

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

Twelfth meeting of the Conference of the Parties
Santiago (Chile), 3-15 November 2002

Interpretation and implementation of the Convention

General compliance issues

COMPLIANCE WITH THE CONVENTION

1. This document has been prepared by the CITES Secretariat upon the request of the Standing Committee.
2. At its 45th meeting (Paris, June 2001), under the agenda item on the late or non-submission of annual reports, the Standing Committee:

Instructed the Secretariat to prepare for consideration at the 46th meeting an analysis of the range of legal, technical and administrative actions that might be taken in response to problems of non-compliance with the Convention, Resolutions and Decisions, such as the late or non-submission of annual reports, taking into account the need to ensure that such actions do not have a negative conservation impact.

3. At its 46th meeting (Geneva, March 2002), under the agenda item on possible measures for non-compliance, the Standing Committee:

suggested the Secretariat elaborate further on the following: the sequential and graduated nature of responses to non-compliance, including a possible flow chart indicating various measures; more emphasis on measures for facilitating compliance and working cooperatively with Parties to do so; clarification of the legal basis for the non-compliance responses listed in paragraph 13 with reference to the Vienna Convention on the Law of Treaties and an indication as to whether amendments to CITES provisions are required; the possible reasons for non-compliance; the respective roles of the Secretariat, the Standing Committee, the Conference of the Parties and other bodies as well as an indication as to whether those roles are properly reflected in the Resolutions that set forth their functions; incentives for compliance; and means to ensure that measures used to address non-compliance do not have any negative conservation impact.

The Standing Committee also:

Instructed the Secretariat to prepare a document for the 12th meeting of the Conference of the Parties that does not require any decision by the Conference of the Parties and does not involve any proposed revision of Resolution Conf. 11.3. This document should comprise a further elaboration of SC46 Doc. 11.3 incorporating all of the points made by Standing Committee members during their discussion on this agenda item.

Terminology and context

4. 'Compliance' is defined in the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2002) as "the fulfilment by the contracting parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental

agreement". It follows that 'non-compliance' essentially is the failure to fulfil those obligations. A 'compliance scheme' comprises the legal basis, institutions, procedures and measures used to promote and facilitate compliance (or prevent non-compliance) as well as to determine non-compliance and bring a party back into compliance.

5. The attention paid to compliance with environmental law, at both national and international levels, has increased significantly over the past few years partly in response to the continued development of new instruments even as existing ones fail to be adequately implemented. This heightened interest is reflected in the UNEP Guidelines mentioned above as well as numerous meetings and publications. CITES, however, has been ahead of its time in terms of the Convention's longstanding emphasis on compliance and enforcement. CITES measures to ensure compliance have been developed by the Parties over a number of years and continue to evolve. They have proven to be effective in improving compliance with the Convention and have probably contributed to the absence of disputes between and among Parties to the Convention. Nevertheless, as with other aspects of the Convention, it is worth evaluating the effectiveness of these measures and determining whether any changes are necessary to enhance the operation of the Convention. For example, Parties have suggested that more attention should be paid to identifying the reasons for non-compliance, providing compliance incentives, assessing the impact of various compliance measures and ensuring that compliance measures are applied consistently.
6. Intergovernmental discussions about compliance show that it is often a sensitive and complicated topic, even though non-compliance affects all parties to and the operation of a treaty. It is all the more refreshing and promising, therefore, that this document results from an initiative by the Parties.

Compliance in general

7. A treaty is binding upon a party, in respect of its entire territory, and must be performed by it in good faith (Vienna Convention on the Law of Treaties, Articles 26 and 29). A treaty even can create obligations or rights for a third State, that is, a non-Party with its consent (Vienna Convention on the Law of Treaties, Articles 34, 35 and 36).
8. Measures taken by CITES Parties to deal with non-compliance have their basis in the legally-binding text of the Convention, interpretative Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice. In general a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. The context of interpretation comprises, in addition to the text of the treaty, its preamble and annexes. Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation and any relevant rules of international law applicable in the relations between parties should also be taken into account (Vienna Convention on the Law of Treaties, Article 31). Supplementary means of interpretation include the preparatory work of the treaty and the circumstances of its conclusion (Vienna Convention on the Law of Treaties, Article 32).

