

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

Forty-ninth meeting of the Standing Committee
Geneva (Switzerland), 22-25 April 2003

Interpretation and implementation of the Convention

Elephants

ELEPHANTS AND IVORY TRADE

1. This document has been submitted by Kenya.
2. Following the adoption by the Conference of the Parties at its 12th meeting (Santiago, 2002) of the annotations in proposals 12.6, 12.7 and 12.8, as amended, the Standing Committee was directed to the following:
 - 12.33 *By its 49th meeting, the Standing Committee, in consultation with the MIKE Central Coordinating Unit and IUCN should define the geographical scope and the nature of the data that constitute the baseline information from MIKE that must be provided before any exports can be approved.*
 - 12.34 *The Standing Committee shall determine how it would conclude that a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory.*
 - 12.35 *By its 49th meeting, the Standing Committee is encouraged to recommend measures for improving law enforcement coordination between ivory producing and ivory importing States.*
3. In order to carry out these tasks properly, and to determine when they have been satisfactorily completed, the Standing Committee will have to interpret some aspects of the language in the various Decisions.
4. In addition, Resolution Conf. 10.10 (Rev.), which is pertinent to the conditions for the sale of ivory, was revised again and its implementation requires further discussion.
5. This paper is presented in four sections: sections 1, 2 and 3 address the language used in the annotations and the four Decisions [including that relating to Resolution Conf. 10.10 (Rev. CoP12)]. Section 4 addresses the establishment of a process for the gathering and dissemination of information relevant to the conditions for trade.

Section 1: the annotations to the Appendices

With regard to annotation 1) (2): *trade in live animals for in situ conservation programmes*

6. Article 2 of the Convention on Biological Diversity defines '*in situ* conservation' as "the conservation of ecosystems and natural habitats and the maintenance and recovery of

viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties".

7. 'Ex situ conservation' is defined as "the conservation of components of biological diversity outside their natural habitats". Using these definitions for guidance, the phrase 'in situ' should be taken to mean "in its natural habitat within the current or historical range of *Loxodonta africana*", thus precluding the export of animals to safari parks and other facilities, especially those outside the range States, which may claim to be conserving the species but are outside its natural habitat. Furthermore, any animals translocated in this way should go directly into their new, *in situ* habitat, as defined above, and not via an intermediate breeding facility.

With regard to annotation 1) (5) ii): *only to trading partners that have been verified by the Secretariat, in consultation with the Standing Committee, to have sufficient national legislation and domestic trade controls to ensure that the imported ivory will not be re-exported and will be managed in accordance with all requirements of Resolution Conf. 10.10 (Rev. CoP12) concerning domestic manufacturing and trade*

8. The Standing Committee should, at its 49th meeting, set a deadline for prospective trading partners to identify themselves well before its 50th meeting, so that the Secretariat and Standing Committee can verify this information in good time. October 2003 is suggested here.

With regard to annotation 1) (5) iii): *not before May 2004 and in any event not before the Secretariat has verified the prospective importing countries and the MIKE programme has reported to the Secretariat on the baseline information (e.g. elephant population numbers, incidence of illegal killing)*

9. Decision 12.33 directs the Standing Committee to define "the geographical scope and the nature of the data that constitutes the baseline information from MIKE that must be provided before any exports can be approved".
10. Given the need to obtain the maximum information possible, the geographical scope should include all those African and Asian range States where MIKE is gathering data.
11. With respect to the nature of the data, MIKE should provide all the baseline data that have been gathered in all the range States where it is already collecting data, including population estimates, population trends, numbers of elephants illegally killed, trends in illegal killing (if available) and information on whether or not the tusks were removed.

