

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



Joint sessions of the 33rd meeting of the Animals Committee and
the 27th meeting of the Plants Committee
Geneva (Switzerland), 12 - 13 July 2024

Appendices of the Convention

Annotations

INFORMAL REVIEW MECHANISM FOR EXISTING AND PROPOSED ANNOTATIONS

1. This document has been prepared by the Secretariat.
2. At its 19th meeting (CoP19; Panama City, 2022), the Conference of the Parties adopted Decisions 19.266 and 19.267 on *Informal review mechanism for existing and proposed annotations* as follows:

Directed to the Secretariat

19.266 *Subject to external funding, the Secretariat shall prepare a proposal on the feasibility and requirements for an informal review mechanism for existing and proposed annotations, provide its findings and recommendations to the Standing Committee.*

Directed to the Standing Committee, in consultation with the Animals and Plants Committees

19.267 *The Standing Committee, in consultation with the Animals Committee and the Plants Committee, shall evaluate the Secretariat's proposal for an informal review mechanism for existing and proposed annotations and submit any relevant recommendations to the 20th meeting of the Conference of the Parties.*

3. The Secretariat reported progress on the implementation of Decision 19.266 to the Animals Committee at its 32nd meeting (AC32; Geneva, June 2023) and the Plants Committee at its 26th meeting (PC26; Geneva, June 2023), as well as the Standing Committee at its 77th meeting (SC77; Geneva, November 2023).
4. Since SC77, the Secretariat undertook the study on the feasibility and requirements for an informal review mechanism for existing and proposed annotations in accordance with Decision 19.266, taking into account the proposal for the establishment of a review mechanism for annotations as contained in document [SC74 Doc. 82](#) as well as the comments and concerns expressed by Parties during SC74 and SC77 regarding several aspects of adopting such a mechanism, including its architecture as well as its role (see summary records [SC74 SR](#) and [SC77 SR](#)).
5. The final study is annexed to the present document. The study was made possible through the generous financial support provided by Switzerland. The Secretariat appreciates the support provided in this regard.
6. The Secretariat recalls that, as indicated in document [SC74 Doc. 85](#) on *Guidance for the publication of the Appendices*, several existing substantive annotations, which are integral to the listing of the species, may lead to confusion in their implementation or create conflicting legal obligations by being incompatible with the fundamental principles of the Convention, or may present other serious challenges.
7. The Secretariat further recalls that during the intersessional period between the 17th and 18th meetings of the Conference of the Parties (CoP17, Johannesburg, 2016; CoP18, Geneva, 2019), and as reported by the

Secretariat in document [SC74 Doc. 82](#), the Standing Committee's working group on annotations recommended that the Conference of the Parties consider the adoption of a mechanism to conduct a review of the existing annotations, as well as a mechanism for a pre-review or a process for screening annotations to be proposed for consideration at future meetings of the Conference of the Parties.

8. The purpose of such a review mechanism for existing and proposed annotations is to support Parties in ensuring consistency in the annotations included in the Appendices of the Convention and to harmonize their interpretation and implementation, thus mitigating risks to deviate from the Convention and its fundamental principles.
9. The Secretariat is of the view that the annexed study provides important background information on the subject matter for the Parties and constitutes a useful basis for discussion. The Secretariat further considers that it is to be considered as work in progress and that there would be value in elaborating various aspects, including but not limited to the implications of such a mechanism – considering the wide range of issues and species and specimens that may be considered under different annotations – and potential terms of reference or a rapid guide developing criteria to guide the review of annotations.

Recommendations

10. The Animals and Plants Committee are invited to:
 - a) take note of the Secretariat's progress in the implementation of Decision 19.266; and
 - b) consider the report annexed to the present document and provide comments on the scientific aspects that may need to be taken into account when conducting an informal review of existing and proposed annotations, to inform the Secretariat's reporting to the Standing Committee at its 78th meeting.

ASSESSMENT OF THE FEASIBILITY OF ESTABLISHING AN
INFORMAL MECHANISM FOR REVIEW OF EXISTING AND PROPOSED ANNOTATIONS
IN THE CITES APPENDICES

1. This Annex contains the study prepared pursuant to Decision 19.266 and it is submitted by the Secretariat to the consideration of the joint session of the 33rd meeting of the Animals Committee (AC33; Geneva, July 2024) and the 27th meeting of the Plants Committee (PC27; Geneva, July 2024).

Background

2. Resolution Conf. 11.21 (Rev. CoP19), on *Use of annotations in Appendices I and II*, specifies that there are two categories of annotations: 'substantive annotations' and 'reference annotations'.

Substantive annotations

3. The substantive annotations are those made in accordance with Article I of the Convention, on *Definitions*, which provides the basis for limiting the scope of a species listing in the Appendices, either in terms of the populations that are covered or, in certain cases, in terms of the types of specimens that are covered by the Convention. Substantive annotations are therefore the texts that specify:
 - a) the geographically separate population or populations that are included in the Appendix concerned usually specifying the country or countries whose population is included; and
 - b) the types of parts and derivatives that are covered by the listing, which is possible only for:
 - i) animal species included in Appendix III; and
 - ii) Plant species included in Appendix II or Appendix III.

