

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



Seventieth meeting of the Standing Committee
Rosa Khutor, Sochi (Russian Federation), 1-5 October 2018

Interpretation and implementation matters

General compliance and enforcement

Compliance matters

GUIDANCE FOR VERIFYING THE LEGAL ACQUISITION
OF CITES SPECIMENS TO BE EXPORTED

1. This document has been prepared by the Secretariat.

Background

- 2.. At its 17th meeting (CoP17, Johannesburg, 2016), the Conference of the Parties adopted Decisions 17.65 to 17.68 as follows:

17.65 Directed to Parties

Parties are encouraged to provide to the Secretariat with: any examples and relevant information regarding methodologies, practical tools, legislative information, forensic expertise and other resources used to monitor compliance with the Convention and to verify the legal acquisition of specimens of CITES-listed species to be exported in accordance with Article III, paragraph 2(b), Article IV, paragraph 2(b), and Article V, paragraph 2(a) of the Convention (referred to as a 'legal acquisition finding').

17.66 Directed to the Standing Committee

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

- a) *consider whether a Compliance Assistance Programme (CAP) should be established to assist countries with difficulties in achieving compliance, including how such a CAP would be funded;*
- b) *consider further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported;*
- c) *provide guidance on verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported; and*
- d) *make appropriate recommendations for consideration at the 18th meeting of the Conference of the Parties.*

17.67 Directed to the Secretariat

Subject to the availability of external funding, the Secretariat, in collaboration with other relevant institutions, cooperation agencies and potential donors, shall:

- a) *organize an international workshop on guiding principles, methodologies, practical tools, information, forensic expertise, compliance risk assessments and other legal resources*

needed by Management Authorities to verify the legal acquisition of specimens of CITES-listed species to be exported; and

- b) *prepare and submit for consideration by the Standing Committee, a proposal for further guidance for verifying the legal acquisition of specimens of CITES-listed species to be exported.*

17.68 Directed to the Secretariat

The Secretariat shall assist the Standing Committee in the preparation of its findings and recommendations with regard to the implementation of Decision 17.66.

3. In fulfilment of Decision 17.67, on 20 February 2018, the Secretariat circulated Notification to the Parties No. 2018/020 on “International Workshop on Legal Acquisition Findings”, informing them of a forthcoming workshop and including a questionnaire regarding their practices in fulfilling the requirement to verify legal acquisition (VLA). In response to the questionnaire, 25 Parties submitted information regarding their VLA practices and four non-governmental organizations (NGOs) shared their views. Annex 3 to the present document provides further details regarding the questionnaires and a summary of the responses. To provide background for the discussions, the Secretariat has done further analysis of the VLA requirement, which is summarized in the commentary of the relevant legal framework of CITES in Annex 4.
4. As instructed in Decision 17.67, paragraph a), the Secretariat organized the workshop aimed at facilitating the discussion among the Parties to the Convention regarding guiding principles, methodologies, practical tools, information systems, forensic expertise used by the Management Authorities in verifying the legality of acquisition of specimens. The workshop took place in Brussels from 13 to 15 June 2018. Over 80 participants representing 31 Parties¹, six intergovernmental organizations² and more than ten non-governmental organizations and academic institutions³ from Africa, Asia, Europe, Oceania and the Americas were represented at the workshop. The Secretariat is grateful for the financial, technical and logistical support provided by the European Union in hosting the workshop.
5. On the basis of the findings and recommendations from the workshop, the responses to the questionnaire, written inputs sent by the Parties and NGOs on preliminary drafts and discussions held at a side event during the joint sessions of the 30th meeting of the Animals Committee and 24th meeting of the Plants Committee, the Secretariat has consolidated a proposal on ‘Guidance for verifying the legal acquisition of CITES specimens’ in the form of a draft resolution of the Conference of the Parties (Annex 1) for consideration by the Standing Committee.
6. The format of a draft resolution for the guidance for verifying legal acquisition is a recommendation from the international workshop.

Definition of verification of legal acquisition

7. According to Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, an export permit shall only be granted when a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora. With regard to export permits authorizing export of specimens of species included in Appendix III, this obligation only applies to the State or States that included the species in that Appendix. In order to be satisfied, the Management Authority shall conduct what was initially referred to as a ‘legal acquisition finding (LAF) and subsequently as a ‘verification of legal acquisition’ (VLA).
8. Although this verification is one of the key requirements for the issuance of the CITES export permit, the Convention and relevant Resolutions of the Conference of the Parties leave to the Parties the decision on how to determine whether the specimen was acquired legally. Given the important number of queries about permits allegedly issued in contravention of the laws of countries involved in CITES authorized transactions

¹ Austria, Belgium, Belize, Bolivia (Plurinational State of), Cameroon, China, Colombia, Costa Rica, Cuba, Democratic Republic of the Congo, Dominican Republic, Equatorial Guinea, European Union, Germany, Israel, Italy, Madagascar, Malawi, Mozambique, Namibia, Montenegro, Netherlands, Peru, Senegal, Slovakia, Spain, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia.

² The Food and Agriculture Organization of the United Nations (FAO), the International Tropical Timber Organization (ITTO), the United Nations Economic Commission for Europe (UNECE) /UNCEFACT, the UN Environment World Conservation Monitoring Centre (UNEP-WCMC) and the World Customs Organization (WCO).

³ Center for International Environmental Law (CIEL), Chambre Syndicale de la Façure Instrumentale / Confederation of European Music Industries (CSFI/CAFIM), Defenders of Wildlife, Durrell Institute of Conservation, European Association of Zoos and Aquariums (EAZA), Environmental Investigation Agency (EIA), FACE, Natural Resources Defence Council, Pro Wildlife, Wildlife Conservation Society, World Wildlife Fund (WWF) and a researcher from the University of Adelaide.

and the need to prevent the use of CITES permits for fraudulent purposes, the mandate of the Conference of the Parties to develop further guidance for the verification of legal acquisition of CITES specimens appears timely and appropriate. The absence of that guidance may seriously undermine the reliability of the CITES permit system as a proof of legality and sustainability.

9. In principle and where appropriate, it could be considered that the determination of whether a specimen was obtained in accordance with relevant laws and regulations refers to the series of steps – and not only to the last of these – by which a specimen is brought from its source and becomes the possession of the exporter. Modern information systems and traceability technologies could assist Management Authorities in tracing transactions for which the legality should be verified before the issuance of a CITES document.

