

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

Fifty-third meeting of the Standing Committee
Geneva (Switzerland), 27 June-1 July 2005

Interpretation and implementation of the Convention

GUIDELINES FOR COMPLIANCE WITH THE CONVENTION

1. This document has been prepared by the Chair of the Standing Committee's Working Group on Compliance.
2. During the 13th meeting of the Conference of the Parties (CoP13, Bangkok, 2004), the Working Group held several meetings in which representatives of the following Parties participated: Australia, Brunei Darussalam, Canada, China, Ecuador, Germany, Japan, Malaysia, Mexico, the Netherlands, New Zealand, Norway (Chair), Saint Lucia, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and Zambia. The Secretariat was also present at all of the meetings.
3. One of these meetings was also opened to intergovernmental and non-governmental organizations so that they could express their views on the topic. Six organizations participated in that meeting.
4. The Working Group used the revised draft guidelines on compliance with the Convention contained in document SC50 Doc. 27, Annex 3, as a basis for its discussions during CoP13.
5. The draft was considered a good reflection of current practice, but somewhat voluminous and unwieldy. There seemed to be an agreement that the objective of the guidelines should be to reflect and clarify current rules and practice, and not to create new rules.
6. Before the last meeting during CoP13, the Chairman circulated a new draft (annexed to the present document) which took into account comments made during the discussions and some of the written contributions, and aimed at simplifying the structure of the guidelines.
7. The Working Group decided to continue discussions by e-mail until the present meeting of the Standing Committee, but at the time of writing (April 2005) several aspects still needed further consideration:
 - a) Many members found the draft more prescriptive than necessary, and some questioned the need for a formalized compliance mechanism. Some pointed out that past cases had demonstrated the need for flexibility and for considering non-compliance on a case-by-case basis.
 - b) Several members were of the opinion that the guidelines should lend more importance to support and capacity-building than to sanctions or 'punitive' measures.
 - c) The Working Group believes that the roles of the Conference of the Parties and of the Standing Committee need to be clarified, in particular whether Parties should be able to bring individual cases before the Conference of the Parties.
 - d) A balance should be reached between the transparency and confidentiality required because of legitimate concerns. How explicit should the criteria be in this regard?
 - e) Is there a need for a separate Compliance Committee? Most members agreed that the Standing Committee could fill this role.

8. As the Working Group has not completed its deliberations, it is recommended that it meet again at the beginning of SC53 and report in the course of the meeting. The Standing Committee can then decide how it wants to proceed with this issue.

Draft guidelines on compliance with the Convention
(as per 12 October 2004)

Chairman's attempt to take into account the discussions of the WG and part of the written contributions.

- Old paragraph numbers are in brackets (...)
- Text which should be [re]considered is in [...]
- Alternate wordings are in *italics and separated/divided by slashes*
- Editor's comments are //between double slashes//

Objectives

1. (1) [Recalling Article XIII and other relevant provisions of the Convention,] the objectives of these guidelines are:
 - a) to assist the Standing Committee [and the Conference of the Parties] in:
 - i) reviewing Parties' overall compliance with the Convention;
 - ii) promoting and facilitating Parties' compliance with the Convention;
 - iii) ensuring the fair, consistent and effective application of compliance-related procedures within the Convention's provisions and relevant Resolutions;
 - iv) making appropriate recommendations to the Conference of the Parties;
 - v) [identifying ways to improve the *implementation/compliance with*, and thereby the effectiveness, of the Convention and making appropriate recommendations to the Conference of the Parties;]
 - b) to assist Parties in meeting their obligations regarding compliance with the Convention.

Legal basis and scope

2. (2-4) These guidelines have their basis in [Article XIII of the Convention, Resolution Conf. 11.3 and Decision 12.84] and should be applied in a manner consistent with the text of the Convention, applicable rules and principles of international law, relevant Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice. An indicative list of these instruments is attached to these Guidelines.//an alternative to bracketed text above//
3. In the event of any conflict between these guidelines and the Convention, the Convention prevails.
4. These guidelines are without prejudice to any dispute settlement procedure under the Convention.
5. (14) ~~The application of these guidelines relates~~apply, in particular, to compliance with the following Convention obligations:
 - a) Designation of a Management Authority and a Scientific Authority (Article IX);
 - b) Ensuring that trade in CITES-listed specimens only takes place after the prior grant of CITES permits or certificates or comparable documents issued by non-party States showing that, *inter alia*, specimens have been legally acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V, VI, VII and XV);

- c) Taking of appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1);
- d) Maintenance of records of trade and preparation of periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8); and
- e) Responding to communications of the Secretariat or the Standing Committee //not comprised by art. XIII, but relevant// related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).

