

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



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Interpretation and Implementation of the Convention

CROSS-BORDER MOVEMENT OF MUSICAL INSTRUMENTS

1. This document has been submitted by the United States of America^{*}.

Background

2. Musicians and institutions such as orchestras and museums that own musical instruments that contain CITES-listed species have encountered a number of challenges when travelling internationally with those instruments. The need to issue a separate CITES document for each international border crossing has also presented an administrative burden for the issuing Management Authorities.
3. The Convention provides an exemption to Articles III, IV, and V for personal and household effects. Additionally, the Parties have adopted Resolution Conf. 13.7 (Rev. CoP14) on *Control of trade in personal and household effects*. However, not all Parties implement the personal and household effects exemption in the same manner. This further complicates the ability of musicians to take their instruments across international borders.
4. Section VI of Resolution Conf. 12.3 (Rev. CoP15) on *Permits and certificates*, provides guidance to Parties on how to issue documents under Article VII, paragraph 7, for travelling exhibitions. However, the Resolution is silent on whether an orchestra or travelling musical group could qualify for a travelling exhibition certificate, as laid out in this Resolution.
5. The United States was asked by several U.S. organizations that represent musicians and musical instrument manufacturers, as well as by a number of musicians themselves, to evaluate whether a mechanism could be developed to allow for the frequent cross-border movement of musical instruments that contain CITES-listed species. Specifically, these musicians and organizations asked whether it would be possible to develop a mechanism that would allow them to obtain a CITES document, much like a passport, that would authorize the frequent cross-border movement of their instruments without the need to obtain a separate CITES document each time they cross an international border.
6. At CoP10 (Harare, 1997), the Parties adopted Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, which established a passport-like document that would allow individuals who own a CITES-listed pet to move across international borders without obtaining a separate CITES document for each movement. In reviewing this Resolution, it appears that a similar process could be adopted for personally owned musical instruments that are not being sold, traded or otherwise disposed of while outside the owner's usual State of residence.
7. In addition, instruments owned by museums or other institutions are frequently moved across borders as part of orchestras, museum exhibitions, or other performances. As with personally owned musical instruments, museums and other institutions temporarily move instruments they own across borders with

^{*} *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

the clear intention of returning the instruments to the institution that owns them. The United States was asked to develop a mechanism that could facilitate the frequent cross-border movements of these instruments as well.

Discussion

8. In reviewing the provisions of Resolution Conf. 10.20, and in an effort to provide the same type of relief from requiring CITES documents for each cross-border movement to musicians who frequently travel across international borders with their personally owned musical instruments, the United States has prepared a draft resolution to facilitate such movement (Annex 1). The draft resolution establishes a certificate of ownership, similar to that established for live pets, which would facilitate the movement of personally owned instruments that would not be sold, transferred, loaned or otherwise disposed of while outside the owner's usual State of residence. The proposed Certificate of Ownership would have the same format as the one currently used by Parties for documents issued in accordance with Resolution Conf. 10.20 and would require exporting and importing Parties to validate the document at each border crossing, much like what is done for passports for foreign travellers.
9. While the draft resolution would address personally owned instruments, it does not address the movement of instruments owned by a museum or other institution such as an orchestra. However, we believe that such movements could be addressed by Article VII, paragraph 7, if the instrument met the criteria of this section. As long as the species used to manufacture the instrument was acquired before 1 July 1975 or before the date the species was included in the Appendices, or was artificially propagated or bred in captivity, the musical instrument should be eligible for a travelling-exhibition certificate for frequent cross-border movements.
10. The United States is therefore proposing a revision to Resolution Conf. 12.3 (Rev. CoP15), section VII (see Annex 2 to the present document), to clarify that orchestras and museum exhibitions could qualify for a travelling-exhibition certificate to facilitate the frequent cross-border movement of instruments and thereby reduce the administrative burden on the museum or orchestra as well as the issuing Management Authority.

