

EUROPEAN PARLIAMENT

Working Documents

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DOCUMENT 1-152/80

Report

on behalf of the Committee on the Environment, Public Health and Consumer Protection

on the proposal from the Commission of the European Communities to the Council (Doc. 1-270/79) for a Decision concerning the conclusion of the convention on the conservation of European wildlife and natural habitats

Rapporteur: Mr H.J. MUNTINGH

By letter of 8 August 1979 the President of the Council of the European Communities requested the European Parliament, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a decision concerning the conclusion of the Convention on the Conservation of European Wildlife and Natural Habitats.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection.

On 25 September 1979 the Committee on the Environment, Public Health and Consumer Protection appointed Mr Hemmo Muntingh rapporteur.

It considered this proposal at its meeting of 25 January 1980 and, at its meeting of 25 April 1980, the committee unanimously adopted the motion for a resolution.

Present: Mr Collins, chairman; Mr Muntingh, rapporteur; Mr Colla (deputizing for Mrs Krouwel-Vlam), Mr Forth (deputizing for Miss Hooper), Mrs Fullet, Mrs Roudy, Mrs Scrivener, Mrs Seibel-Emmerling, Mr Sherlock and Mr Verroken.

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The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Decision concerning the conclusion of the convention on the conservation of European wildlife and natural habitats

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
- having been consulted by the Council (Doc. 1-270/79),

- having regard to the Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment²,
- having regard to the Resolution of the same authority of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment³,
- having regard to the Council Directive of 2 April 1979 on the conservation of wild birds⁴,
- having considered the opinion of the Economic and Social Committee of 5 October 1979⁵,
- having regard to the report of the Committee on the Environment, Public Health and Consumer Protection (Doc. 1-152/80),

¹ OJ No. C 210, 22.8.1979, p. 12

² OJ No. C 112, 20.12.1973, p. 1

³ OJ No. C 139, 13.6.1977, p. 1

⁴ OJ No. L 103, 25.4.1979, p. 1

⁵ CES 1028/79 fin.

1. Warmly welcomes the proposal from the Commission to the Council for a decision concerning the conclusion of an agreement on the conservation of European wildlife and natural habitats and strongly recommends the Council to ratify it at the earliest opportunity;
2. Refers to this agreement hereinunder as the Convention;
3. Is of the opinion that the importance of the Convention's sphere of application for an effective Community policy on nature and the environment should be recognized;
4. Considers such a policy to be urgently necessary in view of the tragic plight of the natural environment in Europe and in the rest of the world;
5. Strongly urges the Council and Commission to give high priority to a Community policy on nature and the environment;
6. Points out that at world level the United Nations Environment Program (UNEP), the International Union for the Conservation of Nature and Natural Resources (IUCN), the World Wildlife Fund (WWF) and, at the European level, the Council of Europe, which drew up the Convention, and the European Environmental Bureau (EEB) have consistently advocated that priority should be given to these matters;
7. Forcefully brings to the attention of the Council and Commission the World Conservation Strategy drawn up by the IUCN and financed by the WWF and the UNEP which sets out this system of priorities in detail;
8. Considers it absolutely essential that the European Community should cooperate closely with the abovenamed bodies and lend them its assistance where necessary;
9. Is of the opinion that, in order to carry these priorities into effect and carry out the policy, which is really essential if the last remnants of nature in Europe are to be safeguarded, the finances and particularly the staff of the Environment and Consumer Protection Service must be considerably reinforced;
10. Notes that the Convention is closely related to a number of other items of international legislation but that no study is yet available which would make clear the similarities, differences and relationships between the Convention and these other international legislative acts;
11. Requests the Commission to prepare or commission such a study;
12. Notes that the Convention also applies to cetaceans and that the Community is therefore committed to protecting them;
13. Takes the view that the responsibility for the measures to be taken to protect cetaceans ought to lie totally with the Environment and Consumer Protection Service;

14. Is very pleased that the Convention is an open convention to which the European Community and countries other than those belonging to the Council of Europe may accede;
15. Points out that it is particularly important that East European and North African countries should accede to the Convention and requests the Committee of Ministers of the Council of Europe to pay great attention to this matter;
16. Draws attention to the fact that the Council requested Parliament to deliver its opinion during the October 1979 part-session but that the opinion was not requested until 8 August 1979 and considers that, in view of the not inconsiderable importance of this Convention and its complexity, the Council was practically asking for the impossible;
17. Notes that the Convention was signed by the European Community on 19 September 1979 and hence it is impossible to make further amendments to the text before ratification;
18. Is, however, of the opinion that the Convention is patently capable of improvement;
19. Considers one of the most important achievements of the Convention to be that it opens up the way for an ecocentric approach in addition to the normal anthropocentric approach to nature;
20. Urges the Commission and Council to declare that this ecocentric approach is also relevant to the directive on birds and to incorporate it in all future legislation on nature within the European Community and to encourage this approach outside the Community where the Community has an interest;
21. Regrets that the Convention in its general provisions does not speak of all wild animals and plants;
22. Requests the Council and Commission to take the steps called for in Article 3 of the Convention with dispatch as part of the second action programme on the environment;
23. Urges the Commission to accelerate implementation of the projects regarding the conservation of natural habitats mentioned in the second action programme on the environment;
24. Asks the Commission to submit to the Council a proposal for a directive on the protection of plants within a period of three years;
25. Requests the Commission to meet the obligations imposed under Article 6 of the Convention by submitting to the Council, within a period of three years, either a proposal for a directive on the protection of all vertebrate animals in Europe or separate directives for individual classes of vertebrate animals in Europe;

