

RESOLUTION CONF. 9.10 (REV. COP14)

DISPOSAL OF ILLEGALLY TRADED, CONFISCATED AND ACCUMULATED SPECIMENS

1. The table presented in Annex 5 b) to the present document contains, in the left-hand column, the current text of Resolution Conf. 9.10 (Rev. CoP14), with proposed amendments. The explanation of each proposal is presented in the right-hand column.
2. The Standing Committee's working group that is conducting an editorial review of Resolutions in the context of Decision 14.19 has already discussed this Resolution and has suggested a number of corrections. These are included in the table below, rather than at the 59th meeting of the Standing Committee, because it is preferable to consider all of the amendments simultaneously at a single meeting.
3. As the number of suggested changes is quite large, a clean version of how the Resolution would appear if all of the proposed amendments were accepted is presented in Annex 5 c).

Recommendation

4. The Secretariat recommends that the Conference of the Parties adopt the amendments to Resolution Conf. 9.10 (Rev. CoP14) shown in Annex 5 b), including the transfer of text from recommendation k) to Resolution Conf. 10.7.

PROPOSED AMENDMENTS TO RESOLUTION CONF. 9.10 (REV. COP14)

DISPOSAL OF ILLEGALLY TRADED, CONFISCATED AND ACCUMULATED SPECIMENS

NB: Words proposed to be deleted are ~~crossed-out~~. Words proposed to be inserted are underlined.

| Proposed amendments | Explanation |
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| <i>Disposal of illegally traded, confiscated and accumulated specimens</i> | As specimens are not available to be disposed of unless they have been confiscated, "illegally traded" is unnecessary and can be omitted, as in the title of Resolution Conf. 10.7 on <i>Disposal of confiscated live specimens of species included in the Appendices</i> . |
| RECALLING Resolutions Conf. 2.15, Conf. 3.9, paragraph c) ii), Conf. 3.14, Conf. 4.17, Conf. 4.18, Conf. 5.14, paragraph f), and Conf. 7.6, adopted by the Conference of the Parties at its second, third, fourth, fifth and seventh meetings (San José, 1979; New Delhi, 1981; Gaborone, 1983; Buenos Aires, 1985; Lausanne, 1989), relating to illegally traded, confiscated and accumulated specimens, international compliance control and other aspects of enforcement; | |
| RECALLING Resolution Conf. 10.7, on <u><i>Disposal of confiscated live specimens of species included in the Appendices, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997)</i></u> ; | This new paragraph is proposed because it is important to recognize that there is another Resolution that deals specifically with disposal of live specimens. |
| RECOGNIZING that Parties have experienced problems with the disposal of specimens of Appendix-I species that have been obtained as a result of confiscation, accidental death or otherwise; | |
| RECALLING that Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention require that, as a pre-condition for the issuance of a re-export certificate, the Management Authority of the State of re-export be "satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention"; | Commas inserted to improve clarity. |
| WHEREAS Article VIII of the Convention requires Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, including measures to provide for the confiscation or return to the State of export of illegally traded specimens; | |
| RECOGNIZING that Article VIII, paragraph 4 (b), of the Convention requires Parties to return any confiscated living specimen to the State of export, after consultation with and at the expense of that State, or to place it in a rescue centre or other appropriate place; | |
| NOTING, however, that Article VIII does not preclude the Management Authority allowing the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the (re-)exporter; | |
| CONSIDERING that a Party may also provide for the internal reimbursement of expenses that result from the confiscation of a specimen traded in violation of the Convention; | |