Suggested guidance for verifying legal acquisition (draft resolution in Annex 1)

10. The Secretariat has prepared draft guidance building upon the existing practice reported by Parties, the recommendations of the international workshop and additional inputs received from Parties and other stakeholders. The Secretariat is very grateful for the fruitful, constructive and open exchanges during the process of elaboration of the draft guidance which is meant to provide options for the Parties to consider when verifying legal acquisition, rather than any rigid framework. As mentioned above, the term 'verification of legal acquisition' is used in the document to refer to the requirement at issue. It has replaced the term 'legal acquisition finding' taking into account comments made by the participants at the workshop.
11. The aim of the guidance for verifying legal acquisition is to provide a common ground for the understanding and application of this key requirement to the Management Authorities and other relevant actors, including enforcement authorities, e.g. customs and permit applicants. The draft resolution in Annex 1 reflects the guiding principles (flexibility, proportionality and transparency) in an attempt to balance the responsibility of demonstrating the legality of acquisition attributed to the applicant of CITES permits with minimum elements that any verification of legal acquisition should observe. To facilitate the collection of necessary evidence by the applicants and ensure a smooth communication between the Management Authority and applicants, it was reported by some Parties that they have adopted in their national legislation (e.g. Ministerial resolutions, etc.) written guidance on the procedures that are followed for the verification of legal acquisition with the explanation of the evidence required to substantiate legal acquisition. Such best practices, to the extent these are appropriate and applicable, should be encouraged and adopted by other Parties.
12. In the spirit of Article VIII, paragraph 3, of the Convention, which provides that "the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay", the draft resolution recognizes that simplifying and standardizing the procedures and reducing paper work will help to better achieve the objectives of the Convention and benefit both permit applicants and Management Authorities. The draft resolution therefore suggests applying a risk assessment approach as part of the verification of legal acquisition.
13. The draft resolution reflects the most commonly used approaches to the VLA and aims to address the challenges identified by the Parties and the Secretariat. In particular, the draft resolution suggests provisions to strengthen the basis for inter-agency cooperation within the State Parties, as well as between Management Authorities of CITES Parties.
14. With regard to the guidance on verifying the legal acquisition of founder stock of captive-bred CITES listed species to be exported, the workshop was not able to identify conclusive recommendations. While a number of Parties and NGOs expressed concern that it is not always possible to identify the origin of the breeding stock of captive bred animal specimens, especially where it was acquired many years ago, no clear solution agreeable to all has been identified to address such situations. The work related to the implementation of Resolution Conf. 17.7 on *Review of trade in animal specimens reported as produced in captivity* appears to be the most relevant place to discuss the matter. As provisional solution, it is suggested in paragraph 1 c) of the draft resolution and paragraph 1 of Annex II to the draft resolution that common approaches to VLA are applicable to the verification of legal acquisition of breeding stock.
15. Should the Standing Committee consider that the new term ('verification of legal acquisition') is appropriate, the Secretariat would suggest amendments to two Resolutions in force in order to harmonize the use of concepts, namely:
 - a) Paragraph 27 b) of Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates* should read:

upon receiving credible information or intelligence, importing countries should reject shipments of specimens of species accompanied by export permits issued under court order without the required

CITES findings. The importing Party should contact the exporting Party to seek confirmation that a non-detriment finding by the Scientific Authority was made and that ~~a legal acquisition finding by the Management Authority verified legal acquisition were made~~; and

- b) Paragraph 1.1.2 of Section II and paragraph 1.1.2 of Section III of the Annex to Resolution Conf. 14.6 (Rev. CoP16) on *Introduction from the Sea* should read respectively:

To export a specimen that has been introduced from the sea, ~~a legal acquisition finding (i.e. a finding that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora)~~ verification of legal acquisition is required as a condition for the issuance of the export permit [Articles III, paragraph 2 (b), and IV, paragraph 2 (b)].

and

The Management Authority ~~makes a legal acquisition finding (i.e. a finding that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora)~~ verifies legal acquisition of the specimen before issuing an export permit [Articles III, paragraph 2 (b), and IV, paragraph 2 (b)].

Recommendations

16. In fulfilment of Decision 17.66, the Standing Committee is invited to submit the draft resolution on verification of legal acquisition of CITES specimens and the related draft decisions proposed in Annexes 1 and 2 to the present document, as well as the consequent amendments to existing Resolutions as suggested in paragraph 15 above to CoP18.
- 17 The Standing Committed is further invited to note the other annexes to the present document, containing the responses to the questionnaire on the verification of legal acquisition and the main results of the international workshop held in Brussels and hosted by the European Union from 13 to 15 June 2018.

Draft Resolution

Verification of legal acquisition of CITES specimens

RECALLING the provisions of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, which require a Management Authority of the State of export to establish that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

RECALLING the provisions of Article III, paragraph 4 (a), and Article IV, paragraph 5 (a) which require a Management Authority of the State of re-export to establish that the specimen was imported into that State in accordance with the provisions of the present Convention;

RECALLING ALSO the provisions of Article VIII, paragraph 1, of the Convention, which requires the Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof and Resolution Conf. 8.4 (Rev. CoP15), paragraph 2, which urges the Parties to adopt appropriate measures for effective implementation of the Convention;

RECALLING FURTHER Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 5 j) and i), which recommend that “Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin” and that “no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation unless the specimen has previously been confiscated”;

CONSIDERING Resolution Conf. 11.3 (Rev. CoP17) on *Compliance and enforcement*, paragraph 2 e), which recommends that “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 i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with copies of all documentation relating to the transaction; and ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention”;

RECOGNIZING that Article VIII, paragraph 3 of the Convention provides that “the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay”;

RECOGNIZING FURTHER that the Convention places considerable responsibility upon the CITES Management Authorities to ensure that specimens of listed species entering international trade are of legal origin; and

EMPHASIZING that this Resolution is aimed at supporting Management Authorities in verifying the legal acquisition of specimens of CITES-listed species prior to the issuance of CITES documents authorizing their international trade and strengthening cooperation between exporting, transit and importing countries for the effective implementation of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