26. Urges the Commission, once the Standing Committee has been properly established and has begun work, to propose in this committee that the Convention should be amended so that the bird species listed separately in Appendix III should be brought under the provisions of Articles 7, 8 and 9;
27. Requests the Commission to submit proposals in the Standing Committee to standardize the prohibitions on methods of capture in the Convention and the directive on birds;
28. Is curious to know what effect the Convention will have on the re-introduction of certain animal and plant species and invites the Commission to initiate or commission research into this;
29. Is of the opinion that, during the negotiations on the accession of Greece, Spain and Portugal to the European Communities, the Commission should point out to these countries that they will have to give equally strict protection to the animal and plant species which have obtained strictly protected status under the directive on birds and the Convention;
30. Finds that the appendices of the Convention are deficient, that there is no appendix for fish and that the structure of the appendices differs from those of the directive on birds;
31. Requests the Commission to initiate fresh discussions within the Standing Committee on the structure of the appendices and to try to have them amended to conform with those of the directive on birds;
32. Requests the Committee of Ministers of the Council of Europe to do its utmost to ensure that the appendices of the Convention are made as comprehensive as possible and also to come forward with a proposal for an appendix on fish.

EXPLANATORY STATEMENTI. GENERAL OBSERVATIONS

1. The first point to be made about the Convention on the Conservation of European Wildlife and Natural Habitats, hereinafter referred simply as 'the Convention', is that it deals exclusively with living things and hence pays no attention to the conditions which their physical surroundings must provide in order to keep these living things alive.

2. These conditions form part of the broader concept of the environment which the second action programme defines as the totality of factors which by their complex interaction form the climate, habitat and living conditions of mankind such as they are or have been experienced.

3. Clearly wildlife will have no chance at all if the environment does not provide the conditions in which living creatures can develop undisturbed. The present Convention must therefore be seen as part of a package of environmental protection measures which would also include legislation on the sulphur content of certain liquid fuels or the directive on waste materials originating from the titanium dioxide industry, to name but two.

4. To put it in another and more precise way: the Convention must form part of a common policy on nature and the environment. Such a policy is urgently needed simply because nature and the environment are not bounded by frontiers. By definition they are transfrontier, international concepts and therefore deserve an international or perhaps even supranational approach.

5. Your committee therefore wishes to make it clear at the outset that it considers the present Convention as one of the initial steps towards a common nature and environment policy in the European Community.

6. Such a policy is urgently needed - not only in Europe, but throughout the world. A couple of quotations from World Watch Paper 22 'Disappearing Species: The Social Challenge' by Erik Eckholm may explain why.

7. 'More than half of the animal species which we know to have become extinct over the last 2,000 years - the first known example being the European lion around 80 A.D. - have disappeared since 1900. Of the larger animal species, over the last 350 years one species or subspecies has become extinct every ten years.'

But, according to the International Union for the Conservation of Nature and Natural Resources (IUCN), one larger animal species is now disappearing every year. Altogether it is generally believed that about 1,000 species of birds and mammals are endangered at this time.'

8. 'There are no reliable estimates of the number of extinct plant species but the IUCN Committee on Endangered Plants has come to the conclusion that about 10% (between 20,000 and 30,000 species) of flowering plants in the world are dangerously rare or threatened with extinction.'

9. 'Thomas Lovejoy of the American World Nature Fund has made extrapolations of the current population trends, land-use and air and water pollution which suggest that by the year 2000 the total number of species in the world will be reduced by at least a sixth. This means that at least 500,000 species will have disappeared.'

10. Even if Lovejoy's predictions were only 1% right they would be 100% unacceptable.

11. Closer to home and on a smaller scale the figures for Europe are no less alarming. The OECD's State of the Environment 1979 did not mince matters.

10% of all plants (1,400 species), 54% of all birds (220 species) 23% of mammals (36 species) and 43% of reptiles and amphibians (64 species) are threatened and in danger. This is a horrific situation for anyone who grasps the meaning of these dry statistics.

12. It is horrific not simply because the existence of animal species is at stake but because the existence of man and the quality of that existence are also at stake. Man is completely dependent on plants and animals. Without a healthy nature there will be no healthy people.

13. In these circumstances it is crystal clear that there is an urgent need for effective measures to check the rapid destruction of nature and the environment, measures which would include organization and legislation.

