

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

Seventh Meeting of the Conference of the Parties

Lausanne (Switzerland), 9 to 20 October 1989

Interpretation and Implementation of the Convention

Trade in Ivory from African Elephants

DISPOSAL OF PROCEEDS FROM THE SALE OF CONFISCATED IVORY

This document has been prepared by the Secretariat.

Resolution Conf. 6.12, adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987), recommended that an African Elephant Working Group (AEWG) be established, among other things, "to undertake an examination of disposal procedures and distribution, in accordance with Resolution Conf. 4.18, of the proceeds emanating from the sale of illegal ivory seized outside its country of origin".

This issue was addressed when the Working Group met for the first time. The following is a summary of the discussions held in Nairobi in 1988 (taken from the summary of the first meeting of the AEWG):

Interest was expressed in having these proceeds used specifically for the conservation of the African elephant. It was suggested that confiscated ivory be sold under the auspices of the CITES Secretariat, and that a certain percentage of the funds be used by CITES for elephant conservation and for funding the CITES Secretariat Ivory Unit.

Some countries have programmes in place whereby some or all of the proceeds from the sale of seized ivory are used specifically for conservation purposes, whereas in others, the funds are handed over to the government treasury, whereupon the money may or may not be earmarked for conservation. In some countries, constitutional or legislative impediments prevent the funds from being allocated for specific programmes.

It was recognized that there is a need to define what is meant by "illegal" ivory, and to address the problems associated with identifying countries of origin. A drafting group was established to make recommendations on the disposal of proceeds from the sale of confiscated ivory. A resolution was drafted and presented to the meeting for discussion, at which time it was decided that additional work was needed to examine its financial, administrative and legal implications. Further discussion on this subject was deferred until the next meeting of the Working Group.

The proposed resolution of the drafting group mentioned above is attached, in its original form, as an Annex to this document.

At the beginning of the second meeting of the AEWG (Gaborone, 1989), the Secretariat noted that further discussion of the question of proceeds from the sale of confiscated ivory was needed. However, the issue was not raised specifically during the meeting and, therefore, no additional progress was made. As indicated in document Doc. 7.23, a fundamental question that needs to be answered is whether or not the Parties, in particular African range states, still accept the principle of putting confiscated ivory on the market, as has been the practice in the past.

Since it was generally acknowledged that the draft resolution proposed in Nairobi was deficient in various respects, and that certain provisions required more careful analysis, the Secretariat believes the document needs to be refined considerably before it is presented to the Parties for approval. It would be presumptuous for the Secretariat to attempt to revise the document, as this is the responsibility of the Working Group, but it shall offer its suggestions, taking into account comments received from various delegations present in Nairobi.

Comments on the proposed resolution

1. A more appropriate title for the draft resolution would be "Disposal of Proceeds from the Sale of Confiscated Ivory".
2. The preamble should refer to the mandate given to the African Elephant Working Group to consider this question by Resolution Conf. 6.12.
3. Recommendation no. 1 (see Annex) raises a number of concerns. It is not clear that the national legislation of all Parties would permit such proceeds to be transferred to the CITES Secretariat for inclusion in a conservation fund. A proviso, such as "where national legislation permits", might be added in order to allow for this possibility. If the ivory is sold by a consuming country, a certain (small) percentage of the proceeds should be remitted to that country as compensation for reasonable expenses incurred. The criteria for deciding what constitutes a "sound" nature conservation project, who shall make that decision, and how the money is distributed in the event that several projects are submitted require considerable elaboration.
4. In recommendation no. 2, to take into account all possibilities (including for example, African countries without elephant populations), it might be appropriate to broaden the expression "in a range state or consumer country" to "outside the country of origin".

As an alternative to having the country of origin pay the transportation costs associated with repatriation of the ivory, the confiscating country might sell the ivory on behalf of the country of origin, and deposit the proceeds in the conservation fund for use by the latter, after deduction of expenses incurred.

5. In recommendation no. 3, as in the others that precede it, provision should be made for a certain percentage of the proceeds to be used to offset the Secretariat's costs of administering the conservation fund on the range states' behalf. The previous comments made with regard to criteria for evaluating project proposals submitted and distribution of funds also apply.

In all of the recommendations concerning the actual sale of the ivory, the Parties may wish, as indicated in recommendation no. 3, that the Secretariat be involved in organizing and supervising the tender on their behalf. (See also document Doc. 7.32 which discusses this possibility with regard to specimens of other species.) Of course, this would be contingent on provision of sufficient funds to cover the Secretariat's administrative costs.

The Secretariat would like to draw attention to other fundamental questions that must be resolved. For example, the need to establish the country of origin raises a number of difficult technical issues, such as who shall be responsible for making such a determination, by what means and at whose expense. Concerns have also been expressed about the definition of "illegal ivory" proposed in the footnote to the draft resolution.

PROPOSED RESOLUTION

ON

THE DISPOSITION OF ILLEGAL* IVORY

CONSIDERING that the continuing high level of trade in illegal ivory is decimating wild populations of elephants and robbing African nations of a resource which is of inestimable value to current and future generations;

RECOGNIZING that concerted action is now being taken by many nations to implement Resolution Conf. 4.18 by confiscating illegal ivory, and that the proceeds from the sale of such confiscated ivory, can make a significant contribution to the conservation of elephants and other species of wildlife in developing countries;

THE AFRICAN ELEPHANT WORKING GROUP RECOMMENDS THAT:

1. If confiscated in a consumer country where the country of origin is not known, the ivory should be sold and the proceeds should go to the CITES Secretariat and the same fund should be used by the African range states upon submission of sound nature conservation related projects;
2. If confiscated in a range state or consumer country in circumstances where the origin of the ivory is known, the ivory should be repatriated to the country of origin at the recipient country's cost;
3. If seized in a producer country where the country of origin is not known, the ivory should be sold under the supervision of the CITES Secretariat, and the proceeds shared as follows:
 - 3.1 50% of the proceeds to be deposited in the CITES Secretariat Fund and used by the African range states upon submission of sound nature conservation related projects;
 - 3.2 50% of the proceeds to be used by the country that confiscated the ivory on nature conservation related projects.

* Definition

ILLEGAL IVORY Is ivory without any of the following: a certificate of ownership; an export permit or obtained in contravention of laws of the country of origin.