

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

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

General compliance issues

REVISION OF RESOLUTION CONF. 11.3 ON COMPLIANCE AND ENFORCEMENT

1. This document has been submitted by Kenya.
2. Enforcement of CITES has long proved to be a problem among Parties. Even those Parties (mostly consumer ones) that are relatively well resourced are unable to enforce the provisions of the Convention and police effectively the large volumes of wildlife traded across their borders.
3. The extent to which CITES provisions are enforced varies considerably among Parties. This has been clearly demonstrated by the findings of the CITES Tiger Technical Missions which have been conducted in 15 tiger range and consumer States since 1999¹.
4. There are several underlying reasons for this. In its 1996 study of the effectiveness of CITES, Environmental Resources Management (ERM) found that Parties responding to its questionnaire were experiencing difficulties in several areas related to enforcement:
 - a) domestic financial limitations;
 - b) insufficient scientific information;
 - c) lack of adequate legislation and regulatory mechanisms;
 - d) the low ranking of CITES and wildlife conservation in national political priorities;
 - e) the lack of trained personnel at all levels, but especially in the Customs service and at field level;
 - f) the need for appropriate equipment (e.g. computers and software) and facilities; and
 - g) inadequate public information.²ERM concluded that "effective national enforcement of CITES is hard to achieve, even for the richest countries...". It is likely that if such a study were conducted today similar findings would be reported.
5. At its meeting in Shepherdstown, from 2 to 4 February 2004, the CITES Enforcement Expert Group concluded that illegal trafficking in wildlife continues to be a major concern and that many CITES Management Authorities are not suitably resourced or experienced to address this; the problem must

¹ See documents Doc. SC.42.10.4, 'Technical Missions' (Sep.-Oct. 1999) and CoP12 Doc. 33 Annex, "Conservation of and trade in tigers" (Nov. 2002).

² Environmental Resources Management (ERM), Study on How to Improve the Effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), attached to document Doc. SC.37.6 (ERM/CITES Standing Committee, Sep. 1996).

be combated by law enforcement agencies adequately staffed with trained and equipped professional officers.

6. The Expert Group further concluded there is insufficient liaison among national CITES authorities and wildlife law enforcement agencies; insufficient consultation between national, regional and international law enforcement agencies prior to CITES meetings; and insufficient information regarding illegal trade being exchanged at these levels.
7. Several recommendations were made by the Expert Group, including, *inter alia*, that:
 - a) Parties recognize the seriousness of illegal trade in wild fauna and flora and identify it as a matter of higher priority for their national law enforcement agencies. In particular, wildlife law enforcement officials should have parity in training, status and authority with their counterparts in Customs and police;
 - b) 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;
 - c) Parties that have not already done so consider nominating officials from relevant national enforcement agencies to participate in the Interpol Wildlife Crime Working Group and that this group be represented at meetings of the Conference of the Parties;
 - d) consideration be given to expanding the remit of the CITES Tiger Enforcement Task Force, when appropriate, beyond issues relating to Asian big cats;
 - e) the Parties, inter-governmental and non-governmental organizations provide funds and expertise to enable enforcement-related training or the provision of training materials, which is urgently needed in many 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; and
 - f) an international association of wildlife law enforcement officers be established, to assist the dissemination of technical advice and information to wildlife law enforcement staff; and
 - g) a dedicated officer specializing in wildlife crime be appointed, seconded or funded within the ICPO-Interpol General Secretariat in Lyon, France.
8. Clearly it would benefit the enforcement of CITES if these specific recommendations of the Expert Group were incorporated into Resolution Conf. 11.3 on Compliance and enforcement.
9. We have noticed the increasing use of national plans within CITES to encourage compliance with the provisions of the Convention, both with respect to general implementation in specific countries and with respect to enacting national implementing legislation. National action plans are also a feature of other multilateral environmental agreements.
10. We believe that a general requirement for national action plans which incorporate, in relation to improving enforcement of CITES, targets, timetables, activities and a plan for accessing potential funding sources, would enhance political will at the national level and assist in achieving compliance with the Convention.
11. The Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora has been in force since 10 December 1996 and the Lusaka Agreement Task Force (LATF) operational since 1 June 1999. Despite being limited to five Field Officers, between 1999 and 2003 LATF trained 90 enforcement officers from member countries, established a central database for intelligence, and has been responsible for several seizures of specimens of wild fauna and flora. Its most notable case was the investigation which contributed to the seizure in June 2002 of 6.5 tonnes of ivory in Singapore.
12. Given the problems that have been identified with communication and coordination between wildlife law enforcement agencies at the regional and national levels, Parties should give consideration to the

establishment of other similar regional task forces, as well as increased support for the Lusaka Agreement to enhance its capacity and reach, and ultimately its effectiveness.