14. The bodies working towards this at world level, the United Nations Environment Program (UNEP), the IUCN and the World Wildlife Fund (WWF), have made proposals which get right at the heart of the problem in the draft of a 'World Conservation Strategy'. Your committee considers that the European Community should maintain close links with these organizations and provide them with material and moral assistance where necessary.

15. In Europe the main body dealing with the conservation of wildlife is the Council of Europe. The present Convention is one example of its work. Your committee is of the opinion that the Europe of the Nine should cooperate

closely with the Council of Europe in the field of nature conservation and make as much use as possible of the knowledge the Council of Europe has accumulated.

16. Within the Europe of the Nine, and in addition to the European Communities' Environment and Consumer Protection Service, there are a number of private, semi-governmental and governmental organizations operating in this area. It is extremely important that the knowledge and influence which have been acquired should be brought together so that a policy on the conservation of nature and the environment can be as effective as possible.

17. The Environment and Consumer Protection Service may therefore have an important role to play here. Your committee is of the opinion that this department must be provided with the necessary staff and financial resources as a matter of priority so that it may carry out this task in a proper manner.

18. It is also very important that the European Community should help the private nature protection organizations which have formed themselves into an international association to tackle the question of nature and environment protection at international level. These are the organizations which will be able to force national governments to take the much needed international nature protection measures and your committee therefore considers that these organizations must be given as much support as possible.

19. The Convention on the Conservation of Wildlife and Natural Habitats is one of the measures which needs to be taken in the legislative field. It will be seen from our comments on individual articles that your committee is not completely satisfied with it.

20. However, in view of the desperate plight of the natural environment, your committee welcomes the Convention very much and whole-heartedly recommends Parliament to urge the Council to ratify it, particularly since it has already been signed by the Commission and the text cannot now be amended before it is ratified.

21. The Convention has so far been signed by all the countries belonging to the Council of Europe except Malta, Cyprus and Iceland, that is to say Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom, and also by Finland and the European Community.

22. Your committee attaches great importance to the fact that this is an open Convention which means that countries which are not members of the

Council of Europe may also accede to it. This is particularly important in the case of Eastern Europe and North Africa. The migration routes of many species which sojourn in Western and Central Europe cross over East European and North African countries. Your committee therefore recommends that Parliament should request the Committee of Ministers of the Council of Europe to do its utmost to bring East European and North African countries into the Convention.

23. Furthermore, your committee considers it important that Parliament should, in view of the need to reach a common policy on nature and the environment quickly, invite the parliaments of the Member States of the European Community, to ratify the Convention at their earliest opportunity.

24. As mentioned above, your committee considers that the present Convention forms only part of an overall policy to protect nature, the environment and the countryside. It is therefore particularly important to see what place the Convention takes up amongst the other main pieces of international legislation such as:

- a. the Directive of the Council of the European Communities on the conservation of wild birds
- b. the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington Convention)
- c. the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
- d. the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)
- e. the International Whaling Convention
- f. the African Convention on the Conservation of Nature and Natural Resources.

Your committee has unfortunately not been able to obtain a comparative study which would clarify the position of the present Convention in relation to the four mentioned above. Your committee considers that such a study could help to provide a clearer insight into the legislative and administrative decisions which have been adopted with regard to the protection of nature and the environment in Europe and recommends that Parliament request the Commission to produce one.

25. To conclude this general introductory section your committee would like to direct Parliament's attention to a couple of critical points which have been raised with the rapporteur by various organizations and persons during his research.

26. The first is the matter of which European Community body is responsible for the wide-ranging problem of whaling. Is it the Environment and Consumer

Protection Service or is it the Directorate-General for Fisheries? Your committee takes the view that since there is scarcely any more hunting for whales to be done because they have thoughtlessly been practically exterminated, the Environment and Consumer Protection Service is the only correct authority.

27. The second question is whether the European Community is wise to ratify the Convention when the Convention entails a number of commitments which it is not certain that the Community can meet. The reference here is to the serious shortage of staff and financial resources suffered by the Environment and Consumer Protection Service which will have to carry out these commitments. It was often even asked whether the service might not in future act as a brake on the further development of the Convention because of its manpower shortage.

Your committee considers this question to be a serious one because it does have an element of truth in it. It too has often expressed concern with the situation at the Environment and Consumer Protection Service, most recently during its consideration of the budget. Your committee has therefore reached the conclusion that the Convention can only be ratified by the Council if sufficient manpower and finances are at the same time made available to this department so that it can implement the Convention in a proper manner.

II. PARTICULAR OBSERVATIONS ON THE INDIVIDUAL ARTICLES OF THE CONVENTION

28. Structure of the Convention

The Convention can be divided into four parts:

- the preamble
- the material articles (Chapters I to V, Articles 1 - 12)
- the procedural articles (Chapters VI to IX, Articles 13 - 24)
- the appendices:

- I. strictly protected flora species
- II. strictly protected fauna species
- III. protected fauna species
- IV. prohibited means and methods of killing, capture and other forms of exploitation.

29. The basic philosophy underlying the nature conservancy measures of the Convention seems in principle to be the same as the basic philosophy adopted by the European Community.

