

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



Eighteenth meeting of the Conference of the Parties  
Colombo (Sri Lanka), 23 May – 3 June 2019

Species specific matters

Maintenance of the Appendices

RESERVATIONS WITH RESPECT TO AMENDMENTS TO APPENDICES I AND II

1. This document has been prepared by the Secretariat. It is divided in two parts: the first part concerns reservations made after the 90-day deadline and the second part concerns the effective date of the withdrawal of a reservation.

**Part one – Reservations made after the 90-day deadline**

Background

2. In accordance with the provisions of Article XV, the Conference of the Parties, at its 17th meeting (CoP17, Johannesburg, 2016), considered and adopted a number of amendments to Appendices I and II proposed by the Parties. Unless otherwise decided, the amendments adopted at the meeting entered into force 90 days after that meeting in accordance with Article XV, paragraph 1 (c), except for those Parties which have entered a reservation pursuant to Article XV, paragraph 3 of the Convention. These provisions read as follows:

*Article XV*

- 1.(c) *Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.*

....

3. *During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (l) of paragraph 2 of this Article any Party may by notification in writing to the Depository Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.*

3. By Notification to the Parties No. 2017/010 of 26 January 2017, the Secretariat circulated information from the Depository Government (Government of Switzerland) in relation to Article XV, paragraph 3, of the Convention on reservations received with respect to the amendments to Appendices I and II adopted at CoP17.
4. In relation to four of these reservations, the Notification contained the following note:

*Although these reservations were received after the deadline set out in the Convention, the Depository Government has indicated that in keeping with the practice followed by other depositaries in similar cases, it intends to consider these reservations as received if there is no objection from any CITES Party by 24 April 2017.*

5. At the time, the Secretariat conveyed to the Depositary its concerns about this practice and mentioned its intention to bring the matter to the Standing Committee to seek clarification. At the 69th meeting of the Standing Committee (SC69, Geneva, November 2017), the Secretariat presented document [SC69 Doc. 67](#) setting out the issues and legal background, which is summarized in the paragraphs below.

### Discussion

6. The Depositary stated that the practice of accepting late reservations in the absence of an objection is described in the “Summary of Practice of the UN Secretary-General as Depositary of Multilateral Treaties”<sup>1</sup> as follows (emphasis added):

*Under established customary international treaty law, as codified by the Vienna Convention on the Law of Treaties, reservations may only be made (when allowed) at the time of signing or of depositing an instrument of ratification or the like, or alternatively, with the unanimous consent of all parties concerned (see article 19 of the Vienna Convention).*

7. On this basis, the Depositary concluded that a reservation to an Amendment of an Annex to the CITES, decided by a CoP, may only be made within the 90-day deadline or, alternatively, with the unanimous consent of all Parties to CITES. Since a single objection is sufficient to finally refuse the reservation, as happened in 2005, the above-mentioned approach is nothing but a precise check by the Depositary whether the condition of unanimous consent is tacitly fulfilled. It seems that another approach for CITES could not be easily justified, despite the precise deadline laid down in Article XV, paragraph 3, of CITES, particularly since the precedent of 2005.<sup>2</sup>
8. The Depositary further indicated that it would be helpful if decisions taken by the CITES CoP in the future could explicitly state whether such late reservations should continue to be treated according to this practice or, on the contrary, should not be admitted.
9. The Secretariat notes that the practice described above concerns late reservations that should have been made at the time of “signing, ratifying, accepting, approving or acceding to a treaty”<sup>3</sup>, but for some reason were only formally made later in time. However, the matter at hand concerns reservations with respect to an amendment to the CITES Appendices entered by a Party to the Convention in accordance with paragraph 3 of Article XV.
10. Article XXIII of the Convention contains the provisions of CITES on reservations. The relevant parts read as follows:
1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.
  2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:
    - (a) *any species included in Appendix I, II or III; or*
    - (b) *any parts or derivatives specified in relation to a species included in Appendix III.*
11. Article XXIII of the Convention thus distinguishes between the two types of reservations: Paragraph 1 concerns specific reservations to an amendment to the CITES Appendices. This type of reservation can be made by a Party in accordance with Article XV and XVI of the Convention. Paragraph 2 concerns specific reservations made by a State at the time of depositing its instrument of ratification, acceptance, approval or accession. In the context of CITES, the practice which allows Parties to enter reservations after depositing their instrument of ratification, acceptance, approval or accession on a non-objection basis, should not apply to the reservations regulated by paragraph 1 of Article XXIII.

