

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



Seventy-eighth meeting of the Standing Committee
Geneva (Switzerland), 3-8 February 2025

Compliance

POSSESSION OF SPECIMENS OF SPECIES INCLUDED IN APPENDIX I

1. This document has been prepared by the Secretariat.
2. At its 19th meeting (CoP19; Panama City 2022), the Conference of the Parties adopted Decision 19.67 on *Possession of specimens of species included in Appendix I* as follows:

Directed to the Standing Committee, with the assistance of the Secretariat

19.67 *The Standing Committee, with the assistance of the Secretariat, shall:*

- a) *explore whether further non-binding guidance is needed on the implementation of the Convention with respect to possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, to help address illegal international trade and, if so, request the Secretariat to prepare draft guidance for its endorsement;*
- b) *consider whether additional recommendations related to the possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, in relevant Resolutions are warranted to address illegal international trade in such specimens; and*
- c) *make recommendations for consideration at the 20th meeting of the Conference of the Parties, including appropriate revisions to existing Resolutions, relating to the regulation of possession of specimens of species included in Appendix I, including species that have been transferred from Appendix II to Appendix I, as well as specimens of species included in Appendix II subject to a zero export quota contained in the Appendices, to help address illegal international trade in such specimens.*

Previous intersessional work

3. At its 77th meeting (SC77; Geneva, November 2023), the Standing Committee was unable to review the report of the Secretariat on the implementation of Decision 19.67 (see document [SC77 Doc.37](#)) due to lack of time. The following paragraphs 4 to 8 are a summary of the information provided in document SC77 Doc.37, for ease of reference for the Standing Committee in its review of the implementation of the Decision.

4. Article VIII of the Convention on *Measures to be taken by the Parties* provides in paragraph 1:
 1. *The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:*
 - a) *to penalize trade in, or possession of, such specimens, or both; and*
 - b) *to provide for the confiscation or return to the State of export of such specimens.”*
5. In Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention*, the Conference of the Parties further directs the Secretariat:
 - a) *to identify those Parties whose domestic measures do not provide them with the authority to:*
 - i) *designate at least one Management Authority and one Scientific Authority;*
 - ii) *prohibit trade in specimens in violation of the Convention;*
 - iii) *penalize such trade; or*
 - iv) *confiscate specimens illegally traded or possessed;*
 - b) *to seek from each Party so identified information indicating the procedures, action and time-frames that are envisaged in order to adopt, as a matter of the highest priority, the measures necessary for effective implementation of the Convention; and*
 - c) *to report its findings, recommendations or progress to the Standing Committee and at each meeting of the Conference of the Parties.*
6. In accordance with Article VIII and Resolution Conf. 8.4 (Rev. CoP15), the Secretariat concluded that national legislation of the Parties to the Convention should allow for the regulation and penalization of possession of illegally traded specimens of species included in the Convention Appendices – including Appendix I – to facilitate enforcement of the prohibition of trade in violation of the Convention. Yet, Resolution Conf. 8.4 (Rev. CoP15) does not expressly refer to such regulation and penalization as one of the basic requirements of national legislations.
7. The Secretariat noted that pursuant to Article III, paragraph 2 (b), Article IV paragraph 2 (b), Article V, paragraph 2 (a), and Article VII paragraphs 4 and 5 of the Convention, the legal basis of possession of specimens of CITES-listed species may be an important element for the Management Authorities of the State of export to analyse when determining that a specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.
8. The Secretariat further informed the Committee that:
 - a) through its analyses of legislation submitted by Parties under the National Legislation Project or bilateral requests for support, the Secretariat had noted a recurrent gap concerning the regulation and penalization of the possession of illegally traded specimens of CITES-listed species;
 - b) to assist Parties in the development of effective and enforceable legislation, the Secretariat – in collaboration with Parties and partners – had prepared a revised draft of the Model Law in October 2021, which included the question of the regulation and penalization of possession of illegally traded specimens of CITES-listed species, in accordance with Article VIII of the Convention and Resolution Conf. 8.4 (Rev. CoP15). The Model Law is publicly available on the [CITES website](#);
 - c) one of the policy implications of the first edition of the report on *World Wildlife Crime: Trafficking in protected species*, produced by the United Nations Office on Drugs and Crime (UNODC) in collaboration with partners, based on data on 164,000 seizures in 120 countries, was that: “*Illegal trade could be reduced if each country were to prohibit, under national law, the possession of wildlife that was illegally harvested in, or illegally obtained from, anywhere else in the world.*”;
 - d) one of the findings of the study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal, produced under Decision 17.87 (Rev. CoP18) on *Domestic markets for frequently illegally traded specimens* (see information document [CoP19 Inf. 42](#)), was that possession – when expressly regulated – is regulated in different ways in the Parties’ national legal frameworks (pp. 39-40); and there may be varying types or degrees of penalties applicable to illegal possession as well (p. 46). In the recommendations that could be considered by the

