

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



Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Interpretation and implementation of the Convention

Compliance and enforcement issues

COMPLIANCE AND ENFORCEMENT

1. This document has been submitted by Germany on behalf of the European Community Member States acting in the interest of the European Community.
2. Illegal trafficking of wild fauna and flora is of growing concern and increasingly involves organized criminal networks using sophisticated techniques, and therefore increased attention must be given by Parties to illicit trade across borders and within regions.
3. The lack of recognition by many senior governmental and law enforcement officers, and policy- and decision-makers of the seriousness of illicit trade in wildlife is severely hampering current efforts to combat such criminal activities.
4. Differences in national legislation and in implementation among Parties may facilitate illicit trade and legislative deficiencies should be identified and addressed by the Parties and the Convention Secretariat as a matter of priority.
5. Formal and informal channels of communication between authorities at the national and international levels are required to coordinate the efforts of the Parties' enforcement bodies, to ensure efficient actions, to avoid duplication of effort and to alert relevant agencies of illegal trade occurring in other countries.
6. Many authorities are not suitably resourced or experienced to address illegal wildlife trafficking and this challenge must be addressed through training and equipping professional law enforcement officers and agencies.
7. Awareness among the civil society of wildlife trade regulations and awareness of the negative impact of illicit trade should be raised.
8. It is therefore proposed to amend Resolution Conf. 11.3 (Rev. CoP13) on Compliance and Enforcement in light of the above considerations and to convene a second meeting of the CITES Enforcement Expert Group.
9. The budget for a second meeting of the CITES Enforcement Expert Group shall not exceed USD 100,000.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat notes that whilst the present document makes a number of suggested amendments to Resolution Conf. 11.3 (Rev. CoP13), particular emphasis is placed upon the development of action plans. The Secretariat, in document CoP14 Doc. 7.3, has already suggested that the CITES Enforcement Expert Group be re-convened and it believes the subject of such plans could be added as an issue for the group to consider and make recommendations upon.
- B. The Secretariat believes it is important, however, to recognize that the Group has only been convened once in the past and that its role then was advisory in nature. It appears from the document that it is now to perhaps become a semi-permanent review body, with a remit to monitor Party-specific compliance. The Secretariat does not believe that this would be appropriate and is aware that the members of the first such Group deliberately avoided any discussion of compliance matters. The Secretariat believes that the strength of a CITES Enforcement Expert Group lies in its potential to convene on an *ad hoc* basis to consider and report upon specific issues.
- C. The Secretariat also remains of the view, as expressed in documents SC54 Doc. 38 and CoP14 Doc. 25, that the formulation of action plans by Parties should not be mandatory.
- D. In its Costed programme of work for the Secretariat for the triennium 2009-2011 [document CoP14 Doc. 7.3 (Rev. 1)], the Secretariat has already identified the need for USD 40,000 of non-staff costs for a meeting of the CITES Enforcement Expert Group. This figure was based upon very limited support from the Secretariat and a meeting being conducted in English only. Should any changes be suggested to the format of such a meeting, the budget might need to be increased.
- E. With regard to other suggested changes in the text of Resolution Conf. 11.3 (Rev. CoP13), the Secretariat believes some of the wording is unclear. It also questions whether some of the text, especially that referring to the development or amendment of legislation, is relevant for a Resolution relating to compliance and enforcement and whether it might not more appropriately be incorporated into the CITES National Legislation Project. Alternatively, or additionally, consideration could be given to amending Resolution Conf. 8.4 (National laws for implementation of the Convention). The Secretariat would readily work with Germany to refine the suggested amendments to Resolution Conf. 11.3 (Rev. CoP13). In the meantime, it offers the following alternative text to facilitate addressing the subject of action plans.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Regarding national and regional action plans

Directed to the Secretariat

14.XX The Secretariat should:

- a) convene a meeting of a CITES Enforcement Expert Group to:
 - i) assess progress in implementing the recommendations made by the Group at its meeting in Shepherdstown in 2004;
 - ii) assess available information relating to the national action plans recommended in Resolution Conf. 11.3 (Rev. CoP13); and
 - iii) produce draft guidance relating to national and regional action plans.
- b) if necessary, seek external funds to enable a meeting of the Group;
- c) publish the outcomes of the meeting, including any recommendations, on the CITES website seeking additional comments; and
- d) report on this matter at the 58th meeting of the Standing Committee.