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<sup>1</sup> Prepared by the Treaty Section of the Office of Legal Affairs of the United Nations and available at: [https://treaties.un.org/doc/source/publications/practice/summary\\_english.pdf](https://treaties.un.org/doc/source/publications/practice/summary_english.pdf)

<sup>2</sup> In 2005, the Depositary followed the same approach with regard to a late reservation submitted by a Party with respect to amendments decided at CoP13. See [Notification to the Parties 2005/009 of 10 March 2005](#) on specific reservations.

<sup>3</sup> Vienna Convention on the Law of treaties, Article 19

12. Based on the clear deadline in Article XV, paragraph 3, for making a reservation with regard to an amendment, the Secretariat is of the view that accepting late reservations may undermine the integrity of the Convention and its functioning by generating legal uncertainty among Parties and the regulated community as to the regime governing trade in specimens of species covered by a late reservation. It should also be noted that the CoP at the time of adoption of an amendment in some specific cases has decided that the application of the amendment should begin at a later date than the normal 90 days.<sup>4</sup>
13. Finally, the Secretariat understands that the practice of accepting late reservations should only apply in the broader context of Article 20 of the Vienna Convention “unless the treaty otherwise provides.” As mentioned above, the Secretariat notes in this context, that in the case of CITES, the treaty explicitly provides otherwise in Article XV, paragraph 3.

### Conclusion

14. At SC69, members of the Standing Committee and observing Parties reaffirmed the 90-day deadline for submission of a specific reservation to the entry into force of an amendment to the CITES Appendices, underscoring that the acceptance of late reservations might undermine the integrity of the Convention – and noted that the deadline only applied to reservations made with respect to amendments to Appendix I or II and not to Appendix III. The Standing Committee agreed that reservations with respect to amendments to Appendices I or II must be made in accordance with the provisions of the Convention and within the 90-day deadline stipulated in paragraph 3 of Article XV. The Standing Committee welcomed the intention of the Secretariat to submit a draft proposal to amend those relevant elements of Resolution Conf. 4.25 (Rev. CoP14) on *Reservations* to provide clearer guidance in this regard to the Depositary Government (see summary record [SC69 SR](#)).
15. The Secretariat seizes the opportunity to note that the Convention does not directly regulate the specific and exceptional situation where the CoP decides on a delayed implementation of a listing in Appendix II. The Secretariat recommends that the general 90-day deadline should also apply in such cases and that any reservations to amendments to the Appendix II, which include delayed implementation, be made in accordance with paragraph 3 of Article XV, e.g. within 90 days after the meeting at which such an amendment was agreed.
16. Accordingly, the Secretariat has prepared a draft amendment to Resolution Conf. 4.25 (Rev. CoP14) on *Reservations* as set out in Annex 1 to the present document.

### **Part two - Effective date of withdrawal of reservations**

#### Background

17. Articles XV, XVI, XXIII and XXV of the Convention refer to the fact a reservation that has been made in accordance with these provisions may be withdrawn. The Convention contains no further guidance on the procedure for withdrawal of such reservations nor on the date of effect of a withdrawal of a reservation.
18. The Vienna Convention on the Law of Treaties addresses the question related to withdrawal of reservation in Article 22 which states:

*Article 22 WITHDRAWAL OF RESERVATIONS AND OF OBJECTIONS TO RESERVATIONS*

1. *Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.*
2. *Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.*
3. *Unless the treaty otherwise provides, or it is otherwise agreed:*
  - (a) *The withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;*

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<sup>4</sup> See for instance the listings of sharks and rays at CoP17 where the entry into effect of the listing was delayed by twelve or six months.

