DESPITE AN INTERNATIONAL BAN IN 1989, THE ILLEGAL TRADE IN ELEPHANT IVORY CONTINUES. CAN ANYTHING BE DONE TO PREVENT IT?
RYAN HALL (Law)

Abstract: Trade in ivory has been occurring for centuries, but only recently have we noticed that the population of elephants is at an all-time low, largely due to this illicit trade. As a high-value commodity, ivory is at the forefront of wildlife crime and, in monetary terms, illegal wildlife trade is the third largest crime behind drugs and human trafficking. Concern regarding the slaughter of elephants is mounting. In 1975 the Convention on International Trade in Endangered Species (CITES) was established in an attempt to protect endangered species, such as the elephant, but the trade in ivory persists.

This article addresses the effectiveness of CITES on the illegal ivory trade. It seeks to examine the limitations of CITES’ regulations and policies through critical evaluation and analysis. It argues that CITES is a ‘mere’ tool to protect the elephants and a tool is only as effective as its users. It is we, as citizens, as nations and as the world, who must use this tool to enforce its regulations, decisions and policies to protect the elephant and prevent its imminent extinction.

Keywords: Ivory Trade, Poaching, CITES, Endangered Species, Elephants, Wildlife Crime.

Introduction
The world’s largest land animal, the elephant, is also one of the smartest and their social structure is complex and multi-layered. For centuries, their tusks have been highly sought after, to be used for anything from good luck charms through to intricate carvings. Many people, even to this day, believe that the ivory from an elephant’s tusk is a medicinal product. As a result, elephant populations have been falling and despite an international ban in 1989 on the trade of ivory, elephants are still poached today, slaughtered by man for their valuable tusks. The trade has constantly been in the news of late, due to growing concern among governments and conservationists, including members of the Royal Family. Surely we cannot let such a majestic mammal leave the face of the planet? In Botswana, May 2015, delegates to the African Elephant Summit heard from experts that African elephants could become extinct ‘in our lifetime within one or two decades’ (Guardian 2015).

This article will examine CITES, which is a piece of international legislation that regulates trade in threatened species. Hence, it is the treaty that regulates trade in elephant ivory, much of which has been made illegal. It will focus on two countries, China, the biggest importer of ivory, and Kenya, one of the leading nations involved with preventing the illicit trade.
The Convention on International Trade in Endangered Species (CITES)

CITES came into force on 1 July 1975. It is administered by the CITES Secretariat. Most countries in the world, including both China and Kenya, are Parties to this treaty. This means, in effect, that they have agreed with the terms of the CITES treaty. The aim, or basic concept, of the text is ‘to ensure that international trade in specimens of wild animals and plants does not threaten their survival’ (CITES a). CITES has three Appendices that list the animals and plants that require protection. Those listed in Appendix I are the most protected and include ‘species threatened with extinction which are or may be affected by trade’ (CITES b, Article II ‘Fundamental Principles’, 1). Appendix II includes species that are ‘not necessarily now threatened with extinction [but] may become so’ (ibid., 2a).

Most elephants are listed under Appendix I, although some populations, namely those in Southern Africa, have been down listed to Appendix II in order that ivory stocks from those countries can be legally sold (see later).

CITES is an international agreement and as such it is not legally binding. It has long been recognised that international agreements are a common means to state positions and record matters of mutual concerns between nations. However, the Parties are required to implement the Convention into their own domestic law; but this does not take the place of domestic law. Parties must adopt their own legislation in order to ensure that CITES is implemented at national level (CITES b, 1), as per the text of the treaty.

In an attempt to control continuing illicit trading, the Convention stipulates that in order to trade in any part of an elephant across international borders, permits are required for both export and import. An export permit can only be given if the Scientific Authority and the Management Authority of the exporting state agree that the trade will not be detrimental to the survival of the elephant (Articles III & IV). Furthermore, an export permit can only be given if an import permit has been granted (Article III).