Directed to the Standing Committee

- 14.XX The Standing Committee should review the Secretariat's report at its 58th meeting and determine whether additional measures are necessary including, if appropriate, directing the Secretariat to prepare a discussion document or proposed amendments to Resolution Conf. 11.3 (Rev. CoP13) for consideration at the 15th meeting of the Conference of the Parties.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Revision of Resolution Conf. 11.3 (Rev. CoP13) on Compliance and enforcement

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

RECALLING Resolutions Conf. 6.3 and Conf. 7.5, adopted by the Conference of the Parties at its sixth and seventh meetings (Ottawa, 1987; Lausanne, 1989), Resolution Conf. 2.6 (Rev.), adopted at its second meeting (San José, 1979) and amended at its ninth meeting (Fort Lauderdale, 1994), Resolution Conf. 3.9 (Rev.), adopted at its third meeting (New Delhi, 1981) and amended at its ninth meeting, Resolution Conf. 6.4 (Rev.), adopted at its sixth meeting and amended at its ninth meeting, and Resolution Conf. 9.8 (Rev.), adopted at its ninth meeting and amended at its 10th meeting (Harare, 1997);

RECOGNIZING the concerns expressed by various Parties that trade in plants and animals listed in Appendices II and III of the Convention may be detrimental to the survival of some species;

AWARE that, in the past, several cases of violation of the Convention have occurred because of inadequate or insufficient implementation by Management Authorities in both exporting and importing countries regarding surveillance, issuance of documentation and control of compliance with the provisions regulating trade in live and dead animal and plants, and their parts and derivatives;

CONSIDERING that it is of utmost moral, biological, ecological and economic interest for all Parties to the Convention that such violations not re-occur and that the mechanisms established for the Convention to this end are fully implemented, so as to ensure their normal and efficient functioning to control trade in, and afford effective protection to, endangered animal and plant species;

AWARE that there is considerable variability among Parties in their capacity to implement and enforce the provisions of the Convention;

RECOGNIZING that the developing countries, because of their special socio-economic, political, cultural and geographic circumstances have major difficulties in meeting appropriate control requirements, even though this does not exempt them from observing the highest possible degree of effectiveness;

RECOGNIZING the extreme difficulties that all producer countries are facing in implementing their own CITES controls, and that such difficulties exacerbate enforcement problems in other Parties, while there are still consumer countries that continue allowing illegal imports as a result of a lack of adequate CITES control;

RECOGNIZING that illegal exports from producing countries of specimens of species included in the Appendices cause serious damage to the valuable resources of wildlife, and reduce the effectiveness of their management programmes;

ATTENTIVE to the fact that the reservations made by importing countries allow loopholes through which specimens illegally acquired in the countries of origin can find legal markets without any control whatsoever;

OBSERVING that some importing countries that maintain reservations refuse to take into consideration the recommendations of the Conference of the Parties in Resolution Conf. 4.25, adopted at its fourth meeting (Gaborone, 1983), weakening in that way the conservation policies of producing countries that wish to protect their wildlife resources;

RECOGNIZING that illegal trafficking in wild fauna and flora continues to be a major concern;

CONSIDERING that the countries that import these illegally obtained resources are directly responsible for encouraging illegal trade world-wide, and in this way the natural heritage of producing countries is damaged;

CONSIDERING that it is essential for the success of the Convention that all Parties implement and comply effectively with all the regulations established by the Convention;

CONVINCED that enforcement of the Convention must be a constant concern of the Parties at the highest level if they are to succeed in fulfilling the objectives of the Convention;

CONVINCED of the need to strengthen enforcement of the Convention to address serious problems caused by the illegal trafficking of wild fauna and flora, and that the available resources for enforcement are negligible when compared to the profits gained from such trafficking;

RECALLING that Article VIII, paragraph 1, of the Convention provides that the Parties shall take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, and that these shall include measures to provide for the confiscation or return to the States of export of specimens illegally traded;

RECOGNIZING that the Preamble of the Convention states that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

AFFIRMING the obligation of Parties to collaborate closely in the application of the Convention, through expeditious exchange of information on cases and situations related to wildlife trade suspected to be fraudulent, so as to enable other Parties concerned to apply legal sanctions;

WELCOMING the adoption of a resolution on law enforcement cooperation at the Asian regional meeting in Israel in March 1994;

WELCOMING the Beijing Statement on the Control of Wildlife Trade in the Asian Region, made at a workshop on the subject in Beijing in October 1995, which stated that efforts would be made to create a mechanism for cooperation in law enforcement in the Asian region;

RECOGNIZING the contribution to enhancing enforcement of CITES made by the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora;

