

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

Seventh Meeting of the Conference of the Parties

Lausanne (Switzerland), 9 to 20 October 1989

Consideration of Proposals for Amendment of Appendices I and II

Other Proposals

PROPOSALS FOR AMENDMENT OF RESOLUTION CONF. 5.11

This document has been prepared and is submitted by the Secretariat.

Introduction

1. At the second meeting of the African Elephant Working Group (Gaborone, July 1989), substantial discussions were held regarding the sale of ivory stocks, either in Africa or in consuming countries, in case of a transfer of the African elephant (Loxodonta africana) from Appendix II to Appendix I.
2. It was made clear that the terms of Resolution Conf. 5.11, recommendation h), are such that, in the case of ivory, legal trade would be restricted to pre-Convention specimens, acquired before the African elephant was listed for the first time in the CITES appendices (i.e., 26 February 1976, when Loxodonta africana was listed by Ghana in Appendix III), in addition to legitimate hunting trophies and imports for non-commercial purposes or under exemptions provided by Article VII.
3. While some considered that the implementation of Resolution Conf. 5.11, recommendation h), would prevent the constitution of new ivory stocks between the time of discussions and the date of entry into force of the listing in Appendix I, some others considered such an implementation unfair because stocks were constituted with ivory acquired in full compliance with CITES regulations.
4. The legality of Resolution Conf. 5.11, recommendation h), was also contested by some speakers as it implies a retroactive implementation of a legal text.

Although no review of the situation has been made, it does not seem likely that many Parties are in a position to implement this particular recommendation.

(See also document Doc. 7.43.1, paragraphs 17 to 20).

Resolution Conf. 5.11

5. Resolution Conf. 5.11 on the definition of the term "Pre-Convention Specimen" was adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985) after extensive discussions regarding recommendation h), the only part of the Resolution, together with the last paragraph, that deals with the transfer of taxa from one annex to another.
6. To illustrate the conditions under which this recommendation was adopted: the following information is provided:

References: Proceedings of the Fifth Meeting of the Conference of the Parties: documents Plen. 5.7, section XIII 11. (pp. 115-116), Com. 5.25 (pp. 212-214), Doc. 5.31, and Doc. 5.31 Annex (pp. 473-480).

It is instructive to compare the text of paragraph h) of the draft resolution that appears on pp. 213-214 with the text of Resolution Conf. 5.11 that was finally adopted by the Conference of the Parties. The former reads as follows:

"(The Conference of the Parties recommends) that specimens which were acquired in compliance with the laws on the protection of fauna and flora and before the date of entry into force of the transfer of the species involved from one appendix to another be treated as follows:

- in the case of a species uplisted, i.e. from Appendix III to II or I, or from Appendix II to I, the specimens concerned shall remain subject to the provisions applicable to them at the date of acquisition;
- in the case of a species downlisted, i.e. from Appendix I to II or III or where the species is deleted from the appendices, the specimens concerned shall be subject to the provisions applicable to them at the time of export, re-export or import".

In contrast, Resolution Conf. 5.11, paragraph h), as adopted, reads:

"(The Conference of the Parties recommends) that in the case of a species uplisted, i.e. from Appendix III to II or I, or from Appendix II to I, or downlisted from Appendix I to II or III specimens concerned shall be subject to the provisions applicable to them at the time of export, re-export or import".

The debate on this issue (pp. 115-116) indicates clearly that the revised Resolution was intended to prohibit trade in existing stocks of specimens of species uplisted from Appendix II or III to Appendix I.

Proposed Amendments

7. If it is decided to amend Resolution Conf. 5.11, paragraph h), this can be done in two ways, either in reverting to the text prepared in the draft resolution (see 6. above), recognizing that the retroactive implementation of a law is not acceptable, or by amending paragraph h) to exclude ivory, taking into consideration the large volume of stockpiled ivory in producer and consumer countries.

