about) permit decisions. Inclusion of a standard permit form in the Resolution has helped to harmonize CITES documentation and to facilitate the acceptance of such documentation. This has been complemented by the regular distribution of sample permits, and efforts are now underway to make these available electronically. The overall trend towards e-permitting should make it easier for Parties to issue, verify and decide whether to accept CITES documents.
14. Bilateral consultations between Management Authorities enable queries to be answered, technical mistakes or omissions to be clarified and, if necessary, permits to be reissued or retrospective permits issued. Unfortunately, bilateral consultations are not yet as regular or as effective as they might be. Exporting countries have complained to the Secretariat that their CITES documents have been refused by an importing country without prior consultation. For their part, importing countries have complained to the Secretariat that there is no prompt response to queries they have sent to exporting countries. More and better two-way communication between Parties (and non-Parties) is clearly needed. This might take place at CITES-related meetings and over the telephone as well as through letters, telefaxes or emails. Direct contact is preferable to indirect contact via the Secretariat. If long-distance consultation cannot resolve certain concerns, one country might consider visiting the other and even providing related technical or financial assistance.
15. There is no specific reference to 'cooperation' in Resolution Conf. 11.18 on Trade in Appendix-II and -III species. Parties are nevertheless encouraged to consult with one another if they deem that such a species "is being traded in a manner detrimental to the survival of that species". If consultation is not feasible or successful, they might call upon the Secretariat to assist them. In the operative paragraphs of Resolution Conf. 11.3 (Rev. CoP13), it is recommended that an importing country notify the country concerned if it "has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction".

Unilateral measures

16. The Convention's obligations are fairly substantive and clear-cut. Resolutions have been adopted to give interpretative guidance for those provisions which Parties found to be somewhat complex or ambiguous (e.g. certain exemptions and special procedures). Decisions under the Convention have generally been taken by consensus. Unlike the Convention or related Resolutions and decision-making, which are multilateral in nature, stricter domestic measures and reservations are unilateral actions that an individual Party decides to take. Some of these measures and reservations have been adjusted or withdrawn over time, in response to changes in circumstances or policies.

17. The legal right for Parties to adopt stricter domestic measures or to enter reservations is clear, and the scope of this right is determined by the Convention. Paragraph 1 of Article XIV states that the Convention does not affect a Party's right to adopt stricter domestic measures "regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof". It also states that the Convention does not affect a Party's right to adopt similar domestic measures regarding non-CITES specimens. Article XXIII does not allow any general reservations, but it does allow specific reservations (i.e. in relation to a species included in the Appendices or parts and derivatives of a species included in Appendix III). These might be entered at the time of a State's adherence to the Convention or with regard to amendments made to the Appendices under Article XV or XVI (i.e. within 90 days after their adoption in relation to Appendix I or II and at any time after their communication in relation to Appendix III).
18. As mentioned above, recognition of the right to adopt stricter domestic measures and reservations has probably enabled and encouraged States to participate in CITES when they might otherwise not have done so. The use of such measures and reservations may have allowed States to adjust their obligations under the Convention so that they conform to domestic law where it was not feasible for political, cultural, social or economic reasons to change that law. The underlying notion is that it is better to have States in the treaty than not to be party at all.

