

Interpretation and Implementation of the Convention

NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

Introduction and Synopsis

1. This is a report on the progress in the Secretariat's ongoing project to evaluate, and to assist in the improvement of the domestic legislation of the Parties to implement the Convention. This project was initiated at the direction of the Conference of the Parties at its eighth meeting. Two phases of the project have been completed so far, in which the legislation of approximately 125 Parties has been evaluated. During Phase I, the legislation of 81 Parties and territories was collected and analysed. During Phase II, the legislation of 44 Parties was collected and analysed. Analysis of the legislation was performed by the Environmental Law Centre (ELC) of IUCN and TRAFFIC USA, working in conjunction with the Secretariat.
2. At the ninth meeting of the Conference of the Parties, the Secretariat reported the results of Phase I of the project. This report placed the legislation of each Party analysed during Phase I into one of three categories, based on the apparent effectiveness of each Party's legislation in implementing the Convention. Parties whose legislation was considered incomplete were recommended by the Conference of the Parties to take steps towards improving their legislation prior to the 10th meeting. The progress made by some Parties, requiring the re-classification of their legislation, is noted in Annex 1. Pursuant to the decision of the ninth meeting of the Conference of the Parties, the Secretariat herein recommends action which should be taken in relation to those Parties which failed to improve their category 2 or 3 legislation during the time frames established by the Conference of the Parties. The Secretariat was directed to provide technical assistance in the improvement of national legislation to those Parties that requested it. Progress in these areas is discussed below.
3. Following the ninth meeting of the Conference of the Parties, a second group of 44 Parties was selected for analysis by the Secretariat, in Phase II of the project. The results of this analysis, which was performed by ELC and TRAFFIC USA, are discussed below and reported in Annex 2.
4. The Secretariat makes specific recommendations below regarding how the approach in this project might be improved during Phase III.

Categorization of Legislation

5. Resolution Conf. 8.4 directed the Secretariat to examine implementing legislation and identify those Parties whose domestic measures did not authorize them to:
 6. – designate at least one Management Authority and one Scientific Authority;
 7. – prohibit trade in specimens in violation of the Convention;
 8. – penalize such trade; or
 9. – confiscate specimens illegally traded or possessed.
10. At its ninth meeting the Conference of the Parties agreed that these points could provide the basis for creating three categories into which the legislation could be classified depending upon its apparent sufficiency in implementing the requirements of the Convention. These three categories are as follows:

11. Category 1: legislation which is believed to generally meet the requirements for implementation of CITES;
12. Category 2: legislation which is believed generally not to meet all requirements for the implementation of CITES; and
13. Category 3: legislation which is believed generally not to meet the requirements for the implementation of CITES.
14. These categories remain in use for the purposes of this document. In response to enquiries received about the meaning of these categories, the Secretariat stresses that they apply only to the scope and text of national legislation that has been enacted into law or regulation by a Party. The categorization does not take into account legislation that has not yet been enacted or come into force, nor is it meant to reflect how well or poorly a Party may be implementing administrative or other requirements of the Convention.

Phase I

Introduction

15. By adoption of Decision 6. a) directed to the Parties at its ninth meeting, the Conference of the Parties recommended Parties considered in Phase I whose legislation was considered to be in category 2 or 3 to take all necessary steps to improve or develop implementing legislation and notify the Secretariat of their progress in these areas no later than six months prior to the 10th meeting of the Conference (December 1996). On 18 April 1995, the Secretariat issued Notification to the Parties No. 845 to remind Parties about the decision of the Conference of the Parties. In August 1996, the Secretariat sent letters to the Parties whose legislation was considered to be in categories 2 or 3 reminding them of the deadline and requesting information. Pursuant to a directive of the Standing Committee at its 37th meeting in December 1996, the Secretariat sent another letter in January 1997 to the Parties whose legislation was in category 3 and which had responded neither to the first reminder letter nor the December 1996 deadline.

Current Status

16. Annex 1 describes the current status of legislative categorization for Parties considered in Phase I of this project.
17. At the suggestion of the Standing Committee, the Secretariat has indicated which of the Parties with legislation in category 3 have a significant level of trade. For these Parties, the need for adequate legislation is more urgent.