13. Between 1987 and 1997, the Secretariat compiled a separate and detailed Report on Alleged Infractions for meetings of the Conference of the Parties. At its 10th meeting (Harare, 1997), following discussion on the format of the infractions report, the Conference of the Parties decided that a "distinction should be made between alleged infractions of the provisions of the Convention and non-compliance with the provisions laid down in Resolutions of the Conference of the Parties" (Decision 10.122). In the event, the Secretariat did not implement this Decision. Instead, it altered the whole format of the infractions report, cutting out detail on alleged infractions and drastically reducing the content. This appears to have been a unilateral action by the Secretariat.
14. Infractions reports had come to be accepted as a reliable and impartial instrument reinforcing national implementation and accountability. Parties featuring in the reports were encouraged to address the problems highlighted. The effective loss of the reports has decreased access to enforcement-related information, particularly in Parties where CITES authorities and wildlife law enforcement agencies may not have access to restricted international databases or that would not normally request information from the Trade Infraction and Global Enforcement Recording System (TIGERS).
15. We believe that reinstatement of the Reports on Alleged Infractions, in the format used between 1987 and 1997, but incorporating the distinction recommended in Decision 10.122, would improve access to information particularly for developing country Parties and Parties with economies in transition, and encourage improvements in enforcement. Kenya therefore recommends the adoption of the draft revision of Resolution Conf. 11.3 as outlined in the Annex.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat has reported on the results of the meeting of enforcement experts (Shepherdstown, February 2004) in document CoP13 Doc. 23 and its annexes.
- B. The draft decisions proposed by the Secretariat already aim at improving the provision of contact information for enforcement authorities. With regard to this and other suggested amendments to Resolution Conf. 11.3, the Secretariat suggests that they be part of a comprehensive review of Resolution Conf. 11.3 in preparation for CoP14. Such a review could take into account not only the recommendations of the enforcement experts group but also, *inter alia*, the work done on guidelines for compliance with the Convention, the facilitation of biennial reporting, feedback on the revised format for infraction reports and UNEP's 10-year review of the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora.
- C. In the interim, the Secretariat has identified several enforcement-related decisions which are long-standing in nature and could be incorporated into Resolution Conf. 11.3 (see document CoP13 Doc. 17).
- D. In view of the above, the Secretariat does not support the overall revision of Resolution Conf. 11.3 that Kenya has proposed.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Revision of Resolution Conf. 11.3 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;

~~NOTING~~ 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 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;

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;

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) formulate national 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 with wildlife law enforcement responsibilities with parity in training, status and authority with 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 listed in the Appendices;

iv) 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

iv) inform each other of all circumstances and facts likely to be relevant as regards illegal traffic and also of control measures, with the aim of eradicating such traffic;

b) 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

c) if an importing country has reason to believe that an Appendix-II or -III species is 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 part 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 in 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, inter-governmental and non-governmental organizations to provide additional financial support for the enforcement of the Convention, by providing funds to 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;

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, 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, 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;
- c) Parties work together within their regions to develop appropriate mechanisms for cooperation and coordination between wildlife law enforcement agencies at the regional level;

- d) Parties establish *ad hoc* CITES Enforcement Task Forces as needed focusing initially on species included in Appendix I;
- e) Parties that have not already done so consider nominating officials from relevant national enforcement agencies to participate in the Interpol Wildlife Crime Working Group;
- bf) the Parties provide to the Secretariat detailed information on significant cases of illegal trade; and
- eg) the Parties inform the Secretariat, when possible, about convicted illegal traders and persistent offenders;
- DIRECTS the Secretariat to communicate such information quickly to the Parties;

Regarding additional actions to promote enforcement

RECOMMENDS further that the Parties:

- a) promote incentives to secure the support and cooperation of local and rural communities in managing wildlife resources and thereby combating illegal trade;
- b) where appropriate, evaluate and utilize for enforcement purposes, information from non-governmental sources while maintaining standards of confidentiality; and
- c) consider the formation, at national level, of specialized wildlife enforcement units or teams;

URGES the Parties, inter-governmental 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 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; ~~and~~

URGES ICPO-Interpol to:

- a) appoint a dedicated officer specializing in wildlife crime within the ICPO-Interpol General Secretariat in Lyon, France;
- 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
- c) take steps to establish an international association of wildlife law enforcement officers to assist with the dissemination of technical advice and information to wildlife law enforcement staff; 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.