Compliance-related provisions in Multilateral Environmental Agreements

9. Many of the newer multilateral environmental agreements (MEAs) have specific articles on 'non-compliance' or 'compliance' (e.g. Article 8 of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer or Article 18 of the 1997 Kyoto Protocol and Article 34 of the 2000 Cartagena Protocol on Biosafety). Taken as a whole, these general 'enabling' provisions mandate parties to consider and approve cooperative procedures and institutional mechanisms to promote compliance, offer advice or assistance where appropriate and determine as well as address cases of non-compliance.
10. The text of CITES goes further than a general enabling provision and expressly contains, in Article XIII on International measures, cooperative procedures and institutional mechanisms for dealing with

possible non-compliance. This text is further elaborated by Resolution Conf. 11.3, Resolution Conf. 8.9 (Rev.) and Resolution Conf. 11.18 as well as related Decisions and specific cases of application. Although Resolutions and Decisions of the Conference of the Parties generally are considered non-binding, they have significant legal force and persuasiveness because they are based on the text of the Convention and often adopted by consensus. Article XIV on the Effect on domestic legislation and international conventions recognizes the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof. This provision has been used on occasion to support Parties' implementation of a recommendation to suspend trade. It should be clarified, however, that the making of such a recommendation by the Conference of the Parties or the Standing Committee has a multilateral rather than a unilateral character.

11. During the past two years, the legal basis for compliance measures within MEAs such as CITES has been a focus of extensive discussions among Governments, the Secretariat, the World Trade Organization, the United Nations Conference on Trade and Development, UNEP and the secretariats of other MEAs as they seek to enhance synergies and mutual supportiveness of MEAs and the WTO [see, for example, WTO/CTE Compliance and Dispute Settlement Provisions in the WTO and in MEAs, Note by the WTO and UNEP Secretariats (WT/CTE/W/191; 6 June 2001) available at <http://www.wto.org>]. In this process, there has been recognition that the environment and trade regimes stand on equal legal footing and that deference should be given to each in its respective field of expertise. The general acceptability of multilateral trade measures as distinct from unilateral trade measures also has been acknowledged.
12. The Convention and interpretative decisions of CITES bodies specify the institutions, procedures and measures related to compliance. They also set forth the obligations or commitments against which compliance is to be measured, the criteria to be used in determining compliance and the consequences of non-compliance. Amendments to the Convention do not appear necessary but additions to Resolution Conf. 11.1, Resolution Conf. 11.3, and perhaps other Resolutions, might be considered after Parties review and discuss this document.

CITES bodies involved with compliance

13. Article XI of the Convention on the Conference of the Parties, paragraph 3, requires the Parties to review regularly the implementation of the Convention and authorizes the Conference of the Parties, where appropriate, to make recommendations for improving the effectiveness of the Convention. Article XIII provides the Conference of the Parties with authority to make "whatever recommendations it deems appropriate" in relation to allegations of unsustainable trade or ineffective implementation. The Secretariat's reports to the Conference of the Parties and CITES subsidiary bodies, e.g. on annual reports, the Review of Significant Trade, national legislation and alleged infractions and other implementation problems, provide much of the basis on which the Parties evaluate compliance with the Convention.
14. Resolution Conf. 11.1 on the Establishment of Committees empowers the Standing Committee to carry out such interim activities on behalf of the Conference of the Parties as may be necessary and to provide guidance and advice on matters brought to it by the Secretariat in the exercise of its function. The Conference often instructs or delegates its authority to the Standing Committee, e.g. pursuant to Resolution Conf. 8.4, to consider 'appropriate measures', which may include restrictions on the trade in specimens of CITES-listed species. In various instances, e.g. pursuant to Resolution Conf. 8.9 Rev.), the Secretariat recommends to the Standing Committee that all Parties immediately take strict measures including as appropriate suspension of trade in the affected species with a particular Party. Given the significant role played by the Standing Committee in relation to compliance issues, additional consideration should be given to better reflecting this role in Resolution Conf. 11.1 (see document CoP12 Doc. 13.3).