There is no possibility to exclude whole animals or plants of listed species, whether alive or dead.

Reference annotations

4. As stated in Resolution Conf. 11.21 (Rev. CoP19), there are three kinds of reference annotations, which are provided for information only. These are:
 - a) annotations to indicate that one or more geographically separate populations, subspecies or species of the annotated taxon are in another Appendix;
 - b) the annotations 'possibly extinct'; and
 - c) annotations relating to nomenclature.
5. The use of annotations in the Appendices, and the need for clarity and a standard approach has been the subject of considerable discussion by the Parties. This is why the Conference adopted Resolution Conf. 11.21 at the 11th meeting of the Conference of the Parties (CoP11; Gigiri, 2000), and has revised it seven times, most recently at the 19th meeting of the Conference of the Parties (CoP19; Panama City, 2022). Moreover, the annotations in the Appendices are referred to in the guidance provided in the operative part of at least nine other Resolutions of the Conference of the Parties (CoPs).
6. Beyond the guidance provided in these Resolutions, the Standing Committee agreed to establish a working group on annotations. This is a reflection of the need to address issues related to the interpretation and implementation of annotations adopted as part of amendment proposals that perhaps did not meet the conditions of Resolution Conf. 11.21 (Rev. CoP19) and to ensure that those annotations are updated as may be required, and checked for consistency. Such a working group existed already before CoP16 (Thailand, 2013) and dealt mainly with plant annotations. At that meeting, in Decision 16.162, the Standing Committee was instructed to re-establish the working group to deal with several issues. At the same meeting, the

Conference of the Parties (CoP) gave instructions relating to issues with annotations in a further seven Decisions. Decision 16.162 was revised at the 17th meeting of the CoP (Johannesburg, 2016).

7. At the 18th meeting (Geneva, 2019), the CoP further revised Decision 16.162 (Rev. CoP17), to tackle continuing issues, and adopted a further five Decisions regarding annotations. Of particular relevance to the present document is Decision 18.316, as follows:

Directed to the Standing Committee

18.316 *The Standing Committee shall, in collaboration with the Animals and Plants Committees, determine requirements for development and adoption by the Conference of the Parties of:*

- a) *a mechanism for undertaking a periodic review of existing annotations; and*
- b) *a mechanism for the a priori review of annotations proposed for consideration at meetings of the Conference of the Parties, to support consistent implementation of the guidance on annotations provided in Resolution Conf. 11.21 (Rev. CoP18).*

The Conference of the Parties adopted a further three Decisions to support the implementation of Decision 18.316: Decisions 18.318, 18.319 and 18.320.

8. At the 74th meeting of the Standing Committee (SC74; Lyon, March 2022), the Secretariat presented document [SC74 Doc. 82](#), as a basis for the implementation of the Decisions listed above. This contained a proposal for the establishment of an "Annotations Periodic Review". The stated objective was to establish a process to ensure consistency in the annotations and harmonise their interpretation and implementation.
9. During the discussion at SC74, one member of the Committee supported the proposal, and several supported the general aims. However, concerns were raised regarding a number of points: the creation of a new body; the balance of the composition of the proposed panel; the degree of formality of the proposed process; and the legal implications, considering that, after a proposal to amend the Appendices has been submitted, the scope cannot be increased. Following the discussion, the Committee invited the Standing Committee Chair, in consultation with the Secretariat, to submit to CoP19 two draft decisions:
 - a) one directing the Secretariat to prepare a proposal for an informal mechanism to provide advice on annotations; and
 - b) one directing the Standing Committee to evaluate the proposal by the Secretariat and to make recommendations to CoP20.
10. The Chair of the Standing Committee duly submitted a document for consideration at CoP19 (document [CoP19 Doc. 85.3](#)), with two draft decisions. With a minor amendment, these were adopted as follows:

Directed to the Secretariat

19.266 *Subject to external funding, the Secretariat shall prepare a proposal on the feasibility and requirements for an informal review mechanism for existing and proposed annotations, provide its findings and recommendations to the Standing Committee.*

Directed to the Standing Committee, in consultation with the Animals and Plants Committees

19.267 *The Standing Committee, in consultation with the Animals Committee and the Plants Committee, shall evaluate the Secretariat's proposal for an informal review mechanism for existing and proposed annotations and submit any relevant recommendations to the 20th meeting of the Conference of the Parties.*

11. At the 77th meeting of the Standing Committee (Geneva, November 2023), the first full meeting after CoP19, the Secretariat indicated in document [SC77 Doc. 73](#) that the study requested in Decision 19.266 was in the process of being organized. The present report is the result of that study.