Phase II

Introduction

18. Following the ninth meeting of the Conference of the Parties, ELC and TRAFFIC USA were contracted to analyse the national legislation of an additional 44 Parties to the Convention.
19. The categorization of the legislation, resulting from the analysis, is contained in Annex 2.

Comment

20. The Secretariat stresses that the analyses conducted in Phase II of this project focused only on national leg-

islation for CITES implementation which has been enacted into law by each Party. It has not focused on proposed legislation, or on whether CITES is implemented well or poorly in the country being analysed.

21. The Secretariat makes a recommendation below concerning the need for Parties whose legislation was considered in Phase II and is classified in categories 2 or 3 to report improvements to the Secretariat.

Phase III

22. The Secretariat recommends that Phase III of this project, which will involve a review of the legislation of those Parties whose legislation has not yet been analysed, should begin as soon as possible. The costs to the ELC and to TRAFFIC USA to complete the analyses for the first and second phases have been greater than the funding provided by the contracts. As a result, these two organizations used funds from their own budgets to complete their obligations under the contracts. Therefore, the funding provided for the completion of the analyses for the remaining Parties should be increased in the budget to reflect more realistically the costs of the work. The Secretariat intends to initiate Phase III immediately after the 10th meeting of the Conference of the Parties.

Improvement of the process of analysis

23. In response to the comments of some Parties, the Secretariat will seek during Phase III to improve the process of analysis, in order to promote transparency and comprehension of the way in which each Party's legislation is analysed and categories are assigned. The Secretariat urges the Parties involved in Phase III to provide complete legal texts and to respond promptly to requests for information and for comments on draft analyses.

Actions after Phase III

24. The Secretariat perceives this project as one which will continue as long as new Parties accede to the Convention, as long as Parties continue to amend and improve their implementing legislation and as long as Parties continue to seek technical assistance in drafting and improving such legislation. Between now and the 11th meeting of the Conference of the Parties, the Secretariat intends to:
 25. – initiate and complete Phase III;
 26. – update evaluations of new implementing legislation when the Secretariat is made aware of such legislation by the Parties;
 27. – develop recommendations for actions by the Conference of the Parties at its 11th meeting regarding Parties reviewed in Phases I and II and placed in categories 2 or 3 which do not take action to improve their legislation; and
 28. – provide technical assistance to those Parties that request it.
29. The Secretariat recommends that this project be continued so that the legislation of all Parties can continue to be analysed and to provide a means of providing support and technical assistance for those Parties working to improve their implementing legislation.

Uses of the Analyses

30. Except where little or no information on national legislation is available, the analyses will be useful to Parties seeking to know about the provisions of national laws in other countries to regulate trade in specimens of CITES-listed species. Importing Parties can refer to the analyses when seeking information about the legality of exports from other Parties. Some Parties have

national legislation that includes penalties for violations of foreign law by their citizens. Enforcement authorities of these Parties can refer to the analyses for information about laws in other countries that might apply to their investigations. The Parties are urged to use the analyses for these purposes. When necessary, copies of legislation can be obtained from the Management Authorities of the Parties concerned.

31. Article VIII, paragraph 7(b), of the Convention states that each Party shall transmit to the Secretariat a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention. Because this requirement has not been implemented by most Parties (although some improvement has occurred over the last two years), it has often been difficult for the Secretariat to obtain current information on national legislation for implementation of the Convention. The Secretariat intends to stress again to the Parties, as it did in Notification to the Parties No. 716 of 21 December 1992, the importance of this obligation, and to request that all Parties submit their biennial reports, which should contain information on any recent changes in legislation concerning the implementation of CITES.
32. The Secretariat will not distribute copies of all the analyses to all Parties. To do so would be of questionable usefulness and would be expensive. Furthermore, each analysis is written only in the working language of the Convention most appropriate for the Party concerned.
33. The question of distribution of the analyses to the Parties as well as to NGOs, universities or other organizations has been raised on several occasions. At its 36th meeting, the Standing Committee decided that "the Secretariat should obtain the consent of each Party before releasing the analysis of its legislation". The Secretariat proposes that this decision be endorsed by the Conference of the Parties.