This philosophy is that.

- a. All species must be protected

- b. Some species are to be given special protection should this prove necessary
- c. The protection of some species may be lifted under stringent conditions should this prove necessary.

However, the way in which this philosophy has been translated into concrete terms in the Convention compares somewhat unfavourably with the way in which this was done in the Community's directive on birds.

30. The Convention is based on the following considerations:

- a. Wild fauna and flora and their natural habitats need to be protected (Articles 1, 2 and 3)
- b. A number of species need strict protection (Appendices I and II)
- c. A number of species, mostly unspecified, may be hunted or otherwise exploited under certain conditions (Appendix III)
- d. A number of species which do not appear in either Appendix II or Appendix III are only protected by the general statements in Articles 1, 2 and 3.

31. This structure has a number of drawbacks.

- a. Many strictly protected species (Appendix II) are common species which only require a ban on their hunting and are not really in need of special protection. The listing of these species in Appendix II may weaken the protection given to habitats under Article 4.
- b. The unspecified list of fauna which may be hunted inevitably contains rare species which may need to be protected as they attempt - in a natural way - to establish their habitats in Europe.
- c. The wording of the Convention leaves something to be desired from an educational point of view. It reinforces the old-fashioned idea that any species may be hunted unless it is in need of special protection. In this day and age when large numbers of species are dying out or are threatened with extinction, the only correct and ecologically responsible stand to take is that all species must be protected with exception of a few selected species which may be hunted.
- d. The enumeration of certain species which, although in principle receiving protection under Articles 1, 2 and 3, in actual fact fall completely outside the terms of the Convention is also a weak point from the point of view of nature conservancy. These species too should benefit from the provisions of the Convention, particularly Articles 7, 8 and 9.

32. Preamble

The emphasis in the preamble is on the value of wild flora and fauna. It calls upon the acceding States to take wildlife and their natural habitats into consideration when formulating their national policies. A plea is also made for international cooperation between the contracting parties to the Convention on the subject of migratory species. Furthermore, the text is worded in such a way that it may be signed by countries which are not members of the Council of Europe.

Comment

The fourth paragraph of the preamble is the first instance of an international agreement recognizing that wild plants and animals have their own intrinsic worth. That is to say that, in addition to the usual anthropocentric approach to nature, the Convention opens up the way for an ecocentric approach. This may rightly be seen as one of the most important achievements of the Convention and your committee has therefore given its full approval to this aspect. Furthermore, your committee has noted with pleasure that the Convention is not limited to countries belonging to the Council of Europe but that it is also possible for East European, North African and other countries to accede to it.

Recommendation

Your committee recommends that Parliament suggest to the Commission and the Council that they not only accept the ecocentric approach within the framework of the Convention on the Conservation of European Wildlife and Natural Habitats but also declare it to be relevant to the directive on birds and incorporate it in all future legislation concerning nature within the Community (and outside).

33. Article 1

This article enumerates the objectives of the Convention. The words Europe or European are not mentioned. This is only right since the species found in Europe are also found outside Europe and a large number of migratory birds are not restricted to Europe alone. By adding the expression wild fauna and flora, notice is given that this Convention is not intended to deal with individual members of a species which have been bred in captivity. Your committee regrets the fact that the text does not say all wild flora and fauna.

34. Article 2

This article makes a general statement on the measures to be taken by the Contracting Parties to conserve wild flora and fauna in general. This is in fact merely a general declaration of principle which is developed in greater detail further on in the Convention.

35. Article 3

This article refers in general terms to the individual obligations of each Contracting Party. In the first paragraph each Contracting Party pledges itself to promote national policies for the conservation of wild flora, fauna and natural habitats, giving particular attention to endangered and vulnerable species, especially endemic ones (i.e. those found exclusively on the territory of one of the Contracting Parties).

In the second paragraph each Contracting Party undertakes to have regard to the conservation of wild flora and fauna in its planning and development policies, and particularly in its measures against pollution.

In the third paragraph each Contracting party pledges itself to promote education about nature conservancy and disseminate general information on the need to protect wild flora and fauna and their natural habitats.

Comment

Your committee would point out that the Convention says nothing about the importance which must be attached to nature conservancy in the decision-making process. This is characteristic of the Convention which is directed more towards the highest common denominator than the lowest common multiple. In view of the deplorable state of nature in all countries, it would have been better if greater emphasis had been placed on the need to draw up the necessary measures quickly.

Recommendation

Your committee recommends that Parliament request the Council and Commission to take the steps requested in Article 3 at an early date. The second action programme on the environment offers several opportunities for this.

36. Article 4

This article provides specific directives with regard to the conservation of natural habitats.

The first paragraph of the article in fact repeats the obligations under Article 3 except that here they refer specifically to the conservation of habitats. The second paragraph deals with the protection of habitats where adjoining or surrounding areas are developed.

Paragraph 3 calls for particular attention to be given to areas (not merely habitats) which are important for bird migration.