Convention basis and existing framework

12. The Conference of the Parties has called for a proposal to establish an informal mechanism for the review of existing and proposed annotations in the CITES Appendices. The terms of reference for the present study required two elements: an assessment of the feasibility of establishing a review mechanism; and consideration of the requirements for establishing such a mechanism. It is therefore important to first consider the legal basis and the existing framework for such establishment.

Basis for establishing an informal review mechanism

13. Under Article XI, paragraph 5, of the Convention, the Conference of the Parties may adopt Rules of Procedure. The CoP has adopted [Rules of Procedure](#) for meetings which, in Rule 7, paragraph 3, state that the Conference (as well as Committees I and II at meetings) may establish working groups to enable it to carry out its functions.
14. The Conference has exercised its authority to establish permanent committees and subcommittees as appropriate, having established the Standing Committee in Resolution Conf. 2.2, adopted at the second meeting of the Conference of the Parties (CoP2; San José, 1979), with terms of reference that include “to perform any other function as may be entrusted to it by the Conference of the Parties”. It subsequently established the Animals and Plants Committees at its 6th meeting (CoP6; Ottawa, 1987). Resolution Conf. 18.2 on *Establishment of committees* reflects all the permanent committees and subcommittees that the CoP established.
15. It therefore appears that there is a solid precedent for the Conference to establish committees, subcommittees, working groups or other subsidiary and advisory bodies to conduct intersessional work and advise it in the exercise of its functions, which include amendment of Appendices I and II, in accordance with Article XV. (See below regarding amendments to Appendix III.)

Resolutions referring to the inclusion of annotations in amendment proposals

16. In the context of establishing an informal mechanism for reviewing annotations, it is important to consider the guidance that has already been established by the CoP, including the following points:
 - a) In accordance with Article XV of the Convention:
 - i) under paragraph 1, when a proposal is made to amend Appendix I or II at a meeting of the CoP, there is a process for the Secretariat to consult all Parties and interested bodies, and to circulate the responses not later than 30 days before the meeting;
 - ii) under paragraph 2, when a proposal is made to amend Appendix I or II between meetings of the CoP, the process includes the opportunity for circulation of comments from all Parties, and of the findings and recommendations of the Secretariat. In the case of marine species, it also provides for consultation with intergovernmental bodies that have a function in relation to the species concerned.
 - b) Resolution Conf. 5.20 (Rev. CoP17) on *Guidelines for the Secretariat when making recommendations in accordance with Article XV* provides guidance to the Secretariat when making recommendations in relation to proposals to amend the Appendices between meetings of the CoP (i.e. in accordance with Article XV, paragraph 2). Specifically, the guidance that is to be followed by the Secretariat includes the instruction that:

if the proposal includes an annotation, the recommendations should specifically cover:

- i) *if the appropriateness of the proposed annotation with regard to those specimens that dominate the trade and the demand for the wild resource*
- ii) *any potential problems in implementing the proposed annotation; and*
- iii) *whether the proposed annotation is harmonized with existing annotations.*

Recommendations developed by the Secretariat pursuant to Resolution Conf. 5.20 (Rev. CoP17) could be shared with and considered an informal review mechanism for review existing and proposed annotations.

- c) In Resolution Conf. 8.21 (Rev. CoP16), on *Consultation with range States on proposals to amend Appendices I and II* (para. 1.a.ii), the CoP recommends that "where the proposing Party intends to consult the range States, it should ... consult with the Management and Scientific Authorities of these States on the substance of the proposal, including any proposed annotation". The alternative provided in the Resolution is to seek comments from all Parties via a circulation of the proposal by the Secretariat.
- d) In Resolution Conf. 9.24 (Rev. CoP17), on *Criteria for amendment of Appendices I and II*, the CoP (in para. 7):

RESOLVES that annotations to proposals to amend Appendix I or Appendix II should be made in accordance with the applicable Resolutions of the Conference of the Parties, be specific and accurate as to which parts and derivatives are covered by the Convention, include those specimens that first appear in international trade as export from range States and that dominate the trade and the demand from the wild resource, and should, to the extent possible, be harmonized with existing annotations.

In Annex 6 to the same Resolution, the *Format for proposals to amend the Appendices*, provides a list of the specific information that should be provided in relation to annotations, as follows:

If a specific annotation to the listing in the Appendices is proposed, the proponent should:

- *ensure that the proposed annotation is in compliance with the applicable Resolutions;*
 - *indicate the practical intent of the annotation;*
 - *be specific and accurate as to the parts and derivatives to be covered by the annotation;*
 - *provide clear and simple definitions of any terms in the annotation that may not be easily understood by enforcement personnel and user groups (noting that definitions should be specific to CITES and scientifically and technically precise to the extent practicable for purposes of the annotation);*
 - *ensure that the annotation includes those specimens that first appear in international trade as exports from range States and that dominate the trade and the demand from the wild resource;*
 - *harmonize, to the extent practicable, new annotations with existing annotations; and*
 - *where applicable, provide identification sheets to be included in the CITES Identification Manual that illustrate the parts and derivatives covered under the annotation.*
- e) In Resolution Conf. 9.25 (Rev. CoP18) on *Implementation of the Convention for species in Appendix III*, in para. 1.f), g) and h), the CoP makes three recommendations relevant to annotations, for Parties considering the inclusion of species in Appendix III:
- f) *ensure that any proposed annotation that is part of a request to include a species in Appendix III includes those specimens that first appear in international trade as exports from its territory and that dominate the trade and the demand for the wild resource and is, to the extent practicable, harmonized with relevant existing annotations;*
 - g) *take into consideration the implementation challenges that would be caused by restricting the listing to specific national populations, noting that this should be generally avoided; and*
 - h) *consult with the Secretariat, the Standing Committee and, as appropriate, the Animals Committee or Plants Committee, to ensure that any proposed annotation that is part of a request to include a species in Appendix III (and any definitions developed that define terms in the annotation, as appropriate) is clear and unambiguous, and likely to be understood by enforcement personnel and user groups.*
- f) Resolution Conf. 10.13 (Rev. CoP18) on *Implementation of the Convention for tree species* contains (in para. 1.c) recommendations regarding the definitions to be applied with respect to annotations in the CITES Appendices.
- g) Resolution Conf. 11.11 (Rev. CoP18) on *Regulation of trade in plants* refers to the possible exclusion of hybrids and cultivars by a specific annotation.

- h) Resolution Conf. 11.20 (Rev. CoP18) on *Definition of the term 'appropriate and acceptable destinations'* provides an interpretation of this term as used in annotations in the Appendices.
- i) In Resolution Conf. 11.21 (Rev. CoP19) on *Use of annotations in Appendices I and II*, the CoP provides a full range of guidance on the use of annotations. In the context of a review of annotations, it should be noted that the CoP (in para. 7):

URGES Parties submitting proposals that contain substantive annotations to consult with the Secretariat, the Standing Committee and, as appropriate, the Animals Committee or Plants Committee, to ensure that the annotation is appropriate and can be readily implemented.
- j) Resolution Conf. 12.3 (Rev. CoP19) on *Permits and certificates* includes, in section XII, comprehensive guidance *Regarding permits and certificates for timber species included in Appendices II and III with the annotation 'Logs, sawn wood and veneer sheets'*.
- k) Finally, in Resolution Conf. 16.6 (Rev. CoP18) on *CITES and livelihoods*, the CoP recognizes that there are circumstances in which an annotation in the Appendices may indicate a delayed entry into effect of an amendment that has been adopted. It may be noted that this type of annotation is not among those listed as types of annotation in Resolution Conf. 11.21 (Rev. CoP19).

- 17. There is currently no process for verifying that all proposals to include a new annotation in the Appendices or to revise an existing annotation take into account all the guidance that has been established by the CoP. While core guidance on the subject matter is provided in Resolution Conf. 11.21 (Rev. CoP19), it is possible to notice some divergence in the practice of the proposals introducing or amending annotations.
- 18. In the context of the question of the establishment of an informal mechanism to review existing and proposed annotations, it might be considered whether it would be useful to amend Resolution Conf. 11.21 (Rev. CoP19) either to contain all the relevant recommendations, to include a reference to all the other Resolutions that provide relevant guidance about the inclusion and use of annotations, or to reinforce the Secretariat's or the Standing Committee's mandate to formulate recommendations on proposals to amend the Appendices in accordance with Article XV. Terms of reference, a rapid guide or set of criteria to facilitate and guide a prompt and cost-effective review process could be developed to assist in the review process.

Options for the establishment of an informal review mechanism

- 19. The Secretariat has been instructed to prepare a proposal on the feasibility and requirements for an informal review mechanism for existing and proposed annotations, and to provide its findings and recommendations to the Standing Committee.
- 20. All decisions of the CoP and the Standing Committee are essentially 'formal' and any body, group or committee established by the CoP would therefore be 'formal' in the sense that it would be created in accordance with the Rules of Procedure. For the purposes of this study, the Secretariat understands that the term 'informal' is understood to mean 'agile' and capable of providing a review of annotations relatively quickly and delivering non-binding guidance (especially at a meeting of the CoP for example). It might also be understood to mean 'not permanent' so that the informal mechanism might be called to provide its advice only when needed on a case-by-case basis.
- 21. To fulfil the wish of the CoP, two elements are needed:
 - i) a process to review the existing annotations in the Appendices; and
 - ii) a process to ensure a rapid review of any proposed annotations, or amendments to annotations.

These could be kept separate or combined into a single mechanism by the creation of a body or process for the conduct of the two types of reviews. Considering that one of these tasks is to be conducted and completed and that the other task is potentially to be repeated for every meeting of the CoP in the future, the discussion below assumes that the most practical solution is to establish two separate processes.