Parties when developing or amending their national legislation, the report suggested the adequate inclusion of the question of possession of specimens of Appendix I species.

Progress achieved in the implementation of Decision 19.67

9. At the recommendation of the Standing Committee at SC77, the Secretariat issued Notification to Parties [No. 2023/130](#) inviting Parties and stakeholders to provide comments on document SC77 Doc. 37. Responses were received from: Oceania; Australia, China, the European Union and its Member States, Japan, the United Kingdom of Great Britain and Northern Ireland, the United States of America; Born Free, the International Fund for Animal Welfare (IFAW), Wildlife Conservation Society (WCS), and the World Wide Fund for Nature (WWF).
10. Oceania, four Parties and all observers concurred in considering that the regulation and penalization of possession of specimens of CITES-listed species obtained in violation of the Convention is an important or even critical aspect of the implementation of the Convention and should be enabled through national laws adopted for the implementation of the Convention. One Party and one observer expressly considered it to be a requirement under Article VIII of the Convention.
11. The two other Parties who provided comments considered that Article VIII, paragraph 1, of the Convention “grants Parties the discretion to enforce penalties on either the trade or the possession of illegally acquired specimens” and that “there is a choice for Parties to make as best fits their national context”. One of these two Parties considered that the Secretariat’s recommendations “should be aligned with the Convention’s text, upholding the principle of *pacta sunt servanda* and ensuring a faithful and genuine interpretation of the treaty”, or would require formal amendment of the Convention.

Discussion and conclusions

12. While the wording of Article VIII of the Convention provides a certain flexibility to Parties when developing and adopting their national measures for the implementation of the Convention, the Secretariat is of the view that the wording of Article VIII paragraph 1 cannot be considered as an “either/or” situation where the regulation and penalization of illegal trade in CITES specimens and possession of illegally traded CITES specimens should be interpreted as providing a choice to regulate one, and thus exclude the regulation of the other.
13. Furthermore, Resolution Conf. 8.4 (Rev. CoP15) directs the Secretariat to identify those Parties whose domestic measures do not provide them with the authority to “confiscate specimens illegally traded or possessed.” Article VIII, paragraph 1, of the Convention refers in more general terms to the penalisation of trade in, or possession of, specimens traded in violation of the Convention, or both; and the confiscation or return to the State of export of such specimens. The confiscation of specimens illegally possessed has thus been covered under Resolution Conf. 8.4 (Rev. CoP15) without it being considered as “incompatible with the Convention’s text” or requiring an amendment to the Convention.
14. Finally, Article XIV of the Convention provides that the provisions of the Convention do not affect the rights of the Parties to adopt: (a) 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; or (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III. The fact that Article XIV allows for the adoption of stricter domestic measures concerning the possession of specimens of species included in Appendices I, II and III indicates that the question of the regulation of possession is indeed covered under the provisions of the Convention.
15. On the basis of this discussion, the Secretariat considers that there is merit in proposing to amend Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention* to more accurately reflect the provisions of Article VIII with regard to the penalization of the possession of illegally traded specimens to facilitate enforcement of the prohibition of trade in violation of the Convention. The Secretariat further suggests using this opportunity to update the relevant provisions of the preamble.