| Proposed amendments | Explanation |
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| <p>AWARE of Resolution Conf. 10.7 on <i>Disposal of confiscated live specimens included in the Appendices</i>, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997), which considers that the successful recovery of the costs of confiscation and disposal from the guilty party may be a disincentive for illegal trade;</p> | <p>Title of Resolution Conf. 10.7 changed to italics, in line with current editorial practice.</p> |
| <p>AWARE that some Parties do not allow the sale of confiscated specimens because of the message this transmits to the public;</p> | <p>This paragraph seems unbalanced. To provide balance, it could be stated that many countries do allow the sale of confiscated specimens. However, the Secretariat proposes that it be deleted.</p> |
| <p>THE CONFERENCE OF THE PARTIES TO THE CONVENTION</p> | |
| <p>RECOMMENDS that:</p> | |
| <p><i>Regarding the export or re-export of <u>confiscated illegally traded specimens</u></i></p> | <p>An amendment is proposed to complement the proposed title of the Resolution.</p> |
| <p>a) except in the circumstances specified in paragraphs b) and c) below, Parties not authorize any re-export of specimens for which there is evidence that they were imported in violation of the Convention;</p> | |
| <p>b) when applying Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention to specimens <u>that were</u> imported not in accordance with the provisions of the Convention <u>and</u> that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII or of this Resolution, or for investigatory or judicial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;</p> | <p>Minor amendments proposed to clarify the meaning.</p> |
| <p>c) when applying Article IV, paragraphs 2 (b) and 5 (a), of the Convention to specimens of species in Appendix II that have been confiscated as a result of attempts to import or export them illegally and that have subsequently been sold by the Management Authority, having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been obtained in accordance with the provisions of the Convention and with the laws of the State for the protection of fauna and flora for the purposes of issuing export permits or re-export certificates; and</p> | |
| <p>d) permits and certificates granted in accordance with paragraph b) or c) above clearly indicate that the specimens are confiscated specimens;</p> | |
| <p><i>Regarding the disposal of illegally traded, confiscated and accumulated dead specimens of Appendix-I species</i></p> | <p>Deletion of 'illegally traded' is proposed to complement the proposed title of the Resolution.</p> <p>The duplications between this section and the following section make it preferable to combine the two, for simplicity.</p> |
| <p>e) Parties <u>dispose of</u> transfer confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific- educational, <u>or</u> enforcement- or identification purposes, and that Parties save in storage or destroy these excess specimens whose disposal transfer for these purposes is not practicable;</p> | <p>Minor amendments of text and punctuation for clarification and consistency.</p> |

| Proposed amendments | Explanation |
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| <p>f) Parties make legislative provision to require the guilty importer and/or the carrier to meet the costs of confiscation, custody and storage or destruction of the specimens, or returning specimens to the country of origin or last re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the that country of origin or re-export so wishes; and</p> | <p>Combined with old paragraph i) into new paragraph g) below.</p> |
| <p>g) where such legislation does not exist and the country of origin or last re-export wishes the specimens to be returned, financial assistance be sought to facilitate the return;</p> | <p>Combined with old paragraph j) into new paragraph h) below.</p> |
| <p><i>Regarding the disposal of illegally traded, confiscated and accumulated specimens of species in Appendix II and Appendix III</i></p> | <p>Combined with the previous section.</p> |
| <p>f) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to <u>achieve the purposes</u> benefit enforcement and administration of the Convention, and that steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal;</p> | <p>An amendment is proposed to reflect the fact that the general aim of the Convention is to support wildlife conservation through regulation of trade in listed species. There might be other ways to support this purpose than through enforcement and administration.</p> <p>Deletion of "that", as unnecessary, as it is already in the 'chapeau'.</p> |
| <p><i>Regarding costs associated with confiscated specimens</i></p> | <p>New title to reflect the substance of the paragraphs below.</p> |
| <p>g) Parties make legislative provision to require the guilty importer and/or the carrier, or both, to meet the costs of confiscation, custody, <u>storage, destruction or other</u> and disposal, including returning specimens to the country of origin or re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or <u>last</u> re-export so wishes; and</p> | <p>The combination of this paragraph with old paragraph f) above, requires the addition of the references to storage and destruction, which in fact may apply to specimens of any CITES species, not only those in Appendix I.</p> <p>In the current Resolution, the reference to taking action in the interest of dead specimens makes no sense. With this paragraph separated, it can apply to live and dead specimens, so that the reference is now appropriate.</p> <p>The reference to the 'country of re-export' must mean the country of last re-export. So this is now indicated.</p> |
| <p>h) where such legislation does not exist and the country of origin or <u>last</u> re-export wishes a <u>confiscated</u> the live specimens to be returned, <u>that country shall seek</u> financial assistance be sought to facilitate the return; <u>and</u></p> | <p>This text is intended to replace old paragraphs g) and j). The difference between them is that paragraph g) is not restricted to live specimens. However, the preambular paragraph relevant to this recommendation correctly refers to Article VIII, paragraph 4 (b), of the Convention. As that provision of CITES relates only to the case "where a living specimen is confiscated", the restriction to live specimens is appropriate and the Secretariat has proposed that this be retained and clarified.</p> <p>As there was no indication as to who is expected to seek financial assistance, an amendment is proposed to clarify this,</p> |