AWARE of the need for improved cooperation and coordination among CITES authorities and wildlife-law enforcement agencies at the national, regional and international levels;

NOTING the conclusions and recommendations of the CITES Enforcement Expert Group at its meeting in Shepherdstown (United States of America) in February 2004;

CONSIDERING that Article XIII does not specify a time-limit for a Party to respond to a request for information from the Secretariat, and that such a deadline is necessary in order that the absence of response not be interpreted as a refusal to respond;

CONSIDERING that the use of certain terms to designate the parts and derivatives of wildlife may give rise to certain offences;

RECOGNIZING the important role the Secretariat can play in the enforcement process, and the means provided by Article XIII of the Convention;

CONSCIOUS of the Secretariat's role in promoting enforcement of the Convention, as provided by Article XIII, and of the measures that the Secretariat has taken with the International Criminal Police Organization (ICPO-Interpol) and the World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes;

AWARE that, with the limited funding available, Parties and the Secretariat should make the maximum use of existing inter-governmental enforcement mechanisms and resources;

AGREEING on the need for additional measures to reduce further the illegal trade in species covered by the Convention;

ACKNOWLEDGING that, owing to such high levels of trade in wildlife, it is incumbent upon consumer nations together with producer countries to ensure that trade is legal and sustainable and that measures adopted and implemented by Parties support conservation in producer countries;

RECOGNIZING that illegal trade in specimens of species included in the Appendices of the Convention can cause serious damage to wildlife resources, reduce the effectiveness of wildlife management programmes, undermine legal trade and threatens sustainable development particularly in the developing economies of many producing countries;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

Regarding compliance, control and cooperation

URGES all Parties to strengthen, as soon as possible, the controls on trade in wildlife in the territories under their jurisdiction, and in particular controls on shipments from producing countries, including neighbouring countries, and to strictly verify the documents originating from such countries with the respective Management Authorities; and

RECOMMENDS that:

- a) all Parties:
 - i) recognize the seriousness of illegal trade in wild fauna and flora and identify it as a matter of high priority for their national law enforcement agencies;
 - ii) consider formulating national and regional action plans, incorporating timetables, targets and provisions for funding, designed to enhance enforcement of CITES, achieve compliance with its provisions, and support wildlife-law enforcement agencies;
 - iii) provide officials who have wildlife-law enforcement responsibilities with equivalent training, status and authority to those of their counterparts in Customs and police;
 - iv) ensure strict compliance and control in respect of all mechanisms and provisions of the Convention relating to the regulation of trade in animal and plant species listed in Appendix II, and of all provisions ensuring protection against illegal traffic for the species included in the Appendices;
 - v) in case of violation of the above-mentioned provisions, immediately take appropriate measures pursuant to Article VIII, paragraph 1, of the Convention in order to penalize such violation and to take appropriate remedial action; and
 - vi) inform each other of all circumstances and facts likely to be relevant to illegal traffic and also of control measures, with the aim of eradicating such traffic;
- b) Parties which have low sanctions in their national legislation and Parties where sanctions imposed are significantly lower than existing laws provide for, take steps to ensure that sufficiently high penalties are legislated and encourage their implementation to act as a deterrent against wildlife trade crime;
- b_c) importing Parties in particular not accept under any circumstances or pretext, export or re-export documents issued by any authority, irrespective of its hierarchical level, other than the Management Authority officially designated as competent by the exporting or re-exporting Party and duly notified to the Secretariat; and
- e_d) if an importing country has reason to believe that specimens of an Appendix-II or -III species are traded in contravention of the laws of any country involved in the transaction, it:
 - i) immediately inform the country whose laws were thought to have been violated and, to the extent possible, provide that country with copies of all documentation relating to the transaction; and

- ii) where possible, apply stricter domestic measures to that transaction as provided for in Article XIV of the Convention;

Regarding names used for parts and derivatives on permits and certificates

RECOMMENDS that:

- a) when issuing permits and certificates, Parties use a standardized nomenclature for the names of parts and derivatives, established by the Secretariat; and
- b) the Secretariat establish a draft nomenclature and submit it to the Parties, who will have 60 days in which to present their observations; that the Secretariat then establish the definitive nomenclature; and that the same procedure be applied to modify the nomenclature;

Regarding application of Article XIII

RECOMMENDS that:

