

Interpretation and Implementation of the Convention

INTERPRETATION OF ARTICLE II, PARAGRAPH 2(b), AND ARTICLE IV, PARAGRAPH 3

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| <ol style="list-style-type: none"> 1. Article II of the Convention establishes the fundamental principles and specifies the conditions for including species in the appendices. 2. Paragraph 2 of Article II specifies the conditions for inclusion of species in Appendix II and is divided into two subparagraphs, indicating radically different reasons for inclusion. 3. Under paragraph 2(a), species are included in Appendix II if, because of their biological status, although they are not necessarily threatened with extinction, they may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival. 4. Under paragraph 2(b), species are included in Appendix II, although their biological characteristics do not require it under the terms of paragraph 2(a). These species must be subject to regulation in order to ensure the efficient control of trade in specimens of species included in Appendix II under subparagraph 2(a). 5. Paragraph A of Annex 2b of Resolution Conf. 9.24 recommends inclusion also in Appendix II of species the specimens of which are similar in appearance to those of species included in Appendix I. 6. These provisions are likely to lead to inclusion in Appendix II of a large number of species, particularly plant species, that are not threatened. 7. In addition, paragraph 3 of Article IV of the Convention, concerning the regulation of trade in specimens of species included in Appendix II, requires that each Party shall permanently monitor, through its Scientific | <p>Authority, the export permits for specimens of species included in Appendix II as well as the actual export of these specimens. Each Party is required to ensure that the export of specimens of the species concerned is not detrimental to the biological status of the species or to the role it plays in the ecosystem.</p> <ol style="list-style-type: none"> 8. Paragraph 3 of Article IV makes no distinction between species included in Appendix II under the terms of paragraph 2(a) of Article II, and those included under the terms of paragraph 2(b), and it applies, therefore, in the same way to species potentially threatened and to species that are not. 9. The Management and Scientific Authorities of the Parties within the range of the species are thus under an obligation to gather data on non-threatened species. This requires increasing means, even though the Conference of Parties has recognized on several occasions (Resolutions Conf. 4.7, Conf. 5.3 and Conf. 8.9) that the application of Article IV, paragraph 3, requires considerable human resources and technical and financial means beyond those available to many Parties. The recent report on the improvement of the effectiveness of the Convention confirms this point of view. 10. This attached draft resolution seeks to free the Parties of the duty to collect scientific data on non-threatened species that are included in Appendix II under the terms of Article II, paragraph 2(b), by indicating that their inclusion in Appendix II is the result of their resemblance to other species. The Parties' only obligation will be to issue appropriate certificates for specimens of these species. |
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COMMENTS OF THE SECRETARIAT

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| <ol style="list-style-type: none"> 11. In the operative part of the attached draft resolution, the first paragraph beginning with "DECIDES" appears to relate to the information to be included in the appendices. The Conference of the Parties decided at its ninth meeting that draft resolutions should not include "decisions on the presentation of the appendices" (Decision No. 5 directed to the Parties). 12. The intention of the second paragraph beginning "DECIDES" in the operative part of the attached draft | <p>resolution is to relieve the Parties of an obligation of the Convention. This can not be done except by amending the text of the Convention.</p> <ol style="list-style-type: none"> 13. The Secretariat therefore considers that there would be no useful purpose served by annotating the appendices to indicate species included in accordance with Article II, paragraph 2(b), putting aside the practical difficulty of doing so. |
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DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES
Interpretation of Article II, Paragraph 2(b), and Article IV, Paragraph 3

RECALLING that, under the terms of Article II, paragraph 2(a), of the Convention "all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival";

RECALLING that Article II, paragraph 2(b), permits inclusion in Appendix II of species that "must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control";

TAKING NOTE that Article II, paragraph 2(b), constitutes the legal basis for classification in Appendix II of species the

specimens of which show a similarity in appearance to specimens of species included in Appendix II under Article II, paragraph 2(a);

RECALLING that paragraph A of Annex 2b of Resolution Conf. 9.24, adopted at the ninth meeting of the Conference of the Parties (Fort Lauderdale, 1994), establishing criteria for the amendment of Appendices I and II provides, in addition, the possibility of including in Appendix II species the specimens of which show a similarity in appearance to specimens of species included in Appendix I;

RECALLING that these provisions have been adopted in order to simplify the identification of products, in order to facilitate implementation of the Convention;

CONSIDERING that these provisions may gradually generate the inclusion of a large number of non-threatened species, especially plant species, in Appendix II;

NOTING that Article IV of the Convention, concerning the regulation of trade in specimens of species included in Appendix II, makes no distinction between species that are included in Appendix II because of their biological status and those that are included because of the application of the principle of similarity in appearance;

RECALLING that, under the provisions of Article IV, paragraph 3, the Parties are obliged to ensure that the level of export from their territory of all species included in Appendix II affects neither the biological status of the species concerned nor the ecosystems of their habitat;

TAKING NOTE that Resolution Conf. 4.7, adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983) recognizes "that many Parties exporting Appendix II wildlife are unable to effectively implement Article IV, paragraph 3, of the Convention";

TAKING INTO CONSIDERATION that, for the species included in Appendix II under the provisions of Article II, paragraph 2(b), the Convention requires that the Scientific Authority of the State of export provide the same level of continuous monitoring as that required for species included in Appendix II under the provisions of Article II, paragraph 2(a);

CONSIDERING that this obligation presents major inconveniences, especially that of creating excessive work for the Management and Scientific Authorities of the countries where these species are found; and

TAKING INTO ACCOUNT the limited and insufficient financial and human resources available for conservation programmes and that it is highly prejudicial to assign resources for the monitoring of common species while these resources could be more efficiently used for the management of threatened species;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

CONSIDERS that the differences in the conservation status of these two distinct categories of species justifies a distinct approach for each of the two cases;

DECIDES that species included in Appendix II under the provisions of Article II, paragraph 2(b), should be so identified; and

DECIDES that, with regard to the species thus identified, the Parties have as their only obligation the issuance of appropriate permits and are not required to carry out the research required under the provisions of Article IV, paragraph 3.