With regard to annotation 1) (5) v): *the proceeds of the trade are used exclusively for elephant conservation and community conservation and development programmes within or adjacent to the elephant range*

12. A definition of "community conservation and development programmes" should be agreed, with an emphasis given to those programmes likely to have direct benefit for elephant populations. Range States that sell ivory should be encouraged to make available to the Parties detailed information on how the proceeds of the ivory sales have been used. No definition of terms was established for the use of proceeds from the 1999 ivory auctions and, indeed, no information relating to the use of the funds was made available to the Parties. While all the range States that were permitted to sell ivory in 1999 briefly mentioned the ivory auctions in their CoP12 proposals, none of them provided detailed

information on how the funds were spent. The Committee should now decide whether or not the process of distribution of future funds should be overseen by an independent body.

With regard to annotation 1) (5) vi): *Only after the Standing Committee has agreed that the above conditions have been met. On a proposal from the Secretariat, the Standing Committee can decide to cause this trade to cease partially or completely in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations*

13. This is a key paragraph resulting from the CoP12 elephant debate and misinterpretation of it could have serious consequences for elephant populations. Unfortunately, the wording of the annotation presents interpretative difficulties. "On a proposal from the Secretariat" seems to imply that the Secretariat has sole discretion to act in this matter; the Standing Committee should make it clear that it has the power to direct the Secretariat to prepare such a proposal.
14. The wording "can decide to cause this trade to cease partially or completely" appears to refer to an ongoing trade (such as the proponents originally requested), whereas the Parties agreed only to a one-off sale. The Standing Committee needs to establish that the wording "cause this trade to cease..." is broad enough to include preventing the one-off sales from going forward in the first place, should there be evidence showing a serious problem with illegal killing.
15. Secondly, the Committee should determine precisely what kind of information would provide a trigger for the Secretariat to propose a cessation of trade. This includes setting out in specific terms what is meant, in this paragraph, by "non-compliance". Such a definition must include compliance with all the provisions in Resolution Conf. 10.10 (Rev. CoP12) relating to control of internal markets.
16. The words "proven detrimental impact" contradict conclusions already reached by the Conference of the Parties that causality, with respect to poaching levels, can only be inferred, not proven. The difficulties of establishing cause and effect were highlighted at CoP12, when TRAFFIC argued that the increased volume of illegal ivory trade in 1998 was a direct result of China's economic growth, while the Government of China attributed the increase to the ivory trade decision of 1997.
17. For this paragraph to have meaning, therefore, the Standing Committee must adopt interpretations that can be applied in practical terms. The Committee should make it clear that the burden of proof implied by these words is one that is possible to achieve. The standard, therefore, should not be absolute proof, but a balance of probabilities based on correlation; a precautionary approach would place the burden on those seeking to show that a significant increase in (for example) poaching or illegal trade was not the result either of the sale itself or of expectations the sale arouses.
18. The Committee should also indicate what types of information should be considered in determining whether a detrimental impact is occurring; these should not be restricted to purely biological factors (as these may be difficult to assess in the available time) but should include such indicators of illegal activity as poaching increases, increased seizures, or shifts in the market price of ivory since the agreement to allow trade to resume at CoP10. A rise in ivory prices has been linked to the revival of ivory markets, so the level of pricing in the main markets should be monitored.
19. Range States, as well as the recipients of illegal ivory imports, should be advised, by way of a Notification to the Parties, to question those undertaking illegal activities with a view

to establishing the factors that have motivated them. This information should be reported to the Secretariat and the Standing Committee.

20. Secondly, tourists apprehended with illegal ivory should be questioned as to why they believed the importation of ivory to be legal. This, too, would assist the Parties in establishing any market impacts of a renewed ivory trade. Again, a Notification should be sent to the Parties advising them of the value of this approach.
21. The data should be given a precautionary interpretation; for example, elephants which are illegally killed and which have had one or both tusks removed should be considered to have been poached as a result of an existing market for ivory, particularly if no other reasonable explanation can be found, e.g. crop destruction or other forms of conflict.
22. Furthermore, the Committee must decide what sources of information (Management Authorities, governmental enforcement agencies, inter-governmental agencies, NGOs) would be acceptable and what level of verification should be provided. As NGOs sometimes have more information on illegal killing than other bodies, NGO information should be taken into account. Data collection should not be 'passive' but as active and inclusive as possible.