Approach suggested for the technical review of existing annotations

- 22. For the review of existing annotations, the CoP may consider several options. First, the CoP may itself establish a new body as per the Rules of Procedure and by amending Resolution Conf. 18.2 or it may task the Standing Committee to arrange this review, considering that the terms of reference of the Standing

Committee, in consultation with the Animals and Plants Committees as appropriate, in Annex 1 to Resolution Conf. 18.2, on *Establishment of committees*, include "perform any other functions as may be entrusted to it by the Conference of the Parties".

23. In either case, a review of the existing annotations would require at least two actions:

- i) an examination and analysis of the text of the existing annotations; and
- ii) identification of any problems that Parties and/or stakeholders have experienced with the implementation of the Convention relating to the existing annotations.

The second action could be undertaken either at a meeting of the CoP or through a Notification to the Parties. However, considering the importance and potential amount of information to gather, this might preferably be done through a survey of Parties organized by the Secretariat through a Notification to the Parties.

24. The terms of reference of the existing annotations working group of the Standing Committee include (see document [SC77 Doc. 70](#)):

- a) *in close collaboration with ongoing efforts in the Plants Committee, continue reviewing the appropriateness and practical challenges resulting from implementation of the annotations to the Appendices; and*
- d) *conduct any work related to annotations directed to it by the Conference of the Parties, the Standing, Animals or Plants Committee ...*

If an annotations working group is re-established after the next CoP, it would be possible to ask this working group to undertake the review of existing annotations. However, this may not be the best solution as that working group may be too large to provide for an agile review mechanism, may not have the necessary range of technical experience and, most importantly, already has a very significant workload. Nonetheless it would be appropriate to consult the existing working group on its work on existing annotations in order to avoid duplication of effort or conflict of responsibilities.

25. For the review of existing annotations, an appropriate option might therefore be for the Conference to:

- a) instruct the Secretariat to conduct a survey of Parties, through a Notification, to determine implementation issues that have arisen as a result of annotations in the Appendices;
- b) instruct the Secretariat to prepare a summary of and analysis of the responses received and submit this review to the Standing Committee;
- c) request the Standing Committee to arrange the rapid technical review and analysis of existing annotations and of implementation issues that arise, leaving the Committee to decide how this should be done, either by:
 - i) a subgroup of the existing annotations working group, including a representative of each of the Animals and Plants Committees; or
 - ii) a new subcommittee of Party representatives, established for the purpose, including a representative of the annotations working group and a representative of each of the Animals and Plants Committees; or
 - iii) the Secretariat, either by itself or through a consultancy subject to available funding, in consultation with representatives designated by the Animals and Plants Committees.

The rapid technical review would be based on the results of the survey of Parties and relevant stakeholders and would need to take into account the work already carried out by the annotations working group and the Animals and Plants Committees. The review would result in recommendations for consideration by the CoP through the Standing Committee;

- d) request the Standing Committee to examine the report of the review and to make any appropriate recommendations to the CoP. If there is no consensus and it considers it appropriate to recommend amendments to the annotations, it may request the Depositary Government, on behalf of the Standing Committee, to submit any proposal that is considered necessary in order to resolve problems identified.

26. The steps indicated in the preceding paragraphs seem to be the steps needed to conduct a review of the existing annotations in the Appendices, i.e.:
- a) survey
 - b) text review and analysis
 - c) formulation of recommendations and proposals.

It would of course be possible to allocate some tasks to other existing bodies, notably the Animals and Plants Committees. It should be kept in mind, however, that both Committees already have significant workloads.

Approach suggested for the technical review of proposals for annotations or amendments to annotations

27. For the review of proposals for annotations or amendments to annotations, there are at least three elements to consider: the timing; who conducts the technical review; and what is done with the recommendations or other results.
28. Annotations can be made available for discussion or introduced for a decision and negotiation at different moments of the decision-making process. In terms of timing, there are essentially three possibilities, which are not mutually exclusive:
- a) a review of proposals before they are formally submitted;
 - b) a review of proposals after they have been formally submitted but before the meeting of the CoP at which they are to be considered (i.e. 'post-submission, pre-CoP'); and
 - c) a review of proposals at the meeting of the CoP at which they are to be considered.

The timing of the review will determine the other two elements. Therefore, the following text considers the three timing possibilities separately, even though all three may be implemented.

29. It is important to keep in mind that Article XV, paragraph 1.(a), of the Convention specifies what must be done when a Party communicates to the Secretariat a formal proposal to amend the CITES Appendices at a meeting of the CoP.

The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of subparagraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.

The provisions of subparagraphs (b) and (c), refer to: communication of the proposal to Parties and consultation with relevant intergovernmental bodies in relation to marine species; and to communication of the proposal to Parties in the case of other species.

