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Ninth Intergovernmental Meeting on the Action Plan  
For the Caribbean Environment Programme and Sixth  
Meeting of the Contracting Parties to the Convention for  
the Protection and Development of the Marine Environment  
of the Wider Caribbean Region

Kingston, Jamaica, 14-18 February 2000

**COMMENTS BY CUBA  
ON THE CONTEXTUALIZATION OF SPAW  
AND ITS RELATIONSHIP WITH CITES**

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**Introduction**

Pursuant to Recommendation No. 16 of the IV Meeting of ISTAC-SPAW, the Contracting Parties should submit to the present Intergovernmental Meeting a synthesis of their comments which would be presented by the Secretariat as final product of the analysis on collaboration between CITES-SPAW, as well as the interpretation of Articles 11 and 25 of the SPAW Protocol.

The measures provided by Recommendation No. 16 of the IV ISTAC-SPAW Meeting have not been accomplished, and we have therefore lost the opportunity of reaching a consensus on the final interpretation of the SPAW Protocol, as well as clarifying its relationship, with CITES, which would facilitate the action of the Parties once the Protocol has entered into force.

UNEP (DEC) /CAR IG.17/inf.5 has been presented as an information document to this Meeting, under the title "Comments on the SPAW/CITES Compatibility." This document is one of the first steps in carrying out Recommendation No. 16 of the IV ISTAC/SPAW Meeting, but does not achieve its full aim although that was the purpose of the Meeting.

The relationship between CITES and SPAW had been dealt with in previous documents, notably UNEP (OCA)/CAR WG.19/4 and UNEP(OCA)/CAR WG.19INF.11, presented during the III ISTAC/SPAW Meeting. The document presented at this Meeting as an information document constitutes the responses given by a group of recognized authorities in the field of environmental law to a number of questions.

As usually occurs with complex legal matters, the answers differ considerably, although there was agreement on the fact that there were no incompatibilities between the two instruments. As previously stated, the answers cover the entire document although there are no comments by the respective Secretariats.

The Cuban delegation subscribes to and supports the validity of this process as outlined by the IV ISTAC Meeting, but would like to call the attention of the Meeting the following aspects:

The topics debated in the context of the interpretation of SPAW cannot be resolved outside the context of the Protocol itself. Any prior legal analysis may provide important input, as is this case, but final decisions of a political nature, can only be taken by the Parties to the Protocol, which, in fact, do not exist since the instrument has not yet been entered into force. As indicated in Article 24 of the Cartagena Convention "only Contracting Parties to a Protocol are entitled to take decisions relating to it."

Only Parties to the Protocol are entitled to chart a future course in the development of this instrument. It is also useful to recall that the instrument was finalized more than ten years ago and that, unlike those that have already entered into force, including CITES itself, it has not benefited from the enrichment and developmental process by which international instruments are strengthened through successive conferences of the Parties, as well as corrective processes and amendments.

In this way, there can only be limited interpretation of any text which is more than a decade old, especially when during that time numerous new principles and concepts in the fields of politics and environmental law have developed. In spite of that, it should not be extended, unless the intention is to rule the course of an institution which parts are not yet established.

Cuba, like a few other countries, has ratified the SPAW Protocol based on the conviction that it has the potential to become an important instrument of regional cooperation, particularly in the field of biological diversity, the main instrument of which is included among those approved after the SPAW Meeting and which has therefore not been taken into account.

By taking such a stance, Cuba has always had the conviction that SPAW needs to undergo a progressive movement, which will bring it in line with the most current tendencies in the field of sustainable development. However, the paradox lies in the fact that: this step can only be taken from the inside. Therefore Cuba, as well as other countries that share this vision, should take the approach of acceding to the Protocol, in order to be entitled to effect change.

For this reason and in view of the imminent and hoped-for ratification of the Protocol by the ninth contracting party, which would fulfil the requirements of Article 28.2 of the Cartagena Convention for the entry into force of its Protocols, and given the reasons outlined above, Cuba considers it indispensable to:

Reach a consensus on the final and definitive interpretation of the SPAW Protocol, and adopt amendments to the wording of the Protocol which will allow the introduction of the necessary criteria regarding sustainability, so that the SPAW Protocol can be brought into line with current trends on sustainability without disregarding the essence of the Convention.

This agreement can only be achieved during the first meeting of the Parties to the Protocol and, in order to avoid reservations and possible withdrawals, this Meeting should be convened as soon as possible, and within 90 days of its entry into force. Cuba is offering to co-host this meeting under the same principles as the IV ISTAC/SPAW Meeting, and we are hereby requesting that the Secretariat issue a notice to the Contracting Parties, once the Protocol has entered into force.

Cuba can only accept the definite annexes after they have been adopted in the First Meeting of the Contracting Parties to the SPAW Protocol, pursuant to the provisions of Paragraph 18 of the UNEP (OCA)CAR IG.7/3 document of 1991.

Furthermore, Cuba considers that: in accordance with Article 11 of the Protocol, there is a time frame of 90 days after its entry into force, within which it can express any reservations.

Given all of the above, Cuba is proposing that the meeting adopt the following recommendations:

- That the Secretariat prepare a document containing a synthesis of all comments, to be sent to the Contracting Parties of the SPAW Protocol of the Convention of Cartagena for their consideration at their first meeting, once the Protocol has entered into force, with a view to achieving a definitive interpretation of the SPAW articles, contextualization of the Protocol, and adoption of the annexes.
- That the first meeting of the Contracting Parties of the SPAW Protocol be convened soon after its entry into force, in order to avoid the preventive measure of large-scale presentation of reservations to the annexes or even possible rejection of the Protocol.