Assistance to the Parties

34. Resolution Conf. 8.4 directs the Secretariat to seek external funding to enable it to provide technical assistance to Parties in the development of measures to implement the Convention. Such technical assistance with respect to national legislation has taken several forms and is continuing.
35. The Secretariat has requested the UNEP Regional Office for Latin America and the Caribbean to help those countries from the region that have requested assistance to draft national legislation. The first analysis for Paraguay of its environmental legislation has already been completed and some assistance to Peru has been provided.

Guidelines for Legislation to Implement CITES

36. As a result of the completion of a joint project between the ELC and the Secretariat, the Secretariat has provided to each Party at least one copy of the book *Guidelines for Legislation to Implement CITES*, written by Cyrille de Klemm. The Parties are urged to use this publication when they are developing CITES implementing legislation. Unfortunately this book has been published only in English. The Secretariat has contracted ELC to revise the text of this book, taking into account developments that have occurred since the publication of the first edition. The Secretariat will make the revised edition available to the Parties upon completion in the three working languages of the Secretariat and, if external funding is available, in other languages.

Provision of consultants for development of legislation

37. The Secretariat's technical assistance to the Parties should also include the assignment of a consultant to Parties requiring assistance in developing national legislation. The consultant would review the Party's current national legislation for the protection of wild fauna and flora. In co-operation with the officials of the Management Authority and with lawyers of the government concerned, the consultant would then develop draft legislation for implementation of the Convention. Several persons with experience in drafting environmental legislation have indicated to the Secretariat their willingness to act as consultants to Parties in need of technical assistance. The Secretariat would be pleased to receive the names of other qualified and experienced persons who would be available for such work.
38. The Secretariat has received contributions from the United Kingdom and the World Wide Fund for Nature (WWF) for a pilot project in this area of technical assistance. As a result, the Secretariat has been able to complete work on draft legislation for Guyana, a

Party that has requested assistance. The Secretariat has recommended that, in the future, Parties whose national legislation generally does not meet the requirements for CITES implementation (category 3) should be considered the highest priority to receive such assistance.

39. The Secretariat has also proposed that at least a part of the funding for technical assistance to the Parties should not depend on external sources but should be included in the budget of the Trust Fund for the period 1998-2000.
40. Resolution Conf. 8.4, paragraph b), directs the Secretariat to seek from Parties that lack legislation for CITES implementation information about the actions needed in order to establish the measures necessary to enforce the provisions of the Convention properly and about the procedures and time frames for doing so. The Secretariat asks that the Parties consider for approval the draft decisions of the Conference of the Parties presented in Annex 3, in furtherance of this and other directives of Resolution Conf. 8.4.

Doc. 10.31 (Rev.) Annex 1

Current Status of Phase I Legislative Categorizations (as of 1 May 1997)

1. Parties previously possessing category 2 or 3 legislation which have enacted new CITES category 1 legislation
Cuba
Czech Republic
Japan
Mexico
Slovakia
2. Parties possessing category 2 legislation which have enacted new CITES legislation that the Secretariat has not yet finalized in the analysis
Argentina
China
Israel
Spain
Singapore
Russian Federation
Venezuela
3. Parties possessing category 2 legislation which have drafted improved CITES legislation that has not yet entered into force
Chile
Colombia
South Africa
Togo
United Kingdom – Hong Kong
United Republic of Tanzania
4. Parties possessing category 2 legislation which have not drafted improved CITES legislation, but which have requested technical assistance in doing so
Brazil
Paraguay
Peru
Zimbabwe
5. Parties possessing category 2 legislation which have either failed to respond to Decision 6 or reported no significant improvements in their CITES implementing legislation
Bangladesh
Botswana
Cameroon
Congo
Equatorial Guinea
Estonia
India
Hungary
Kenya
Madagascar
Malaysia – Peninsular
Malaysia – Sarawak
Malawi
Mauritius
Namibia
Nigeria
Papua New Guinea
Sudan
Suriname
Thailand
Zambia
6. Parties previously possessing category 3 legislation which have enacted new legislation that now falls within category 2
Honduras
El Salvador
Panama
7. Parties possessing category 3 legislation which have drafted new legislation that has not yet entered into force
Ghana
Greece
Philippines
Poland
Malaysia – Sabah
Uganda

8. Parties possessing category 3 legislation which have requested technical assistance in improving their legislation

Bolivia
Gabon
Guyana (assistance has been provided)
Senegal
Seychelles

9. Parties possessing category 3 legislation which have neither enacted improved CITES legislation nor responded to Decision 6.

