

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

Eleventh meeting of the Conference of the Parties
Gigiri (Kenya), 10-20 April 2000

Interpretation and implementation of the Convention

PERSISTENT OFFENDERS

1. This document has been submitted by Israel.

COMMENTS FROM THE SECRETARIAT

- A. Article VIII, paragraph 1(a), of the Convention makes clear that each Party must take appropriate measures to penalize trade conducted in violation of the Convention. The draft resolution in the Annex however proposes the establishment of a system that may be contrary to the rights of individuals or to natural justice. This is of particular concern given the suggestion that persons or businesses should be labelled as "persistent offenders" if they have received even one criminal conviction. This takes no account of the nature of the offence and the imposition of a seven-year ban on trading in CITES-listed specimens would, the Secretariat suggests, inevitably lead to legal challenges.
- B. The draft resolution is likely to be contrary to the legislation concerning the rehabilitation of offenders of some Parties and the Secretariat is aware that the national data protection legislation of several Parties prohibits their Management Authorities from providing details of criminal convictions to the Secretariat. Many Parties would also have to amend their national legislation in order to implement the proposed sanctions.
- C. In addition, the Secretariat recalls that in Resolution Conf.4.6 (Rev) the Conference of the Parties decided "that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat must contain or be accompanied by a budget for the work involved and an indication of the source of funding." The attached draft resolution, however, makes no mention of the budgetary implications of the work proposed to be done by the Secretariat.
- D. Finally, the Secretariat should note that the concept outlined in the attached draft resolution has been discussed by the Wildlife Crime Working Group of ICPO-Interpol, where it failed to receive support.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Persistent offenders

AWARE that there are several persons, businesses and organizations with histories of persistent violation of the Convention;

AWARE also that the judicial systems of several Parties impose especially lenient sentences upon conviction in cases of violation of the Convention, and that such sentences are often regarded by those convicted as little more than a cost of doing business;

CONSCIOUS that such leniency is ineffective as a deterrent to discourage violations of the Convention;

SEEKING an effective alternative solution to deter persistent offenders from continued violation of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that:

- a) the CITES Secretariat compile a master list of persistent offenders, and that such list be circulated to the Management Authority of each Party:
 - i) "persistent offenders" are defined as persons, businesses or organizations that have received at least three civil convictions, or one criminal conviction, involving violation of the Convention during the preceding seven years;
 - ii) the identities of persistent offenders should be provided to the CITES Secretariat by the Management Authorities, along with information concerning any known legal or illegal pseudonyms (aliases, Also Known As [AKA] and Doing Business As [DBA], etc.); and
 - iii) names of persistent offenders will be removed from the CITES master list after seven years has elapsed since the date of the most recent conviction, or upon reversal of the ultimate conviction by a court of appeal; and
- b) Management Authorities not accept any CITES permit upon which a persistent offender is identified as the importer, exporter or re-exporter.