15. Under Resolution Conf. 11.1, the Animals and Plants Committees are authorized to formulate recommendations for remedial measures for those species for which trade is believed to be having a detrimental effect.
16. Article XII of the Convention on The Secretariat, paragraph 2 (d), requires the Secretariat "to study the reports of Parties and to request from them any further information necessary to ensure implementation of the Convention". Subparagraph (e) further requires the Secretariat "to invite the attention of the Parties to any matter pertaining to the aims of the present Convention". Subparagraph (h) also requires the Secretariat "to make recommendations for the implementation of the aims and provisions of the Convention...".
17. To strengthen the Secretariat's capacity to address compliance issues within the Convention and provide relevant advice or assistance, a Legislation and Compliance Unit was created. It comprises a Chief, Senior Enforcement Officer, Legal and Trade Policy Officer and Unit Secretary. Such a unit is unique among MEAs, though there is a Special Adviser Compliance within the Secretariat for the United Nations Framework Convention on Climate Change. Governments, the Secretariats of other MEAs – notably the Montreal Protocol on Substances that Deplete the Ozone Layer – and researchers have expressed interest in the CITES structure.

Compliance procedures in CITES

Guiding principles

18. One Party has said that the compliance scheme currently used in CITES is unique, pragmatic, non-bureaucratic and inexpensive – and that Parties should not tamper with what works or attempt to mirror the compliance schemes in other MEAs. If innovative and effective practices within those MEAs might have useful implications for CITES, however, they would seem worth identifying.
19. All of the elements of a 'compliance scheme' (see paragraph 4) exist in CITES, so it is possible to speak of a 'CITES compliance scheme'. As these elements are scattered among various texts, however, it is useful to explain where they can be found and how they have been or might be applied. Moreover, the CITES compliance scheme is constantly evolving through interpretation and practice.
20. It is important to keep in mind that the ultimate aim of the CITES compliance scheme is to improve the implementation, and thereby the effectiveness, of the Convention – and the national wildlife management policies and programmes that underlie it. The text of Article XIII of the Convention and Resolution Conf. 11.3 is characterized by a positive, facilitative approach to compliance. Nevertheless, its application has been viewed as negative and coercive at times. Parties have indicated that additional emphasis is needed on facilitating compliance, that is, preventing non-compliance in the first instance and bringing a Party back into compliance as soon as possible. Significant expansion of these efforts, however, may require additional funds for capacity building. Open, mutual and regular communication is critical to the facilitation of compliance and the Secretariat has begun using a wider range of information contacts to ensure such communication. Parties also need to be further encouraged to provide early warning of any compliance problems and the reasons for them.
21. Some Parties believe that developed and developing countries have occasionally been treated unequally in relation to compliance issues, despite similar factual situations and applicable precedents. Careful attention to the consistent handling of compliance issues would afford Parties a degree of certainty and provide credibility to the compliance scheme. On the other hand, the scheme needs to have sufficient flexibility to address compliance issues on a case-by-case basis in a way that is both proportional and fair. The entire scheme should be transparent, though some aspects are somewhat confidential and others more public.
22. To date, CITES has employed a range of responsive actions for dealing with non-compliance and others could be explored in the future. The actions are consultative, non-judicial and non-adversarial in nature

and include procedural safeguards for the participants involved (e.g. fair notice, opportunity to respond, opportunity to participate in relevant meetings of subsidiary bodies, etc.). In practical terms, however, not all countries are able to take advantage of the opportunity to physically appear before subsidiary bodies and this raises concerns about fairness.

23. The conservation impact of compliance measures often is considered (e.g. the National Legislation Project focus on Parties with Category 3 legislation and high volumes of trade), and the Secretariat is unaware of any case in which such measures have had or might have a negative conservation impact.

Obligations or commitments

24. Although Parties should comply with all provisions of the Convention, the CITES compliance scheme has focused on the obligations to:

- a) Designate a Management Authority and a Scientific Authority (Article IX)

Resolution Conf. 8.4 on National Laws for Implementation of the Convention directs the Secretariat to identify those Parties whose domestic measures do not provide them with the authority to designate at least one Management Authority and one Scientific Authority. Resolution Conf. 10.3 on Designation and role of the Scientific Authorities recommends that Parties not accept export permits from countries that have not informed the Secretariat of their Scientific Authorities.

