

Comments of the Animals Committee in regard to the application from the Philippines to register the parrot breeding operation Birds International Inc. in the CITES register of operations that breed Appendix I animal species for commercial purposes.

On May 2 2008 the Animals Committee was informed by its Chair that the the Philippines had again applied for the inclusion of seven species of birds bred by Birds International Inc. in the *CITES Register of operations that breed Appendix-I animal species for commercial purposes*, namely:

Amazona barbadensis;
Ara ambigua;
Ara macao;
Cacatua sulphurea abboti;
Cacatua sulphurea citrinocristata;
Cacatua sulphurea sulphurea; and
Cacatua moluccensis.

The members of the Animals Committee were provided with substantial documentation on this case: Seven applications and two pre-Convention certificates for the specimens that form the parental breeding stocks as well as relevant supporting correspondence from Indonesia and Singapore on the origin of the parental stock of *Cacatua moluccensis* and electronic scans of the letters of objection.

The AC Chair also informed the Committee that this application had been published with Notification to the Parties No. 2008/002 of 21 January 2008 and that by the deadline for comments of 20 April, three Parties had objected to this registration, namely Indonesia (range state of two species [one species and three subspecies]) and the non-range states United States and Australia:

Indonesia objected to the registration of four of the seven taxa. In particular Indonesia challenged the legality of the parent stock, since neither records for the exports of *Cacatua moluccensis* nor for the *Cacatua sulphurea* specimens in the late 1970s or early 1980s could be found, the latter species and subspecies being fully protected since 1999 and catch quota being zero since 1994. Although the Philippines provided documentation confirming the pre-convention status of these specimens according to their legislation, Indonesia decided to retain the objection.

Australia objected because it believes that there are links between the captive breeding operation Birds International Inc. and persons who have been convicted in Australia of illegal wildlife trafficking offences. It furthermore requested from the Secretariat further information on the legal acquisition of the original stock.

The United States of America objected to the registration, because of concern in regard to the legal acquisition of the parental stock, stating a. o. that documentation would not be available to demonstrate that all the founders had been pre-convention.

The AC Chair informed the Committee members that, at AC23, the delegation of the Philippines had been able to meet with those of Indonesia and of the United States to discuss their objections and that no similar meeting could be held with Australia as this Party was not represented at that meeting. The Secretariat had promised that it would let the AC know if any of the objecting countries would be withdrawing their objection as a result of bilateral discussions, but until today no such information has been received.

In such a situation Resolution Conf. 12.10 (Rev. CoP14), Annex 2, paragraph 3, comes into effect, which states that:

*If any Party objects to the registration, or expresses concern about the application, the Secretariat shall refer the documentation to the Animals Committee, which shall respond to **these objections** within 60 days. Then, the Secretariat shall facilitate a dialogue between the Management Authority of the Party submitting the application and the Party or Parties objecting to the registration, and shall provide the recommendations of the Animals Committee, and allow a further 60 days for resolution of the identified problem(s).*

Thus – as marked in bold in the paragraph above – the members of the Animals Committee were to comment only on the substance of the objections by the three Parties. The AC was not to decide (or vote) itself whether this operation was to be registered or not. At most the AC was to formulate recommendations

on how to proceed. All the comments were sent to all the members of the AC and copied to the Secretariat and are therefore known in full by everybody. Following instructions by the Secretariat the AC Chair nevertheless tries to sum up the comments that have been forthcoming by some AC members until the deadline in regard to these objections, including recommendations. Unfortunately, no comments have been received from the members of the Asian region, nor of the African region.

In its own comments, the AC Chair (representative of the European region) points out that the same institution had submitted a very similar (not the same!) application in 2005, which however contained a different list of species and that last time among a few others (range States), also the USA and Australia – both no range countries - had objected with the same arguments and had kept up, together with Indonesia, their objections until CoP14.

Concerning the objection in regard to the legal establishment of the parental stock, the AC Chair argues that going back more than 25 years shows a different picture of the “CITES world”. Some countries were not Parties to CITES yet, some species were not listed yet or not on the same Appendices as today and therefore documentation was perhaps not established at the time or is not available anymore etc. In fact, such a situation exists in all Parties for the time when they individually joined CITES. Furthermore: Many countries know a statute of limitation, which means that after a certain time period, even actions that might have been illegal at the outset cannot be investigated or prosecuted anymore. Consequently in view of the fact that CITES entered into force in the Philippines only on November 16 1981 and all Psittaciformes were listed on the CITES Appendices only on June 6 1981 in the AC Chair's view the applicant did its best to document the pre-convention status of his breeding stock already in its 2005 application and does its best now again.

Concerning the objection of Australia, which “believes” - without giving any specific information or proof - that there would be links between the captive breeding operation and persons who have been convicted in Australia of illegal wildlife trafficking offences, the AC Chair points out that already at CoP 14 there were statements made by certain delegations that without having a clear proof of any connection to the present application, such an objection must be considered void or at least unfair, because everybody can discredit someone else by such diffuse accusations.