Paragraph 4 asks for special consideration to be given to inter-state cooperation on natural habitats situated in frontier areas.

Comment

This is another article which could have been expanded somewhat. A clause relating the conservation of natural habitats in some way to time would not be out of place. Again it is unfortunate that the way in which the habitats might be protected and the type of habitat which should be given priority are not specified.

Examples of this might be:

- the setting up of a network of biogenetic reserves
- the protection of wetlands in the manner prescribed by the Ramsar Convention.

Recommendation

Your committee recommends that Parliament urge the Commission to speed up implementation of the projects to conserve natural habitats set out in the second action programme on the environment and that it ask the Council and the Commission to make the necessary financial and organizational resources available for this to be done.

These projects cover:

- (a) The setting up of a European Fund for Monuments and sites.
It would in fact be better to include sufficient specific appropriations for environment and nature conservancy in the Community budget as Parliament attempted to have done in amendments to the 1980 budget.
- (b) Studies on the conservation of mountain regions.
- (c) The application at Community level of the principles for the integrated planning of coastal areas drawn up by the Council of Europe and the OECD.
- (d) The making of an inventory of Community wetlands in urgent need of protection and the formulation of proposals on the protection and management of certain wetlands and adjoining areas.

37. Article 5

In this article the Contracting Parties pledge themselves to take the appropriate and necessary legislative and administrative measures (without these being explicitly described) to ensure the special protection of the wild flora species listed in Appendix 1.

The picking, gathering etc. of these species is forbidden. At the same time the possession, sale and bartering of these species is where appropriate forbidden at national level.

International trade is not covered by this article and its regulation is therefore left to the Washington Convention. Close attention should be paid to the measures which must be taken with regard to the specific species named in the appendices.

Comment

The list of plant species to be given strict protection (Appendix I) is by no means exhaustive. Those included nearly all come from southern Europe. The list ought therefore quickly to be extended to cover all the species of flora in the Community which are in need of strict protection.

Recommendation

Your committee has come to the conclusion that the protection of endangered species of flora in the Community can best be enforced by means of a separate directive on plants similar to the directive on birds. The necessary additions of Community plants to Appendix I of the Convention can then be made using data from the plants directive. Your committee therefore recommends that the Commission be requested to submit a proposal for a directive on plant protection to the Council within a period of three years.

38. Article 6

Here again there is an obligation to take appropriate and necessary legislative and administrative measures to ensure the special protection, in this case, of the wild fauna species specified in Appendix II. The article also notes which particular activities are prohibited. Since a clear distinction is made between the status of species of fauna appearing in Appendix II and Appendix III respectively, the measures to be taken under Article 6 are more stringent than those provided for under Article 7 (Appendix III). It is forbidden deliberately to capture, keep or kill the species listed in Appendix II; damage to or destruction of their breeding or resting sites is not permitted. A special phrase is included with a view to the protection of birds concerning the gathering of eggs. Moreover, the possession of and domestic trade in the animal species listed in Appendix II are forbidden, as is the possession of and trade in stuffed animals or any part thereof.

Again no mention is made of international trade. It should be noted that this article concerns catching or killing for taxidermic purposes. Cases of this happening out of self-defence are not affected by the Convention.

Comment

In your committee's opinion this article ought in principle to give full protection to all vertebrate animals while, of course, providing an opportunity to make exceptions.

This is technically quite feasible since we have pretty exact knowledge as to what species of vertebrate animals are living in Europe and fairly good knowledge about where they are and in what numbers. It should be possible to make the proper exceptions without too much difficulty by analogy with the directive on birds.

Recommendation

Your committee is of the opinion that, once the Convention has been ratified, one of the first tasks of the 'Standing Committee' (as proposed in Article 13 of the Convention) must be to amend the Convention along the lines described above.

Your committee therefore recommends that the Commission be requested to make efforts in this direction in the Standing Committee even at the stage when it is temporarily working 'unofficially'.

Your committee considers furthermore that the European Community can best meet the obligations imposed upon it in this article by creating a special directive for all vertebrate animals with the exception of birds or by creating a separate directive for individual classes of vertebrate animals (mammals, reptiles, amphibians, fish).

The committee therefore recommends that Parliament request the Commission to meet its obligations under the Convention by submitting within the framework of the second action programme on the environment a draft directive or several draft directives as explained above to the Council within a period of three years.

39. Article 7

This article enumerates what measures are to be taken to protect the wild species of fauna specified in Appendix III. The Convention assumes that the situation of the species listed in Appendix III is not such as to warrant strict protection.

Exploitation of these species is permitted provided that it does not lead to a reduction in their populations to the point where they can be regarded as endangered and provided that the exploitation is regulated. The article lists a number of ways in which this regulation may be carried out.

In the case of the birds, amphibians and reptiles in Appendix III, it is merely suggested that these shall include all species which are not named in Appendix II. The same is true of cetaceans.

In the case of birds, however, an exception has been made for some species which are so numerous in some countries that they are treated as 'pests'. These include some species of gull and crow.