Stricter domestic measures

19. Parties have adopted stricter domestic measures for both native and exotic species listed in the Appendices. A recent analysis of the 2003-2004 biennial reports (see document CoP14 Inf. 15) shows that a majority of Parties reporting have adopted stricter domestic measures regarding the conditions for trade (75 %), taking (60 %), possession (65 %) and transport (55 %) of CITES-listed specimens. Some of these measures have taken the form of export or import bans on individual animal or plant species or categories of species.
20. It is recommended in Resolution Conf. 4.22 (Proof of foreign law) that Parties provide detailed information to the Secretariat on their stricter domestic measures, essentially to increase their transparency. It is recommended in Resolution Conf. 6.7 (Interpretation of Article XIV, paragraph 1, of the Convention) that Parties consult with range States when considering the adoption of stricter domestic measures for exotic species. To date, there has been inconsistent implementation of both Resolutions. Parties have sometimes appeared to deem consultations with non-governmental organizations as a reasonable substitute for consultations with government bodies in affected range States.
21. Stricter domestic measures seem to result, *inter alia*, from the perceived need to: provide a higher level of national protection for a species because it is a native species or because its inclusion in a particular Appendix does not reflect its conservation status in that country; protect a country's ecosystems from invasive exotic species; address suspected instances of illegal trade; prevent an exemption or special procedure under Article VII of the Convention from being used as a 'loophole' for illegal trade; limit trade in order to reduce the institutional resources or other costs involved with its monitoring; defer to relevant and additional public health or veterinary or phytosanitary requirements; ensure the economic competitiveness of local producers; and avoid possible criticism or pressure from special interest groups or the media, especially those which are against the consumptive use of wildlife.
22. On occasion, the Conference of the Parties has recommended that Parties adopt stricter domestic measures. Under Resolution Conf. 11.3 (Rev. CoP13), "if an importing country has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction", it should "where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention". Under Resolution Conf. 11.18, it is recommended that Parties might apply stricter domestic measures if consultation with another State regarding possible overexploitation of a species is not feasible or successful.
23. The title of Article XIV of the Convention (i.e. Effect on domestic legislation and international conventions) implies that its primary aim may have been to ensure that existing stricter domestic

measures were not automatically invalidated by a country's adherence to the Convention. This would have allowed Parties some time to bring their stricter domestic measures into conformity with the objectives and provisions of the Convention. The future adoption of stricter domestic measures may also have been anticipated but it seems unlikely that negotiating governments would have necessarily wanted to encourage their widespread adoption. It has moreover been suggested by some Parties that the negotiators of Article XIV envisaged that stricter domestic measures would be adopted primarily by exporting and not importing countries.

24. A number of Parties have considered that stricter domestic measures might be warranted under certain circumstances. For example, the requirement of an import permit for all specimens of Appendix-II species might be justified by the difficulties in controlling a specimen's movements once it enters a region which has common external Customs control and no Customs control between participating countries. The requirement of an import permit for live specimens of Appendix-II species might be justified by the difficulties of dealing with such specimens if their arrival is unexpected and the relevant documents are not in order as they have to be seized, cared for or disposed of. Affording a particular native species more protection than is provided under CITES may be justified if the conservation status of the national population is different than that of the global population on which the CITES listing is based.
25. The need for species-specific measures may not be agreed by all of the countries that share the species. In Resolution Conf. 12.7 (Rev. CoP13) it is recommended that "if a range State of a shared stock of a species of Acipensiformes decides to reduce its quota established in accordance with this Resolution under stricter domestic measures, this shall not affect the quotas of the other range States of this stock". Moreover, the need for a unilateral measure is not the only factor to be taken into account. It is recommended in Resolution Conf. 10.13 (Rev. CoP13) (Implementation of the Convention for timber species) that Parties "consider any possible deleterious conservation and trade impacts before they impose stricter domestic measures on trade in timber specimens of species included in Appendix II or III".
26. Certain stricter domestic measures might be avoided altogether through the use of a multilateral process or reconsideration of the necessity for a particular unilateral measure. For example, it seems that concerns about the sufficiency of CITES protection for a particular species would best be addressed through the amendment procedures provided in the Convention. Concerns about species being affected adversely by trade should be addressed through the Review of Significant Trade. Some national or supra-national legislation provides full protection for many or all domestic species, apparently irrespective of their actual conservation status, and this policy approach might be reviewed to determine whether such a degree of protection is really needed for relevant CITES-listed species.
27. Stricter domestic measures that require particular care are ones that result in the complete or nearly-complete closure of an import market. Such measures have not been very common but they include, *inter alia*, broad bans on live wild bird imports. Such bans have been justified on conservation or human and animal health grounds and are said to be consistent with WTO rules. The bans cover a large number of exotic species whose individual conservation status varies. They are permanent in nature but allow imports to be considered if comprehensive conservation management plans are first adopted by range States. They are seen as providing a positive economic benefit to producers of captive-bred birds in the importing countries. There are indications that special interest groups have begun to promote similarly broad import bans for live mammals and amphibians.
28. Other stricter domestic measures that require careful attention are those that may unnecessarily conflict with multilateral processes already agreed in CITES. For example, conservation management requirements imposed on a range State via the application of an importing country's national legislation may not be entirely consistent with multilateral recommendations found in a Resolution of the Conference of the Parties or a decision of the Standing Committee.
29. Some countries have assessed the impacts and effectiveness of their stricter domestic measures. In one instance this resulted in confirmation of the appropriateness and usefulness of such measures and their subsequent retention. In another instance, the assessment resulted in a revised set of stricter domestic measures which were more limited in number and scope. Parties that are currently

undertaking wildlife trade policy reviews (see document CoP14 Doc. 15) will be looking at their stricter domestic measures as an aspect of the review.