The Preamble to the Convention also recognises that ‘peoples and states are and should be the best protectors of their own wild fauna and flora’ (CITES b, para. 3). Hence, CITES does not regulate Parties in their own domestic, internal trade in species, unless they so desire. Thus, when ivory is being traded internally (not leaving the country), it is not subject to any international trading law and the responsibility rests with the country itself.
Paragraph four of the Preamble recognises ‘that international co-operation is essential for the protection of certain species ... against over-exploitation through international trade’ (CITES b). When compared with paragraph three, this statement emphasises that CITES cannot stand on its own, it requires Parties to act unanimously to protect species, to ensure that any international trade they engage in conforms with CITES and, depending on the species, that Parties conform to the requirements under the three Appendices.

Kenya

Kenya is at the forefront of the ivory trade and one of the leading countries in the world when it comes to conservation and protection, specifically of elephants. In 1989, Kenya destroyed twelve tonnes of stockpiled ivory to show the world it would not stand for the ivory trade any longer. This was the first of many ivory stockpiles that would be destroyed by Kenya over the next few decades. The world took notice of what Kenya did and, as a result, the trade in ivory was banned shortly afterwards. In 2013 it was estimated that there were around 140,000 elephants in Eastern Africa and much of the illegal African ivory passes through Kenya on its way to China (Lori 2013). However, current estimates show a staggering decline, now down to about 100,000 animals (Guardian 2015).

Kenya relies heavily on the tourism industry for a source of income. In 2010 over one million tourists visited Kenya generating over 73 billion Kenyan Shillings (roughly 845 Million dollars). Kenya’s wildlife is vast and impressive and if the ivory trade continues it is likely that this number could drop dramatically. It is not just because of elephants and rhinos per se, but all of the endangered wildlife within East Africa.

The Wildlife Conservation and Management Act (2013) of Kenya (the Act) came into force on 10 January 2014. It imposed stricter measures on those involved with illegal trades, including the ivory trade. Part IV of the Act provides that ‘each county [in Kenya] shall have a County Wildlife Conservation and Compensation Committee’. It empowers the counties in Kenya to take an active role in conserving and protecting elephants and other wildlife. Many people in Kenya, and elsewhere, suffer from human-elephant conflicts where elephants will destroy crops and homes, with retaliation against the elephant the outcome. This Committee prevents any need for the people to retaliate, as it can also provide compensation to those affected (the Act, Section 25). Another positive outcome of this Committee is that, through its work, the government can get to understand the full effect of poaching, conflicts and other matters concerning the trade, and can then act upon
this intelligence, because the best people to inform the government about the trade are those closest to the trade – the communities.

Sections 39 and 40 of the Act provide for individuals, communities and landowners to create a wildlife conservancy, sanctuary or association. By co-operating and involving communities across Kenya, the government can spread the cost of conserving and protecting elephants through empowerment. If communities become involved with conservation and invest time and money in doing so, they may feel that it is their duty to protect these magnificent mammals.

Part XI of the Act sets out ‘offences and penalties’. This Part is most relevant to the illicit trade. It gives power to the courts of Kenya to impose unlimited fines. It also shows how much elephants and other species are valued in Kenya. In each section of Part XI, minimum fines and imprisonment terms are specified. By doing this it effectively makes the trade very expensive to operate. However, as mentioned before, this would be subject to authorities making successful arrests and this is where co-operation nationally and internationally is vital.

Section 99 of the Act, also under Part XI, is of high importance to the illicit trade:

No person shall trade in, import, export, re-export or introduce any specimen of a wildlife species into or from Kenya without a permit issued by the Service under this Act (Section 99[1])

Any person who contravenes any provisions of this section commits an offence and shall be liable … to a fine of not less than ten million shillings (about $116,000) or to imprisonment for not less than five years … (Section 99[3]).

These are very strict terms and it is these types of punishment that will be required in all countries to truly stop the trade. As recently as January 2014, a Chinese man was arrested in Kenya and fined twenty million shillings (about $233,000) or face imprisonment for seven years (Africa Review 2014).

Schedule 6 of the Act is similar to that of CITES’ Appendices, as it lists endangered species specific to Kenya. As the African elephant is in CITES Appendix I, it is listed as ‘endangered’ under the Act.
It is yet to be seen what the true impact of this legislation will have on the trade in Kenya. Theoretically, it is a piece of legislation that will give way to many landmark cases in relation to the ivory trade. The main problem will be enforcing and making successful arrests, so that prosecutions can be made.