1. RECOMMENDS that:

- a) For the purposes of Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention, the term “verification of legal acquisition” be used by the Parties when referring to the examination conducted by a Management Authority prior to issuing a CITES export permit to satisfy itself that the specimen was obtained in accordance with relevant laws and regulations of that State (in other words, legally acquired);
- b) To the extent possible, the determination of whether a specimen was obtained in accordance with relevant laws and regulations should take into account the whole series of actions through which the specimen is brought from its source into the possession of an exporter; and
- c) Depending on the context, the term defined above should also be used when considering exemptions and other special provisions mentioned in Annex II, on a case-by-case basis;

2. AGREES that:

- a) “Applicant” means a person who applies for a CITES document required to export, import, re-export or introduce from the sea a specimen of a CITES-listed species;
- b) “Chain of custody” means chronological documentation, to the extent practicable and in accordance with national laws and records, of the transactions pertaining to the removal from the wild of a specimen and the subsequent ownership of that specimen;

- c) "Risk assessment" means the evaluation of the likelihood that a specimen of a CITES-listed species was not legally acquired;

Guiding principles

- 3. RECOMMENDS that the following general principles be used by the Parties for the verification of legal acquisition:
 - a) Procedures to conduct the verification of legal acquisition should be sufficiently flexible to allow for consideration of different CITES transactions;
 - b) To the extent possible, procedures to verify legal acquisition should be made available to applicants to facilitate the collection of required evidence and provide clarity to permit applicants;
 - c) The applicant is responsible for providing sufficient evidence for the Management Authority to determine that the specimen was legally acquired, such as statements or affidavits made under oath and carrying a penalty of perjury, import or export permits, invoices and receipts, forestry concession numbers, hunting permits or tags, or other documentary evidence;
 - d) The evidence that the Management Authority requires of an applicant to demonstrate legality of acquisition should be proportionate with the likelihood that a specimen of a CITES-listed species was not legally acquired;
 - e) Applicants are expected to know and be able to verify, to the extent practicable, the origin of the specimens they have obtained and to have minimized the risk that the specimens they are trading were illegally acquired; and
 - f) Management Authorities are encouraged to maintain records of permits issued, including the evidence provided by the applicant regarding the legality of acquisition, to ensure the ability to respond to inquiries from the State of import or re-export;
- 4. RECOMMENDS that cooperation between Management Authorities of Parties be guided by the following principles:
 - a) Where the Management Authority of the State of import or re-export has reason to believe that the specimen accompanied by a CITES permit or certificate may not have been legally acquired, it should:
 - i) immediately inform the Management Authority of the State whose laws are believed to have been violated;
 - ii) provide the Management Authority of that State with copies of all documentation relating to the transaction; and
 - iii) request the basis for the determination that the specimen was legally acquired; and
 - b) If after consulting with the Management Authority of the relevant State, the Management Authority of the State of import or re-export has not received satisfying information regarding the basis for the determination that the specimen was legally acquired, it should not authorize the import or re-export of the specimen concerned and should not issue an import permit or a re-export certificate;

Due diligence

- 5. RECOMMENDS that:
 - a) CITES Parties should exercise due diligence when presented with a CITES permit or certificate, even if they believe it to have been issued by a competent authority, when they have a reason to believe that the specimens of CITES-listed species may not have been legally acquired;
 - b) In exercising due diligence, CITES Parties should, consult with the Management Authority of the State whose laws are believed to have been violated; and
 - c) To ensure effective cooperation between CITES Authorities of different Parties, Management Authorities should be responsive to enquiries and cooperate with the Management Authorities of other CITES Parties on matters relating to the validity of CITES export permits;
- 6. RECOMMENDS that the Parties use the guidance contained in Annex I to this Resolution, when verifying the legal acquisition of CITES specimens and when applying the exemptions and other special provisions, mentioned in Annex II; and
- 7. INVITES all Parties, governmental, intergovernmental and non-governmental organizations and other sources to provide financial and/or technical assistance for the development of training material on the verification of legal acquisition, maintaining up to date a dedicated webpage on the CITES website, the

organization of workshops and other building capacity activities related to the implementation of this Resolution.

Annex 1 [to the Draft Resolution]

Guidance for verifying the legal acquisition of CITES specimens

1. Verification of legal acquisition by the State of export

- a) Parties are recommended to include in their national regulatory framework the obligation of a Management Authority to verify, prior to issuing any CITES permit or certificate, whether a specimen of CITES-listed species to be exported was legally acquired.
- b) To ensure due process and assist applicants in providing evidence of legal acquisition, each Party may, where appropriate and possible, prepare general written instructions regarding the evidence required of an applicant and make that information publicly available. The instructions may specify that a Management Authority may require additional evidence depending on the nature of a specific transaction.
- c) Management Authorities may choose to verify legal acquisition based on a risk assessment of the chain of custody, which may include the consideration and balancing of the following factors to the extent that they may be relevant to a particular CITES document request (the order of listing of the factors does not indicate any priority):
 - i) the Appendix in which the species is listed;
 - ii) the source of the specimen (considering whether the specimen is wild-collected, ranched, bred in captivity or artificially propagated, or of unknown origin);
 - iii) occurrence of the species in a controlled environment in the Party dealing with the application;
 - iv) geographical factors (e.g. whether the territory from which the specimen originated is affected by armed conflicts or other factors that may increase the likelihood of illegal acquisition);
 - v) documented illegal harvest or illegal trade;
 - vi) purpose of trade (commercial or non-commercial);
 - vii) history of applications from the applicant, including any history of non-compliance;
 - viii) monetary value of the specimens; and
 - ix) existence of look-alike species.
- d) Where, after considering and balancing the above factors, a Management Authority concludes that there is a high risk that the specimen requested to be exported was not legally acquired, it may choose to require evidence providing more certainty and engage in further scrutiny of the chain of custody. Where a Management Authority concludes that the risk of illegal acquisition is low, it may choose to engage in less scrutiny and require less evidence of the applicant.

2. Procedures for verification of legal acquisition by the State of export

- a) Where a Management Authority is required to verify legal acquisition, it first should review all the documentary and other evidence presented by the applicant. The evidence and documentation should, to the extent practicable, provide information on the entire chain of custody back to the source of the specimen. Where a Management Authority considers that the evidence is incomplete, it should provide the applicant with an opportunity to produce additional evidence.
- b) If upon the review of the evidence and taking into account all other relevant elements, a Management Authority is satisfied that the specimen was legally acquired, the requirement of verification of legal acquisition is fulfilled.
- c) Where a Management Authority is not satisfied that the specimen was legally acquired, it should decline to issue the requested CITES document.