Recommendation

11. We recommend that the Conference of the Parties consider the information presented in this document and adopt the draft resolution attached in Annex 1 and the revisions to Resolution Conf. 12.3 (Rev. CoP15), section VII attached in the Annex 2 to the present document.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat supports in principle the recommendation to adopt the draft resolution on *Frequent cross-border movements of personally owned musical instruments*, contained in Annex 1 and the proposed amendment to Resolution Conf. 12.3 (Rev. CoP15), contained in Annex 2, subject to the comments below.
- B. With regard to the draft resolution in Annex 1:
 - i) The introductory text in the operative part indicates that what follows refers to "cases where it is determined that a document is required". However, the applicability of the subsequent text relates only to trade in personally owned musical instruments that are derived from CITES species, excluding Appendix-I specimens acquired after the species was included in the Appendices. This should be clarified in the introductory text, in which case paragraphs a) and b) could be simplified, as follows:

RECOMMENDS that for trade in personally owned musical instruments that are derived from CITES species, other than Appendix-I specimens acquired after the species was included in the Appendices in cases where it is determined that a document is required, that:

- a) Parties issue a certificate of ownership for a ~~pre-Convention Appendix I, II or III personally owned musical instrument or for a personally owned musical instrument containing specimens of Appendix II or III species acquired after the effective listing date ("personal effects")~~, to facilitate the frequent cross-border movement of musical such instruments that accompany are being hand-carried by the owner;

- b) although any Party may issue a certificate of ownership to the owner of a ~~pre-Convention Appendix I, II or III musical instrument or an Appendix II or III musical~~ such an instrument who wishes to travel to other States with ~~it their musical instrument~~ as a personal effect, ~~it the Party~~ should do so only after agreement ~~with between~~ the other Parties concerned, and if the usual residence of the owner is within the territory of the issuing Party and the musical instrument is registered with the Management Authority of that Party;
- ii) In recommendation e), the term "individual's State of usual residence" is unclear because there is no indication of which "individual" is being referred to. The Secretariat recommends that the word "individual" be replaced by "owner".
- iii) In recommendation f), the phrase "no longer in the possession of the owner" to refer to specimens that have been sold is incongruous because, if a person sells his/her musical instrument, he/she is no longer the owner. (The same incongruity exists in Resolution Conf. 10.20, on which the proposed text is based.) The Secretariat recommends that the simplest solution is to use the phrase "no longer in the possession of the registered owner".
- C. With regard to the proposal, in Annex 2, to insert a new paragraph a), in section VI of Resolution Conf. 12.3 (Rev. CoP15), the Secretariat believes that the phrase "other like exhibitions that are temporary" may be inappropriate. Considering that the phrase applies to travelling zoos and circuses, they might not be temporary in their "State of usual residence", even if their stay in another State is temporary. The Secretariat therefore recommends that the words "other like exhibitions that are temporary" be replaced by the words "other such exhibitions". The recognition of orchestras as "travelling exhibitions" may seem far fetched, but would achieve the purpose of the proponent.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Frequent cross-border movements of personally owned musical instruments

RECALLING that Article VII, paragraph 2, of the Convention provides that the provisions of Articles III, IV and V shall not apply to specimens that were acquired before the provisions of the Convention applied to those specimens, where the Management Authority issues a certificate to that effect;

RECALLING that Article VII, paragraph 3, of the Convention provides that, other than in certain circumstances, the provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects;

RECOGNIZING that, because the Convention does not define the term 'personal or household effects' in Article VII, paragraph 3, the Parties adopted Resolution Conf. 13.7 (Rev. CoP14) on *Control of trade in personal and household effects* to define the term;

NOTING that, under Resolution Conf. 13.7 (Rev. CoP14), Parties agreed to not require export permits or re-export certificates for personal or household effects that are dead specimens, parts or derivatives of Appendix-II species except under certain circumstances;

RECOGNIZING, however, that many Parties do not fully implement the personal and household effects exemptions in Article VII, paragraph 3, and Resolution Conf. 13.7 (Rev. CoP14), due to stricter domestic measures or other provisions, resulting in administrative burdens for individuals who frequently move musical instruments manufactured from species listed in the Appendices to the Convention across international borders when they might otherwise be exempt from documentation requirements under the Convention;