## Discussion

19. The Guide to Practice on Reservations to Treaties<sup>5</sup> suggests that the withdrawing Party may set the effective date of withdrawal of the reservation, where
- (a) *that date is later than the date on which the other contracting States or contracting organizations received notification of it; or*
  - (b) *the withdrawal does not add to the rights of the withdrawing State or international organization, in relation to the other contracting States or contracting organizations*<sup>6</sup>.
20. The practice under CITES is that the Depositary informs Parties in accordance with Article XXV, paragraph 2, of any withdrawal of a reservation through a diplomatic notification to the Parties<sup>7</sup>. In such a notification, the Depositary usually indicates the date of receipt by the Depositary of the withdrawal of the reservation and the date of the communication by the Party withdrawing the reservation. However, it is not always clear which of these dates is the effective date of the withdrawal. While this may not be an issue for most international treaties, it is critically important in CITES that there be clarity on the date from which the provisions of the Convention apply to ensure that controls of trade and enforcement of the provisions can be effective.
21. As noted above, the Vienna Convention stipulates that the withdrawal becomes operational in relation to another State only when notice of it has been received by the State unless otherwise agreed. The Conference of the Parties therefore may wish to agree to an effective date of operation. There may be instances where the Party withdrawing the reservation indicates a future date when the withdrawal becomes effective. In the absence of a future date, the Secretariat suggests that the Conference of the Parties agree that the effective date of the withdrawal of a reservation is the date of the Depositary's notification to the Parties. This would seem to be the most in line with the Vienna Convention.

## Conclusion

22. Based on the above, the Secretariat is of the view that it might be useful to clarify that a withdrawal of a reservation becomes operational only on the date of the Depositary's notification of the withdrawal to the Parties, unless the Party withdrawing the reservation has set a later date. The Secretariat proposes that this clarification be made in Resolution Conf. 4.25 (Rev. CoP14).

## Recommendations

23. The Secretariat invites the Conference of the Parties to adopt the amendment to Resolution Conf. 4.25 (Rev. CoP14) on *Reservations* as set out in Annex 1 to the present document.

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<sup>5</sup> See *Text of the Guide to Practice on Reservations to Treaties*, adopted by the International Law Commission at its sixty-third session, contained in [document A/66/10/Add.1](#)

<sup>6</sup> *Op cit.* page 11

<sup>7</sup> See for instance [242.45-0-CITES 2/15](#): Notification to the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), concluded in Washington on 3 March 1973: Withdrawal of a reservation by Canada

PROPOSED AMENDMENTS TO  
RESOLUTION CONF. 4.25 (REV. COP14) ON *RESERVATIONS*

1. In the preamble, after the second preambular paragraph, insert two new paragraphs as follows:

ACKNOWLEDGING that different interpretations may exist with respect to the submission and acceptance of late reservations;

NOTING that for the effective application of the Convention, clarity on the effective date of the withdrawal of a reservation is critical;

2. In the operative part of the Resolution insert the following paragraphs after the existing text:

5. URGES any Party to notify the Depositary Government in writing of a reservation it wishes to make with respect to an amendment to Appendix I or II within 90 days after the meeting, in accordance with Article XV, paragraph 3, of the Convention;

6. REQUESTS the Depositary Government not to accept any reservations entered after the 90-day deadline; and

7. AGREES that the withdrawal of a reservation becomes operational on the date of the Depositary's notification to the Parties unless a later date has been set by the Party withdrawing the reservation.

TENTATIVE BUDGET AND SOURCE OF FUNDING  
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

According to Resolution Conf. 4.6 (Rev. CoP16) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, 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 or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding.

The Secretariat considers that the proposed amendments will not have any budgetary implications for the Secretariat or any of the permanent committees.