- d) A Management Authority may share relevant information about the legal acquisition of the specimen on the CITES document. Description of the main documentary evidence used as a basis for verification of legal acquisition or other relevant information may be included in Box 5 of the standard CITES document. Such relevant information may include statements or affidavits made under oath and carrying a penalty of perjury, import or export permits, invoices and receipts, forestry concession numbers, hunting permits or tags.

3. Verification of legal acquisition of specimens of Appendix I or II species taken in the marine environment not under the jurisdiction of any state

- a) According to Resolution Conf.14.6 (Rev. CoP16) on *Introduction from the sea*, paragraph 2 b), “whenever any specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and is transported into a different State, the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, should be applied, with the State in which the vessel that took the specimen is registered being the State of export and the State into which the specimen is transported being the State of import”. In those circumstances, the State of export shall verify the legal acquisition of the specimen.
- b) In the case of chartering operations, where the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4 apply pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 2 c), the State of export shall verify the legal acquisition of the specimen taken in the marine environment not under the jurisdiction of any State.
- c) According to Resolution Conf.14.6 (Rev. CoP16), paragraph 3, the State of introduction, the State of export and the State of import should “take into account whether or not the specimen was or will be acquired and landed:
 - i) in a manner consistent with applicable measures under international law for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and
 - ii) through any illegal, unreported or unregulated (IUU) fishing activity”.
- d) While recognizing the provisions in paragraph 3 c) of this Annex are different from the verification of legal acquisition, the provisions of this Resolution may provide some general guidance.

4. Cooperation between relevant agencies and Management Authorities of CITES Parties

- a) To ensure effective cooperation between domestic authorities (national, provincial, local, tribal) involved in the process of regulating the acquisition of specimens of CITES-listed species, the Parties may consider establishing mechanisms of inter-agency cooperation.
- b) Where necessary, Management Authorities of the Parties should consult competent intergovernmental bodies regarding the verification of legal acquisition and the fulfilment of due diligence requirements.
- c) When an exporting or re-exporting State receives a request from an importing State to verify the authenticity and validity of a CITES permit or certificate, it makes every effort to respond to that request within 15 days of receiving the request.
- d) If an exporting or re-exporting State is not able to verify the validity of a CITES permit or certificate within 15 days of receiving such a request from an importing State, it should provide a preliminary response within 15 days of receiving the request and a final response as soon as possible thereafter. The maximum period for such verification should not exceed 30 days.

5. Regarding practical tools

- a) For the purpose of establishing the chain of custody, the Parties may make use of information systems and traceability tools.
- b) In verifying legal acquisition, Parties may wish to consult existing international legal databases such as ECOLEX, FAOLEX, and the World Legal Information Institute.

- c) Where Parties consider that more certainty is required to establish that a specimen was legally acquired, Parties may have recourse to or request verification by the applicant using forensic tools such as DNA testing, stable isotope analysis, and radiocarbon dating.
- d) Management Authorities may use for their convenience the rapid guide for verifying legal acquisition below.

6. Rapid guide for the verification of legal acquisition

Whenever the specimen of a CITES-listed species is exported, to verify legal acquisition, the Management Authority may ask itself several questions:

1. Is there a requirement to verify legal acquisition under CITES?

Yes, where the specimen is exported under Articles III, IV, V of the Convention, see also Annex II to the draft resolution.

2. Is there a high risk the specimen may have been acquired illegally?

See paragraphs 1 c) and d) to the present annex.

3. Depending on the risk assessment and circumstances, is it necessary and practicable for the applicant to provide evidence on the entire chain of custody?

4. Is the evidence submitted by the applicant sufficient to demonstrate legal acquisition? If not, what additional evidence should be required?

See the draft resolution, paragraphs 3 c) and 5 of the present Annex.

5. If the Management Authority is satisfied that the specimen has been legally acquired, what kind of information it is practicable to share in Box 5 of the standard CITES document?

See paragraph 2 d) to the present Annex.

6. If the Management Authority is satisfied that the specimen has been legally acquired, what documents / other evidence is it practicable to keep for the record?

See the draft resolution, paragraph 3 f)

Annex 2 [to the Draft Resolution]

Exemptions and other special provisions requiring the verification of legal acquisition or other legal findings

The Conference of the Parties has recommended that verification of legal acquisition and other legal findings, such as verifying the date of acquisition, be made in the following circumstances.

Breeding/parental stock of specimens bred in captivity or artificially propagated

1. Pursuant to Resolution Conf. 10.16 (Rev.) on *Specimens of animal species bred in captivity*, paragraph 2 b ii), and Resolution Conf. 11.11 (Rev. CoP17) on *Regulation of trade in plants*, paragraph 1 b i), a Management Authority of the State of export should verify legal acquisition of the breeding/parental stock of specimens bred in captivity or artificially propagated to be exported under Article VII, paragraphs 4 and 5 of the Convention.

'Pre-Convention' specimens

2. In accordance with Article VII, paragraph 2 of the Convention and pursuant to Resolution Conf. 13.6 (Rev. CoP16) on *Implementation of Article VII, paragraph 2, concerning 'pre-Convention' specimens*, to authorize the export of a 'pre-Convention specimen', a Management Authority shall be satisfied that a specimen was acquired before the provisions of the Convention applied to it and should therefore establish the date of acquisition or the earliest provable date on which it was first possessed by any person.

Specimens of Appendix I and II species taken in the marine environment not under the jurisdiction of any State

3. Pursuant to Resolution Conf.14.6 (Rev. CoP16) on *Introduction from the sea*, paragraph 2 b), "whenever any specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and is transported into a different State, the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4, respectively, should be applied, with the State in which the vessel that took the specimen is registered being the State of export and the State into which the specimen is transported being the State of import". In those circumstances, the State of export shall verify the legal acquisition of the specimen.
4. In the case of chartering operations, where the provisions of Article III, paragraphs 2 and 3, or Article IV, paragraphs 2, 3 and 4 apply pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 2 c), the State of export shall verify the legal acquisition of the specimen taken in the marine environment not under the jurisdiction of any State.
5. Pursuant to Resolution Conf.14.6 (Rev. CoP16), paragraph 3, the State of introduction, the State of export and the State of import should "take into account whether or not the specimen was or will be acquired and landed:
 - i) in a manner consistent with applicable measures under international law for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and
 - ii) through any illegal, unreported or unregulated (IUU) fishing activity".