**China**

China is generally regarded as the biggest consumer of ivory in the world. Paula Kahumbu reports that ‘many conservationists believe that … the crisis can only be halted by addressing the demand for ivory in Asian countries, especially China which accounts for more than 50% of the world’s consumption of ivory’ (Kahumbu 2013). In addition to this, ‘[m]ost Chinese consumers say that they believe ivory is produced in a sustainable manner’ (ibid.). According to Bryan Christy, writing for *National Geographic*, Chinese Consumers seem to be aware but have no compassion about where ivory comes from (Christy 2012).

In 2004 the State Forestry Administration (SFA) People’s Republic of China established an ivory registration system. This system was designed to ensure that all legal ivory, raw and worked, was to be sold with a certificate of registration or a photographic ID card depending on weight. In theory this should have worked and it should have reduced the trade, because sellers should not have been able to sell ivory without the correct documentation. However, many sellers within China stated that it was not necessary to have any documentation for ivory pieces of less than fifty grams (BBC1 Panorama 2012), which is not the case, as every piece of ivory sold in China should be accompanied with registered documents.

As well as needing identification cards and registration documents to sell ivory in China, carving factories and retail outlets need to be registered as licensed sellers. According to the International Fund for Animal Welfare (IFAW), ‘[b]y the end of 2011, 36 carving factories and 136 retail outlets around the country has received SFA-issued certificates to trade in elephant ivory’ (Gabriel, Hua & Wang 2011, 7). However, it is argued that the SFA did not control the number of licenses it distributed and as a result does not have the finance or the man-power to enforce its own regulations. Furthermore, by allowing so many licensed outlets and factories, the SFA created an opportunity to smuggle ivory, because upon any inspection owners could provide documentation and negate any questions about illegal ivory. It is also reported that ‘ivory sellers claimed they were rarely subjected to inspection by authorities … [and when they are], they said markets usually get a tip-off’ (ibid., 12).
Another way that this system is flawed is that there appears to be a ‘separation of ivory products from their identification cards’ (Gabriel, Hua & Wang 2011, 11). If sellers keep the ID cards separate, they are able to sell similar looking pieces with the same ID card until they are inspected further. If the authorities rarely inspect outlets and factories, sellers are going to get away with passing off illegal ivory as legal.

If authorities inspect retailers, could they also inspect buyers of ivory? Potentially the authorities could stop and search random buyers of ivory, rather than inspecting the outlets. This way, even if the market gets a tip-off about any inspection, the inspection would not be carried out upon them. The authorities could give a warning and/or a fine to any buyer without the correct ID cards and ask for details of the supplier. The knock-on effect of this would be that buyers would demand the ID before purchasing any ivory as the customers would not want to be approached by the authorities again. This could mean that the supplier would have to register more ivory and the authorities would be able to identify illegal traders more easily and take action.

Supply and demand evidently play a key role in the illegal ivory trade. The fact that China has traded in ivory for hundreds of years does not help the problem. Although outside the scope of this research, it could be argued that there is already too much legal and illegal ivory in China and that monitoring the trade there is perhaps impossible. Solutions are not easily found. If China legalised all current supplies of ivory already in the country, traders would be able to register all ivory and comply with the law, thereby allowing the SFA to monitor the trade more closely.

Even if the laws within China are apt in terms of preventing the trade, enforcing them remains a problem. If sellers are able to get away with passing off illegal ivory as legal and profiting by it because prices are rising due to high demand, why should they comply with the law?

**Inter-agency co-operation**

Although problems continue, China has made a number of inroads to controlling the ivory trade. The National Inter-Agency CITES Enforcement Collaboration Group (NICECG) of China was established in 2011 ‘to act as an intelligence gathering operation and also to provide capacity building for local enforcement organisations and to co-ordinate national operations’ (Heath 2012). It includes a range of government departments, including the State Forestry Administration (SFA).
On 9 May 2012, the Secretary-General of CITES, Mr John E. Scanlon, awarded NICECG a certificate of commendation in recognition of two major operations carried out in 2012 by the Forest Police and the Customs Authorities who uncovered thousands of illegal activities, leading to the arrest of suspects, the closure of illicit trading outlets, the dismantling of criminal networks and the seizure of thousands of animals and related products (CITES 2012). The success of NICECG demonstrates the value of collaboration and could encourage other Parties to follow suit and form organisations across all Party States that will be able to work concurrently and combat the illicit trade. Its success to date has proved that cooperation, not just nationally but internationally, can prevent the trade and co-operation is what seems to be lacking between the Parties.

