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Supplementary Explanatory Notes to
 Draft (6) (November 1973)
 of Interim Agreement on the
 Conservation of Polar Bears

Prepared by IUCN

Introduction

The Working Paper for the meeting convened by the Government of Norway with the purpose of finalizing an Interim Agreement on Conservation of Polar Bears is equivalent to Draft (5) prepared by IUCN. The Explanatory Notes which accompanied the Working Paper covered proposals and viewpoints received by IUCN up to 1 September 1973.

To facilitate the discussions at the meeting, a version of the Working Paper with various additional proposals received by IUCN up to 7 November 1973 interpolated, has been prepared as Draft (6). These Supplementary Explanatory Notes relate to the interpolations and to viewpoints on these and on other sections of the Draft received by IUCN up to that date.

The interpolations have been made using italic type to distinguish them from the original text of Draft (5).

The present notes have been numbered from 40 so that they can be distinguished from the Explanatory Notes circulated with the Working Paper.

Specific Drafting Issues

40. Canada, in commenting on the USSR proposal to the effect that there should be no reference to any potential Polar Bear Agreement (see Notes 1, 13, and 28), states:-
- (a) That Canada does not consider deletion of the term "interim" in the title as an important issue, and would be prepared to accept the title in either form. In any event, the five nations are all aware that the IUCN Polar Bear Specialist Group has been working on an eventual Polar Bear Convention.
 - (b) That although the IUCN Group is working on a Polar Bear Convention, there is no guarantee that such a Convention will be concluded. Indeed it is possible that the design of the Polar Bear Agreement will be used for a general Convention covering the entire Arctic region, rather than a Convention on polar bears alone. (This comment refers to the USSR proposal in Note 13.)

(c) That Canada concurs with the USSR proposal, and an earlier Norwegian proposal (see Note 29), that reference to the Polar Bear Convention is unnecessary. (This comment refers to the USSR proposal in Note 28.)

- N.41. Canada has no objection to the USSR proposal (see Note 11) for a new first paragraph to the preamble. Norway feels that such an addition would appear to cause no difficulty.
- N.42. Canada states that the USSR proposal for a change in the third paragraph of the preamble (see Note 12) seems a desirable change, as it does not change the intent of the Agreement, but it does reserve more autonomy in management for the signing nations. The five signing nations could not dictate terms for "protection" to other maritime nations in any event. Norway sees no difficulty with this change.
- N.43. Canada, Norway and USA have commented on the USSR proposal (see Note 16) to substitute in paragraph 1 of Article I the phrase "in the regions they inhabit" for the phrase "on the high seas".

USA interprets this change as making the agreement cover all polar bears and states: "We recognize advantages of and would have no objection to the substance of the suggestion contained in the Soviet comments that the Agreement cover all polar bears rather than just those on the high seas. Consultation with other participants before and during conference will establish whether that is practicable".

Norway sees this change as raising very complicated matters and states: "We feel that national territory falls outside the scope of the Agreement. This question should be subject to further consultation".

Canada, because of the great differences in national claims and the imminence of the Law of the Sea Conference, favours wording in the Agreement that would not refer to any jurisdictional boundaries. For the purposes of this Agreement, and specifically for this Agreement, Canada prefers wording which categorizes management, research, and protection as either internal to each State, or beyond a prescribed distance seaward from the land territory of any state. Resorting to such a geographical delimitation, rather than using jurisdictional references to territorial waters or high seas would provide more effective control over "international" bears with which Article I is concerned. Canada intends to circulate drafts of Articles I and II which use such wording.

- N.44. Canada suggests an amendment to paragraph 4 of Article I to permit amendment of restrictions, and has proposed Alternative (1) of the footnote. Alternative (2) is put forward to cover the several possibilities that can arise.
- N.45. USSR also proposes the deletion of the phrase "in accordance with international law" in Article II.

Canada reaffirms its reservations on this phrase because of the fluid and uncertain state of the law in present circumstances and the close scrutiny of these matters in preparation for the forthcoming Law of the Sea Conference.

- N.46. Canada prefers to retain the words "conduct and" in Article III (deletion was proposed by USSR - see Note 26).

Canada states: "Our view is that Canada conducts a proportionally greater part of the research on polar bears than any other country. This is done because 1) the polar bear is an economically important species in Canada, and 2) the polar bear hunt is of great cultural value to Canadian native peoples. Canadian policy strongly favours the survival of these cultures. In addition, however, polar bears as a species may be threatened by world-wide factors such as arctic shipping, offshore drilling, and the pollution of arctic waters by industrial chemicals. Canada holds that the large industrial nations should therefore carry a greater portion of the research responsibility necessary for survival of the species under possible massive ecological upsets. Resolution No. 2 of the 1972 IUCN Polar Bear Group voiced this same view, with the consent of the Soviet delegates.

- N.47. Denmark proposes that the words "or approval" be added after the word "ratification" wherever it appears in paragraphs 1, 2 and 3 of Article VI.
- N.48. Norway, in commenting on the USSR proposals dealt with in Notes 10, 13 and 26, points out that these relate to the rather basic question of making the agreement a permanent one rather than an interim one. Norway states: "We have certainly sympathy with the idea of passing right on to a lasting agreement. At this late stage it might, however, cause difficulties to change the basic approach to the agreement too drastically. Perhaps the USSR point could be met by rewording Article VI so as to pave the way for more or less automatic prolongation".

Norway then suggests the following revision of paragraph 4 of Article VI:-

4. After this Agreement has remained in force for a period of five years any of the Contracting Parties may request that the Agreement be opened for renegotiation. In the absence of such a request the Agreement shall continue in force in its original form.

N.49. Denmark proposes an addition to Article VI to cover the transitional position that could arise if the Agreement is replaced by a Convention. In that event during a transitional period only some of the States would be bound by the Convention whilst others were still preparing for ratification or approval.

Denmark proposes therefore to add a new paragraph 5 to Article VI (renumbering the present paragraph 5 as paragraph 6) as follows:-

5. This Agreement shall terminate on the date when the Convention foreseen in the preamble has entered into effect for all parties to the Agreement.