RECOGNIZING that, under section VI of Resolution Conf. 12.3 (Rev. CoP15) on *Permits and certificates*, the Parties agreed that frequent cross-border movement of specimens used for exhibition purposes could be issued a travelling-exhibition certificate;

AWARE that personally owned musical instruments manufactured from species listed in the Appendices to the Convention may be frequently moved across international borders for a variety of legitimate purposes, including but not limited to personal use, performance, display or competition;

NOTING that musical instruments owned by a museum, orchestra or similar institution being moved across international borders could be issued a travelling-exhibition certificate under Resolution Conf. 12.3 (Rev. CoP15) to facilitate such movement;

NOTING that the repeated granting of permits and certificates under Articles IV, V or VII of the Convention for personally owned musical instruments that are frequently moved across international borders poses problems of a technical and administrative nature, but that such movement needs to be monitored closely to prevent illegal activities;

DESIRING that exemptions provided by the Convention not be used to avoid the necessary measures for the control of international trade in specimens crafted from species listed in the Appendices;

RECOGNIZING that Article XIV, paragraph 1 (a), of the Convention states that the provisions of the Convention shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions of trade, taking, possession or transport of specimens of species included in Appendices I, II or III, or the complete prohibition thereof;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS, in cases where it is determined that a document is required, that:

- a) Parties issue a certificate of ownership for a pre-Convention Appendix-I, -II or -III personally owned musical instrument or for a personally owned musical instrument containing specimens of Appendix-II or -III species acquired after the effective listing date ("personal effects"), to facilitate the frequent cross-border movement of musical instruments that are being hand-carried by the owner;

- b) although any Party may issue a certificate of ownership to the owner of a pre-Convention Appendix-I, -II or -III musical instrument or an Appendix-II or -III musical instrument who wishes to travel to other States with their musical instrument as a personal effect, it should do so only after agreement between the Parties concerned, and if the usual residence of the owner is within the territory of the issuing Party and the musical instrument is registered with the Management Authority of that Party;
- c) a Management Authority not issue a certificate of ownership for a musical instrument that is being hand-carried or is part of personally accompanying baggage unless it is satisfied that the musical instrument is legally possessed by the applicant and that the musical instrument has not been acquired in contravention of the provisions of any domestic legislation or the Convention;
- d) the Management Authority require the applicant for a certificate of ownership to provide their name and address and pertinent data regarding the musical instrument, including the species used to manufacture the instrument, the manufacturer's name and serial number or other means of identification;
- e) the certificate issued in accordance with paragraph a) above include in box 5, or in another box if the standard form referred to in Resolution Conf. 12.3 (Rev. CoP15) is not used, the following language: "The specimen covered by this certificate, which permits multiple cross-border movements, is owned for personal use and may not be sold, loaned, traded or otherwise disposed of outside the individual's State of usual residence";
- f) when a musical instrument that is the subject of a certificate of ownership issued pursuant to this Resolution is no longer in the possession of the owner (e.g., due to sale, theft or destruction), the original certificate of ownership must be immediately returned to the issuing Management Authority;
- g) a certificate of ownership issued for a musical instrument be valid for a maximum period of three years to allow multiple imports, exports and re-exports of the instrument;
- h) the Parties concerned treat each certificate of ownership as a type of passport that allows the movement of the identified musical instrument accompanied by its owner across their borders upon presentation of the original certificate to the appropriate border control officer who:
 - i) inspects the original and validates it with an ink stamp, signature and date to show the history of movement from State to State; and
 - ii) does not collect the original at the border, but allows it to remain with the specimen;
- i) the Parties concerned require that the musical instrument be securely marked or otherwise appropriately identified and that this mark or a description thereof be included on the certificate of ownership so that the authorities of the State into which the musical instrument enters can verify that the certificate corresponds to the musical instrument in question;
- j) when, during a stay in another State, a certificate of ownership for a musical instrument is lost, stolen or accidentally destroyed, only the Management Authority that issued the document may issue a duplicate. This duplicate will bear the same number if possible and the same date of validity as the original document, but will bear a new date of issuance and include the following statement: "This certificate is a true copy of the original";
- k) in accordance with paragraphs a) and f) above, the owner may not sell or otherwise transfer the musical instrument when travelling outside of their State of usual residence;
- l) musical instruments for which certificates of ownership have been issued must be returned to the owner's State of usual residence before the expiration of the certificate and that Parties not replace or re-issue certificates of ownership that expire while the musical instrument is outside the owner's State of usual residence; and
- m) Parties maintain records of the number of certificates of ownership issued under this Resolution and, if possible, include the certificate numbers and the scientific names of the species concerned in their annual reports.