Section 2: Resolution Conf. 10.10 (Rev. CoP12)

23. Since the annotated proposals refer to compliance with Resolution Conf. 10.10 (Rev. CoP12), the terms of this Resolution should be clarified.

With regard to: *Regarding Compliance with Control of Internal Trade*

- a) *to identify those Parties with an ivory carving industry and internal ivory trade whose domestic measures do not provide them with the authority to:*
 - i) *register or license all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products.*

24. The authority to register or licence should not merely be shown to exist, but to be adequate for CITES purposes. It should include authority to require that all ivory importers, exporters or dealers be listed in a register of legitimate ivory dealers. This list should not include any dealers previously known to have imported ivory illegally or otherwise acted unlawfully with regard to the ivory trade, whether convicted or not. Japanese legislation should be amended in this regard, since the individual fined for smuggling 500 kg of ivory into Japan in 2000 is still technically allowed to operate as a registered dealer.
25. All registered dealers should be required to take inventories of their current stock and provide them to the authorities.
26. All transactions involving raw, worked or semi-worked ivory should be recorded, with the name and address of the new owner being supplied to the authorities. Inventories should clearly number both whole and cut raw ivory tusks in the manner laid out in Resolution Conf. 10.10 (Rev. CoP12) (*Regarding marking*), but with the additional requirement that the mark should also identify the original importer.

- ii) *assert compulsory trade controls over raw ivory.*

27. In addition to the above, legislation should allow for regular inspections of the premises of all importers, exporters and dealers, whether registered or not, to ensure that ivory originating only from those Parties permitted to trade ivory internationally has been sold.

iii) establish a comprehensive and demonstrably effective reporting and enforcement system for worked ivory.

28. An appropriate system should require that all worked and semi-worked pieces carry documentation to identify the imported tusk from which they originated. The absence of such documentation should preclude an ivory item from legitimate sale.

29. Consumers at the retail level should be informed, by means of press notices, posters at the point of sale and any other means, that they should buy ivory only if it is accompanied by such documentation.

30. Regular inspections of retail outlets should be carried out, to ensure that these conditions are being complied with.

b) to seek from each Party so identified information indicating the procedures, action and time-frames that are needed in order to establish the measures necessary to properly enforce the recommendations regarding internal ivory trade.

31. This action should be carried out no later than five months after the 49th meeting of the Standing Committee. Verification that the necessary measures have been undertaken in prospective importing Parties should be sought and obtained by the Secretariat **before** that Party is permitted to engage in any further international trade.

c) to report its findings, recommendations or progress to the Standing Committee, which shall consider appropriate measures, including restrictions on the commercial trade in specimens of CITES-listed species to or from such Parties.

32. This action should be carried out before the 50th meeting of the Standing Committee and the report submitted to the Committee at that meeting and to all subsequent meetings, as appropriate.

Section 3: the Decisions

33. The four Decisions of relevance to the trade in ivory from Botswana, Namibia and South Africa are Decisions 12.36, 37, 38 and 39. The document in which they were presented was the Communiqué from the Fifth African elephant range States dialogue meeting (document CoP12 Doc. 20.1). They were:

- CoP12 Doc. 20.1 Annex 3, Amendment to Resolution Conf. 10.10 (Rev.) (see above)
- CoP12 Doc. 20.1 Annex 4, Draft decision regarding the control of internal ivory trade
- CoP12 Doc. 20.1 Annex 5, Draft decision regarding compliance with control of internal trade identified in Resolution Conf. 10.10 (Rev.)
- Prop. 12.11 (India and Kenya).