- b) Ensure that trade only takes place after the prior grant of certain permits or certificates showing that, *inter alia*, specimens have been legally-acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V and VI)

Paragraph 1 of Article XIII of the Convention also provides the legal basis for monitoring and addressing Parties' ability to ensure that species included in Appendix I or II are not being adversely affected by trade. The language in paragraph 1 of Article XIII, together with Resolution Conf. 8.9 (Rev.) on Trade in specimens of Appendix-II species taken from the wild and related Decisions, is the basis for the Review of Significant Trade. There is clear expression of a compliance procedure in this Resolution.

- c) Maintain records of trade and prepare periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8)

This Article, together with Resolution Conf. 11.17 and related Decisions, underpins a recent process developed by the Parties to improve compliance with the annual report requirement (see document CoP12 Doc. 22.1).

- d) Take appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1)

Article VIII on Measures to be taken by Parties, paragraph 1, requires Parties to "take appropriate measures to enforce the provisions of the Convention and to prohibit trade in violation thereof". This is the basis for requiring adequate national legislation to implement the Convention (see document CoP12 Doc. 28).

- e) Respond to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII)

Article XIII requires the Secretariat and affected Parties to communicate, investigate and act upon potential compliance problems and authorizes the Conference of the Parties to make

related recommendations. Specifically, paragraph 1 provides the legal basis for generally monitoring and addressing Parties' ability to implement the provisions of the Convention effectively. This paragraph, together with Article VIII on Measures to be taken by Parties, Article XIV on Effect on Domestic Legislation and International Conventions, Resolution Conf. 11.3 on Compliance and enforcement, Resolution Conf. 11.18 on Trade in Appendix-II and III Species and related Decisions, underpins the procedure for dealing with Parties' capacity to enforce the Convention, that is, to reduce or prevent illegal trade (see document CoP12 Doc. 27).

25. In document SC46 11.3, it was suggested that another obligation might be the payment of contributions to the Trust Fund. Article XI, paragraph 3 (a), of the Convention authorizes the Conference of the Parties to adopt financial provisions to enable the Secretariat to carry out its duties. Together with Resolution Conf. 11.2 on Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties, this Article could be used as the basis for dealing with Parties whose payments are in arrears. The Secretariat notes, however, that the amendment to Article IX, paragraph 3 (a) that relates to financial provisions, is still not applicable to six Parties. Moreover, several Parties have stated there is no provision in the Convention making it a legal obligation to pay such contributions. By contrast, Article 19 of the Charter of the United Nations provides:

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Parties have stated, in the absence of such a provision, the CITES compliance scheme should not provide harsh consequences in relation to payments in arrears. The Standing Committee work plan under the *Strategic Vision through 2005* has included a number of actions intended to identify and address the causes of non-payment.

26. Although there is no obligation in the Convention to set export quotas for CITES-listed species, Parties are expected to comply with quotas established through the Review of Significant Trade, as well as the national quotas Parties choose to establish voluntarily, in order to ensure effective international cooperation regarding the regulation of trade in CITES species that are subject to export quotas. Concerns about non-compliance with quotas for specimens of Appendix-I and Appendix-II species have prompted the adoption of stricter domestic measures by various importing countries and the transfer of some species from Appendix I to Appendix II. Additional compliance-related aspects of the setting, implementation, monitoring and management of quotas are addressed by documents CoP12 Doc. 49, CoP12 Doc. 50.1 and CoP12 Doc. 50.2.
27. In the future, the Parties may identify other substantive or procedural obligations that are of concern in terms of non-compliance (e.g. preparing biennial reports on legislative, regulatory and administrative measures taken to enforce the Convention).

Measures to promote compliance (and prevent non-compliance)

28. The compliance scheme in CITES, as in most MEAs, has its foundation in the **gathering, communication and review of information**. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) provide the means by which implementation of and compliance with the Convention is monitored.
29. Review of this material by the Secretariat, various Convention bodies or others helps to identify areas of effective compliance as well as potential or actual problems with compliance. By sharing the results of these reviews, either broadly through the CITES website or a Notification or more narrowly through reports to various Convention bodies (as envisaged by Resolution Conf. 11.3), Parties' attention can be

drawn to specific compliance issues and actions taken to solve them. This process of notifying Parties about potential or existing compliance problems, in turn, can help to promote further compliance, prevent non-compliance or address non-compliance in its early stages. Further communication with affected Parties can also identify the reasons for any non-compliance that is uncovered.

