

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

Fifty-third meeting of the Standing Committee
Geneva (Switzerland), 27 June-1 July 2005

Interpretation and implementation of the Convention

RESERVATIONS

1. This document has been prepared by the Secretariat.
2. The text of the Convention provides the possibility for Parties to make specific reservations with regard to species included in the Appendices (or their parts or derivatives), by informing the Depository Government (Switzerland). There are three separate provisions in the Convention indicating when a reservation can be made, and their period of validity, as follows. (The italicized text indicates a direct quotation.)
 - a)
 - i) When a State becomes a Party to CITES, it may, at the same time, enter a reservation with respect to any species included in Appendix I, II or III or any parts or derivatives specified in relation to a species included in Appendix III. (Article XXIII, paragraph 2)
 - ii) *Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.* (Article XXIII, paragraph 3)
 - b)
 - i) When Appendix I or II is amended in accordance with Article XV of the Convention, either at a meeting of the Conference of the Parties or through the postal procedures, any Party may within 90 days make a reservation with respect to the amendment. (Article XV, paragraph 3)
 - ii) *Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.* (Article XV, paragraph 3)
 - c)
 - i) With regard to species included in Appendix III, any Party may at any time enter a reservation with respect to the species or any specified parts or derivatives. (Article XVI, paragraph 2)
 - ii) *until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.* (Article XVI, paragraph 2)
3. When a species is transferred from Appendix I to II, or vice versa, or when a species already in Appendix III is subsequently included in Appendix I or II, the text of the Convention is not completely clear about the effects of such an amendment on the validity of any existing reservation relating to the species. There appear to be two ways of interpreting the text of the Convention.
 - a) In each of the provisions cited in paragraph 2 above, it is indicated that, once a reservation has been made, its effect (that the Party is treated as a State not party to the Convention with respect to trade in the species or specified part or derivatives) remains valid until the reservation is withdrawn. It may therefore be inferred that, when a species is transferred from one Appendix to another, any reservation relating to that species remains in effect.

- b) The alternative view is that, when a species is transferred from one Appendix to another, any reservation relating to that species ceases to be in effect and, if the Party concerned wishes to retain a reservation, it must inform the Depositary Government. This view is appropriate if a transfer from one Appendix to another is viewed as a deletion from one Appendix followed by an inclusion in another. Any existing reservation would thus fall when the species was deleted. This view is supported by at least three considerations.
- i) Firstly, reservations may be viewed as being made not only in relation to a particular species but also in relation to the Appendix in which it is listed. In his connection, it is notable that any reservation made in accordance with Article XV is made in relation to a specific amendment to the Appendices. Reservations made in accordance with Article XVI clearly relate to species in Appendix III.
 - ii) Secondly, there are complications relating to reservations with respect to specific parts and derivatives. To take a hypothetical example, a shark species could be included in Appendix III with only fins listed as covered, and a Party might make a reservation with regard to the fins. If the species were subsequently included in Appendix II, where there is no possibility to specify, for an animal species, the parts and derivatives that are covered, it would not be possible for any Party to then make a new reservation with regard to the fins. Logic seems to suggest that any reservation made in relation to the parts and derivatives of the species while it was included in Appendix III should no longer be considered valid when it becomes included in Appendix II.
 - iii) Thirdly, there is an issue relating to whether a species is becoming more-strictly protected or less-strictly protected and to the reasons for making a reservation. If a Party has entered a reservation with regard to a species included in Appendix II, not wishing to be bound even by the provisions that allow a regulated trade, it would not be surprising if it wished to maintain the reservation if the species were transferred to Appendix I. However, if a Party has entered a reservation with regard to a species in Appendix I, not wishing the commercial trade to be prohibited, it would be surprising if it wished to maintain the reservation if the species were transferred to Appendix II. However, there are several possible reasons for entering reservations and, in cases where a species is transferred from one Appendix to another, it would be preferable for each Party to specify whether it wishes a reservation to continue.
4. Following the 13th meeting of the Conference of the Parties (CoP13, Bangkok, 2004), the Secretariat applied the approach indicated in paragraph 3. a) above. This seems to be a strict application of the relevant provisions. However, the Secretariat believes that the approach in paragraph 3. b) would be preferable, would solve, or help to avoid, a number of potential problems and would be more in keeping with the conservation spirit of the Convention and the general principle that reservations undermine the effectiveness of Conventions. The Secretariat has consulted informally with the Depositary Government, which is in agreement that this approach is acceptable.

Recommendations

5. Consequently, the Secretariat hereby requests the Standing Committee to endorse the following series of actions by the Secretariat.
- a) To write to each Party that already held a reservation in relation to a species that was transferred from one Appendix to another as a result of a proposal adopted at CoP13, and that did not renew the reservation, to ask whether it wishes to withdraw its reservation. In cases where a reservation is to be withdrawn, this should be done formally by a letter to the Depositary Government.
 - b) To prepare a draft resolution or a draft amendment to an existing Resolution, for consideration at the 14th meeting of the Conference of the Parties, to clarify that, in cases where a Party holds a reservation in relation to a species that is deleted from one Appendix of the Convention and included in another, the reservation will be considered as no longer valid and the Party will need to enter a new reservation in accordance with Article XV, paragraph 3, or XVI, paragraph 2, if it wishes to maintain the reservation.

6. The Secretariat also proposes to write, on behalf of the Standing Committee, to all Parties that have entered reservations, to request them to review their reservations and the reasons why they were made, in order to determine whether they can now be withdrawn.