The Chair also reminds members that at CoP14 the last application (in regard to different species) was put to a vote and missed the two-thirds majority by one vote only. In view of the fact that there were doubts that the vote had been carried out correctly and a correct vote could have reversed the decision, the Secretariat sent a note after the CoP14 to the members of the Standing Committee, asking them whether this vote needed to be revised. The SC decided that there was no procedure to go back to a decision the CoP had taken but advised the Philippines to bring the matter forward again at the next CoP.

In more general terms the AC Chair comments that in the interest of keeping the process for registering operations that bred Appendix I species for commercial purposes alive and going (after all a good, transparent, well controlled system and in the interest of conservation of Appendix I species) he wished that a compromise could be found between the proponent and the objecting Parties. Perhaps a pledge by the applicant - as was the case last time - to donate some funds to conservation projects of the species in question in their range countries might help. He states that Birds International Inc is today a high-class parrot breeding center with first rate facilities (veterinary quarters, quarters for raising nestlings) and competent and highly skilled and experienced staff, breeding a great number of parrot species – among them highly endangered and as such “biologically valuable” Appendix I species - with great success for a number of subsequent generations and as such contributes substantially to the conservation of these species, preventing them, as in the case of the Spix Ara, even from extinction. As already with the last application he points out that this institution - whatever the decision will be - continues to breed these species and to export them “commercially” to Parties that accept them, the only difference being that they would have a “C” code. Should this institution however be included in the *CITES Register of operations that breed Appendix-I animal species for commercial purposes*, then it would export these species with an “D” code and the whole operation would - in addition - be submitted to strict controls by the state authorities.

Rod Hay, the representative of the Oceanian region is of the opinion that the concern of Australia about a link between the captive-breeding operation and persons convicted of wildlife trafficking in Australia does not appear to be a technical basis for rejecting the proposal, however it does, quite reasonably, mean that the declarations should be carefully examined, particularly concerning the source stock of the breeding operation.

Noting that Birds International Inc already has obtained registration for two bird species, Rod Hay asks the question if there are any particular considerations concerning the new list of species. The only one seems to

him, whether all of the founder stock were of legal origin. His view is that as a consequence of the analysis done by the USA of the documentation, significant uncertainties remain. However in view of the difficulties in providing documentary evidence of legal acquisition for pre-convention specimens (something he also experiences from time to time in NZ) and the efforts that the Philippines' MA and the applicants have made, Rod concludes that the information is relatively good. He shares the Chair's view by saying that many Parties, especially the 103 who have joined the Convention subsequent to the Philippines would doubtless experience similar difficulties, particularly concerning the purchase from a non-range state at the time (like Suriname and Singapore) of species that were not listed under the Convention at the time. The key question, he says, is whether the uncertainty matters and concludes that in practice, in this case, it doesn't. The breeding operation is closed and the founder birds can't be returned to the wild so the operation has no bearing on the management in the wild, except to the extent that supply from this facility may substitute the incentive for wild capture. The only concern is whether the registration of this facility would set a precedent for applications from future facilities more open to "dodgy dealings" than this one. This however is impossible to say for certain, because the registration of a facility must always be done in confidence that there will be a high standard of monitoring and enforcement.

Notwithstanding some slight confusion in regard to *Amazona barbadensis* Rods view is that the applications document a facility and systems that are fulfilling the requirements of Res. Conf.12.10 (Rev.COP14). Similarly, the regulatory and inspection regime, assuming it is sustained, is consistent with CITES

Although, as Rod says, there is only a subtle distinction between the provisions of Articles VII 4 (code "D") and VII 5 (code "C") which is difficult to grasp, he shares the view expressed by the Chair concluding that the registration provides better control and monitoring than the status quo.

What concerns the Chair's remark that the operation might - as was the case last time - pledge to donate some funds to conservation projects of the species in question in their range countries, Rod rightfully states that the applications provide no reassurance on this and that there is no evidence of past donations. and he says. "Unless concrete evidence is provided of past and proposed initiatives, then I must discount this as a mitigating argument in favour of the proposals". But he also – like the Chair –leaves in the possibility that something might be worked out with the range states.

On the basis that we should not look back at what happened with the voting at CoP14 and start from scratch, Rod draws the following conclusions:

- The documentation concerning origin of the founder stock still illustrates uncertainty over legal acquisition for a significant proportion (29%).
- That uncertainty is nonetheless understandable for specimens that were obtained pre-convention and prior to being listed in the Appendices.
- Despite the uncertainties, registration of this facility would not reduce the monitoring and compliance applied to it by the MA, and may even enhance it.
- The breeding and husbandry facilities appear to meet all the requirements for registration; it is noted that registration is in place for two species already.
- However, there is no certainty that registration would lead to greater support for conservation projects in the range states, so the applicants and Philippines MA may like to discuss this with the relevant range states, particularly Indonesia.

Carlos Ibero Solana the representative of Europe also concentrated heavily on the point of a benefit-sharing project, stating that in the documentation there is no reference to funds allocated to *in situ* conservation of the species concerned. He quotes from Resolution Conf. 10.12 (Rev. CoP 14), under "RESOLVES, where it says

j) the Management Authority shall satisfy itself that the captive-breeding operation will make a continuing meaningful contribution according to the conservation needs of the species concerned.