General principles

- 6. (5) A positive and supportive approach should be taken towards issues of non-compliance, with the aim of ensuring long-term compliance.
- 7. (6) Non-compliance should be addressed in a consultative, transparent and pragmatic manner with procedural safeguards to affected Parties.
- 8. (8) ~~The application of~~ These guidelines ~~in addressing instances of non-compliance must be~~ should be applied in a consistent and fair manner. There should be equal ~~treatment~~ consideration of Parties ~~in similar cases and situations of non-compliance~~ and where applicable precedents are involved, but sufficient flexibility to address matters and adapt measures on a case-by-case basis, taking into account factors such as a Party's national economic circumstances, social stability and existing administrative and other constraints.
- 9. (32) Where an affected Party cannot access the financial resources needed to participate in CITES meetings where its own compliance is being considered, it may request assistance from the Secretariat or the Standing Committee in identifying such resources.

Transparency and confidentiality

- 10. As a general rule, the findings of the Secretariat and other investigating instances are not to be treated confidentially, except for the reasons listed in paragraph XX below..
- 11. (7) As a general rule, discussions in the Standing Committee should not be confidential except for the reasons listed in paragraph XXX below. The decision to keep discussion confidential is the responsibility of the Standing Committee [or the Conference of the Parties].
- 12. (7) Information and discussions may be kept confidential for the following reasons:
 - a) to avoid threats to the safety of individuals;
 - b) to protect ~~legitimate secrecy~~ confidential business information;
 - c) to avoid the disclosure of information that could jeopardize the survival of populations of species included in the Appendices of the Convention;
 - d) to avoid compromising a judicial investigation; or
 - e) to protect information that an affected Party has requested be kept confidential.

The various bodies and their tasks

- 13. (10) As the supreme policy-making body of the Convention, the Conference of the Parties *should/shall* direct and oversee the handling of compliance matters particularly through the identification of key obligations and procedures. It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention. [At the request of a Party, the Conference of the Parties may review specific issues of

non-compliance and related decisions of the Standing Committee.] //should this sentence remain at all? Seems more or less consensus to let SC be only body dealing with individual cases.//

14. (11) The Standing Committee is the main deliberating and decision-making body in individual compliance matters. It should examine general and specific compliance matters in accordance with instructions from and authority delegated by the Conference of the Parties. It should advise and assist Parties in complying with the Convention, verify information, make determinations regarding issues of non-compliance and monitor and assess overall compliance.
15. (12) The Animals and Plants Committees should, when requested and within the scope of their mandates, advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters by *inter alia* undertaking necessary reviews, consultations, assessments and reporting.
16. (13) The Secretariat should assist and support the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters. It should receive, study, verify and communicate to the Parties information on compliance matters. It should advise and assist Parties in complying with the Convention, draw their attention to apparent issues of non-compliance, ~~follow the instructions and comply with the deadlines given by the Standing Committee and the Conference of the Parties,~~ and track the implementation of compliance-related decisions of the Standing Committee and the Conference of the Parties. The Secretariat should report on a regular basis to the Standing Committee and the Conference of the Parties on its activities undertaken under these guidelines.

General promotion, monitoring and reporting ~~and facilitation~~ of compliance (and prevention of non-compliance)

17. (17) Advice, assistance and other capacity-building activities provided by the Secretariat or other bodies should focus on enabling Parties to meet their compliance obligations.
18. (18, 16) Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) ~~should~~ provide the primary means by which compliance with the Convention is monitored. To that end, the Secretariat shall, ~~by the most effective means,~~ advise Parties at least 60 days in advance of deadlines applicable to reporting or other obligations under the Convention ~~and offer relevant assistance.~~
19. (19) Information and reports provided by the Parties ~~should~~ shall be reviewed by the Secretariat and the results of these reviews ~~should be~~ provided to the Parties. The Secretariat may receive compliance-related information at any time and from any source, but should assess the quality of the information before communicating it to the Parties and/or the appropriate Convention bodies.
20. (15) The Secretariat should keep Parties informed as fully as possible, ~~through confidential communications, where necessary, and otherwise~~ through Notifications to the Parties and its reports, of areas of effective compliance with the Convention, the identification of compliance problems, the actions taken to solve those problems and, if so is the case, the successful restoration of compliance. If strictly necessary, cf. paragraph 6 above, such information may be imparted through confidential communications.
21. (20) The Secretariat should maintain open and regular communication with Parties concerning compliance matters.