30. Certain regional agreements that regulate in a more restrictive manner some of the species covered by CITES (e.g. the Specially Protected Areas and Wildlife Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, the Inter-American Convention for the Protection and Conservation of Sea Turtles, the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area, and the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas) could be considered as a set of stricter domestic measures for those countries that are party to both the regional agreement and CITES.

Reservations

31. During the negotiation of the Convention, a few countries suggested the inclusion of a general reservations clause but this was rejected by other countries because they thought that allowing reservations on whole articles would defeat the entire purpose of the treaty. Although some multilateral environmental agreements (e.g. the Montreal Protocol on Substances that Deplete the Ozone Layer) do not allow any reservations whatsoever, the working draft used for the negotiation of CITES provided for specific reservations and this approach was accepted by governments.
32. The list of reservations on the CITES website as of March 2007 showed that some 37 Parties had entered reservations for 1 to 55 species. No reasons need to be given for reservations. In a document prepared for the third meeting of the Conference of the Parties (New Delhi, 1981), the Secretariat said that “[i]n some cases, reservations were entered simply because a Party disagreed with the majority decision regarding the listing of a species ... or else as a transitory administrative measure to preserve the *status quo* until national legislation has been brought into line with the amended Appendices. In most cases, however, reservations are motivated by national economic interests, aimed at preserving trade options and privileges as an exception from internationally accepted standards.” (see document Doc. 3.22). Reservations can be and have been withdrawn.
33. In Resolution Conf. 1.5 (Rev. CoP12), [proposed for consolidation with Resolution Conf. 9.25 (Rev.) in document CoP14 Doc. 20.2], it is recommended that a Party which makes a reservation on a species listed in Appendix I or II should not then propose that the same species be listed in Appendix III. It is recommended in Resolution Conf. 4.25 on Effects of reservations that any Party having entered a reservation with regard to any species included in Appendix I treat that species as if it were included in Appendix II for all purposes, including documentation and control. This recommendation was intended to assist multilateral cooperation in the regulation of trade and the collection of trade data, despite the entering of a reservation.
34. The Convention is silent on the treatment of reservations where a species is transferred from one Appendix to another. At its 53rd meeting (SC53, Geneva, June – July 2005), the Standing Committee endorsed treatment of reservations as lapsing if a species is transferred to another Appendix (see document SC53 Doc. 34). The Secretariat had suggested that this would be “more in keeping with the conservation spirit of the Convention and the general principle that reservations undermine the effectiveness of the Convention”. Related revisions to Resolution Conf. 4.25 are now proposed in document CoP14 Doc. 49.

Promotion of international cooperation and multilateral processes

35. International cooperation requires mutual trust and respect. If these are present, the perceived need for stricter domestic measures and reservations may evaporate. While any government may impose stricter domestic measures or enter reservations, international wildlife trade should be managed through multilateral action and agreement. It is by working together that governments and other interested parties can best protect wildlife and maintain a sustainable trade system that prevents more plant and animal species from becoming extinct.
36. Multilateral action is not just intergovernmental in nature but can and should involve ‘other interested parties’ or stakeholders. Such stakeholders generally have access to and the ability to inform or influence multilateral decision-making under the Convention. Moreover, the analysis of Parties’

biennial reports for 2003-2004 shows that 70 % of those reporting had collaborated with non-governmental organizations at the national level. About half of those reporting had collaborated with trade or private sector associations, sub-national authorities and local communities. Only 16 % had apparently collaborated with indigenous people. Additional effort seems needed to enhance cooperation, at both the national and international levels, with local communities and indigenous groups – taking account of their livelihood concerns – as well as the private sector. This would help ensure that the development and implementation of future multilateral or unilateral actions are balanced and not skewed towards one interest or another.