Central African Republic
Dominican Republic
Egypt
Guatemala
Indonesia

Nepal
Nicaragua
Pakistan
Rwanda
Sri Lanka
United Arab Emirates
Zaire

10. Parties in paragraph numbers 7, 8 and 9 above in which significant wildlife trade occurs

Egypt
Guyana
Indonesia
Malaysia – Sabah
Nicaragua
Senegal
Zaire

Doc. 10.31 (Rev.) Annex 2

Current Status of Phase II Legislative Categorizations (as of 1 May 1997)

1. Parties possessing domestic legislation believed to generally meet all the requirements for CITES implementation (category 1)

Austria
Costa Rica
Ethiopia
Finland
Liechtenstein
Luxembourg
Republic of Korea
Sweden
Vanuatu

2. Parties possessing domestic legislation believed not to meet all the requirements for CITES implementation (category 2)

Benin
Bulgaria
Burkina Faso
Ecuador
Eritrea
Gambia
Guinea
Iran
Monaco
St. Kitts and Nevis
St. Lucia

St. Vincent and the Grenadines
Trinidad and Tobago
Tunisia
Uruguay

3. Parties possessing domestic legislation believed to generally not meet the requirements for implementation of CITES (category 3)

Algeria
Bahamas
Barbados
Belize
Brunei-Darussalam
Burundi
Chad
Comoros
Côte d'Ivoire
Cyprus
Djibouti
Guinea-Bissau
Jordan
Liberia
Mali
Morocco
Mozambique
Niger
Romania
Sierra Leone

Doc. 10.31 (Rev.) Annex 3

Proposed Decisions of the Conference of the Parties
Regarding Further Steps to be Taken by the Parties and by the Secretariat to Implement Resolution Conf. 8.4

Decisions directed to the Parties

Regarding Parties whose legislation was analysed during Phase I

1. The following action should be taken in relation to the Parties identified in Annex 1 of document Doc. 10.31 (Rev.), paragraph 10, that is those Parties: whose national legislation was analysed during Phase I of the review of national legislation and is believed not to meet the requirements for CITES implementation; which did not comply with Decision 6(a) directed to the Parties, adopted at the ninth meeting of the Conference of the Parties by reporting improvements in their legislation; and which have been identified as Parties engaged in significant amounts of international trade in CITES species.

- a) All Parties should, from 9 June 1998, refuse any import, export and re-export of CITES specimens to and from these countries.
- b) Before 9 June 1998, the Secretariat shall report on the progress on the adoption of national legislation that substantially improves implementation of CITES within a Party identified in paragraph 10 of Annex 1 to Doc. 10.31 (Rev.), and the Standing Committee shall decide whether the Decision in paragraph a) shall apply or not to that Party. The report shall include the comments of that Party.

- c) Any Party identified in paragraph 10 of Annex 1 to Doc. 10.31 (Rev.) that enacts legislation meeting the criteria specified in Resolution Conf. 8.4 shall report to the Secretariat regarding such enactment. Such report shall be in writing, must include the text of the legal enactment that has taken effect, and must be translated into one of the three working languages of the Convention. Such report must be received by the Secretariat no later than 1 February 1998.
2. Parties identified in document Doc. 10.31 (Rev.) Annex 1 as having national legislation in categories 2 and 3, but which are not identified in paragraph 10, should:
- a) take all necessary measures to develop national legislation for implementation of CITES and to ensure that this legislation will be in effect by the 11th meeting of the Conference of the Parties;
- b) report to the Secretariat any progress made in this regard no later than six months before that meeting; and
- c) provide to the Secretariat copies of all relevant new legislation and, where applicable, a translation of this legislation into one of the three working languages of the Convention.
3. With respect to Parties described in Decision 2 above that have not taken positive steps to implement that Decision, the Conference of the Parties at its 11th meeting shall consider appropriate measures, which may include restrictions on the commercial trade in specimens of CITES-listed species to or from such Parties.