DRAFT REVISION OF RESOLUTION CONF. 12.3 (REV. COP15)
ON *PERMITS AND CERTIFICATES*

Text proposed for inclusion is underlined and text proposed for deletion appears in strikethrough.

VI. Regarding travelling-exhibition certificates

RECOMMENDS that:

- a) for the purpose of this resolution, the term "travelling exhibition" includes, but is not limited to, travelling zoos, circuses, menageries, museum exhibitions, orchestras, plant exhibitions, and other like exhibitions that are temporary and where the CITES specimens will be returned to the State of usual residence;
- ab) each Party issue a travelling-exhibition certificate for CITES specimens belonging to a travelling exhibition based in its State, registered with the Management Authority and wishing to transport specimens of CITES species to other States for exhibition purposes only, on the condition that they were legally acquired and will be returned to the State in which the exhibition is based and that they were:
 - i) acquired before 1 July 1975 or before the date of inclusion of the species in any of the Appendices of the Convention;
 - ii) bred in captivity as defined in Resolution Conf. 10.16 (Rev.); or
 - iii) artificially propagated as defined in Resolution Conf. 11.11 (Rev. CoP15);
- bc) travelling-exhibition certificates should be based on the model included in Annex 3 of the present Resolution. They should be printed in one or more of the working languages of the Convention (English, Spanish or French) and in the national language if it is not one of these;
- ed) travelling-exhibition certificates should contain the purpose code 'Q' and include in block 5, or in another block if the model form is not used, the following language: "The specimen/s covered by this certificate may not be sold or otherwise transferred in any State other than the State in which the exhibition is based and registered. This certificate is non-transferable. If the specimen/s dies/die, is/are stolen, destroyed, lost, sold or otherwise transferred, this certificate must be immediately returned by the owner to the issuing Management Authority";
- de) a separate travelling exhibition certificate must be issued for each live animal;
- ef) for travelling exhibitions of specimens other than live animals, the Management Authority should attach an inventory sheet that contains all of the information in blocks 9 to 16 of the model form for each specimen;
- fg) travelling-exhibition certificates should be valid for not more than three years from the date on which they were granted to allow multiple imports, exports and re-exports of the individual specimens that they cover;
- gh) Parties consider such travelling-exhibition certificates as proof that the specimens concerned have been registered with the issuing Management Authority and allow the movement of such specimens across their borders;
- hi) at each border crossing, Parties endorse travelling-exhibition certificates with an authorized stamp and signature by the inspecting official and allow the certificates to remain with the specimens;
- ij) Parties check travelling exhibitions closely, at the time of export/re-export and import, and note especially whether live specimens are transported and cared for in a manner that minimizes the risk of injury, damage to health or cruel treatment;

- ~~j~~k) Parties require that specimens be marked or identified in such a way that the authorities of each State into which an exhibition enters can verify that the travelling-exhibition certificates correspond to the specimens being imported;
- ~~k~~l) when, during a stay in a State, an animal in possession of an exhibition gives birth, the Management Authority of that State be notified and issue a Convention permit or certificate as appropriate;
- ~~l~~m) when, during a stay in a State, a travelling-exhibition certificate for a specimen is lost, stolen, or accidentally destroyed, only the Management Authority which has issued the document may issue a duplicate. This duplicate paper certificate will bear the same number, if possible, and the same date of validity as the original document, and contain the following statement: "This certificate is a true copy of the original"; ~~and~~
- n) the travelling exhibition must return to its State of usual residence before the expiration of the certificate and Parties may not replace or re-issue travelling exhibition certificates that expire while the specimen is outside the owner's State of usual residence; and
- ~~m~~o) Parties include in their annual reports a list of all travelling-exhibition certificates issued in the year concerned;