

# Sustainable eNews

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May 2003



**IWMC**  
**World Conservation Trust**

## Welcome to the 162nd Party to CITES

The Syrian Arab Republic has deposited its instrument of accession to CITES on 30 April 2003 and will so become the 162<sup>nd</sup> Party to CITES on 29 July 2003.

## Editorial: There You Go Again

by Eugene Lapointe

**T**he anti-whaling bloc within the International Whaling Commission (IWC) appears resolved to drag out the lengthy, enervating debate over Iceland's IWC membership through another dreary round. Readers will recall that, in London 2001 and Shimonoseki 2002, that group broke the IWC's own rules in order to prevent Iceland, with its pro-whaling credentials, from taking its rightful place within the IWC. Subsequently, at a Special Intersessional IWC meeting (Cambridge, UK, October '02), the majority voted to accept Iceland's membership though, in reality, no such vote should ever have been required.



But democracy is a messy process when the result does not come out the way you want it and the defeated parties now want to re-open the question decided at Cambridge. Fourteen nations have written to the U.S. State Department (the U.S. being the depository nation of the International Convention on the Regulation of Whaling) protesting Iceland's IWC membership. U.S. State and Commerce Department officials disavow any interest in re-opening the matter of Iceland's membership. However, the 14 authors are, presumably, not writing solely to show off their penmanship and they intend some form of anti-Iceland initiative when the IWC convenes in Berlin June 15.

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Evidently, the authors have no interest in the standing of the IWC itself, whose reputation now stands in shreds after numerous rounds of similar NGO-inspired “the end justifies the means” rule-breaking. The delicious irony is that fully 10 of the nations attacking Iceland’s membership have signed on to a resolution radically to expand the IWC’s conservation agenda and enable it to accept external funding. In short, having besmirched the IWC and dragged it through the mud in order to further their own domestic agendas (and distract attention from their environmental failures at home), these 10 now propose to give the IWC a whole new range of authority. The fact of the matter is that, through initiatives such as its anti-Iceland campaign, the anti-whaling bloc has all but destroyed the IWC and it is no longer a question of whether the institution will win a broader mandate but whether it will survive in any form whatsoever.

But still the anti-whalers continue with their self-appointed agenda, frustrating the formulation of a Revised Management Scheme for the sustainable harvest of non-endangered cetacean species while casting around for more landlocked nations to join their ranks. All the while they are blissfully unaware that one more illegal swipe at Iceland’s IWC membership could prompt a scraping of chairs and a general exit of sustainable use nations from Berlin, leaving them to contemplate the intricate designs of German wallpaper.

## Who Is the Boss at CITES?

**I**t is amazing for such a question to be raised with respect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) but this was, nevertheless, the question asked us a representative of a Party member of the Standing Committee during the recent 49th meeting of the Committee, in Geneva.

It took no more than a second to get over our surprise and our answer was that the Parties indeed are the ‘Boss’. This means the Parties as a whole, the Conference of the Parties in other words. Although this is not specifically stated in the Convention, the Conference of the Parties is for sure its governing body, the only one that may take decisions binding the Parties (amendments to Appendices I and II), unless they enter specific reservations. In accordance with Article XI, paragraph 3(e), it may also adopt, where appropriate, recommendations for improving the effectiveness of the Convention. Accordingly, the Conference of the Parties has adopted a large number of resolutions and other decisions.

It is through the adoption of such a resolution that the Standing Committee of the Conference of the Parties was established, at the second meeting of the Conference (CoP2, San José, 1979) to act in between CoPs, on the condition that it does so within the policy agreed by the Conference. Subject to this condition, we may consider that the Standing Committee is also a ‘boss’ acting on behalf of the Conference, and so entitled to make recommendations but not to take any decisions binding the Parties. In no circumstances however, may the ‘Boss’ be an individual Party, a group of Parties or any body established by the Convention or by the Conference of the Parties to facilitate the implementation of the Convention. This includes the Chairman of the Standing Committee and especially the Secretariat, which is composed of international civil servants, headed by the Secretary General, who, by definition, are supposed to serve the Parties and to accomplish a number of functions determined by the treaty or entrusted to it by the Conference of the Parties.