37. A Party has the sovereign right to decide what it will allow to be sold and what it will allow to be bought in relation to specimens covered by the Convention. It takes such decisions based on scientific determinations about the potential impact of such trade, legal determinations about the proper acquisition of the specimens that will be traded and policy determinations about whether it wishes to authorize trade in a particular species or specimen. Each of these decisions, however, will have implications for other Parties and may limit the options they have for exercising their sovereign rights. Parties should therefore ensure that the scientific, legal and policy information underlying their decisions is objective, complete and accurate. They should also take account of the economic and social interests which may be behind or be affected by a particular policy. The Convention prohibits commercial import which has a high risk of endangering the survival of species in the wild and regulates commercial international trade which creates a lesser or no risk of such harm. National implementation should respect this differentiated treatment.
38. Misperceptions about the Convention continue to hamper effective cooperation. Some stricter domestic measures and reservations are derived from, and contribute to, the false notion of CITES as an 'embargo' on wildlife trade. The title of the Convention does not refer to 'illegal' trade. Rather, it is a treaty that was adopted to regulate international trade. In a recent case requiring an interpretation of the Convention, a national court found that its aim is to permit trade in certain species in a controlled, sustainable manner. The court determined that, if trade were banned under the Convention, there would have been no need to expressly recognize the ability of Parties to adopt stricter domestic measures.
39. During the negotiation of the Convention, it was described as an essentially uncomplicated agreement which would protect endangered species, without creating a non-tariff barrier to legitimate trade in plants and animals. It was envisaged as requiring a sort of 'Green Export Certificate' for listed species that would provide an important tool for Customs officials of importing States. Differing interpretations and applications of its provisions, varying degrees of mutual trust and respect, and diverse policies and practices regarding wildlife trade in general have caused the Convention to appear more complicated – and more restrictive – than it is. In reality, it remains fairly simple and straightforward. The possibility for Parties to diverge from the provisions of the Convention, and the national or supranational actions that have been taken as a result, have contributed to the complexity associated with the Convention. Efforts to simplify implementation of the Convention, therefore, need to take national and supranational policies and actions into account.

Consistent implementation of Resolutions

40. The consideration and adoption of resolutions is a key multilateral process within the Convention. Resolutions resulting from this multilateral decision-making process have substantial legal force and, once they are agreed, they should be followed. Some Parties have provided in their legislation for the general incorporation of all Resolutions adopted by the Conference of the Parties, and this is encouraged under the National Legislation Project. Such an approach has the effect of making such Resolutions legally binding and, in principle, should ensure that they are implemented in accordance with their provisions.
41. A number of Parties implement only certain Resolutions or portions of them. Information contained in the Reference Lists section on the CITES website shows that there is inconsistent implementation of Resolution Conf. 10.20 (Frequent cross-border movements of personally owned live animals) and Resolution Conf. 13.7 (Control of trade in personal and household effects). Information contained in the Notifications to the Parties shows that not all Parties follow Resolution Conf. 12.10 (Rev. CoP13) (Guidelines for a procedure to register and monitor operations that breed Appendix-I species for

commercial purposes) or Resolution Conf. 13.6 (Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens). Complaints have been made to the Secretariat that at least one Party does not implement Resolution Conf. 13.5 (Establishment of quotas for black rhinoceros hunting trophies). On occasion Parties interpret a Resolution differently than other Parties or wish to apply it in a flexible manner because of practical considerations in a situation where there is a low risk of conservation harm.

42. It would be useful to learn more about the Resolutions that Parties do not implement in part or in whole and to identify the reasons for that practice. Such a review could consider any associated implementation problems that are mentioned in Parties' biennial reports (i.e. any difficulties encountered in implementing specific Resolutions or Decisions adopted by the Conference of the Parties and measures, procedures or mechanisms within the Convention that would benefit from review and/or simplification). The analysis of Parties' 2003-2004 biennial reports showed concern being expressed about, *inter alia*, implementation of captive breeding and artificial propagation procedures, the personal effects exemption, Resolution Conf. 12.7 (Rev. CoP13) and Resolution Conf. 12.10 (Rev. CoP13). A more in-depth analysis of this and other information might result in a decision to clarify, revise or repeal (and perhaps replace) a particular Resolution.
43. Increased and targeted capacity building could contribute to the consistent implementation of Resolutions as well. There is a general need to improve the reliability of non-detriment and legal acquisition findings by all Parties. This, in turn, will engender more trust and respect between Parties and ensure that their CITES documents are seen and treated as 'green certificates'. Lessons taken from the chemicals management sphere could be useful in this regard (e.g. the establishment of good laboratory practice and standard testing methods which led to the mutual acceptance of resulting data).
44. A number of Resolutions appear to be more restrictive than the Convention, and this also needs more review.