30. If implementation problems are detected through the review of reported information, compliance can be facilitated (particularly if the lack of ability to comply seems clear) through the provision of **advice and/or assistance**. This could include providing the affected Party with information, technical or financial assistance, technology transfer, training or otherwise improving its capacity to comply. The offer of technical or financial assistance also could serve as an incentive to comply for Parties that otherwise lack sufficient know-how or resources for CITES implementation.
31. A Party which has been identified as having compliance problems may be asked to undertake **additional self-reporting and/or targeted monitoring** (requirement that a Party submit to the Secretariat more information than normally required or submit it sooner than normally required, requirement that the Secretariat confirm certain permits for a certain period of time) or other recommended policies or actions. These offer Parties an opportunity to correct whatever may be making it difficult to comply fully with a particular obligation.
32. Finally, greater efforts to comply may be triggered by the issuance of an **informal warning** (a direct communication from the Secretariat or a subsidiary body of the Convention to a Party suggesting that it might be out of compliance, explaining the basis for that conclusion, urging the Party to investigate the matter and asking that the results of the investigation be shared with the Secretariat and/or the CITES subsidiary body).

Determination of non-compliance and bringing back into compliance

33. The process leading up to a formal determination of non-compliance can be initiated in one of several ways. First, it might begin with a Party's failure to meet a deadline (e.g. for the submission of information requested under the Review of Significant Trade or for the submission of annual reports or for the enactment of legislation or for the submission of a response under Article XIII). Second, it might be prompted by a specific query or complaint registered by one or more Parties (e.g. citing suspected permit fraud or failure to address incidents of illegal trade). Third, it might result from the review of submitted information (e.g. discrepancies in the annual reports of exporting and importing countries).
34. After the initiation of the process, a technical assessment follows of a Party's actions in relation to certain compliance criteria. This provides the basis for any formal determination of non-compliance and the appropriate measures for bringing a Party back into compliance.

Criteria for determining compliance

35. The criteria for determining compliance with various obligations can be found in the text of the Convention, Resolutions and Decisions of the Conference of the Parties, decisions of the Standing Committee, recommendations of the Animals and Plants Committees, Notifications to the Parties and communications between a Party suspected to have compliance problems and the Secretariat. Every effort is made to ensure such criteria are clear, reasonable, fairly applied and consistent with the relevant legal obligation.
36. In addition to these criteria, Parties often consider the cause, nature, degree and frequency of non-performance before making a formal determination of non-compliance. Failure to fulfil a single obligation has been sufficient to result in a determination of non-compliance but often an affected Party is out of compliance with more than one Convention obligation.

Measures to address non-compliance (and bring back into compliance)