NICECG and China encouraged Operation ‘Cobra’ in 2013. This involved ‘customs, police and wildlife officers from Asia, Africa and the United States’ to engage in a cross border enforcement operation to ‘crack down on wildlife crime syndicates’, which resulted in ‘hundreds of arrests and ... the seizure of assorted wildlife specimens’ including 6,500kgs of elephant ivory (World Customs Organisation 2013). This provides evidence that co-operation on an international level is needed to combat the trade. According to the press release, the operation was funded by all states involved, thus spreading the cost of the exercise. There is always safety in numbers and when a problem is shared, a problem is halved. Upon completion of Operation ‘Cobra’, John E. Scanlon stated that it was ‘an important operation that ... brought together ... law enforcement authorities ... [with] a strong commitment and willingness ... to combating transnational organised wildlife crime’ (World Customs Organisation 2013).

Evidently, the NICECG is a step in the right direction in combating the trade in ivory. Co-operation and co-ordination is required to tackle a trade that is vastly complex. If / when further, similar operations are carried out, problems with data, statistics, co-operation etc. could be minimized. Information shared between organisations could help establish an effective mechanism; enforcing laws and tracking the movement of illegal ivory may be made easier and more efficient, especially for those Parties where finance is a problem.

With the challenges facing China at this time of economic ascendency, trade regulation can only be achieved through effective law enforcement co-operation, collaboration and communication between responsible government agencies (Traffic 2011).
Another success story is the Lusaka Agreement Task Force (LATF), an agreement made between several nations including Kenya. It focuses on ‘enforcement operations directed at [the] illegal trade in wild fauna and flora’ (LAFT Agreement). It is a permanent law enforcement institution, carrying out investigations pertaining to illegal trade in wild fauna and flora. LAFT has joined hands with NICECG to ‘curb [the illegal] African elephant ivory trade’ (ibid.). It is argued that this Agreement is very successful, because it allows authorities to enforce the law along the whole line of the illicit trade, from the source within Africa through to the sellers in China. It also encourages a partnership that will benefit both China and Africa as expertise may be passed to one another. ‘The two institutions resolve to carry out exchange programme for operative by reciprocal visits of NICECG and LATF’s officers’ (ibid.). The LATF led ‘Operation Cobra II’ in January 2014, was commended by the CITES Secretary General, as it ‘produced a high number of significant wildlife seizures, arrests, prosecutions and achievements of best practices’, including the ‘sentencing of a Chinese ivory smuggler in Tanzania to 20 years in jail and the first ever joint China-Africa cooperative investigation’ (LATF 2015).

The LATF is a non-profit making, international organisation that requires funding in order to operate. Without funding, Cobra II may not have gone ahead or been as successful as it was. It requires co-operation in order to be successful. One Agreement that the LATF is bound to is the Agreement between itself and CITES (Memorandum of Understanding). This agreement recognises that co-operation is essential. The Agreement also provides that CITES should give information to the LATF to better understand the issues related to the trade. Among other things, the memorandum shows how the co-operation between the two bodies works. LATF also has an Agreement with the International Criminal Police Organisation – INTERPOL with a similar memorandum (Co-operation agreement between Interpol and LAFT). The more co-operative organisations become towards the trade and the more freely information about the trade can be passed between the organisations, the better chance we have of combating the illicit trade.