Other exemptions and special provisions

6. Pursuant to Resolution Conf. 13.7 (Rev. CoP17) on *Control of trade in personal and household effects*, paragraph 1 b) 'personal or household effects' within the meaning of Article VII, paragraph 3 of the Convention, means specimens that are legally acquired.
7. Pursuant to Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, paragraph 1 b), a certificate of ownership for a live animal of a species listed in the Appendices may be issued to the personal owner of a legally acquired live animal.
8. Pursuant to Resolution Conf. 11.15 (Rev. CoP12) on *Non-commercial loan, donation or exchange of museum and herbarium specimens*, paragraph 3 e) iv), specimens exported under Article VII, paragraph 6 of the Convention as part of non-commercial loan, donation or exchange between scientists or scientific institutions should be legally obtained specimens.
9. Pursuant to Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, paragraph 12 b), CITES-listed specimens belonging to a travelling exhibition and transported under Article VII, paragraph 7 of the Convention should be legally acquired.
10. Pursuant to Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*, paragraph 1 b), a musical instrument certificate should be issued when a CITES

competent Authority is satisfied that the CITES specimens used in the manufacture of the musical instrument have not been acquired in contravention of the provisions of the Convention.

11. Pursuant to Resolution Conf. 17.9 on *Trade in hunting trophies of species listed in Appendix I or II*, paragraph 2 a), the export of hunting trophies of species listed in Appendix I or II should only be authorized when a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that country for the protection of fauna (among other requirements).

Draft Decisions of the 18th Conference of the Parties

18.AA

Decision directed to the Parties

Parties are invited to:

- a) implement the guidance provided in Resolution Conf. 18.XX;
- b) provide to the Secretariat any relevant information for the verification of legal acquisition of CITES specimens related to the institutional and legal basis; methodologies; tools and the use of guidance in the context of exemptions and other special provisions; and
- c) offer, on request, cooperative assistance to developing countries, for the improvement of their capacity to verify legal acquisition, based on nationally identified needs;

18.BB

Decision directed to the Secretariat

The Secretariat shall:

- a) issue a notification to the Parties requesting input pursuant to paragraph b) of Decision 18.AA;
- b) report at the next meeting of the Standing Committee on the progress made in the implementation of Resolution Conf. 18.XX on the basis of information, experiences and examples submitted by the Parties;
- c) maintain a prominent section regarding the verification of legal acquisition on the CITES website and update it regularly;
- d) request feedback from the regulated public/applicants to identify challenges in demonstrating legal acquisition of specimens; and
- e) develop and disseminate training material for the verification of the legal acquisition of CITES specimens.

18.CC

Decision directed to the Standing Committee

The Standing Committee shall monitor progress in the implementation of Resolution Conf. 18.XX, and specifically, at its 73rd and 74th meetings, assess the report submitted by the Secretariat regarding the implementation of the Resolution by the Parties and where appropriate, make recommendations for improving the verification of legal acquisition by the Parties.

**RESPONSES TO THE QUESTIONNAIRE AND ISSUES DISCUSSED AT THE INTERNATIONAL
WORKSHOP HELD IN BRUSSELS FROM 13 TO 15 JUNE 2018**

PRACTICE OF THE PARTIES TO THE CONVENTION RELATING TO VLA

1. In fulfilment of Decision 17.67, on 20 February 2018, the Secretariat circulated Notification No. 2018/020 to the Parties, "International Workshop on Legal Acquisition Findings", which included a questionnaire regarding the practices of the Parties in fulfilling the requirement to verify legal acquisition. In response to the questionnaire, 25 Parties submitted information regarding their VLA practices under the Convention.¹ Four NGO observer organizations also shared their views on this matter.² This document provides a summary of their responses. The responses received offered the possibility of a comparative analysis of different existing models to develop guidance that can assist the Parties in verifying legal acquisition and its connection with adequate non-detriment findings. The Secretariat expresses its appreciation to the Parties and observers that contributed with their responses to advance this mandate.

Institutional and legal bases

2. The Secretariat requested the Parties to provide information on which authorities are responsible for verifying legal acquisition and whether the legislation of Parties includes the CITES requirement that a specimen of a CITES-listed species not be exported if it is obtained in contravention of any national laws of that State.
3. The responses reveal that most of the Parties have legislation prohibiting acquisition of CITES-listed specimens in contravention of national laws. Some Parties, however, lack legislation requiring the Management Authority to verify whether a CITES-listed specimen was obtained legally. Most Parties identified their Management Authorities as the authorities responsible for conducting VLA, however, in some countries this responsibility appears to be shared by several agencies or different levels of administration, e.g. central or federal, regional or state/province and local.

Methodology and guiding principles.

4. The Secretariat requested Parties to describe the methodology (key principles, general standards, main steps, type of documents required, establishment of the chain of custody) that their Management Authorities follow in verifying legal acquisition. The Parties were asked to indicate whether their approaches differ depending on the taxon involved and the Appendix in which it is listed.
5. The responses of the Parties reveal that some have a rather developed VLA methodology whereas others do not follow any methodology. A number of Parties indicated that the burden of proof in establishing legality of acquisition remains with the person requesting the permit. In assessing the legality of acquisition, the authorities generally rely on documentary evidence (licenses, authorizations to harvest/capture, declarations of breeding, possession permits) presented by an applicant or marking of specimens. Management Authorities tend to consult with national agencies involved in the issuance of such permits and authorizations. Some Parties require the applicant to demonstrate the chain of custody with the purpose of tracing a specimen back to its origin. Some Parties differentiate the type of required evidence depending on the Appendix in which the species is listed (with stricter requirements for Appendix I) and the taxon at issue.
6. Some Parties introduced risk assessment procedures in their methodology. The US regulations (50 CFR 23.60) is one example. The level of scrutiny and amount of information the US Management Authority requires for VLA depends on the level of risk associated with a particular shipment. There is less scrutiny where the risk that the specimen was not legally acquired is low. There is more scrutiny and more detailed information is requested from an applicant, when the risk of illegal acquisition is higher. The determination of risk (from high to low) is based on the following factors, among others:
 - a) the Appendix in which the species is listed (from I to III);
 - b) the origin of the specimen (from wild-collected to wild-born or propagated in a controlled environment to bred in captivity;

¹ State Parties that submitted responses include Australia, Belgium, Brazil, Dominican Republic, Equatorial Guinea, European Union, Germany, Israel, Italy, Madagascar, Malawi, Malta, Montenegro, Mozambique, Netherlands, New Zealand, Peru, Philippines, Senegal, Slovakia, Spain, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

² Observers who submitted responses are Center for International Environmental Law, Defenders of Wildlife, Wildlife Conservation Society, World Wildlife Fund.