37. Within CITES, **advice and assistance** are offered at every stage of the compliance process, even after a formal determination of non-compliance. Resolution Conf. 11.3 makes it clear that the Secretariat should work together with the Party concerned to try to solve the problem and offer advice or technical assistance as required. In addition, the Resolution envisages that the Standing Committee may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution.
38. **Issuance of a formal caution** (a direct communication to a Party warning that it is in non-compliance, requesting response or action and indicating that, failing that, further measures might be taken) might occur at this point, such as provided in Article XIII of the Convention. Resolution Conf. 11.3 gives a Party a month to respond to a request for information under Article XIII but also allows that time-limit to be extended if necessary up to a year. At that point, however, the Party must provide justification for the lack of response. Under the Review of Significant Trade, Parties concerned must respond to primary recommendations within 90 days of receipt and must respond to secondary recommendations within 12 months of receipt.
39. A Party also may suggest or agree to **verification** (a review of relevant data or information or country visits by the Secretariat and possibly one or more experts from another Party to ascertain the nature, cause and extent of non-compliance) similarly as envisaged in Article XIII.
40. If neither a formal caution nor a verification mission brings satisfactory results, **public notification** of non-compliance (notification sent to a subsidiary body or to the Parties advising that non-compliance has been brought to the attention of a Party and that there has been no satisfactory response or action) may follow, also as provided in Article XIII.
41. At this point, it may be possible for the Party to agree to a **compliance action plan** (agreed steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion) which allows it a grace period in which to come back into compliance. During this period, no more serious measures would be applied provided that progress in returning to compliance continues to be made. This, however, constitutes the last opportunity for voluntary measures.
42. More serious measures are warranted where a Party's non-compliance is wilful and persistent, including cases in which a Party does not: follow reasonable recommendations; take advantage of offers of assistance; agree to a compliance action plan; or comply with an agreed plan.
43. In such cases, Parties could agree on a **suspension of rights and privileges** (such as recommended temporary suspension of commercial or all trade in specimens of one or more CITES species).
44. As CITES uses trade measures for its implementation, one recommendation for improving the effectiveness of the Convention is a temporary suspension of trade. In practical terms, this provides a period of time during which the relevant Party can move from non-compliance to compliance by *inter alia* enacting adequate legislation, combating and reducing illegal trade or responding to specific recommendations of the Standing Committee concerning the implementation of Article IV of the Convention in the context of the Review of Significant Trade. Having identified a problem of serious non-compliance, it would be inappropriate for Parties not to respond. Recommendations for a suspension of trade may be regarded as a precautionary measure to prevent a continuing violation of the Convention that is detrimental to the survival of one or more CITES-listed species.
45. Recommendations to suspend trade are used as a last resort and CITES puts significant emphasis on inducing Parties into compliance through consultations and advice or assistance. Furthermore, such measures generally are used in cases involving significant levels of trade and where no domestic measures exist to enforce the Convention. Finally, CITES trade measures are withdrawn immediately upon a Party's return to compliance. The use of trade measures to address non-compliance with an

expanding number of obligations by a larger number of Parties, however, has given rise to the need to find other ways of preventing or dealing with non-compliance. In this connection, more use is now being made of compliance action plans (e.g. in relation to sturgeon resource management resulting from the Review of Significant Trade and enactment of legislation under the National Legislation Project). Similarly, different sorts of trade-related measures are being explored such as a 50 per cent reduction in the previous year's exports or the average export of the previous five years.

46. To date, CITES Parties have not considered the suspension of other rights and privileges (restriction of the right to vote at one or more meetings of the Conference of the Parties, ineligibility of a Party to be a member of the Standing Committee, loss of the right of a Party and its experts to participate in other permanent committees, working groups, etc., ineligibility of a Party to receive documents for meetings). Similarly, they have not previously considered the imposition of a **financial penalty** (ineligibility of a Party to have its participation in a meeting of the Conference of the Parties funded through the sponsored delegates project, ineligibility of a Party to receive other financial assistance from the Convention, requirement to make a payment into the CITES Trust Fund beyond the amount of assessed contribution).
47. The violation of a provision essential to the accomplishment of the object or purpose of a treaty by one of the parties entitles the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part (Vienna Convention on the Law of Treaties, Article 60). As noted above, a "treaty" consists of more than just its text and includes related agreements and practice by the parties.
48. It has been suggested that certain rights and privileges under CITES, e.g. voting rights, may not be subject to suspension (cf. Article 19 of the Charter of the United Nations reproduced in paragraph 25 of this document). Such a distinction between various rights and privileges, however, is not evident from the Vienna Convention on the Law of Treaties. Neither is it evident from Article 5 of the Charter of the United Nations which states:

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

49. The measures listed above (and also those listed in relation to the promotion of compliance) are presented in a sequential, graduated manner. The Secretariat notes that a number of these measures are currently used in CITES on a regular basis, even though verification missions are limited by the absence of specific funding provided by the Conference of the Parties. The measures described include both 'carrots' and 'sticks' as all effective compliance schemes require such a balance. To date, the 'sticks' are quite few (various forms of trade measures), considered only after other measures have failed, and used sparingly. A mixture of measures is often used in each case of non-compliance and the list provided above is indicative rather than exhaustive.

Next steps

50. On the basis of this document and related discussions, the Secretariat proposes to draft a set of Guidelines on Compliance with the Convention for consideration by the Standing Committee at its 49th meeting.