Review of proposals before formal submission

30. The above-mentioned provision in Article XV, paragraph 1.(a), gives the possibility for Parties to consider proposed amendments, including any proposed annotations, well in advance of the meeting at which a decision will be made, and to provide their comments for all Parties to consider in advance of the meeting. This, of course, also includes the proponent Party, which can take the comments into account and, which may (in accordance with Rule 24 of the Rules of Procedure of the CoP) at any time before a decision is made, amend its proposal "to reduce its scope or to make it more precise". This could mean, for example, that if a proposed annotation were written in a way to exclude certain types of specimens from a proposed listing of a species, the proposed annotation could not subsequently be amended to include such specimens.
31. However, and in view of the constraint on what can be done after submission of a proposal, it may be advantageous to give to Parties the possibility to seek comments on any potential proposal to amend the Appendices where an annotation is concerned, before the formal communication to the Secretariat.
32. Along these lines, some Parties considering the submission of such a proposal have, in the past, sought the reactions of other Parties and of the Standing, Animals or Plants Committees by introducing a working

document in the agenda of the relevant committee. It should, however, be noted that the agenda and workload of the Committees have grown significantly in the meantime. Other Parties have informally asked the Secretariat for its perspective about proposals.

33. In this context, as noted in paragraph 16 i) above, in Resolution Conf. 11.21 (Rev. CoP19), the CoP already urges "Parties submitting proposals that contain substantive annotations to consult with the Secretariat, the Standing Committee and, as appropriate, the Animals Committee or Plants Committee, to ensure that the annotation is appropriate and can be readily implemented". This obviously is referring to the need for consultation before the formal communication of a proposal to the Secretariat in accordance with Article XV.
34. There is, of course, no formal obligation for Parties to consult in this way and there is no mechanism in place to monitor to what extent this urging from the Conference is currently being implemented by Parties submitting such proposals. The suggested approach can help the potential proponent by offering an opportunity to raise the issue in a meeting of the relevant committee in order to obtain comments directly from Parties and observers, so that any concerns can be taken into account. The Conference also urges potential proponents to consult the Secretariat, which of course stands ready to respond to requests from Parties for comments.
35. In order to facilitate the consultation foreseen by Resolution Conf. 11.21 (Rev. CoP19), one option is to establish a single body to provide feedback to Parties that are considering the submission of an amendment proposal that includes an annotation – although to fulfil the objective of the Resolution, it would need to apply to all amendment proposals that contain annotations. An alternative option with the same aim of facilitation would be to propose an amendment to the Resolution to establish a single point of contact concerning annotations (which would probably be the Secretariat).

Review of proposals post-submission and pre-CoP

36. As indicated above, the text of the Convention provides a process for circulating to all Parties proposals that have been formally submitted to amend the Appendices, and for obtaining their comments, which are circulated by the Secretariat before the meeting of the CoP where a decision will be made.
37. For each meeting of the CoP, the Secretariat provides its own comments and recommendations on proposals to amend the Appendices. It has been doing this at least since the fifth meeting of the CoP (CoP5, Buenos Aires, 1985). The procedure for compiling these comments follows the instructions under Resolution Conf. 5.20 (Rev. CoP17), although that Resolution is referring specifically to the Secretariat's recommendations on proposals to amend the Appendices between meetings, and not to proposals to amend the Appendices to be considered at a meeting of the CoP. In relation to annotations contained in proposals, as indicated in paragraph 16.c) above, the recommendations of the Secretariat should cover: the appropriateness with regard specimens that dominate the trade and demand; potential implementation problems; and the harmony with existing annotations.
38. The question arises whether the Conference requires any further review to be conducted before the meeting starts.
39. As formal communication of proposals to the Secretariat must be done at least 150 days before the meeting where they will be decided upon, this could also allow time for a review by a small expert body, which could report either directly to the CoP or through the Standing Committee at its meeting that is held immediately before the meeting of the Conference.
40. Such a body could be established by the CoP, in the same way that it has established the Credentials Committee under Rule 7, paragraph 2, of its Rules of Procedure, or the existing permanent committees under Resolution Conf. 18.2 on *Establishment of committees*. It could also be established by the Conference under Rule 7, paragraph 3, of its Rules of Procedure, which provides for the establishment of working groups and does not specify that these may only be sessional working groups. Alternatively, at the request of the Conference, it could be established by the Standing Committee as a subcommittee or working group.
41. In either case, the aim of such an additional body would be to provide advice for consideration by the CoP when deciding on the proposals that include annotations or amendments to annotations. As indicated above, terms of reference, a rapid guide or set of criteria to facilitate and guide a prompt and cost-effective review process could be developed to assist in the review process.