A draft resolution is attached as Annex. It provides, in bold characters, the alternative proposals for amendment of Resolution Conf. 5.11.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Definition of the term "Pre-Convention Specimen"

RECALLING that Article VII, paragraph 2, of the Convention provides an exemption from the requirements of Articles III, IV and V where a Management Authority of the state of export or re-export is satisfied that a specimen was acquired before the provisions of the Convention applied to that specimen and issues a certificate to that effect;

NOTING that the implementation of that article has given rise to serious difficulties, both of a technical and of a more fundamental nature;

NOTING that Resolution Conf. 4.11, adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983), only partly solved the issues it addressed and did not address the remaining problems related to the exemption;

NOTING that recommendation h) of Resolution Conf. 5.11, adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985), inappropriately addressed the problem of the status of specimens of a species transferred from one appendix to another;

OR

NOTING that recommendation h) of Resolution Conf. 5.11, adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985), addressed the problem of the status of specimens of a species transferred from one appendix to another in a way which is inappropriate considering the extent of large stocks of ivory in both producer and consumer countries;

CONSCIOUS of the aims and spirit of the Convention;

RECOGNIZING the crucial role of importing Parties in implementing Article VII, paragraph 2, of the Convention, and the authority of importing Parties to apply stricter domestic measures under Article XIV, paragraph 1, to specimens covered by pre-Convention certificates;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

DECIDES to revoke Resolutions Conf 4.11 and Conf. 5.11, adopted at its fourth and fifth meetings;

RECOMMENDS

- a) that for the purposes of Article VII, paragraph 2, of the Convention, the date on which a specimen is acquired be:
 - 1) for live and dead animals or plants taken from the wild: the date of their initial removal from their habitat; or
 - 11) for parts and derivatives: the date of their introduction to personal possession, whichever date is the earliest;

- b) that the certificate referred to in Article VII, paragraph 2, be issued by a Management Authority of an exporting country only where it is satisfied that at the date on which a specimen was acquired:
- the species involved was not listed in one of the Convention appendices; or
 - its country was not a Party to the Convention; or
 - the specimen concerned was subject to a reservation entered by its country with regard to the species involved;

- c) that the certificate referred to in Article VII, paragraph 2, be issued by a Management Authority of a re-exporting country only where it is satisfied that at the date on which a specimen was acquired:
- the species involved was not listed in one of the Convention appendices; or
 - the country of origin was not a Party to the Convention; or
 - the specimen concerned was subject to a reservation entered by the country of origin with regard to the species involved;

in addition to the second and third considerations, its own country:

- was not a Party to the Convention; or
 - was treated as a state not a Party to the Convention with respect to trade in the species concerned under Article XXIII, paragraph 3, of the Convention;
- d) that a Management Authority of an importing country recognize a pre-Convention certificate issued by another Party state only if the date of acquisition of the specimen is anterior to the date at which the Convention entered into force in the country of import for the specimen concerned;
- e) that Parties which issue a pre-Convention certificate either indicate on this certificate, the precise date of acquisition of the specimen concerned or certify that this specimen was acquired before a specific date;
- f) that a specimen be not qualified for the Article VII, paragraph 2 exemption if neither of the dates referred to in e) can be determined;
- g) That Parties do not accept pre-Convention certificates which have not been issued in compliance with this Resolution; and
- h) that specimens which were acquired in compliance with the laws on the protection of fauna and flora and before the date of entry into force of the transfer of the species involved from one appendix to another be treated as follows:
- in the case of a species uplisted, i.e. from Appendix III to II or I, or from Appendix II to I, the specimens concerned shall remain subject to the provisions applicable to them at the date of acquisition; and

- in the case of a species downlisted, i.e. from Appendix I to II or III, or where the species is deleted from the appendices, the specimens concerned shall be subject to the provisions applicable to them at the time of export, re-export or import; and

OR

- h) that in the case of a species uplisted, i.e. from Appendix III to II or I, or from Appendix II to I, or downlisted from Appendix I to II or III specimens concerned shall be subject to the provisions applicable to them at the time of export, re-export or import, except for ivory of the African elephant acquired between the date of the first listing of this species in a CITES appendix (26 February 1976, Appendix III) and the date of entry into force of its listing in Appendix I (18 January 1990), which will keep its status of specimen of an Appendix II or III species; and

CALLS on Parties to take any necessary measures in order to prevent the undue acquisition of specimens of a species between the date at which the Conference of the Parties approves the inclusion of that species in Appendix I and the date at which the inclusion takes effect.