- a) when, in application of Article XIII, the Secretariat requests information on an alleged infraction, Parties reply within a time-limit of one month or, if this is impossible, acknowledge within the month and indicate a date, even an approximate one, by which they consider it will be possible to provide the information requested;
- b) when, within a one year time-limit, the information requested has not been provided, Parties provide the Secretariat with justification of the reasons for which they have not been able to respond;
- c) if major problems with implementation of the Convention by particular Parties are brought to the attention of the Secretariat, the Secretariat work together with the Party concerned to try to solve the problem and offer advice or technical assistance as required;
- d) if it does not appear a solution can be readily achieved, the Secretariat bring the matter to the attention of the Standing Committee, which may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution; and
- e) the Secretariat keep the Parties informed as fully as possible, through Notifications, of such implementation problems and of actions taken to solve them, and include such problems in its report of alleged infractions;

Regarding enforcement activities of the Secretariat

URGES the Parties, intergovernmental and non-governmental organizations to provide additional financial support for the enforcement of the Convention, by providing funds for the enforcement assistance work of the Secretariat;

DIRECTS the Secretariat to utilize such funds towards the following priorities:

- a) the appointment of additional officers to the Secretariat to work on enforcement-related matters;
- b) assistance in the development and implementation of regional law-enforcement agreements; and
- c) training and technical assistance to the Parties;

URGES the Parties to offer secondment of enforcement officers to assist the Secretariat in addressing law-enforcement issues; and

DIRECTS the Secretariat to pursue closer international liaison between the Convention's institutions, national enforcement agencies, and existing intergovernmental bodies, particularly the World Customs Organization and ICPO-Interpol;

Regarding communication of information and coordination

RECOMMENDS that:

- a) Management Authorities coordinate with governmental agencies responsible for enforcement of CITES, including Customs and Police, and, where appropriate, sectoral NGOs, by arranging training activities and joint meetings, and facilitating the exchange of information ~~through, for example, the establishment of inter-agency committees at national level;~~
- b) Parties establish inter-agency committees at the national level, bringing together Management Authorities and governmental agencies responsible for the enforcement of CITES, including Customs and the police;
- bc) Parties, as a matter of urgency, inform the Secretariat of contact details of their relevant national law-enforcement agencies responsible for investigating illegal trafficking in wild fauna and flora;
- ed) Parties, when informed by the Secretariat of the fraudulent use of documents issued by them, carry out an inquiry to identify the instigators of the crime, calling on ICPO-Interpol where necessary;
- ee) when presented with a false document, Parties do everything in their power to determine where the specimens are and where the false document originated and inform the Secretariat and other Parties involved where appropriate;
- ef) Parties work together within their regions to develop appropriate mechanisms for cooperation and coordination between wildlife-law enforcement agencies at the regional level;
- fg) the Secretariat, in consultation with the Standing Committee, establish *ad hoc* CITES enforcement task forces as needed focusing initially on species included in Appendix I;
- gh) Parties that have not already done so consider nominating officials from relevant national enforcement and prosecuting agencies to participate in the Interpol Wildlife Crime Working Group;
- hi) Parties provide to the Secretariat detailed information on significant cases of illegal trade; and
- ij) Parties inform the Secretariat, when possible, about convicted illegal traders and persistent offenders; and

DIRECTS the Secretariat to communicate such information quickly to the Parties; and

Regarding additional actions to promote enforcement

RECOMMENDS further that the Parties:

- a) take the necessary measures to develop a comprehensive strategy for border controls, audits and investigations, by:
 - i) taking into account the different procedures for Customs clearance of goods and Customs procedures such as transit, temporary admission, warehouse storage, etc.;
 - ii) ensuring that officers in charge of control are aware of and trained in CITES matters regarding, for example, CITES requirements, identification of specimens and the handling of live animals;
 - iii) implementing document control in order to ensure the authenticity and validity of CITES permits and certificates, especially, if necessary, by requesting the Secretariat to confirm their validity;
 - iv) conducting physical examinations of goods, based on a policy of risk assessment and targeting;
 - v) increasing the quality of controls at the time of export and re-export; and
 - vi) providing the necessary resources in order to achieve these objectives;