| Proposed amendments | Explanation |
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| | <p>reflecting the provision in Article VIII, paragraph 4 (b), of the Convention that the return of specimens to the State of export shall be "at the expense of that State".</p> <p>The original reference to the 'country of re-export' must mean the country of last re-export. So this is now indicated.</p> |
| <p><i>Regarding the disposal of seized or confiscated plants</i></p> <p>k) priority be given to the care of seized or confiscated wild-collected specimens of Appendix I species and of Appendix II species that may be at risk; and</p> <p>[Transfer text to Resolution Conf. 10.7]</p> | <p>The Secretariat believes that the recommendation in paragraph k) applies as much to animals as to plants. However, since it clearly relates only to live specimens, the Secretariat proposes that the text be transferred to the operative part of Resolution Conf. 10.7.</p> |
| <p><i>In general Regarding publicity</i></p> | <p>The proposed title is a more accurate reflection of the substance of the recommendation that follows.</p> |
| <p>ii) Parties publicize information on seizures and confiscations when appropriate as a deterrent to illegal trade, and inform the public about their procedures for dealing with seized and confiscated specimens and about rescue centres; <u>and</u></p> | |
| <p>CONFIRMS that Parties have the right to allow, or should they choose to do so, not to allow, the sale of confiscated dead specimens, including parts and derivatives, of Appendix II and III species; and</p> | <p>No Resolution affects the right that Parties have to allow or prohibit the sale of confiscated dead specimens. And so this paragraph is unnecessary.</p> |
| <p>REPEALS the Resolutions, or parts thereof, listed hereunder:</p> <p>a) Resolution Conf. 2.15 (San José, 1979) – <i>Exchange of Confiscated Appendix I Specimens</i>;</p> <p>b) Resolution Conf. 3.9 (New Delhi, 1981) – <i>International Compliance Control</i> – paragraph c) ii);</p> <p>c) Resolution Conf. 3.14 (New Delhi, 1981) – <i>Disposal of Confiscated or Accumulated Specimens of Appendix I Species</i>;</p> <p>d) Resolution Conf. 4.17 (Gaborone, 1983) – <i>Re-export of Confiscated Specimens</i>;</p> <p>e) Resolution Conf. 4.18 (Gaborone, 1983) – <i>Disposal and Return of Illegally Traded Appendix II Specimens</i>;</p> <p>f) Resolution Conf. 5.14 (Buenos Aires, 1985) – <i>Improving the Regulation of Trade in Plants</i> – paragraph f); and</p> <p>g) Resolution Conf. 7.6 (Lausanne, 1989) – <i>Return of Live Animals of Appendix II or III Species</i>.</p> | <p>Titles of Resolutions changed to italics, in line with current editorial practice.</p> |

RESOLUTION CONF. 9.10 (REV. COP14)

DISPOSAL OF ILLEGALLY TRADED, CONFISCATED AND ACCUMULATED SPECIMENS

[Clean version including amendments indicated in Annex 5 b)]

Disposal of confiscated and accumulated specimens

RECALLING Resolutions Conf. 2.15, Conf. 3.9, paragraph c) ii), Conf. 3.14, Conf. 4.17, Conf. 4.18, Conf. 5.14, paragraph f), and Conf. 7.6, adopted by the Conference of the Parties at its second, third, fourth, fifth and seventh meetings (San José, 1979; New Delhi, 1981; Gaborone, 1983; Buenos Aires, 1985; Lausanne, 1989), relating to illegally traded, confiscated and accumulated specimens, international compliance control and other aspects of enforcement;