Comment

If Article 6 had established the principle that all vertebrate animals should be protected, Article 6 would have provided some exceptions to this. The same line would then have been followed as in the directive on birds. This is not however the case.

Consequently Appendix III is not a list of species which require varying degrees of protection but a list of species which may be hunted or exploited. Since hunting or exploitation may jeopardize the survival of these species, there must be some regulation. How such a regulation is to be carried out is left to the parties themselves, although there is a reference to the not very specific requirements of Article 2. In your committee's opinion this article is a very unsatisfactory one due in part, of course, to the wording of Article 6. What it in fact means is that nature conservancy is made dependent on the hunting and exploitation of wild animals. The usefulness of wild fauna is their primary protection; respect for living creatures and for their intrinsic value is only a secondary consideration.

Your committee also has a major objection against Appendix III with regard to birds. In this annex a number of birds (mainly crows and gulls) are to all intents and purposes declared 'fair game'. They in no way enjoy the 'general' protection of Articles 1, 2 and 3 which is not detailed anywhere else and thus it seems they are utterly at the mercy of human beings. Although one cannot deny that these birds are very common and are rightly described in some places as 'pests' and that measures against them are justifiable, they do nevertheless need the protection of Articles 7, 8 and 9. Evidence of this is provided by the American passenger pigeon (*Ectopistes migratorius*). At the end of the last century these birds were still to be found in such massive numbers (hundreds of millions) that they sometimes literally obscured the sun but now as a result of hunting it is completely extinct. The last nest of this bird was found in Ohio in 1894 and in 1914 the last passenger pigeon in captivity died in a zoo in Cincinnati.

Recommendation

Your committee recommends that Parliament request the Commission immediately after the Standing Committee (proposed in Article 13 of the Convention) has been set up and has begun work or indeed as soon as it begins work 'unofficially', to submit proposals that the Convention be amended to provide protection for all birds and to bring the species listed separately in Appendix III within the field of application of Articles 7, 8 and 9.

40. Article 8

As mentioned above, the Convention presupposes that the species listed in Appendix III may be exploited up to a certain level. The same may also in specific cases apply to species listed in Appendix II (see under Article 9 below). In general, where exploitation is permitted, the intention is to discourage the use of indiscriminate means of capture and to ban all means capable of causing the local disappearance of a species. In particular, a ban is placed on all the means specified in Appendix II, which was drawn up following the example of the annexes and Article 8 of the European Communities' directive on birds.

Comment

There are some differences in wording and in content between Appendix IV of the Convention and Annex IV of the directive on birds.

It will also be noticed that Annex IV of the directive on birds mentions the capture or killing of protected birds with the aid of aircraft, motor vehicles or motor-boats. The Convention mentions only aircraft and motor vehicles in motion.

Recommendation

There needs to be greater harmonization of the means of capture or killing which are to be banned and the terminology used. This can be done simply by specifying all the methods listed in the two documents and choosing the more stringent text where there is discrepancy between them.

In particular, the fact that the Convention does not provide for a ban on shooting or capturing from motor-boats is a serious omission since these practices often cause great harm to birds (and nature lovers).

If a text worded in this way prompted justifiable objections as, for example, in the case of the Eskimos, a specific derogation clause should be entered in the Convention.

Once again your committee recommends that Parliament request the Commission to raise this matter at the earliest possibility before the Standing Committee.

41. Article 9

The first paragraph of Article 9 sets out the grounds on which Contracting Parties may make exceptions from the obligations they entered

into in Articles 4 to 8. It should be mentioned that this may only be done in the most extreme cases, i.e. when there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned.

It is also possible for the Contracting Parties to make a reservation before acceding to the Convention pursuant to Article 22.

The second paragraph of Article 9 contains an obligation designed to ensure that the dispensation provisions are not applied arbitrarily.

Comment

The third indent of the first paragraph contains the phrase 'other overriding public interests'. We consider this to be a dangerous phrase since it is so unspecific. It is, for example, well known that governments are quick to invoke overriding public interest if sufficient pressure is put upon them. The hunting organizations and the arms industry in particular know how to make good use of this. This loophole should at least be made smaller by giving it a more precise wording or providing better safeguards against misuse.

Your committee would also be interested to know what preventive measures can be taken to ensure that use is in fact made of the possible exemptions under Article 9 only in exceptional cases.

42. Article 10

Since there exists a specific mandate to give special attention to the needs of migratory animals, this Article refers to the special measures to be taken for the protection of these species. In fact, however, the measures concerned here are no different from those listed in previous Articles: the purpose of the article is to provide for cooperation between States with a view to protecting migratory species and particularly those listed in Appendices II and III.

Comments

Application of this article depends partly on the composition of Appendices II and III. Your committee is of the opinion that a larger number of animals, particularly fish, ought to benefit from this article's provisions.

43. Article 11

This article calls upon the Contracting Parties to cooperate whenever appropriate and necessary on the implementation of the Convention in order to enhance the effectiveness of the measures it contains. The Contracting Parties pledge themselves to coordinate and encourage research related to

the purposes of the Convention.