Regarding Parties whose legislation was analysed during Phase II

4. a) Parties identified in document Doc. 10.31 (Rev.) Annex 2, paragraph 3, that is, those Parties whose national legislation was analysed during Phase II and was believed not to meet the requirements for CITES implementation should:
- i) take all necessary measures to develop national legislation for implementation of CITES and to ensure that this legislation will be introduced by the 11th meeting of the Conference of the Parties; and
- ii) report to the Secretariat any progress made in this regard no later than six months before that meeting.
- b) If any of these Parties believes that the Secretariat's current analysis of legislation is not accurate, it should, by 1 September 1997, provide to the Secretariat:
- i) copies of all relevant legislation not referred to in the analysis and, where applicable, a translation of this legislation into one of the three working languages of the Convention; and
- ii) its comments as to how such legislation applies to the implementation of CITES.
- c) Notwithstanding the new information provided by the Party, paragraph 4.a) should apply until the Party receives different advice from the Secretariat.
5. With respect to Parties described in paragraph 4. a) above that have not taken positive steps to implement these recommendations, the Conference of the Parties at its 11th meeting shall consider appropriate measures, which may include restrictions on the commercial trade in specimens of CITES-listed species to or from such Parties.
6. a) Parties identified in document Doc. 10.31 (Rev.) Annex 2, paragraph 2, as being Phase II Parties whose national legislation is in category 2, that is, whose legislation is generally believed not to meet all requirements for CITES implementation should:
- i) take steps to improve their national legislation for implementation of CITES in the areas of weakness indicated in the analysis; and
- ii) report to the Secretariat any progress made in this regard no later than six months before the 11th meeting of the Conference of the Parties.
- b) If any of those Parties believes that the Secretariat's analysis of legislation is not accurate, it should, by 1 September 1997, provide to the Secretariat:
- i) copies of all relevant legislation not referred to in the analysis and, where applicable, a translation of this legislation into one of the three working languages of the Convention; and
- ii) its comments as to how such legislation applies to the implementation of CITES.
- c) Notwithstanding the new information provided by the Party, paragraph 6.a) should apply unless the Party is advised by the Secretariat that its legislation is believed to generally meet all requirements for CITES implementation (category 1).

Decisions directed to the Secretariat

The Secretariat shall:

1. consider any new information on legislation for implementation of CITES received from the Parties indicated in Annexes 1 and 2 of document Doc. 10.31 (Rev.) and amend the analyses of legislation and the ratings accordingly;
2. advise the Parties concerned of any amendments to the analyses of their legislation and to their ratings and, as a result, of any changes regarding actions that they should take concerning the Decisions 2, 4 and 6 above addressed to the Parties;
3. provide technical assistance to Parties requesting assistance in the development of their national legislation for CITES implementation, giving priority to those Parties identified in Annex 1 of document Doc. 10.31 (Rev.) as having national legislation that generally does not meet the requirements for implementation of CITES (category 3);
4. initiate immediately Phase III of the analysis of national legislation by analysing the legislation of Parties not named in Annex 1 or 2 of document Doc. 10.31 (Rev.);
5. keep current the analyses of legislation, using the information from the biennial reports required under Article VIII, paragraph 7(b), of the Convention and other relevant information that becomes available;
6. communicate on request to Parties (free of charge) or to any international or national organization (against payment to cover costs), copies of the analyses of national legislation of any Party whose analysis is completed and which has formally agreed to this communication; and

7. report to the 11th meeting of the Conference of the Parties:

a) the measures taken by the Parties concerned to implement Decisions 2, 4 and 6 above, directed to the Parties and any recommendations relating to Parties that have not implemented the Decisions;

b) any progress concerning technical assistance provided to the Parties in the development of their national legislation for implementation of CITES; and

c) the conclusions of the analyses of legislation begun in 1997 for Parties not named in Annex 1 or 2 of document Doc. 10.31 (Rev.).