RECALLING Resolution Conf. 10.7, on *Disposal of confiscated live specimens of species included in the Appendices*, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997);

RECOGNIZING that Parties have experienced problems with the disposal of specimens of Appendix-I species that have been obtained as a result of confiscation, accidental death or otherwise;

RECALLING that Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention require that, as a pre-condition for the issuance of a re-export certificate, the Management Authority of the State of re-export be "satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention";

WHEREAS Article VIII of the Convention requires Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, including measures to provide for the confiscation or return to the State of export of illegally traded specimens;

RECOGNIZING that Article VIII, paragraph 4 (b), of the Convention requires Parties to return any confiscated living specimen to the State of export, after consultation with and at the expense of that State, or to place it in a rescue centre or other appropriate place;

NOTING, however, that Article VIII does not preclude the Management Authority allowing the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the (re-)exporter;

CONSIDERING that a Party may also provide for the internal reimbursement of expenses that result from the confiscation of a specimen traded in violation of the Convention;

AWARE of Resolution Conf. 10.7 on *Disposal of confiscated live specimens included in the Appendices*, adopted by the Conference of the Parties at its 10th meeting (Harare, 1997), which considers that the successful recovery of the costs of confiscation and disposal from the guilty party may be a disincentive for illegal trade;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that:

Regarding the export or re-export of confiscated specimens

- a) except in the circumstances specified in paragraphs b) and c) below, Parties not authorize any re-export of specimens for which there is evidence that they were imported in violation of the Convention;
- b) when applying Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention to specimens that were imported not in accordance with the provisions of the Convention and that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII or of this Resolution, or for investigatory or judicial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;

- c) when applying Article IV, paragraphs 2 (b) and 5 (a), of the Convention to specimens of species in Appendix II that have been confiscated as a result of attempts to import or export them illegally and that have subsequently been sold by the Management Authority, having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been obtained in accordance with the provisions of the Convention and with the laws of the State for the protection of fauna and flora for the purposes of issuing export permits or re-export certificates; and
- d) permits and certificates granted in accordance with paragraph b) or c) above clearly indicate that the specimens are confiscated specimens;

Regarding the disposal of confiscated and accumulated dead specimens

- e) Parties dispose of confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable;
- f) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to achieve the purposes of the Convention, and steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal;

Regarding costs associated with confiscated specimens

- g) Parties make legislative provision to require the guilty importer or the carrier, or both, to meet the costs of confiscation, custody, storage, destruction or other disposal, including returning specimens to the country of origin or re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or last re-export so wishes; and
- h) where such legislation does not exist and the country of origin or last re-export wishes a confiscated live specimen to be returned, that country shall seek financial assistance to facilitate the return; and

Regarding publicity

- i) Parties publicize information on seizures and confiscations when appropriate as a deterrent to illegal trade, and inform the public about their procedures for dealing with seized and confiscated specimens and about rescue centres; and

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf. 2.15 (San José, 1979) – *Exchange of Confiscated Appendix I Specimens*;
- b) Resolution Conf. 3.9 (New Delhi, 1981) – *International Compliance Control* – paragraph c) ii);
- c) Resolution Conf. 3.14 (New Delhi, 1981) – *Disposal of Confiscated or Accumulated Specimens of Appendix I Species*;
- d) Resolution Conf. 4.17 (Gaborone, 1983) – *Re-export of Confiscated Specimens*;
- e) Resolution Conf. 4.18 (Gaborone, 1983) – *Disposal and Return of Illegally Traded Appendix II Specimens*;
- f) Resolution Conf. 5.14 (Buenos Aires, 1985) – *Improving the Regulation of Trade in Plants* – paragraph f); and
- g) Resolution Conf. 7.6 (Lausanne, 1989) – *Return of Live Animals of Appendix II or III Species*.