In addition, the Contracting Parties will, if necessary, strictly control the reintroduction of native species and the introduction of non-native species of wild flora and fauna.

Comment

Your committee agrees wholeheartedly with the wording of this article. Although useful relations are already known to exist between the various research institutes, more cooperation is urgently needed in the field of natural science. Without the responsible and informed opinions of natural scientists we will not be able to conserve the last remnants of European nature or undertake the improvements it certainly requires.

Your committee is very pleased with paragraph 2 of Article 11. There is an urgent need for plants and animals which have died out in certain parts of Europe to be given another chance to occupy their niche. This will be especially useful in the case of predators since they in particular have been so decimated that, without the measures advocated here, they will be completely extinct by the end of the century. We are referring here to the larger beasts of prey such as the wolf, the polar bear, the brown bear, the lynx and the wolverine and the large birds of prey such as various types of eagle, vulture, buzzard, hawk and owl. In addition one could name numerous other animals which urgently require an extension to their territory by means of reintroduction. These include various kinds of bustard, stork, raven, etc. It would also be a good thing if a number of smaller mammals such as the beaver and the otter could become a little more widespread. This is not the place to go into this subject in any more detail. Suffice it to say that your committee will be very interested to see what the effect of this article will be.

44. Article 12

The Contracting parties are permitted to adopt stricter measures for the conservation on their own territory of wild flora and fauna and their natural habitats than those provided under the Convention.

Comment

Your committee considers it right and indeed necessary that the Contracting Parties should be allowed to take (or to maintain) conservation measures which are stricter than those contained in the Convention. Your committee hopes and expects that ultimately the countries which have adopted the lowest level of protection will harmonize their legislation with those which have the highest.

45. Articles 13, 14 and 15

A Standing Committee is to be set up to follow the application of the Convention, keep its provisions under review and ensure that it maintains the necessary flexibility. These articles contain provisions on the membership, duties and powers of the Standing Committee.

Comment

Under Article 13 international and national organizations will be able to attend meetings of the Standing Committee. The Secretary-General of the Council of Europe must receive a request to this effect from the body concerned at least three months before the meeting.

Your committee would point out that this gives the European Parliament an opportunity to attend meetings of the Standing Committee in due course.

Your committee considers that Parliament should make use of it if the appropriate circumstances should arise. It also feels that the period of three months for prior notification is too long. One month should suffice.

46. Articles 16 and 17

These articles provide the machinery whereby the articles and appendices of the Convention may be amended. In Article 16 a distinction is made between amendments to the material articles (1 to 12) which may be adopted by the Standing Committee and amendments to the procedural Articles (13 to 24) which, because of their political and financial implications, require the approval of the Committee of Ministers of the Council of Europe. In both cases, however, final adoption remains the prerogative of the Contracting Parties. Amendments must be adopted unanimously before they enter into force.

Another procedure is to be followed for amendments to the appendices. Article 17 states that decisions on these amendments may be taken by a two-thirds majority in the Standing Committee.

Comment

Your committee approves the simpler system for amending the appendices in which a two-thirds majority of votes in the Standing Committee is accepted as sufficient. This makes the operation of the Convention more flexible and more adaptable to the needs and requirements of the natural environment. It should however be pointed out that under Article 17(3) the Parties which do not agree with the amendments to the appendices do not have to accept them. All in all, therefore, this article has a fairly laissez-aller ring to it.

47. Article 18

This article sets out the procedure to be adopted in the event of a dispute over the execution of the Convention. An attempt will first be made to solve any problems regarding the execution of the Convention within the Standing Committee. Should this not succeed, an urgent invitation will be made to the Contracting Parties to reach a solution in consultation with one another.

If there is still no agreement, the dispute will be submitted to arbitration. Each party will designate one arbitrator and these two arbitrators will designate a third.

If there is no agreement on the third arbitrator, he will be designated by the President of the European Court of Human Rights.

The third paragraph of Article 18 is included especially for the European Community and gives further details on how a dispute is to be dealt with if one of the Contracting Parties is a Community Member State.

48. Articles 19 and 20

These articles outline the procedure for signing and accession. One important point here is that the Convention will be open for signature by member States of the Council of Europe, by non-member States (Finland) which have taken part in its drafting and by the European Economic Community. Until such time as the Convention enters into force it will also be open to signature by any other State invited so to do by the Committee of Ministers of the Council of Europe. The Convention will enter into force on the first day of the month following the expiry of a period of three months after the date on which five States have deposited their instruments of ratification, with at least four of these five States being Member States of the Council of Europe. In order to extend the Convention's sphere of application further, the Committee of Ministers will invite non-member States of the Council of Europe to accede to it after consultation with the contracting parties. Yugoslavia has already been approached.

49. Articles 21 and 22

The Contracting Parties may, at the time of signature or ratification, specify the part of their territory to which the Convention will apply. They will also have the opportunity on accession to make one or more reservations regarding certain species specified in the first three appendices and, for certain species mentioned in the reservation or reservations, regarding certain means or methods of killing or capture listed in Appendix IV.