Review at a meeting of the Conference of the Parties

42. In accordance with Article XI, paragraph 3 (b), of the Convention, at meetings of the CoP, the Parties may "consider and adopt amendments to Appendices I and II, in accordance with Article XV". Article XV specifies that "Amendments shall be adopted by a two-thirds majority of Parties present and voting."
43. In accordance with Rule 7.2 of the Rules of Procedure of the CoP, the Conference of the Parties in plenary session is required to establish three committees, including: "*Committee I, which shall be responsible for making recommendations to the Conference on all proposals to amend the Appendices of the Convention and on any matter of a primarily biological nature.*"
44. Proposals to amend the Appendices are therefore referred to Committee I for discussion. Although not specified in the Rules, the usual arrangement is for the presiding officer to allow the proponent of each proposal to present the proposal, and then to allow a discussion in order to seek a decision by consensus if possible.
45. Under current arrangements, at this stage, Parties have already had the opportunity to review the amendment proposals, which were communicated at least 150 days before the meeting, and have also seen the comments and recommendations of the Secretariat, as well as the comments provided by Parties and interested bodies during the consultation period. Many non-governmental observers also publish their own observations regarding the proposals in advance of the meetings. There should therefore have been an opportunity to: identify any potential problems that could potentially be caused by the adoption of proposals that include annotations or amendments to existing annotations; and, in particular, to determine whether any texts for proposed annotations follow the relevant guidance provided in Resolution Conf. 11.21 (Rev. CoP19) and the other nine Resolutions cited in paragraph 16 above. Consequently, it should in principle be possible to conduct a well-informed discussion of any proposed annotations. The request for the present report reflects on the need to support Parties in ensuring consistency in the annotations included the Appendices and to harmonize their interpretation and implementation, thus mitigating risks of inconsistencies or deviations from the Convention and its fundamental principles.
46. The presiding officer at meetings of the CoP, in plenary or committee sessions, is required to try to obtain a consensus regarding amendment proposals. In the absence of a consensus, various scenarios could unfold:
 - a) The proponents may move to split the proposal;
 - b) Any Party may propose an amendment;
 - c) If the disagreements are with respect to minor points, the presiding officer may postpone the discussion and ask the proponent to discuss the proposal with the Parties that have a dissenting voice, in order to find an agreeable text;
 - d) If there are more significant differences, or differences involving a greater number of Parties, the presiding officer is more likely to establish a working group, in accordance with Rule 7.3, and to direct the group to conduct the review of the proposal and to report to Committee I with a proposed amendment to the original proposal that is acceptable to all;
 - e) In the absence of a consensus, either on the original proposal or on any amended proposal, the presiding officer is required under Rule 25 to propose that the decision on the amendment to the Appendices be put to a vote.
47. The process for review of any proposed annotation (or of any proposed amendment to an annotation) at a meeting of the CoP is thus more or less prescribed by the Rules as well as by usual practice. As indicated above, the purpose of the informal mechanism will be to ensure the harmonized formulation, interpretation and implementation of annotations and amendments thereof.

An agile consultative body

48. Some of the options discussed in the analysis above foresee the creation of a new, agile, consultative body to review either existing annotations in the Appendices or proposals to amend Appendix I or II that include annotations. This leaves open the question of what the composition of such a consultative body would be. Here again, there are various options depending on whether Parties prefer an approach that is led by Parties or by experts on the subject matter:

- a) A small number of Parties (as for the Standing Committee, but preferably a smaller number); or
 - b) A small number of individual experts nominated by Parties, serving in their individual capacity (as for the Animals and Plants Committees). In this case, the members may be selected on the basis of their expertise in relation to fauna (zoology), flora (botany), law, trade or wildlife trade, or CITES implementation, for example. It may be ideal for the membership to include a combination of these areas of expertise.
49. The reason for suggesting a 'small number' of members is simply to ensure that consultations can be quick and efficient, and to achieve the level of informality that is required in accordance with Decision 19.266:
- a) In the case of Party membership, this could be achieved by nominating one member per region, for example (i.e. six members);
 - b) In the case of individual expert membership, the small number could be achieved by having one member for each of identified areas of expertise taking into consideration the diversity of species and specimens covered in the annotations.
50. In either case, it would be possible to allow observers from Parties or non-governmental organizations to participate in the new consultative body. However, this would make the consultations broader, and potentially slower, and might not therefore be recommended.
51. The Secretariat would be expected to coordinate the consultation with the members of the informal mechanism, probably mostly through electronic communications (except for consultations at meetings of the CoP or of the Standing Committee, if the members are present), and could of course serve as a member or adviser to the consultative body.

Appendix III

52. The section above on options for the establishment of an informal mechanism to review proposed amendments to the Appendices focuses on Appendices I and II, because the process for amending Appendices I and II is obviously very different from the process for amending Appendix III. The inclusion of species in Appendix III, with any accompanying annotation, is the decision of individual Parties.
53. When amending Appendix III at the request of any Party, the Secretariat has to check that the request is in accordance with Article II, paragraph 3, of the Convention, which states that:

Appendix III shall include all species which any Party identifies as being 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.

The Secretariat also communicates with the requesting Party to ask whether it also took account of the recommendations of the CoP in Resolution Conf. 9.25 (Rev. CoP18), which includes recommendations relating to the use of annotations. [See paragraph 16 e), above.]

54. It is important that annotations in the Appendices are harmonized and not incongruous or contradictory. This raises the question of whether the CoP wishes to go further in its instructions to the Secretariat with regard to the actions it should take when it receives a request to amend Appendix III that includes an annotation. The Standing Committee may consider it sufficient that, in any case where the Secretariat is concerned that such a request might not be in accordance with Resolution Conf. 9.25 (Rev. CoP18), or where the inclusion might create implementation problems, and where the requesting Party insists on original text, the Secretariat may bring the matter to the attention of the Standing Committee for guidance.

