

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



Sixty-fifth meeting of the Standing Committee
Geneva (Switzerland), 7-11 July 2014

Interpretation and implementation of the Convention

Species trade and conservation

Elephants

PREVENTING THE ILLEGAL IVORY TRADE UNDER ARTICLE VII
AND THROUGH THE INTERNET

1. The present document was submitted by Chad¹ and the Philippines¹, supported by the Comoros², to the sixty-fifth meeting of the CITES Standing Committee.
2. Elephants are facing a growing crisis, mainly as a result of poaching and smuggling. There is consensus among the scientific community that the current rate of poaching puts the survival of the population of African elephants at risk. The Secretary-General of CITES highlighted this situation during his opening statement at the African Elephant Summit that took place in Botswana in December 2013 by declaring that "*poaching of elephants in Africa continues to be considerable and could lead to local extinctions if the current rate of slaughter continues.*"³
3. The range States are direct victims of this crisis. We therefore seek more measures on the part of Parties to CITES in some regions in order to alleviate current problems and avoid a pattern of recurrence. We welcome the examples shown by countries that have intensified their efforts to apply legislation and, in some cases, have destroyed ivory stocks to send a clear signal to the public on the crisis. We encourage the taking of additional and more systematic measures during the next meeting of the Standing Committee and, thereafter, their rapid and effective implementation.
4. We consider that in the current circumstances, it is appropriate to consider the adoption of regulations in the area of trade:
 - a) of ivory that predates the Convention, including antiques;
 - b) of personal or household effects which are made of or contain ivory;
 - c) of ivory over the Internet.
5. The CITES Management Authorities are perfectly aware of the existence of an illegal trade in ivory, both on the international market and on domestic markets, and on the Internet. This is made possible by the use, with or without supporting documentation, of exemptions contained in Article VII, paragraphs 2 and 3 of

¹ *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

² *Note from the Secretariat: no official submission of the present document has been received from this country.*

³ *See http://www.cites.org/eng/news/pr/2013/20131202_elephant-figures.php. The comments are based on previous analyses carried out by MIKE and ETIS, published in "Status of African elephant populations and levels of illegal killing and the illegal trade in ivory: A report to the African Elephant Summit" (December 2013), prepared by the African Elephant Specialist Group, CITES, IUCN/SSC, and TRAFFIC International.*

CITES concerning ivory that predates the Convention and personal effects. In the United States of America, for example, legal proceedings against art dealers in Philadelphia that exploited the exemption regarding ivory that predates the Convention were successful in 2011. The exemption in question enabled them to sell, on American soil, ivory from African elephants supposedly imported prior to 1989 and ivory from Asian elephants removed from the wild before 1976. During one of the most significant seizures in the United States or America, the authorities confiscated from the dealer in question one tonne of illegal ivory in Philadelphia, New York, Pennsylvania, Missouri and Kansas. The dealer subsequently pleaded guilty and was sentenced.⁴ According to the indictment, the dealer had paid an associate to buy raw elephant ivory in West and Central Africa and then to carve it according to his instructions. The prosecutors also explained to the court that the dealer had asked his associate to dye or stain the sculptures in order to give them an older appearance and to send these objects to his art gallery in Philadelphia.⁵

6. Concerned, some Parties to CITES have undertaken approaches that demonstrate their growing awareness that the current CITES regulations on trade are not sufficiently strong to prevent the illicit trade in ivory. In particular, the United States of America announced at the beginning of 2014 its intention to put in place a series of new, more restrictive rules regarding the trade in ivory. Those include the elimination of the majority of exceptions that appear in its legislation, which permitted the import of antiques made of ivory by limiting the definition of "antique" and placing the burden of proof on the traders, as well as the limiting of domestic sales of ivory on American soil.⁶ Within the European Union (EU), concerns were expressed in February of this year during a meeting of the Committee on Trade in Wild Fauna and Flora, in which representatives of 27 Member States of the European Union participated. These concerns were related to an increase in re-exportation of ivory that predates the Convention and how to address this problem within the EU.⁷ Some members of the Committee had also been informed of the repeated use of falsified domestic documents that permitted the sale of ivory that predates the Convention within Europe.⁸ On this occasion, Member States were also requested to submit their opinions on these issues in order to determine whether action at the EU level was justified. This activity followed on from the recent sale at auction in France of 600 kg of raw ivory (47 tusks) for a sum of €520,000, which were then re-exported to Qatar and Armenia. Although the ivory was apparently acquired prior to 1976, it is difficult to understand the possible effects current legislation could have on this type of transaction, carried out by way of a permit from the EU or CITES, except stimulate demand and trade in ivory.
7. Last year, a preliminary report from INTERPOL⁹ on a survey on the sale of ivory via the Internet within the EU revealed that 4,500 kg of ivory objects were sold during the single two-week period covered by the study, for an estimated value of €1.45 million. The countries that took part in the study stated that the lack of requirement for the seller to prove the legality of the ivory creates significant difficulties for the regulation of the illegal sales of ivory on Internet auction sites. One of the main recommendations by INTERPOL was to develop specific legislation for Internet trade, in addition to the existing CITES regulations. The global and continuous growth of Internet trade should give rise to concerted international action in order to ensure that this type of trade does not prevent the proper implementation of CITES.
8. The decisions taken by consumer countries to implement or plan to implement their own, stricter measures illustrates the need to review and make more restrictive the exemptions described in CITES regarding the trade in ivory. In particular, the exemptions stipulated in Article VII, paragraphs 2 and 3, which read as follows:
 2. *Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.*