Multilateral CITES processes that could reduce recourse to stricter domestic measures and reservations

45. By acknowledging the right of States to adopt stricter domestic measures or to enter reservations, it is likely that negotiating governments expected that a Party would only take those actions that were reasonable (i.e. a proportionate response to a real need). They may also have expected that a Party would first seek a multilateral or bilateral solution to an identified problem or concern, before resorting to a unilateral solution. In this connection, Rio Principle 12 states that, "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus".
46. It is also important, however, to acknowledge Rio Principle 2 which provides that:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

47. The legality of stricter measures or reservations should be distinguished from their legitimacy. Although divergences from the Convention are legally permitted, their broad acceptance by all Parties depends on whether they appear consistent with the spirit, purpose and principles of the Convention. Their consistency with relevant Resolutions adopted by the Conference of the Parties as well as the wider policy context (e.g. other international legal obligations or other environmental, social and economic aims) is also important. Legitimate measures or reservations are those which appear to be, *inter alia*: based on rational or legal authority; internally and externally coherent; fair or equitable; the product of consultations with affected or interested parties; and generally worthy of respect. The legitimacy of certain measures or reservations may depend upon their number, their nature and scope, their duration and the way in which they are applied. The level of their acceptance may change over time due to changing circumstances or opinion. Should that acceptance level drop below a certain point, however, legitimacy can be lost. It might be regained through better

awareness-raising or assistance regarding a particular measure, an adjustment in the measure itself or a change in its application.

48. Recognizing that not all CITES Parties are also party to the Cartagena Protocol on Biosafety, it might nevertheless be interesting to note that Article 2(4) of the Protocol reads: "Nothing in this Protocol shall be interpreted as restricting the right of a Party to take action that is more protective of the conservation and sustainable use of biological diversity than that called for in this Protocol, provided that such action is consistent with the objective and the provisions of this Protocol and is in accordance with that Party's other obligations under international law".
49. Parties might identify a list of 'CITES multilateral processes' that could be used to reduce recourse to stricter domestic measures and reservations. Some possible processes were mentioned earlier in this document and others are contained in Annex 1. Once such a list has been established, a problem-analysis/resolution approach could be used. This would involve first describing very precisely the problem, issue or concern raised by a Party – including its possible cause. The list of multilateral processes could then be checked to see whether one of them might be used to address the concern.
50. If a multilateral process does not work (or works very slowly) or does not seem appropriate, the concerned Party might consider whether a unilateral action would effectively address the concern. It should consult with potentially affected Parties where appropriate, think carefully about the kind of action that might achieve the desired result and then design the action as narrowly as possible to meet the particular concern, ensuring consistency with the Convention and relevant Resolutions. The measure or reservation should be considered temporary and not permanent, and adjusted or withdrawn if there is a change in relevant circumstances or policies.
51. In 1996 a study was done by Environmental Resources Management, under a contract with the Secretariat, on how to improve the effectiveness of the Convention. The study resulted in 25 recommendations, one of which stated that "[t]he Conference of the Parties should consider adoption of an additional interpretative resolution on stricter domestic measures".
52. Parties with stricter domestic measures and reservations might be encouraged to review those actions to determine whether they are effective and necessary or whether there is scope for withdrawing or adjusting them, perhaps in favour of a multilateral process. It is expected that implementation of the Convention would benefit from encouraging multilateral decision-making as well as a balanced and thoughtful approach to unilateral actions.

Coherent positions on environment and wildlife trade in international fora

53. Objective 5.4 of the CITES Strategic Vision through 2007 is "[t]o ensure continuing recognition and acceptance of CITES measures by WTO and to ensure the mutual supportiveness of the decision-making processes between these bodies". In related action points, the Secretariat is given responsibility for regional and international liaison between CITES and WTO while Parties are responsible for enhancing national liaison between CITES and WTO focal points. Both CITES Parties and WTO members have recognized the importance of policy coherence at the national level. More work on ensuring policy coherence and enhancing national liaison between the environment and trade regimes needs to be done, however. The wildlife trade policy review project should contribute to these efforts.
54. Trade measures under the Convention should be consistent with WTO rules. This means that they should be, *inter alia*, science-based and transparent. According to Rio Principle 12, "States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade".