We understand that it may also appear amazing to a number of people that we have felt necessary to repeat above what should be known by all those involved with CITES work. Nevertheless, this should not be so amazing for those who have attended the most recent CoPs or meetings of CITES Committees, in particular the last meeting of the Standing Committee held in Geneva, in April this year. Let us concentrate on the latter.

Although the provisional Agenda of the 49<sup>th</sup> meeting of the Standing Committee did not include an item on the preparation of the 13<sup>th</sup> meeting of the Conference of the Parties to be held in Thailand, as decided at CoP12, such an item was added to the Agenda, at the request of a Committee member. The concern of that member, as well as of a number of other representatives of Parties, was mainly the date for the meeting, due to the rumour circulating that it should take place in late 2004, i.e. close to the IUCN Conservation Congress, scheduled for November 2004 in Bangkok. While the discussion was to take place by the end of the meeting, it had to be considered earlier when the Committee dealt with the budget cycle, an issue left to it at CoP12 in view of the reluctance of many Parties to increase the interval between meetings to three years, as proposed by the Standing Committee at the suggestion of the Secretariat. The Secretary General admitted that the IUCN Congress generated difficulties but stated that a solution acceptable to both CITES and IUCN, agreed by Thailand, had been found and that CoP13 would be held on 3 to 15 October 2004.

This announcement was not subject to any discussion but, during the meeting and even more outside the meeting room, there were substantial discussions and comments about such early dates for CoP13.

The Chairmen of the Animals and Plants Committees expressed concerns and we also had the feeling that the date was being imposed on the host country, or at least that the Secretariat had not given Thailand much chance to argue in favour of a later date, in early 2005. In addition, it was noticed that to hold two such important meetings at the same period of the same year would likely have detrimental effects on the collection of funds for the Sponsored Delegate Project, the importance of which for an equitable participation in CoPs was pointed out during the meeting.

It is under these circumstances that the issue was raised again at the end of the meeting, with the hope that a postponement of CoP13 could be agreed for various reasons, including that of common sense. However, this was without taking account of the uncompromising attitude of the Secretariat. After expressing its understanding for concerns and after having explained that the occurrence of Ramadan at the time of the meeting was not a significant problem, of which care had already been taken, the Secretariat stated that the determination of the date of a CoP was not an issue for the Standing Committee when there was an agreement between the Secretariat and the host country. It concluded by saying, therefore, that the matter had been resolved!



No member of the Committee, no observer Party contested such an unbelievable statement, which was not based on any resolution or other decision of the Conference of the Parties, and even less on the text of the Convention. None even asked on which basis it was made. Of course CITES, in its Article XI, paragraph 2, provides that “the Secretariat shall convene regular meetings at least once every two years, **unless the Conference decides otherwise**” [emphasis added], and in Article XII, paragraph 2(a), that it shall arrange for and service meetings. However, to convene a meeting and to arrange for it does not mean that the Secretariat may decide, even in agreement with the host country, the time and venue of a meeting. This is clearly the role of the Conference of the Parties, as stated in Article XI, paragraph 4. As CoP12 was unable to make a decision about the time of the meeting, and although it is perfectly logical

that the Secretariat and the host country have to make a commonly agreed proposal, nothing may prevent the Conference of the Parties, or the Standing Committee acting on its behalf, to have different views and **to decide otherwise**.

This was not the case and, in the corridors, but in the corridors only, many people continued to complain.

**In these circumstances, as it was obvious, for unknown reasons (lack of knowledge, lack of interest, surprise, etc.), the Standing Committee and the other represented Parties had forgotten who was the ‘Boss’.**

## Manipulation or desire to make sure that all goes well?

**T**he comments below express also a feeling of uneasiness and those who would tend to believe in the first element of the above question might well associate them with the article referring to the steering body of CITES, the Convention on International in Endangered Species of Wild Fauna and Flora. These comments relate to the last meeting of the Standing Committee too, but also to actions of the Chairman of the Standing Committee and the Secretariat undertaken before the meeting, apparently under the initiative of the Chairman.

