

Interpretation and Implementation of the Convention
INTERPRETATION AND APPLICATION OF QUOTAS

This document has been prepared and submitted by Namibia.

Background

Quotas have become an important aspect of the regulation of trade in various species under CITES. They typify the kind of mechanism by which CITES Parties have co-operated as called for by UNEP Executive Director Dr Mostafa K. Tolba at the eighth meeting of the Conference of the Parties:

CITES is under threat. ... There are complaints – loud complaints – from a number of developing countries that the rich are more interested in making the Third World into a natural history museum than they are in filling the bellies of its people.

As I see it, the most important questions regarding CITES future are: ... CITES role in promoting sustainable development in the Third World. Do you see CITES principal role as preserving species, or in utilizing them for development?

CITES does not provide a legal basis for turning the world into a zoo or into a museum. The philosophy that underlies it is one of conservation and utilization, rather than outright preservation.

The original intent of CITES should be upheld. CITES should be used to guide States towards preserving what needs to be strictly preserved ... and more importantly towards the sustainable utilization of these resources.

One way or another we have to find an economic incentive to preserve ... habitat.

I am aware that there are large and powerful groups — mainly in the rich, industrialized countries — which consider that banning of trade ... is the solution.

Quotas have been employed by the Conference of the Parties in several ways. Two Appendix-I species, the leopard and the cheetah, have been subject to quotas set by the Conference to allow trade in hunting trophies and individual skins.

Several other Appendix-I species, mostly crocodylians, have been transferred to Appendix II under special criteria (Resolutions Conf. 5.21 and 7.14), including the establishment of quotas approved by the Parties.

Also, Resolution Conf. 8.9, on trade in wild-caught specimens of Appendix-II species, contains quota-setting as one of its principal mechanisms.

This paper, and the proposed draft resolution that it supports, are focused on the Appendix-I species, since those require the issuance of an import permit as well as an export permit, and this is where the varying application by Parties has given rise to serious problems.

It is clear from a study of the history of the employment of quotas by the Conference of the Parties that it is the intention of the Parties that the establishment of a quota should satisfy the requirements of Article III for findings by the importing country. This concept has been central to establishment of quotas. The failure of some Parties to implement the quotas in this fashion threatens to undermine the entire system and to interfere with important conservation programmes.

As to the importance of the allowance of limited, non-commercial trade in certain species to the conservation programmes for those species, the following discussion from

the official record of the Committee I discussions on the listing of the markhor *Capra falconeri* makes it clear:

The delegation of Pakistan, a range State, supported the proposal [by the U.K.] in principle, but was concerned that the transfer of the subspecies to Appendix I might cause problems as some populations were subject to limited sport hunting which provided income to local communities. However, they were reassured that Appendix-I listing would not prevent such hunting (Com. I 8.11).

LEOPARDS

The Parties have adopted Resolutions setting forth quotas since the fourth meeting of the Conference of the Parties in Gaborone, Botswana (Conf. 4.13, Conf. 5.13, Conf. 6.9, Conf. 7.7, Conf. 8.10). At the seventh meeting, the Parties made the quota system permanent, except for addition to or changes in the approved quota levels.

During the discussion of a proposal at the eighth meeting to transfer the leopard to Appendix II, the following observations were made by TRAFFIC International:

Although trade in hunting trophies of Appendix-I species was already clearly allowed (Resolution Conf. 2.11), it was agreed during the fourth meeting of the Conference of the Parties to make a special provision facilitating non-commercial exports of *P. pardus* hunting trophies and skins for personal use. Resolution Conf. 4.13 recognized that *P. pardus* "was in no way endangered" in several range States, and established a quota system for non-commercial exports of this species. The quota system provided a clear framework for the licensing (by importing and exporting countries) of non-commercial *P. pardus* skin trade, by laying down the terms under which a transaction would be judged non-detrimental and not for commercial purposes. Since that time Appendix-I export quotas have been reviewed and agreed to by the Parties at each meeting of the Conference of the Parties (Resolutions Conf. 5.13, Conf. 6.9 and Conf. 7.7).

CHEETAHS

Namibia proposed both a transfer to Appendix II with quotas (proposal 9, pursuant to Resolution Conf. 7.14) as well as document Doc. 8.22, which contained a draft resolution suggesting quotas for this Appendix-I species. The proposal said: "the proponents submit ... the attached draft resolution to establish an Appendix-I export quota system for cheetah, which would permit the export of cheetah hunting trophies and skins, subject to similar restrictions first agreed to for the leopard." "Trophy hunting and export of live cheetah have been encouraged in Namibia as an attempt to curb farmers' attempts to eradicate cheetah from their land, and to change their attitude from one of 'kill at all costs' to one where cheetah would be tolerated and accepted." "Trophy hunting is a viable option, which is proving successful in Namibia."