Recommendations

55. The Secretariat recommends that the Conference of the Parties adopt the draft decisions contained in Annex 2. The cost implications of implementing Objective 1.3 of the Strategic Vision for 2008–2013 are contained in the costed programme of work.

Supplemental information on Resolutions as a basis for international cooperation

1. In addition to providing advice, Resolutions play a role in directing assistance to Parties that need it and building mutual trust and respect among all Parties. For example, Resolutions on national reporting, the Review of Significant Trade, national legislation, and compliance and enforcement have led to the development of long-standing programmes aimed at determining whether Parties are fully implementing various aspects of the Convention or need assistance to do so.
2. Resolutions related to the international registration of scientific institutions, captive breeding operations and nurseries, or the universal marking, tagging and labelling of specimens are aimed at enhancing the trustworthiness of those institutions and guaranteeing the legal origin of those specimens. Services or programmes that are centralized at the international level, however, depend on a well-resourced Secretariat. In this connection, it has been found that the demanding technical analysis required of the Secretariat to support international registration of individual captive-breeding operations is generally beyond the Secretariat's limited resources.
3. Revised Resolutions, as well as new tools for Parties' use, have resulted from an examination of the effectiveness of CITES processes at the national and international levels. For example, continuing work is underway to improve Parties' knowledge management and reporting (while reducing their reporting burden) and to make better use of reported information in multilateral decision-making. An inventory of and a database for recommendations made and actions taken in the context of the Review of Significant Trade have been developed and will be available on-line in the future. The National Legislation Project and means for enhancing law enforcement efforts at the national level are regularly reviewed and adjusted. Draft guidelines for the management of nationally established export quotas (see document CoP14 Doc. 36) and draft guidelines for compliance with the Convention (see document CoP14 Doc. 23) have been developed. There is growing interest in evaluating the permitting and marking systems for CITES specimens, particularly in light of the trend towards e-commerce, e-documents and e-signatures, new marking technologies, related knowledge management systems, and increased use of CITES as a mandatory certification scheme (see documents CoP14 Doc. 40 and CoP14 Doc. 43).
4. A number of Resolutions recommend either international (i.e. global, regional or sub-regional) or national action for the conservation of and trade in specific species. These Resolutions have helped to promote better joint management of shared natural resources or harmonized management approaches among range States which may or may not be neighbours.
5. A keyword search of CITES Resolutions shows that they contain a number of references to 'cooperation'. One of the Resolutions containing such a reference is Resolution Conf. 3.4 on Technical cooperation, in which Parties are requested to provide CITES-related assistance through bilateral and multilateral development aid programmes, special funding and the secondment of qualified staff. Other Resolutions and Decisions include more specific calls for the provision of technical or financial support and these have often resulted in positive responses from interested Parties. The Convention lacks specific articles on the provision of technical or financial assistance, which are found in more recent multilateral environmental agreements, and Resolution Conf. 3.4 effectively fills this 'gap' even though it does not seem to receive much attention.
6. There is recognition in Resolution Conf. 8.21 on Consultation with range States on proposals to amend Appendices I and II "that international treaties rely for their successful implementation on cooperation and mutual respect". Although provisions of "the Convention do not require prior support of range States for proposals to amend Appendices I and II", such amendments may affect their interests. The Resolution therefore recommends prior consultation with range States or early submission of amendment proposals. This seems to have led to more letters being sent to range States but the number of responses has been limited and the extent to which those responses are reflected in the final amendment proposal is unclear.