- c) the documentation that the plant was grown from a non-exempt seed to documentation that the plant was grown from an exempt seed);
- d) volume of illegal trade;
- e) type of trade (from commercial to non-commercial);
- f) trade by range countries (from countries that do not allow commercial export to countries that allow it in high volumes);
- g) occurrence of the species in a controlled environment in the United States (from uncommon to common);
- h) ability of the species to be bred or propagated readily in a controlled environment (from no documentation to widely accepted information that the species is commonly bred or propagated); and
- i) genetic status of a specimen (from a pure-bred specimen to a hybrid).

Tools and forensic expertise

- 7 Parties were asked to provide information regarding practical tools (such as databases, supply chain controls, inspections, traceability systems, satellite-based monitoring systems etc.) that they use to verify the legality of acquisition.
- 8. As mentioned above, generally, Parties rely on documentary evidence in assessing legal acquisition. A number of Parties have indicated that, in assessing legality, they rely on databases (of export/import/re-export permits, databases of imported specimens, databases of used closed leg rings, databases of specimens bred in captivity). Some Parties (Australia, for example) use vessel monitoring data checked against log books of vessels to ensure that they do not engage in fishing where it is prohibited. This serves as a basis for VLA determinations. Additionally, marking and tagging of animals appears to be a widespread tool of ascertaining legal acquisition. If in doubt, Parties carry out inspections (of breeding facilities, for example). Some Parties (for example, Belgium, Italy, Netherlands, New Zealand, Slovakia, UK, US) use forensic tools, such tools include DNA testing, analysis of stable isotopes, radio carbon dating (e.g. for rhino horns).

Legal acquisition of the parental stock.

- 9. Parties were asked to explain what methodology and tools they use specifically for verifying the legality of acquisition of the parental stock of captive-breeding facilities and facilities that artificially propagate plant specimens.
- 10. Parties that responded to the questionnaire mostly rely on the same tools and methodology to verify legal acquisition of the breeding stock as for VLA of other specimens. Some special tools include registering births of animals bred in captivity and tracking birth rates.
- 11. The Parties have highlighted that there may be difficulties with tracing founder stock acquired a long time ago. As reported by Germany, the European Union has developed draft guidelines on the establishment of the proof of legal acquisition of pre-Convention parental stocks. The draft guidelines take into account that a full proof is often not possible and that where available evidence is inconclusive, a determination may be based on principles of fairness, reasonableness and proportionality.
- 12. The United States uses additional criteria to establish the legality of the founder stock. In particular, the Management Authority checks whether the breeding stock is supplemented by animals taken from the wild; the purpose of removing the founder stock from the wild; the exact location the founder stock was taken from and the date of taking; gear used to capture the founder stock specimens; mortality rates and estimates of production: estimates of exports for the coming year.

Challenges

- 13. With regard to challenges Parties face in conducting VLA, some Parties report a lack of resources – with regard to skills, knowledge, staff, funding, inspection capacity and relevant databases of specimens. Additionally, many Parties experience difficulties in establishing a chain of custody. It may be impossible to trace a specimen back to the original owner where the purchase took place several years ago. Similarly, traceability of the breeding stock for specimens bred in captivity can be challenging. Fraudulent documentation submitted by applicants in support of legality of acquisition is another reported problem.
- 14. The Management Authorities of federal states find it problematic to verify legal acquisition since laws and regulations on the protection of fauna and flora may differ from one state or province to another. An important issue is cooperation and communication between national agencies involved in the verification of legal origin, but also between the Management Authorities of importing and exporting countries.

Policies and practices of importing Parties

15. Parties were asked to explain their approach to the import of specimens accompanied by a CITES export permit or re-export certificate, when reliable information suggests that the specimens were obtained in contravention of the laws for the protection of fauna and flora of the exporting State.
16. Some countries show more deference to the CITES export permit and see it as a proof of legality. Others look beyond the export permit, in some cases, to verify on which basis the State of export established that the specimen was legally acquired, for example, by requesting documentary evidence of legal acquisition. Where evidence suggests that the specimens may have been obtained in contravention of national laws of an exporting country, the Management Authorities of importing countries generally consult with the Management Authority of the exporting country to clarify what the VLA was based on.
17. The EU has put in place legislation (Commission Regulation 865/2006) authorizing the Management Authorities not to issue an import permit in case the Management Authority of the exporting country does not provide satisfactory information in response to the inquiry regarding the validity of VLA by the Management Authorities of the EU countries.
18. Some Parties impose a set of requirements on private stakeholders to ensure the legality of acquisition of imported specimens. The EU Timber Regulation (Regulation of the European Parliament and Council 995/2010) is an example of a regulation aimed at preventing the import of illegally harvested timber. Under that regulation, operators that place the timber on the market have to maintain a due diligence system, that requires access to certain information, a risk assessment and measures to mitigate the risk of illegally harvested timber being placed on the market. In addition, traders are required to keep records of operators from whom they procured timber and traders to whom they supplied timber, supporting traceability. There is a system of checks by the authorities and penalties for the private entities that do not comply with the regulation.
19. The US Lacey Act (Lacey Act, Section 3372, 16 U.S.C. §§3371-3378) was first passed in 1900 and amended thereafter. Under the Lacey Act, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken, possessed or sold in violation of State or foreign law. Therefore, import, export, sale, acquisition, or purchase of specimens of any CITES-listed species (and other wildlife) that were taken, possessed, transported, or sold in violation of foreign laws is punishable with civil and criminal penalties.

Final observations

20. The draft resolution in Annex 1 has been developed by the Secretariat taking into account the common approaches of the Parties to the verification of legal acquisition, as described above.

COMMENTARY REGARDING RELEVANT LEGAL FRAMEWORK

1. The sections of this Annex provide an overview of the CITES legal framework as it is relevant to the requirement of the verification of legal acquisition. The first section explains the legal provisions of the Convention that impose an obligation on Parties to verify legal acquisition. The second section summarizes the provisions of relevant resolutions of the Conference of the Parties, which, in one form or another, contain the requirement that specimens be legally acquired. The third section addresses the issue of pre-Convention specimens. On the basis of these provisions, the Secretariat has put together Annex II to the draft resolution.