Party-specific facilitation of compliance (and prevention of non-compliance)

22. (23) Where compliance problems are detected, the Secretariat or ~~other appropriate body~~ the Standing Committee acting collectively or through its Chairman, technical committees or regional representatives, should provide advice and assistance to solve them. [Advice, assistance and other capacity-building activities thus provided should focus on enabling Parties to meet the compliance obligations listed in paragraph 3 above.]

23. (21) The Secretariat ~~should~~ shall provide individual Parties ~~that may not be in compliance concerned~~ with information it receives that indicates that they may have compliance problems and should ~~use oral and written communications~~ communicate with these individual Parties to determine whether compliance problems exist.
24. (22) Parties themselves should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline and, where appropriate, the reasons for these problems.
25. (24) A Party that has been identified by the Secretariat as having compliance problems ~~should~~ shall be given the opportunity to correct those problems. It may be asked by the Standing Committee to undertake additional reporting or targeted monitoring (e.g. by submission of further information or provision of permit copies to the Secretariat for verification for a certain period of time), an investigation or other recommended ~~policies or actions~~ including modifications of policies.
26. (25) If a Party's compliance problem is not resolved in spite of any assistance provided and in spite of time allowed for correction, the Standing Committee should issue an informal warning to the affected Party stating that it is out of compliance, explaining the basis for that conclusion and advising it that the non-compliance procedure may be initiated.
27. In their communications with an affected Party the Standing Committee and the Secretariat should make sure that the information provided and the requests for information made to the Party are effectively received by the competent authorities of the Party.

[The Non-Compliance Procedure:] Identifying and Addressing Non-Compliance, and Restoring Compliance

Initiation of non-compliance procedure //Missing: a definition of "non-compliance procedure"//

28. (26) The non-compliance procedure may be initiated by the submission of issues of non-compliance to the Standing Committee[or the Conference of the Parties] by:
- a) a Party that concludes that despite its best endeavours it may be unable on its own to comply with certain obligations under the Convention;
 - b) one or more Parties that [, in the course of their trade monitoring and enforcement,] have concerns about another Party's compliance with its obligations under the Convention or have concerns about trade involving States not party to the Convention; or
 - c) the Secretariat, ~~on its own initiative or in response to information it has received from elsewhere;~~
- or it may be initiated directly by:
- d) the Conference of the Parties; or
 - e) the Standing Committee.
29. (27) Submissions should be in writing and include details as to which specific obligations are concerned and an assessment of the reasons why the affected Party may be unable to meet those obligations. Corroborating information, or indication of where such corroborating information may be found, should be provided. The non-compliance submission may include proposals for remedial action.
30. (28) The Standing Committee [or the Conference of the Parties] shall reject non-compliance submissions which it considers are:
- a) *de minimis*; or
 - b) manifestly ill-founded.
31. (29) Before a non-compliance submission is made to the Standing Committee [or the Conference of the Parties], the Secretariat should screen the underlying information to determine its reliability and

relevance, compile ~~corroborating~~ supplementary information, both corroborating and contradicting, and consult with the affected Party.

32. (30) The Standing Committee [and the Conference of the Parties] should ensure the expedited handling of a non-compliance submission.

Information gathering and fact-finding

33. (31) The Standing Committee [and the Conference of the Parties] should consider non-compliance submissions, information and observations on non-compliance with a view to establishing relevant facts and securing an amicable solution of the matter.
34. (32) A Party that is the subject of a non-compliance submission or that makes a non-compliance submission with respect to itself has the right to participate in the discussions of the Standing Committee [or the Conference of the Parties] with respect to that non-compliance submission and to be consulted formally on the non-compliance submission. Formal consultations should be followed, where appropriate, by information ~~//informal??//~~ consultations. The affected Party may not take part in the preparation and adaptation of any decisions, any measures or any recommendations of the Standing Committee [or the Conference of the Parties]. ~~[Where an affected party cannot access the financial resources needed to participate in such discussions, it may request assistance from the Secretariat in identifying such resources.]~~//moved to para 9//
35. (33) Where necessary [and provided funds are available] the Standing Committee [or the Conference of the Parties] should request, through the Secretariat, further information on a non-compliance submission and should undertake, ~~through the Secretariat and~~ upon the invitation of the Party concerned, the gathering and verification of information in the territory of that Party or wherever such information may be found. This may be carried out by the Secretariat or by the regional representatives.