Recommendations

16. The Standing Committee is invited to:

- a) remind Parties whose legislation is in Category 2 and Category 3 under the National Legislation Project that possession of illegally traded specimens of CITES-listed species is one of the areas being analyzed by the Secretariat in the context of the review of national legislation;
- b) invite Parties whose legislation is in Category 1 under the National Legislation Project to identify potential loopholes in their national CITES-implementing legislation, in particular with regard to the possession of illegally traded specimens of CITES-listed species, and to adopt any necessary amendments;
- c) review and submit to the Conference of the Parties the amendments to Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention* as contained in the Annex to the present document; and
- d) agree that Decision 19.67 has been implemented and can be proposed for deletion.

DRAFT AMENDMENTS TO RESOLUTION CONF. 8.4 (REV. COP19) ON
NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

RECALLING that Article VIII requires all Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, including measures to penalize trade in, or possession of, such specimens, and to provide for the confiscation or return to the State of export of such specimens;

RECALLING ALSO that Article IX requires that each Party designate at least one Management Authority and one Scientific Authority;

RECALLING FURTHER that Article VIII, paragraph 3, requires each Party, as far as possible, to ensure that specimens pass through any formalities required for trade with a minimum of delay;

ACKNOWLEDGING the adoption of Resolution Conf. 44.218.3 on the *CITES Strategic Vision: 2008-2013* ~~2021-2030~~, particularly Objective 1.1 that Parties comply with their obligations under the Convention through appropriate policies, legislation and procedures;

RECOGNIZING that the CITES National Legislation Project was established in 1992 and has provided legislative analyses and assistance to Parties since that time;

RECALLING Resolution Conf. 11.3 (Rev. CoP19) on Compliance and enforcement, adopted by the Conference of the Parties at its 11th meeting (Gigiri, 2000) and amended at its 13th, 14th, 15th, 17th, 18th and 19th meetings (Bangkok, 2004; The Hague, 2007; Doha, 2010; Johannesburg, 2016; Geneva, 2019; Panama City, 2022), which expresses the Parties' conviction that enforcement of the Convention must be of constant concern to the Parties if the objectives of the Convention are to be fulfilled;

NOTING that substantial progress has been achieved, but that ~~approximately half~~ one third of the Parties have not yet taken the appropriate measures to enforce the provisions of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

1. DIRECTS the Secretariat, within available resources:
 - a) to identify those Parties whose domestic measures do not provide them with the authority to:
 - i) designate at least one Management Authority and one Scientific Authority;
 - ii) prohibit trade in specimens in violation of the Convention;
 - iii) penalize ~~such~~ trade in, or possession of, such specimens, or both; or
 - iv) confiscate specimens illegally traded or possessed;
 - b) to seek from each Party so identified information indicating the procedures, action and time-frames that are envisaged in order to adopt, as a matter of the highest priority, the measures necessary for effective implementation of the Convention; and
 - c) to report its findings, recommendations or progress to the Standing Committee and at each meeting of the Conference of the Parties;
2. URGES all Parties that have not adopted appropriate measures for effective implementation of the Convention to do so and inform the Secretariat when such measures have been adopted;
3. INVITES Parties that have adopted domestic measures to implement the Convention to identify potential loopholes in their national CITES-implementing legislation, and to adopt any necessary amendments;
4. INSTRUCTS the Standing Committee to determine which Parties have not adopted appropriate measures

for effective implementation of the Convention and to consider appropriate compliance measures, which may include recommendations to suspend trade, in accordance with Resolution Conf. 14.3 (Rev. CoP19) on *CITES compliance procedures*;¹

5. DIRECTS the Secretariat to seek external funding to enable it to provide technical assistance to Parties in the development of their measures to implement the Convention; and
6. INVITES all Parties, governmental, intergovernmental and non-governmental organizations and other sources to provide financial and/or technical assistance for the development and effective implementation of such measures.

¹ Corrected by the Secretariat following the 18th and 19th meetings of the Conference of the Parties.