34. Some definitions and clarifications of language in these documents remain to be established.

With regard to: document Prop. 12.11

12.33 *By its 49th meeting, the Standing Committee, in consultation with the MIKE Central Coordinating Unit and IUCN should define the geographical scope and the nature of the data that constitute the baseline information from MIKE that must be provided before any exports can be approved.*

35. As argued above, these data should be as comprehensive as possible.

12.34 *The Standing Committee shall determine how it would conclude that a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory.*

36. As argued above, a precautionary approach should be taken.

12.35 *By its 49th meeting, the Standing Committee is encouraged to recommend measures for improving law enforcement coordination between ivory producing and ivory importing States.*

37. The seizure, shortly before CoP12, of 6.5 tonnes of ivory that had travelled through southern Africa on its way to Japan, is a good illustration of the lack of coordination between Parties. As far as can be ascertained, investigations of this seizure appear to have come to a standstill. There appears to be limited communication between the Parties involved and an apparent reluctance to take further action.

38. It is critical that enforcement agencies and Management Authorities cooperate with each other in such cases and that they keep the Secretariat informed of all such incidents.

With regard to: document CoP12 Doc. 20.1 Annex 4, Draft decision regarding the control of internal ivory trade

ii) improving public awareness of the conservation impacts from unregulated national trade in ivory.¹

39. All prospective importing Parties, as well as established ivory markets, should undertake to inform the public of the restricted nature of the international ivory trade by means of press notices and posters at retail outlets and, in particular at airports. Such Parties should make a particular effort with regard to the tourist trade.

With regard to: document CoP12 Doc. 20.1 Annex 5, Draft decision regarding compliance with control of internal trade identified in Resolution Conf. 10.10 (Rev.)

c) The Standing Committee, at its 50th meeting, will review the work conducted by the Secretariat and the Parties to comply with this Decision², and shall consider whether additional measures are appropriate, which in the case of non-compliance may include recommendations to restrict the commercial trade in specimens of CITES-listed species to or from such Parties.³

¹ Note from the Secretariat: now Decision 12.36, paragraph ii)

² Note from the Secretariat: now Decision 12.39

³ Note from the Secretariat: now Decision 12.37

40. This review of progress should be considered additional to the Secretariat's verification of prospective importing Parties prior to the 49th meeting of the Standing Committee and prior to the granting of permission to import ivory.

Section 4: the process

41. By its 49th meeting, the Standing Committee, in consultation with the MIKE Central Coordinating Unit and IUCN, should have defined the geographical scope and the nature of the data that constitutes the baseline information from MIKE that must be provided before any exports can be approved.
42. At the 49th meeting of the Standing Committee, all definitions and criteria, as highlighted in this and other relevant documents, should be agreed. In addition, the Committee should set a deadline for prospective trading partners to identify themselves well in advance (e.g. October 2003) so that the Secretariat and the Standing Committee can verify all conditions relating to ivory markets in good time. The Committee should also agree that all the criteria, as defined and clarified at the 49th meeting, must be met before trade may occur.
43. By a deadline sufficiently in advance of the 50th meeting of the Standing Committee, the prospective trading partners should have identified themselves. In addition, the Standing Committee should have established a process whereby information on illegal killing and illegal trade, whether provided by government agencies, IGOs or NGOs, can be submitted to the Secretariat and to the Committee.
44. Prior to the 50th meeting of the Standing Committee the Secretariat should have sought information from Parties that have identified themselves as potential importers, as well as all other Parties listed in document CoP12 Doc. 20.1 Annex 5, requesting information on "the procedures, action and time-frames that are needed in order to establish the measures necessary to properly enforce the recommendations regarding internal ivory trade".
45. Prior to the 50th meeting of the Standing Committee, the prospective importing Parties and other Parties with ivory markets should have reported to the Secretariat on their progress regarding control of internal ivory markets and implementation of Resolution Conf. 10.10 (Rev. CoP12).
46. Prior to the 50th meeting of the Standing Committee, the MIKE programme should have made a preliminary report on baseline data, population estimates and levels of illegal killing to the Committee.
47. At the 50th meeting of the Standing Committee, the Secretariat should report to the Committee on progress regarding the control of internal markets and all available MIKE data should be circulated to the participants of the meeting. In addition, NGOs should be permitted to present relevant information. The Standing Committee should then decide whether or not all the conditions for trade have been complied with.