⁴ <http://www.reuters.com/article/2011/07/26/us-newyork-ivory-idUSTRE76P6VH20110726>;
<http://culturalheritagelawyer.blogspot.com/2012/09/ivory-smuggler-pleads-guilty-in-us-v.html>

⁵ <http://www.reuters.com/article/2011/07/26/us-newyork-ivory-idUSTRE76P6VH20110726>

⁶ <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>

⁷ https://circabc.europa.eu/sd/a/ee9ef971-b5ce-4ab5-92f9-5e1f673a3779/66_summary_com.pdf

⁸ *Ibid.* According to the summary record of the meeting, "Member States were urged to verify the authenticity of French Art. 8 certificates as there were very good falsifications in circulation." According to Regulation (EC) 338/97, certificates issued in relation to Art. 8 exclude specimens from species listed in Annex I on the prohibition of trade in the EU, as long as they predate the Convention.

⁹ "Project Web: An Investigation into the Ivory Trade over the Internet within the European Union", INTERPOL/IFAW (February 2013). See <http://www.interpol.int/Crime-areas/Environmental-crime/Resources>

3. *The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects.*
9. Resolution Conf. 13.6 (Rev. CoP16) only dwells briefly on the implementation of the exemption of ivory that predates the Convention, even though it recognizes that this exemption " has given rise to a series of difficulties, both of a technical and of a more fundamental nature." Aside from giving more details on the information that should be included on the certificates for ivory that predates the Convention, in particular the date of acquisition, the Resolution only recommends that the holders of these certificates should verify with potential importers or the CITES Management Authority whether the certificate is admissible for import.
10. The exemption regarding personal or household effects is detailed in Resolution Conf. 13.7 (Rev. CoP16). Although this Resolution clearly explains that elephant ivory found in hunting trophies does not fulfil the requirements of the exemption, it does not make any mention of other types of raw or worked ivory.
11. Decision 15.57 contains recommendations on Internet trade. However, those are limited to urging the Parties to send to the Secretariat all information on Internet trade, including: information on good practices and on web sites that adhere to codes of conduct; results of scientific research on the link between internet use and the crime rate against wild fauna; information on the extent and trends of trade over the Internet in the species contained in the CITES lists; and information on any changes to trafficking routes and shipping methods in order to promote trade in wild fauna that could be observed as a result of more intensive use of the Internet. There were no recommendations advising Parties of activities to undertake to prevent the illegal trade in ivory over the Internet.
12. We encourage the Parties to prepare recommendations in preparation for the next Conference of the Parties (CoP17) that propose suitable, reliable and sustainable regulations in order to: a) prevent illegally-obtained ivory becoming legitimized as a result of exemptions on specimens that predate the Convention and personal or household effects in accordance with Article VII, and also "laundering" on the market; and b) to avoid any form of illegal trade of ivory on the Internet. We consider that a new balance should be found in order to bring an end to abuses, through the reduction of existing loopholes at the international level and by encouraging stricter domestic measures at the national level in order to ensure that authentic specimens can be transported across borders, in particular those that are necessary for science and research.¹⁰ However, the needs of dealers that seek to use the abovementioned exemptions should be taken into account as a supplementary issue by CITES: a stricter system for trade of ivory that predates the Convention is a price that we should accept in order to reduce the possibilities of legitimizing ivory collected from elephants that were hunted illegally.
13. In view of the above, we request the Standing Committee to:
- a) Recognize the need to make the exemptions stipulated in Article VII, paragraphs 2 and 3 more strict in order to prevent abuses that make the trade in illegally-obtained raw and worked ivory possible;
 - b) Congratulate the Parties that have already undertaken stricter measures in relation to Article XIV of the Convention with regard to trade in ivory, and invite the other Parties to consider adopting similar measures;
 - c) Establish a working group in order to prepare some recommendations for examination by the sixty—sixth meeting of the Standing Committee on:
 - i) a more restrictive approach to the exemptions described in Article VII in order to prevent illegally-obtained raw or worked ivory being placed on the market under the pretext of being ivory that predates the Convention or as personal or household effects;
 - ii) measures aimed at preventing the illegal trade of ivory over the Internet;
 - iii) a definition of the concept of "antique" ivory and proposals for a global and direct system for the registration and monitoring of this ivory;

¹⁰ *For example, Resolution Conf 16.8, adopted in 2013 permitted, under the reservation of obtaining authorization, frequent, cross-border and non-commercial movements of musical instruments. It is worth considering the implementation of special arrangements for authorizations of products such as authentic antiques, ivory-encrusted furniture and other antiques derived from ivory. However the risk of abuse suggests that such a system would not be adequate for ivory that predates the Convention.*

- d) Prepare recommendations based on the report issued by the working group that can be presented during CoP17;
- e) Request the Secretariat to publish a Notification to the Parties, drawing their attention to the use of falsified certificates related to ivory that predates the Convention and requiring the Parties to verify the authenticity of such ivory.¹¹

¹¹ *Taking into consideration the Article 8 certificates that have been falsified, in accordance with that reported in February 2014 (see note 6, below).*