- b) promote incentives to secure the support and cooperation of local and rural communities in managing wildlife resources and thereby combating illegal trade;
- c) where appropriate, evaluate and utilize for enforcement purposes, information from non-governmental sources while maintaining standards of confidentiality; and
- d) consider the formation, at national level, of specialized wildlife-law enforcement units or teams;
- e) explore innovative means of increasing capacity and improving enforcement, for example through the secondment of experienced wildlife trade enforcement staff to assist the exchange of intelligence and expertise at the national and regional levels and to support the Parties' enforcement staff on the ground;
- f) carry out focused national and regional capacity-building activities with particular focus on fostering inter-agency cooperation and improving knowledge of legislation; species identification; risk analysis and investigation of criminal actions; where possible such workshops could be convened in Customs and police facilities; and
- g) whenever appropriate and possible, liaise closely with CITES Management Authorities and law enforcement agencies in consumer, source and transit countries to help detect, deter and prevent illicit trade in wildlife through the exchange of intelligence, technical advice and support;

RECOMMENDS that the Enforcement Expert Group meet, following the Shepherdstown meeting in 2004, at regular intervals to: assess progress in implementing the recommendations of those meetings; provide an assessment of national and regional enforcement action plans for the Standing Committee; and produce draft guidelines on national and regional enforcement action plans to be presented at meetings of the Conference of the Parties;

URGES the Parties, intergovernmental and non-governmental organizations to provide, as a matter of urgency, funds and expertise to enable enforcement-related training or the provision of training materials, focusing on developing countries and countries with economies in transition, preferably on a regional or sub-regional basis, and provide funds to ensure that wildlife-law enforcement personnel in such countries are adequately trained and equipped;

ENCOURAGES [Parties] ministers, directors general of Customs, police commissioners and other relevant policy- and decision-makers to allocate a higher priority to the enforcement of CITES and prosecution of violations of the Convention, via relevant national legislation;

ENCOURAGES States to offer rewards for information on illegal hunting and trafficking of specimens of Appendix-I species leading to the arrest and conviction of the offenders;

URGES ICPO-Interpol to:

- a) appoint a dedicated officer specializing in wildlife crime within the ICPO-Interpol General Secretariat in Lyon, France; and
- b) support the attendance of a representative from the Interpol Wildlife Crime Working Group at meetings of the Conference of the Parties to CITES; and

INSTRUCTS the Secretariat to:

- a) cooperate with the World Customs Organization, ICPO-Interpol and competent national authorities to:
 - i) prepare and distribute appropriate training material; and
 - ii) facilitate the exchange of technical information between the authorities in charge of border controls; and
- b) submit a report on enforcement matters at each Standing Committee meeting and each regular meeting of the Conference of the Parties; and

REPEALS the Resolutions or parts thereof listed hereunder:

- a) Resolution Conf. 2.6 (Rev.) (San José, 1979, as amended at Fort Lauderdale, 1994) – Trade in Appendix-II and -III species – paragraph b) and paragraph under 'REQUESTS';
- b) Resolution Conf. 3.9 (Rev.) (New Delhi, 1981, as amended at Fort Lauderdale, 1994) – International compliance control;
- c) Resolution Conf. 6.3 (Ottawa, 1987) – Implementation of CITES;
- d) Resolution Conf. 6.4 (Rev.) (Ottawa, 1987, as amended at Fort Lauderdale, 1994) – Controls on illegal trade;
- e) Resolution Conf. 7.5 (Lausanne, 1989) – Enforcement; and
- f) Resolution Conf. 9.8 (Rev.) (Fort Lauderdale, 1994, as amended at Harare, 1997) – Enforcement.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Compliance and enforcement

Directed to the Standing Committee

14.XX The Standing Committee shall, contingent on the availability of external funding:

- a) convene a second meeting of the CITES Enforcement Expert Group to assess progress in implementing the recommendations of the 2004 Shepherdstown meeting; assess information on national and regional enforcement action plans submitted at the 57th meeting of the Standing Committee; and produce draft guidelines on national and regional enforcement action plans to be presented at the 15th meeting of the Conference of the Parties (CoP15);
- b) through its clearing-house mechanism, decide on the appropriate way to handle the logistics, agenda and reporting for the meeting and set timelines for the work to be done; and
- c) consider the comments received on the meeting report from the Parties, and decide on submitting a discussion papers and/or draft resolution for consideration at CoP15.

Directed to the Secretariat

14.XX The Secretariat shall:

- a) as a matter of high priority, assist in obtaining funds from interested Parties, intergovernmental and non-governmental organizations, and other funding sources to support a second meeting of the CITES Enforcement Expert Group to achieve the goals stated in Decision 14.XX, paragraph a);
- b) assist the Standing Committee in preparing the meeting of the CITES Enforcement Expert Group;
- c) provide the report and recommendations from the meeting to the Parties through a Notification to the Parties for consideration and comment; and
- d) prepare a discussion paper and/or draft resolution for consideration by the Standing Committee.