Determination of non-compliance and its cause

36. (34) On the basis of the information made available to it, the Standing Committee [or the Conference of the Parties] should determine whether or not *a state/issue/serious issues* of non-compliance exist(s). Where it has determined that such is the case, it should *establish/set out* the facts and possible causes of the matter of concern and the requirements for its solution.
37. (35) The Standing Committee [or the Conference of the Parties] should also consider the nature, (underlying) cause(s), degree and frequency of non-compliance and whether the affected Party has taken or planned any steps to restore compliance before making a determination that issues of non-compliance exist. Non-compliance with a single Convention obligation may be sufficient to result in a determination.

Recommendation of measures to restore compliance

38. (36) The Standing Committee [or the Conference of the Parties] may, after consideration of the information available to it, decide upon one or more of the following graduated measures to address non-compliance issues that are determined to exist and bring about full compliance with the Convention:
- a) advice, information, appropriate assistance and other capability-building support to the affected Party through the Secretariat or another body;
 - b) direct contact with the affected Party by a representative of the Standing Committee with a view to helping it find a solution;
 - c) special reporting by the affected Party and data verification by the Secretariat;
 - d) issuance of a *formal caution/notice* directly to an affected Party *warning/informing it* that it is in non-compliance, requesting a response or action and indicating that, if there is none, further measures might be taken;

- e) recommended specific actions to be undertaken by the affected Party;
- f) in-country technical assessment and verification mission, upon the invitation of the Party concerned, by the Secretariat, one or several members of the Standing Committee or, depending on the assessment needs, by an independent review team;
- g) public notification of non-compliance sent through the Secretariat by the Standing Committee [or the Conference of the Parties] to all Parties advising that issues of non-compliance have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- h) agreement between the affected Party and [the Secretariat or] the Standing Committee on a compliance action plan with steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion. During this period, no additional measures would be applied [related to this instance of non-compliance] provided that progress in returning to compliance continued to be made;
- i) recommended temporary suspension of commercial or all trade in specimens of one or more CITES-listed species, consistent with Article XIII of the Convention. A recommendation to suspend trade ~~should~~ may be made in cases where a Party's non-compliance is persistent and the Party is showing no will or intention to cooperate towards compliance where it is determined that such persistence is willful or is the result of manifest negligence and it is determined that this persistent non-compliance is likely to be detrimental to the survival of one or more CITES-listed species. Such determination ~~should~~ may be made, for example, when a Party does not:
 - i) follow recommendations;
 - ii) take advantage of offers of assistance;
 - iii) agree to a compliance action plan; or
 - iv) comply with an agreed plan.

It may also be made where no domestic measures exist to enforce the Convention; ~~and~~.

- ~~j) other appropriate measures.~~

39. The list of measures in paragraph YYY above is not necessarily exhaustive. (37) The measures decided upon and the deadlines set for the Party to reply to communications and implement the recommended measure(s) should be decided case-by-case, taking into account the Party's capacity, economic, administrative or other, to restore effective compliance, cf. paragraph 8 above. These considerations, together with the legal and technical ones, should be clearly set out in the Committees recommendations.

40. (9) Where compliance measures are being developed, the possible conservation impact must be taken into account and all efforts taken to avoid developing and establishing measures that are likely to bring about negative conservation results, even if these would apply to a limited number of Parties or species.

Monitoring of implementation and return to compliance

41. (38) The Standing Committee [or the Conference of the Parties] should monitor the actions taken by the Party concerned to restore compliance through, among other things, its submission of progress reports or the submission of reports by the Secretariat.

42. (39) Specific actions as well as the date when the Party concerned is expected to return to compliance should be noted in such reports. Deadlines established by the Standing Committee [or the Conference of the Parties] should be adjusted to allow an affected Party that is making good progress to complete the steps needed to restore compliance.

43. (40) The Party concerned should keep the Standing Committee [or the Conference of the Parties] informed of its progress by submitting summary reports *on a regular basis/according to a schedule to be determined from case to case.*

44. (41) In the event of a failure to return to compliance in a timely manner, the Standing Committee [or the Conference of the Parties] should consider other measures consistent with the list of measures provided above.
45. (42) Existing recommendations to suspend trade should be reviewed at each Standing Committee meeting. Such instances should also be monitored intersessionally. (36 i) A recommendation to suspend trade should be withdrawn as soon as a Party has been restored to full compliance, or has shown clear evidence of having engaged in a process towards that aim.
46. (43) The Standing Committee or the Conference of the Parties should instruct the Secretariat to notify Parties when it is satisfied that an affected Party has returned to compliance.

Review of overall compliance

47. (44) To ensure the continued effectiveness of these guidelines, the Standing Committee-Conference of the Parties should review them every two years at every [alternate] meeting and revise them where appropriate to incorporate experience gained in implementing them or other relevant compliance policy documents.