The Proposed Draft Resolution and the CITES System

Quotas have become a mechanism of great importance in the CITES system. They recognize the need to allow the utilization of wild plants and animals, while maintaining the necessary limits on such use. They offer a co-operative mechanism for exporting and importing countries to use to assure that marking and permitting controls are effective. In a political sense, quotas have allowed the CITES Parties to resolve conflicts between those who feel the need to utilize wildlife both for human needs and for conservation benefits,

and those who are concerned that such use will have detrimental effects on the survival of species.

There have been differences, however, in the way that Parties have chosen to deal with the various quota Resolutions as they apply to both Appendix-I and Appendix-II species. For example, some Parties have concluded that the establishment of a quota in a Resolution amounts to satisfaction of the finding required under Article III that the exportation and importation of a specimen within the appropriate quota will not be detrimental to the survival of the species. This is the majority view, and is reflected in *The Evolution of CITES*, written by Willem Wijnstekers, wherein he states that the establishment of the leopard quota "substitute[d] the role of the Scientific Authority".

Other Parties are confused and refuse to recognize the quotas. Refusal to recognize the quota is not co-operation in the spirit of the Convention and burdens everyone. This is having a negative effect on the ability of range States to conserve these species and has wasted the quota Resolutions of the Parties.

The proposed draft resolution (Annex) would confirm the majority practice of the Parties, and would encourage Parties not following this practice to adopt it. This emphasizes the importance of CITES as a forum for international co-operation in the conservation of species and biodiversity. It is elementary that important terms should be defined particularly in this instance where there is confusion that distracts from the purpose of the quota for which it was established.

There is sometimes an assumption that it is always good to prohibit trade in a species and it is always bad to encourage such trade. But that is neither what CITES says, nor is it accepted policy today. It contravenes the intended purpose of the establishment of Appendix-I trophy quotas. Resolution Conf. 8.3 recognized that there can be benefits from the trade of wildlife. This principle has also been confirmed by IUCN, which adopted a resolution on the sustainable use of wildlife at its 1994 General Assembly in Buenos Aires.

From this point of view, it can be just as much a violation of the Convention for a Party to close its borders to trade in a species as it can be for a Party to engage in trade contrary to the requirements of the Convention. This is especially true when the trade has been reviewed by the Parties and a quota has been agreed at a meeting of the Conference of the Parties. It is equally true when trade is taking place within the framework of a quota mechanism established by the Conference of the Parties.

Note from the Secretariat

The Secretariat recognizes the merits of this document and the value of the argumentation presented. It is however conscious that if the draft resolution is adopted, this would not prevent some Parties from implementing stricter domestic measures on the import of specimens of species subject to export quotas, in accordance with Article XIV, paragraph 1.

Doc. 9.51 Annex

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

The Interpretation and Application of Quotas

RECALLING Resolution Conf. 6.7, adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987), calling on Parties to consult with range States prior to taking stricter domestic measures pursuant to Article XIV which may interfere with trade in wild animals and plants and Resolution Conf. 8.21, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), requiring consultation between proposing States and range States;

RECALLING Resolution Conf. 8.3, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), recognizing the benefits of the use of wildlife;

RECALLING in particular the Preamble to the Convention which states that peoples and States are and should be the best protectors of their own wild fauna and flora;

RECOGNIZING the supreme importance of co-operative and mutual action as called for at the United Nations Conference on the Environment and Development in 1992 at Rio de Janeiro and as embodied in the Convention on Biological Diversity;

AWARE that the Parties have set quotas for the export of specimens of the leopard, various crocodilians, and the cheetah;

AWARE that it is the understanding and practice of the majority of Parties that the establishment of quotas by the Parties satisfies the required finding that the export of a specimen will not be detrimental to the survival of the species and that the import of that specimen will not be for purposes detrimental to the survival of the species, provided that the export is within the limits set in the quota;

AWARE however that the failure of some Parties to adhere to this majority understanding has had negative consequences on the conservation of species by range States;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that, whenever the Conference of the Parties has set specific export quotas or has established a mechanism for setting such quotas for a particular species, this action by the Parties satisfies the requirements of Article III, IV and V regarding the finding by a Scientific Authority that the export will not be detrimental to the survival of the species and that the purpose of the import will not be detrimental to the survival of the species, provided that the trade in specimens of the species is within the limits of the quota.