7. The “supreme importance of cooperative and mutual action as called for at the United Nations Conference on Environment and Development in 1992” is recognized in Resolution Conf. 9.21 (Rev. CoP13) on The interpretation and application of quotas for species included in Appendix I. This Resolution enables the Conference of the Parties to set national quotas for hunting trophies of Appendix-I species, thereby satisfying the requirement under Article III of the Convention for a non-detriment finding. Such a multilateral process was designed to facilitate the acceptance of such trophies, particularly by a minority of Parties that did not treat quotas established by national Management Authorities as satisfying the non-detriment finding requirement. Examples of quotas adopted by the CoP are contained in Resolution Conf. 10.14 (Rev. CoP13) on Quotas for leopard hunting trophies and skins for personal use, Resolution Conf. 10.15 (Rev. CoP 12) on Establishment of quotas for markhor hunting trophies, and Resolution Conf. 13.5 on Establishment of export quotas for black rhinoceros hunting trophies. This multilateral solution to a problem has been fairly successful, even though it seems that not all Parties have accepted the import of hunting trophies that are within a CoP-agreed quota. Ideally, all Parties should accept the establishment of export quotas at the national level thereby removing the need for the CoP to adopt specific quotas.
8. Resolution Conf. 2.11 (Rev.) on Trade in hunting trophies of species listed in Appendix I responds more broadly to the need for “uniform interpretation of the Convention with regard to hunting trophies”. In this Resolution, it is recommended that some hunting trophies be handled in accordance with the personal effects exemption found in Article VII, paragraph 3, of the Convention. Other hunting trophies are subject to “complementary control” by exporting and importing countries. In this connection, it is recommended that “the Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species, unless there are scientific or management data to indicate otherwise”. In addition to this “scientific assessment” by the exporting country, it is recommended that the importing country carry out the independent “scientific examination” required under Article III, paragraph 3 (a), of the Convention. This revised language was adopted to show that the two non-detriment findings are qualitatively different and that the importing country was not expected to re-do and challenge the non-detriment finding of an exporting country. Such an approach reflects the balance reached between national sovereignty and international cooperation.
9. In the introductory paragraphs to Resolution Conf. 11.3 (Rev. CoP13) on Compliance and enforcement, there is acknowledgement of “the obligation for Parties to collaborate closely in the application of the Convention” and “the need for improved cooperation and coordination among CITES authorities and wildlife-law enforcement agencies at the national, regional and international levels”. Parties are specifically recommended to “inform each other of all circumstances and facts likely to be relevant to illegal traffic and also of control measures, with the aim of eradicating such traffic”. They are also recommended to “work together within their regions to develop appropriate mechanisms for cooperation and coordination between wildlife-law enforcement agencies at the regional level” and to “consider nominating officials from relevant national enforcement and prosecuting agencies to participate in the Interpol Wildlife Crime Working Group”.
10. Resolution Conf. 13.9 on Encouraging cooperation between Parties with *ex situ* breeding operations and those with *in situ* conservation programmes contains a provision urging Parties to encourage operations that breed or artificially propagate Appendix-I species to “seek cooperative measures that would support *in situ* conservation based on resources generated by those captive-breeding operations”. Unfortunately, it has proved difficult to date for the permanent committees to develop implementation guidance for this Resolution (see document CoP14 Doc. 48).
11. Although most Resolutions were adopted to enhance cooperation among Parties to the Convention, they might be seen as applying equally to non-Parties that engage in CITES trade. Moreover, Resolution Conf. 9.5 (Rev. CoP13) on Trade with States not party to the Convention was adopted to “provide guidance to Parties for the uniform implementation of Article X of the Convention”. It also facilitates the exchange of information and views between Parties and non-Parties and promotes wider participation in the Convention.

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES

Directed to the Parties

14.xx Parties with stricter domestic measures and reservations should review them in order to determine whether they are effective and necessary or whether there is scope for withdrawing or adjusting them, in favour of CITES multilateral processes.

Directed to the Standing Committee

14.xx The Standing Committee shall establish at its 57th meeting a working group which, operating by electronic means, should:

- a) review and, if necessary, revise the consultancy report produced under Decision 14.xx;
- b) organize, with the help of the Secretariat, a meeting with representation from all CITES regions to discuss the above report; and
- c) based on the report of the meeting mentioned above, consider the need to draft for consideration at the 15th meeting of the Conference of the Parties any revised or new resolutions.

Directed to the Secretariat

14.xx The Secretariat shall:

- a) hire a consultant to prepare a report on ways to ensure that: the Resolutions of the Conference of the Parties are implemented by all Parties in a consistent manner; multilateral CITES processes have been further developed that reduce the need by Parties for recourse to stricter domestic measures and reservations; and Parties have coherent positions on environment and wildlife trade in international fora (as stated in Objective 1.3 of the Strategic Vision for 2008-2013); and
- b) assist the Standing Committee in organizing the meeting mentioned in Decision 14.xx.