One must be conscious however to take note that "contribution" does not mean money exclusively (but could also be expert advice or technical support) and there is no condition contained in this that the contribution has to be limited to *in situ* projects alone (the "*conservation needs*" could be take care of in another way).

Carlos, however, referring to this paragraph, is of the opinion, that what is contained in the species files, under points 17 or 18 ("Description of the strategies used by the breeding operation or other activities that contribute to improving the conservation status of wild population(s) of the species"), namely "The company

is committed to support any effort of the Philippine government or any foreign government and non-government organizations to improve the conservation status of the species at case. The company's vast experience on the conservation of the species like Spix's macaw and the Philippine Eagle, to name a few, will likewise offer a great advantage to any conservation effort that will be initiated on this particular species", does not fulfill what is contained in the paragraph of Resolution Conf. 10.12 (Rev. CoP 14) mentioned above and from this he concludes that the company has done nothing on *in situ* conservation of these species so far.

He therefore would expect – in view of what happened at CoP14 - that the company would engage in a more pro-active approach to *in situ* conservation of every (sub)species concerned.

Taking into consideration that only Indonesia as a range State has objected (correctly in form and time), he concludes that the situation in Indonesia (four (sub)species) would perhaps merit a deeper analysis and he certainly thinks the objections of Indonesia should be taken seriously and the registration of this operation should not go against the will of Indonesia, i.e. until Indonesia might be satisfied on the *in situ* conservation approach of the company for the (sub)species concerned.

As for the other species on the proposal, he would also like to see the development of satisfactory and visible pro-active strategies to contribute to *in situ* conservation for all of them, but but he would not oppose to registering the operation for these remaining species as strongly as for the Indonesian ones, in particular since the respective range States had not lodged an objection.

Marcel Enzo Calvar Agrelo, the representative of South and central America and the Caribbeans just says: "Looking at all the elements, I am afraid we cannot support the registration." And Rodrigo Medellin the representative of North America writes: "After consultation with our agencies, Mexico is also opposing the registration of this facility. I believe it is important to send a message loud and clear that this type of operations with all the problems and concerns raised will not obtain registration in CITES".

Now, as stated above, the Animals Committee was not asked to approve or disapprove of the application, but to comment – substantially - on the objections by the three Parties that had objected with the purpose to facilitate the dialogue between the Party submitting the application and the Parties objecting. If Mexico had reasons to object it should have done so officially within the deadline, but it had not.

Finally, although he is not a member, Colman o'Criodain, alternate representative of the European region also offered a comment, concentrating on two aspects: As for the founder stock that does not seem to meet the letter of the rules regarding legality of origin, he also says that we need to ask ourselves how realistic it is to interpret these rules as strictly as some have suggested.

Referring to a benefit sharing project (training provisions, transfer of husbandry skills, financial support) between Birds International and several range States discussed at CoP14, which moved some of them not to object to the application at the time, Colman said that some kind of arrangement along these lines with the relevant range State might offer the best means of a solution but, in order to avoid a vote at CoP 15, it would have to be acceptable in particular to the range State that had objected (Indonesia). Colman would hope that, if Indonesia could be persuaded to withdraw it's objection on this basis, that the other objectors would follow suit.

In conclusion then in the views of some members of the Animals Committee the following seem to be some points that would be worthwhile to be considered in the dialogue between the Party submitting the application and the Parties objecting, with the purpose to remove the causes for objection:

- In regard to the legality of the founder stock: The uncertainty over legal acquisition for a proportion of the founder stock is understandable for a time when the Philippines (and other countries) were not yet a Party to CITES, when therefore specimens that were obtained had pre-convention status and/or were not yet listed in the Appendices. Therefore it must be asked if it is realistic to interpret these rules as strictly as if we would be dealing with times present. Furthermore, in view of the difficulties in providing documentary evidence of legal acquisition for pre-convention specimens (something other CITES Parties also face), the information is relatively good. However one should look into the possibility to still improve it.
- As for the "belief" of Australia that there are links between the captive breeding operation Birds International Inc. and persons who have been convicted in Australia of illegal wildlife trafficking offences (which does not appear to be a technical basis for rejecting the proposal), Australia should

substantiate those “believes” and prove with facts that these convictions are directly linked to the application at hand and why they make a registration of this operation impossible or withdraw the objection.

- The objections of Indonesia – the only range state - also dealing mainly with the establishment of the founder stock, cannot be disregarded and the application should not be accepted against the will of a range state of the species (subspecies) concerned. Nevertheless it might be worthwhile in trying to negotiate a benefit-sharing project in the interest of the conservation of those species and subspecies, with the aim that Indonesia would see itself in a position to withdraw its objection.
- Perhaps the breeding operation should demonstrate more actively a pro-active strategy to contribute to *in situ* conservation.
- A registration would improve the monitoring and the control of the operation by the MA of the Philippines, from which all stakeholders concerned would benefit.

Thomas Althaus, AC Chair, June 30 2008