I. ARTICLES III, IV, AND V OF THE CONVENTION: OBLIGATIONS OF EXPORTING PARTIES

2. VLA must be done by the Management Authority of the State of export before issuing the CITES-compliant export permit under Article III, paragraph 2 (b), Article IV, paragraph 2 (b), and Article V, paragraph 2 (a) of the Convention. The Convention therefore places considerable responsibility on the CITES Management Authorities of the States of export to ensure that specimens of listed species entering international trade are of legal origin. The obligation of VLA extends to the export of specimens of all CITES-listed species, be it Appendix I, II or III. With regard to Appendix III, only the State or States that included the species in that Appendix are under the obligation to conduct VLA.
3. Although some Parties have deployed significant efforts to verify legality, there is no detailed guidance to synthesize and harmonize the content of the minimum requirements for conducting VLA. The Conference of the Parties has recommended, however, that 'exporting Parties should not proceed with any export of specimens of any CITES-listed species without evidence of legal origin of specimens of the species' [Resolution Conf. 12.3 (Rev. CoP17), paragraph 27 a)]. This implies that the Management Authority of the State of export should base its determination of legality on evidence.

II. RELEVANT PROVISIONS OF THE RESOLUTIONS OF THE CONFERENCE OF THE PARTIES

Obligations of exporting Parties for specimens exported under the exemptions of Article VII

Specimens bred in captivity or propagated artificially

4. Where permits are applied for, to export captive-bred animal specimens and artificially propagated plant specimens of CITES-listed species, the Management Authority should verify the legal acquisition of the breeding stock, which includes the ensemble of the animals in the operation that are used for reproduction.¹ The Conference of the Parties has included the requirement of the verification of legal acquisition in the interpretation of the terms 'bred in captivity' and 'artificially propagated' used in Article VII, paragraphs 4 and 5 of the Convention in Resolutions Conf. 10.16 (Rev.) and Conf. 11.11 (Rev. CoP17).
5. Specifically, Resolution 10.16 (Rev.) states in paragraph 2 b) ii) that the term 'bred in captivity' shall apply only if the breeding stock was established in accordance with the provisions of relevant national laws and is maintained without the introduction of specimens from the wild, except for the occasional addition of animals, eggs or gametes, in accordance with the provisions of relevant national laws (among other requirements).
6. With regard to plant specimens, Resolution Conf. 11.11 (Rev. CoP17), paragraph 2 interpreted the term 'artificially propagated' to mean grown under controlled conditions from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules that either are exempt from the provisions of the Convention or have been derived from cultivated parental stock. Paragraph 1 b) i) of the Resolution requires that the cultivated parental stock be established in accordance with the provisions of relevant national laws.
7. It is noted that none of the Resolutions explicitly state that the Management Authority should satisfy itself with regard to the legal acquisition of breeding / parental stock, which seems to represent an important gap in the regulatory framework for captive breeding and artificial propagation. With the view to making explicit this recommendation and in light of the comments of the Parties, the Secretariat has suggested paragraph 1 in Annex II to the draft resolution.

Personal and household effects

8. Article VII, paragraph 3 of the Convention, provides a limited exemption from the provisions of Article III, IV and V for those specimens. Since the Convention does not define what personal and household effects are, the Conference of the Parties provided additional guidance with regard to this exemption in Resolution

¹ Resolution Conf. 10.16 (Rev.), paragraph 1 c).

Conf. 13.7 (Rev. CoP17). According to Resolution Conf. 13.7 (Rev. CoP17), paragraph 1, the term 'personal or household effects' contained in Article VII, paragraph 3, means specimens that are:

- a) personally owned or possessed for non-commercial purposes;
- b) legally acquired; and
- c) at the time of import, export or re-export either:
 - i) worn, carried or included in personal baggage; or
 - ii) part of a household move.

9. Notably, the Conference of the Parties decided that one of the elements of the definition of 'personal and household effects' is that such specimens should be legally acquired. Annex 1 to the Resolution Conf. 13.7 (Rev. CoP17), paragraph 12, further clarifies that legal acquisition refers to domestic law.

10. Furthermore, by virtue of Resolution Conf. 10.20, paragraph 1 a), the Conference of the Parties provided guidance regarding cross-border movements of personally owned live animals that are based and registered in the owner's State of usual residence. The Resolution states that a Management Authority should "not issue a certificate of ownership for a live animal of a species listed in the Appendices that is a personal or household effect unless it is satisfied that the live animal is legally possessed by the applicant and that the animal has not been acquired in contravention of the provisions of the Convention."

Exchange between scientific institutions

11. Article VII, paragraph 6 of the Convention provides an exemption from the provisions of Articles III, IV and V relating to non-commercial loan, donation or exchange between scientists or scientific institutions. In Resolution Conf. 11.15 (Rev. CoP12), the Conference of the Parties has warned against the abuse of the exemption and noted that "it should be limited to shipments of legally obtained specimens". The Conference of the Parties further clarified that the exemption should include "frozen museum specimens, duplicate herbarium specimens, and all other types of scientific specimens named in Article VII, paragraph 6, including those that are legally collected in one State for shipment to another State as non-commercial loans, donations, or exchanges". The references to 'legally obtained' and 'legally collected' specimens do not provide any detail on what the scope of any such VLA should be, i.e. limited to the national laws for the protection of the fauna and flora or extending to a broader set of laws.

Travelling exhibitions

12. Article VII, paragraph 7 of the Convention provides that a Management Authority of any State may waive the requirements of Articles III, IV and V of the Convention and allow, under certain conditions, "the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition". Resolution Conf. 12.3 (Rev. CoP17) recommended that the Parties issue a travelling exhibition certificate to specimens being part of a travelling exhibition provided that, among other conditions, those specimens were legally acquired. Like in the case of other exemptions above, the Resolution does not specify under what legislation the determination is to be made.

VLA by the Management Authorities of importing Parties

13. Whereas exporting countries carry the responsibility for authorizing the initial export of a specimen of a CITES-listed species, cooperation and support from importing countries are essential to ensure the legality of trade. In light of this, the Conference of the Parties has recommended that importing countries exercise certain due diligence when confronted with the trade of specimens in violation of laws of a CITES Party. The Conference of the Parties has recommended in Resolution Conf. 11.3 (Rev. CoP17), paragraph 2 e) that:

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:

- i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with copies of all documentation relating to the transaction; and*
- ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention.*

14. In Resolution Conf. 12.3 (Rev. CoP17), paragraph 5 j), the Conference of the Parties has recommended that 'Parties not authorize the import of any specimen if they have reason to believe that it was not legally acquired in the country of origin'. These provisions reinforce a legal basis for the Management Authorities of importing countries to subject to scrutiny the CITES export permit where there is indication that the specimen was acquired in violation of the laws of the State of export.