At its 12<sup>th</sup> meeting (CoP12, Santiago, 2002), the Conference of the Parties to CITES, actually echoing a wish expressed by the Sub-Committee on Fish Trade of the Committee on

Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO), adopted Decision 12.7. The Decision directed the Standing Committee to work with FAO in the drafting of a memorandum of understanding (MoU) between the two organizations, to establish a framework of cooperation with respect to exploited aquatic species. It provided also terms of references to guide the Standing Committee, and envisaged that a draft could be considered at the 25<sup>th</sup> session of the COFI (February 2003) and, if possible, the 49<sup>th</sup> meeting of the Standing Committee (April 2003). On the other hand it did not grant any role either to the Chairman of the Standing Committee or the Secretariat.

At the COFI session, the Agenda of which provided for discussions on the decisions and recommendations of the Sub-Committee on Fish Trade, including those concerning the relationship between FAO and CITES, a Friends of the Chair Group was established to examine this issue, considered as very significant. The CITES Secretariat was represented at the session by an observer but, as other observers, was denied the right to participate in the work of the Group. This apparently for at least three reasons: 1) this kind of Group, under the COFI practice, is limited to FAO member States; 2) the work of the Group was considered as an internal FAO process to determine its position before negotiating with the CITES Standing Committee; and 3) the Secretariat had received no mandate from the Conference of the Parties or the Standing Committee to work on this issue with the FAO. Accordingly, the Group did not take into consideration a document actually submitted by the CITES Secretariat, at the request of and in consultation with the Chairman of the Standing Committee, although it was presented, according to its title, by CITES for consideration by the 25<sup>th</sup> session of the FAO Committee of Fisheries. The submission of this draft MoU on behalf of CITES when none of its Parties, except that of the Chairman, had an opportunity to see it, was obviously misleading and the attitude of the Group was basically justified.

After long discussions in the Friends of the Chair Group and further discussion in the plenary meeting, the COFI was unable to reach consensus on a draft MoU, a small minority of States opposing to a couple of

sentences that would have afforded to the FAO and regional fisheries management organizations the primary role in fisheries management, as recognized by the Conference of the Parties in the preamble of Decision 12.7. The COFI agreed however on two related documents, Terms of Reference for the *ad hoc* Expert Advisory Panel for Assessment of Proposals to CITES and a Work Plan to continue the analysis of the effect of CITES listings of commercially-exploited aquatic species. It is worth noting that though related to CITES these two documents apply to FAO internal business only.



Immediately after the closure of the debate on this issue, the observer from the CITES Secretariat was given the floor and chose, most likely with the agreement of her superiors, to give a long lecture to the audience, constituted mainly of representatives of governments and international organizations, to teach how international laws should be interpreted, to criticize the way the Secretariat was treated by FAO and FAO members, and to tell which detrimental effects this could have on the future relationship between the two organizations.

The lecture caused consternation and a delegate felt obliged to remind to the observer from the CITES Secretariat that government delegates did not need to be taught and what is the role of international civil servants. This was greeted with sustained applause.

These eventful moments were not reported to the Standing Committee, the Secretariat indicating only, in a first occasion, that its representative was excluded from the Friends of the Chair Group and, at a later stage that she had to wait in the corridors, which were in fact the room in which the COFI was dealing with other issues and where all other observers were also sitting. The Standing Committee, after some discussion that clearly indicated a serious split of opinions between participants, decided to establish a working group to consider the same draft MoU as that 'submitted' to the FAO. The discussions in the working group confirmed the divergences and led to some rather harsh exchanges of views between certain participants. After three meetings, the group was unable to make any constructive proposals to the Committee.

The confusion continued in the Committee meeting, and a number of participants regretted that they had no access to any document until the very last days, this preventing them, among other things, to contact their colleagues from fisheries.