Postal procedure

55. Article XV, paragraph 2, of the Convention provides a process for amendment of the Appendices between meetings of the CoP. The process is such that, if any objection is received, the proposal goes to a postal vote, requiring votes from at least half of the Parties within 60 days. The process has been used very few times in the 1970s and 1980s, when there were fewer Parties than there are now.
56. If the Secretariat receives a request for amendment of the Appendices by postal vote, it is required to provide its own recommendations to Parties when it communicates the text of the proposed amendment. As

indicated in paragraph 16. b) above, in Resolution Conf. 5.20 (Rev. CoP17), the CoP has instructed the Secretariat, in these cases, to provide information on: any potential problems relating to the proposed annotation; and whether the proposed annotation is harmonized with existing annotations.

57. Considering the rare use of the postal procedure for amending the Appendices and taking account of the instructions already given by the CoP to ensure that there is a check on any proposed annotation in these cases, it may be considered that there is no need for any further mechanism to review proposed annotations submitted for decision by this procedure.

Summary of options

58. If an informal mechanism (or mechanisms) for review of existing and proposed annotations in the CITES Appendices is to be established, certain basic guiding principles or constraints should be recalled. In particular:

- a) a key objective is to ensure that the fundamental principles of the Convention are observed, the provisions of the Convention are correctly interpreted and implemented and that the use of annotations in the Appendices is harmonized, standardized and easily understood;
- b) the adoption of any annotation will affect international trade in wild fauna and flora; hence the importance of an agile but robust review mechanism for annotations; and
- c) any new mechanism should meet the need of the Conference of the Parties to be able to respond quickly to requests for advice, looking at all aspects of the text of a proposed annotation and its potential impact.

59. The sections below summarize the options and questions to be considered.

Review of existing annotations

60. Who will conduct the review of existing annotations?

- a) CoP establishes a small consultative body;
- b) CoP requests the Secretariat to conduct the review (or to arrange a consultancy to do so subject to availability of resources);
- c) CoP requests the Standing Committee to arrange the review and may:
 - i) leave the Standing Committee to decide;
 - ii) specify an existing body such as the annotations working group or the Animals and Plants Committees;
 - iii) specify the establishment of a new body for this purpose; or
 - iv) specify the Secretariat to conduct the review.
- d) CoP requests the Animals and Plants Committees to conduct the review.

61. How to obtain information on problems experienced by Parties with existing annotations?

- a) Information requested at a meeting of the CoP or the Standing Committee; or
- b) Secretariat seeks input through a Notification to the Parties and interested bodies.

Review of proposals for annotations or amendments to annotations

Review of proposals before formal submission

62. Is there any need to change the current urging from the CoP that Parties submitting proposals that contain substantive annotations consult with the Secretariat, the Standing Committee and, as appropriate, the Animals Committee or Plants Committee?

63. If the answer is yes, who should receive requests for comments on potential proposals? Should it be for example:

- a) all range States;
- b) the annotations working group;

- c) the Secretariat (for its own comments or to coordinate consultations), taking into account the need for the Secretariat to have resources and capacity to respond to such consultations; and/or
- d) a new consultative body created for the purpose.

Review of proposals post-submission and pre-CoP

64. Bearing in mind the problems generated by the adoption of certain annotations, would the CoP benefit from any review of proposals containing annotations to be conducted before the meeting at which they are to be discussed?
65. If the answer is yes, who should conduct this review?
- a) CoP establishes a small consultative body;
 - b) CoP requests the Secretariat to conduct the review (or to arrange a consultancy to do so);
 - c) CoP requests the Standing Committee to arrange the review and may:
 - i) leave the Standing Committee to decide;
 - ii) specify an existing body such as the Annotations Working Group or the Animals and Plants Committees;
 - iii) specify the establishment of a new body for this purpose; or
 - iv) specify the Secretariat to conduct the review.
 - d) CoP requests the Animals and Plants Committees to conduct the review.

Review at a meeting of the Conference of the Parties

66. Taking into account the normal procedure for consideration and adoption of amendments to Appendices I and II summarized in paragraphs 42-45 above, would the CoP benefit from any review of proposals containing annotations to be conducted during the meeting at which they are to be discussed?
67. If the answer is yes, who should conduct this review?.

Beyond the scenarios described in paragraph 46 above concerning the handling of the proposals under the guidance of the presiding officer at meetings of the CoP, two options could be developed to provide a review of the annotations:

- a) CoP establishes a small consultative body composed of Parties;
 - b) CoP establishes a small consultative body composed of individual experts nominated by Parties, serving in their individual capacity. In this case, the members may be selected on the basis of their expertise in relation to fauna (zoology), flora (botany), law, trade or wildlife trade, CITES implementation, or a combination of such areas of expertise.
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