The two articles give further details on how these reservations may be made

and how they may be withdrawn. It is not permitted to make reservations of a general nature. One could not, for example, make a reservation with regard to a whole appendix since then the Contracting Party could not be considered to be meeting its obligations under the Convention.

Comment

These articles demonstrate the advantages and drawbacks of the Convention very clearly.

Since each party has an opportunity on accession to make any reservations for his own country to the wording of the appendices and the prohibited means of capture and exploitation and also to specify the part of its territory to which it considers the measures may suitably be applied, the Convention can be accepted by all. This is the advantage of the Convention: it offers an opportunity for giving at least some protection to nature in all the European and other countries concerned.

It should be noted that the clause that does not allow reservations of a general nature to be made and so prevents exceptions to the Convention being made which are so large that they would completely invalidate it.

In addition, one must applaud the fact that reservations may only be made at the time of signature or when a State deposits its instruments of ratification, acceptance, approval or accession to the Convention. This will prevent the parties that have signed from applying the Convention solely when it suits their convenience to do so.

The drawbacks of these articles are obvious. Without taking into account the situation of plants and animals in other countries, parties may make unilateral reservations which will do harm to the cause of European nature conservation as a whole.

The example of Spain may clarify this. On accession Spain made the reservation *inter alia* that the wolf (*canis lupus*), the great bustard (*otis tarda*), the little bustard (*otis tetrax*), the stone curlew (*burhinus oediacnemus*) and the leatherback (*dermochelys coriacea*) would be classified in Spain not as strictly protected species but only protected species which may be hunted.

When one considers that Spain has objected *inter alia* to the ban on hunting using automatic or semi-automatic weapons with a magazine capable of holding more than two rounds of ammunition, it becomes clear that a number of species which are certainly in need of complete protection from a European point of view can still be hunted in Spain.

Recommendation

Your committee considers that, during the negotiations being held on the accession of Greece, Spain and Portugal to the European Communities, these countries should be informed by the Commission that they will have to give equally strict protection to species which have obtained strictly protected status under the Community's directive on birds (including the three species mentioned above as examples).

50. Articles 23 and 24

These articles, which conclude the Convention, contain a number of formal provisions concerning denunciation of the Convention and the manner in which parties will be informed of matters concerning the Convention.

51. The Appendices

Comments

One difficulty in assessing the appendices is the fact that nowhere in the Convention is it stated what criteria are to be used for including particular plants and animals on these lists.

Your committee can understand why this has not been done (so far). One of the reasons is probably that we are facing a very broad problem since the Convention is meant to cover (all) wild plants and animals in Europe.

Another reason may be that it is not easy to reduce all the various interests to a single denominator. Also, the justifiable haste with which the Convention was prepared so that it could be signed is probably another reason.

Nevertheless we consider that it would have been better if, for example, there had been an explanatory statement or a separate annex which would have set out the criteria used when composing the lists. This would have enhanced the transparency of the Convention and facilitated public and parliamentary assessment and supervision thereof.

It is therefore impossible for your committee to examine the composition of the lists in detail. A few general observations must suffice.

The first thing that one notices is that there is no list of fish or invertebrate animals. There should certainly be a recommendation that these animals should be brought within the terms of the Convention. Which of us, for example, has ever seen a sturgeon (*acipenser sturio*) other than in a picture? Also various species of butterflies which were once very common (perhaps as a result of disturbances in the ecosystem elsewhere) have now become rare.

As far as the vegetable kingdom is concerned, a large number of toadstool species are in need of better protection. Many edible mushrooms in particular are practically extinct in large parts of Europe.

It has already been pointed out above that Appendix II serves two purposes: firstly, the conservation of **rare** species whose habitats need to be protected and, secondly, the listing of more common species (particularly birds) which it is intended to protect against hunting and other types of exploitation. There is a danger that the latter aim may dilute the first. The only way to avoid this is by

- (a) protecting all animals in principle
- (b) giving special protection to some animals in view of their rarity
- (c) lifting normal protection from some animals subject to certain controls.

In Europe there are usually something like 480 species of bird to be found and it is known that another 120 or so species spend some time here. This makes a total of 600 species. The Convention, however, designates only 294 species as those to be granted strict protection, which is less than half. Of these 600 species a majority are migratory species and many more than 294 species are in need of strict protection.

The significance of this is that either the framework of the Convention must be changed in a way we have indicated above or else the lists must be considerably extended. Your committee would emphasize once again that it finds it quite intolerable that a number of bird species (11) are left completely unprotected.

Finally, it should be noted that the lists refer only to species. With one exception, there is no mention of sub-species, varieties or other taxonomically subordinate categories. Your committee considers that the list must take account of these sports of nature too.

To sum up, your committee is of the opinion that the various lists form an acceptable beginning for generalized European conservation of the last remaining European plants and animals. After this beginning, however, the lists must quickly be expanded and a number of new lists must be added.