The Chairman recognized that his action created or at least contributed to the confusion and ingenuously stated that he believed that he had a mandate to do so under Rule 13 of the Rules of Procedure of the Committee. This interpretation of the Rule was not contested (who knew it?), although it was obviously erroneous.

Rule 13 specifies the role of the Chairman and clearly indicates that if he shall represent the Committee and the Parties, this is "within the limits of the Committee's mandate". He should have used the communication procedure described in Rules 30 to 32 and have taken into account the views of the full Committee, which, and nobody else, has received a mandate on this issue from the

Conference of the Parties. He did not. Why? Is it because he suspected that it would be difficult to obtain similar views from all the members, or because he wanted that his views and those of the Secretariat be communicated to FAO for consideration at the COFI session? The question remains open.

Various suggestions were made by the Committee, in particular to circulate the document to all the Parties, not only the members of the Committee, to have an as broad as possible input, and to give a mandate to the Chairman to start negotiation with FAO. Although there was a number of questions asked by some members and other participants on such a mandate and on the documents to be circulated, the Chairman endorsed the ideas, especially that concerning the mandate and pushed for their adoption. In the obvious absence of consensus, by which decisions are usually taken in the Committee, the Chairman said that there was a need to vote. The confusion perpetuated about the voting procedure and the questions submitted to vote, and culminated when the result appeared to be a tie. Although the Chairman had read the relevant Rule a few minutes earlier, he misinterpreted it and, instead of asking to the representative of the Depositary Government whether he wanted to break the tie (it means that the motion was rejected), he told him "now you have to make the decision"! Neither the Secretary General nor his Deputy, whom were sitting next to the Chairman, did react and correct the Chairman, as it was their role to do.

Taken by surprise and also forgetting the Rule, the representative of the Depositary Government supported the Chairman, instead of answering that he did not want to break the tie, as he would most likely have done would the right question have been asked.

Nobody complained about the procedure or tried to contest the result of the vote. While this does not appear of great significance, this nevertheless illustrates how members of the Committee and representatives of Parties may be misled, intentionally or not, because they are not properly prepared to face this kind of situation.

Now the Chairman of the Standing Committee has a mandate to negotiate with FAO, which however has no mandate to negotiate with the CITES Standing Committee, as the latter mandate was given by the COFI to its Sub-Committee on Fish Trade, which will meet in Bremen (Germany) in February 2004 only. Nevertheless, it is important that as many Parties as possible answer to the Notification to the Parties No. 2003/030 sent by the Secretariat on 6 May, and comment on the draft MoU attached to it, in consultation with the national fishery authorities, where appropriate. This would allow the Standing Committee, through his Chairman in a first step, to prepare a new draft that would reflect the views of most Parties not only those of the Chairman and the Secretariat.

Let us hope that the next phase of the process will be conducted in a more open way that would make impossible the kind of questions as that appearing in the title of this article. This would be the only way to favour the achievement of a substantial MoU with FAO, which would in particular clearly describe how CITES will ensure the coordination of the conservation measures enforced by FAO and associated bodies with regard to marine species, as provided for in Article XV of the Convention.

## Invitation from IWMC.org



We invite you to visit our new online Forum at:  
[www.iwmc.org/sustain/IWMC-Forum](http://www.iwmc.org/sustain/IWMC-Forum)

This new department of IWMC.org is where friends and supporters of Sustainable Use can publish their articles and papers. Some of the interesting documents in this new section include:

- Resourcism to Preservationism in New Zealand Forest Management: Implications for the future - by Chris J. K. Perley
- Washington: Conservation v. Animal Rights - by Dexter Van Zile
- Invasive Species Series (with regular updates) - by James M Beers

## Announcement: June eNewsletter

The June issue of IWMC Sustainable eNews will be published directly from the 55<sup>th</sup> Annual Meeting of the International Whaling Commission to be held in Berlin from 16 to 19 June 2003.

## Subscriptions / Submissions

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