15. In Resolution Conf. 12.3 (Rev. CoP17), paragraph 27 b), the Conference of the Parties has also addressed the issue of court-ordered export permits and recommended that:

upon receiving credible information or intelligence, importing countries should reject shipments of specimens of species accompanied by export permits issued under court order without the required CITES findings. The importing Party should contact the exporting Party to seek confirmation that a non-detriment finding by the Scientific Authority and a legal acquisition finding by the Management Authority were made.

16. Resolutions Conf. 11.3 (Rev. CoP17) and Conf. 12.3 (Rev. CoP17) suggest that where doubts regarding the legality of origin of a specimen arise, the importing country should consult the authorities of the exporting country. Furthermore, Resolution Conf. 12.3 (Rev. CoP17) indicates that the absence of a VLA by the Management Authority of an exporting country may serve as a basis for the rejection of the shipment by an importing country.

Policies of re-exporting Parties

17. Although the obligation of re-exporting countries to verify the legality of acquisition is not stated explicitly in the Convention, the Conference of the Parties has recommended in paragraph 5(i) of Resolution Conf. 12.3 (Rev. CoP17) that:

no export permit or re-export certificate be issued for a specimen known to have been acquired illegally, even if it has been imported in accordance with the national legislation unless the specimen has previously been confiscated.

18. Therefore, it is incumbent on the Management Authorities of the re-exporting Parties to inquire into the basis for the VLA made by the exporting Party.

Obligations of Parties concerning specimens of Appendix I and II species taken in the marine environment not under the jurisdiction of any State

19. Verification of legal acquisition has to be made in certain situations where specimens of CITES species are taken in the marine environment not under the jurisdiction of any State. To facilitate the implementation of trade controls for "introduction from the sea", the Conference of the Parties, in Resolution Conf. 14.6 (Rev. CoP16), adopted additional guidance, which clarifies when a VLA has to be made and what other legal considerations have to be taken into account.

20. In the case that a vessel registered in one State takes a specimen of a species included in Appendix I or II in the marine environment not under the jurisdiction of any State and transports it into a different State, the provisions of Article III, paragraphs 2 and 3 (for species in Appendix I), or Article IV, paragraphs 2, 3 and 4 (for species in Appendix II) apply. In such scenario, the State in which the vessel that took the specimen is registered is treated as the State of export and the State into which the specimen is transported is treated as the State of import.² This transaction therefore follows the same provisions as other import/export transactions, and the State of export is under the obligation to do a VLA.

21. Only when any specimen of a species included in Appendix I or II is taken in the marine environment not under the jurisdiction of any State by a vessel registered in one State and is transported into that same State, the provisions of Article III, paragraph 5, or Article IV, paragraphs 6 and 7 regarding "introduction from the sea"³ – with that State being the State of introduction.⁴ Introduction from the Sea is therefore a one-state

² Resolution Conf. 14.6 (Rev. CoP16), paragraph 2 b).

³ The concept of "introduction from the sea" under Article III, paragraph 5, and Article IV, paragraphs 6 and 7 is defined in Article I, paragraph (e) of the Convention as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State". While introduction from the sea of specimens of species included in Appendix I and II is regulated by the Convention, these provisions do not apply to specimens of the Appendix III-listed species.

⁴ Resolution Conf. 14.6 (Rev. CoP16), paragraph 2 a).

transaction. Article III and IV of the Convention provide for the obligation of the State of introduction to make a non-detriment finding, but not a VLA.

22. Resolution 14.6 (Rev. CoP16) also provides guidance for the determination of the State of Export or State of introduction in the case of chartering arrangements.⁵ Depending on the arrangement, the transaction may be treated as export-import with the obligation to conduct a VLA or as introduction from the sea – with no such obligation.
23. Additionally, whenever Appendix I and Appendix II specimens are taken in the marine environment not under the jurisdiction of any state, the Conference of the Parties has recommended that the State of introduction, State of export and State of import take into account additional circumstances of acquisition [in Resolution Conf. 14.6 (Rev. CoP16), paragraph 3]. That examination is of a different scope and nature than the VLA discussed above because, rather than focusing on national legislation, it focuses on international law. Specifically, the Conference of the Parties recommended that:

... in satisfying itself that the provisions of the Convention are met:

- a) the State of introduction, prior to issuing a certificate of introduction from the sea;*
- b) the State of export, prior to issuing an export permit; and*
- c) the State of import, prior to issuing an import permit, or when presented with an export permit:*

take into account whether or not the specimen was or will be acquired and landed:

- i) in a manner consistent with **applicable measures under international law** for the conservation and management of living marine resources, including those of any other treaty, convention or agreement with conservation and management measures for the marine species in question; and*
- ii) through any illegal, unreported or unregulated (IUU) fishing activity.*

24. To summarize, whenever Appendix I and Appendix II specimens are taken in the marine environment not under the jurisdiction of any state, the State of import, State of export and the State of introduction should take into account the circumstances described in the previous paragraph and, where export-import provisions apply, shall make a VLA.

II. PRE-CONVENTION SPECIMENS

25. In their responses to the pre-workshop questionnaire, a number of Parties discussed their practices relating to the identification of pre-Convention specimens. This discussion reveals that the finding regarding the pre-Convention specimens, while being different from a VLA, is related.
26. If a specimen was acquired before the provisions of the Convention applied to it, it fulfils the conditions of the exemption of Article VII, paragraph 2. Therefore, Articles III, IV and V of the Convention do not apply to that specimen and there is no obligation to verify legal acquisition. Although some Parties may verify legal acquisition even for a pre-Convention specimen, such verification is not based on CITES provisions, since the specimen is not covered by CITES.
27. It is noted, however, that, under Resolution Conf. 13.6 (Rev. CoP16), Parties issuing pre-Convention certificates should be satisfied that the specimen was acquired before the provisions of the Convention applied to it and identify the precise date of the acquisition of a specimen or the date before which it was obtained.

⁵ *The review of those rules goes beyond the scope of the present document.*