The ‘one-off’ sales
Since the ban in 1989, CITES has made several attempts to reduce the illegal trade, but the most controversial attempts have been the ‘one-off’ sales which they allowed in 1999 and 2008. The first sale, in 1999, was authorised by CITES after Zimbabwe, Botswana and Namibia successfully lobbied the Tenth Meeting of the Parties in 1997. These States managed to persuade the Parties and the Secretariat that their elephant populations were healthy and that they should be able to sell their stockpiled ivory (a total of 50 tonnes) to one buyer – Japan (CITES 2007). The second sale (2008),
approved by the CITES Standing Committee, allowed a total of 102 tonnes of stockpiled ivory from Botswana, Namibia, South Africa and Zimbabwe to be sold to China and Japan. These were approved on the basis that they had good laws in place and that they ‘would closely monitor their domestic markets’ (CITES 2008a). CITES also announced that the money raised would be used to fund conservation activities (CITES 2008b).

These ‘one-off’ sales have been at the centre of much debate which has yet to be resolved. On the one hand it is argued that the sales reduce the price of ivory by flooding the market, thereby making poaching less profitable. On the other hand it is argued that the sales allow an increase in poaching, because consumers believed it was legal to purchase ivory, thus driving up demand. This is what many of the Non-Governmental Organisations (NGOs), such as the Environmental Investigation Agency (EIA) believe.

In order to monitor and audit the first ‘one-off’ sale, CITES decided to set up the Elephant Trade Information System (ETIS) and MIKE (Monitoring of Illegal Killing of Elephants). ETIS shares many objectives with MIKE. While ETIS aims to record levels of illegal trade, MIKE, similarly an information-gathering system, primarily collects evidence on dead elephants, working out how many have died natural deaths and, more important, how many have been unlawfully killed. ETIS maintains that: ‘Together with MIKE, there is now a very promising basis for assessing decision-making for elephant conservation under CITES in a transparent and credible manner’ (ETIS). Nonetheless, according to NGOs, in particular the EIA, China was not monitoring its domestic markets closely at the time of the sale in 2008.

It is argued that profit is not the sole purpose of this illegal trade. Ivory has been traded for many years, and China has been dealing with ivory for just as long. So the demand, it could be argued, has always been there. As Daniel Stiles observes, ‘unless the laws of supply and demand are recognised ... elephants stand no chance of surviving’ (Stiles 2012). In effect, even if these one-off sales did not occur, the trade would have still continued and increased because demand would still be there, especially from an emerging middle class in places like China and Japan.

Mary Rice suggests that further investment in law enforcement is required: ‘Parties ... should ... be looking for adequate evidence that they are investing in intelligence-led enforcement, multi-agency operations, securing convictions and raising penalties ...’ (Rice 2012). From a legal perspective, it is agreed that there need to be some enforcement mechanisms in place in order to regulate the trade.
However, with many of the trading Parties being within the Third World, it is difficult to approach the trade from an entirely legal point.

Parties to CITES can intercept shipments of ivory at borders, but how many of them actually investigate the shipments and secure convictions? There are very few cases coming from the African and Asian States to indicate that they are securing convictions. One main reason for this could be money. Many African States argue that they need to sell their stockpiled ivory in order to put money into the conservation and protection of elephants. In relation to law enforcement, Stiles points out that ‘under current circumstances [law enforcement] is actually exacerbating the poaching’ (Stiles 2012). Some law enforcement is surely required, however, by seizing shipments we are restricting supply and making poaching more profitable rather than unprofitable. This is because, as the supply is restricted, poachers are going to compensate for lost shipments.

Another reason that the ‘one-off’ sales did not compromise the ban completely is identified by the Elephant Trade Information System director, Tom Milliken, who told the BBC that: ‘Following the last one-off sale under CITES in 1999, it is encouraging to note that the illicit trade in ivory progressively declines over the next five years’ (EIA 2012). Unfortunately, the same cannot be said for the ‘one-off’ sale in 2008 ‘because 2011 was a record year [for ivory seizures]’ (BBC 2011a). Although this does not necessarily mean that poaching increased, it could indicate a potential rise and one could argue that the sale in 2008 encouraged the trade, because 2011 showed record seizures. However, it could also show that Parties are beginning to realise the importance of protecting the elephant and are beginning to take more positive steps to enforce this. It must be noted, however, that despite the seizures in 2011, ‘there were generally few arrests’ (BBC 2011a).

Destruction of stock-piled ivory
Following Kenya’s destruction of its stock-piled ivory in 1989 many countries around the world have also destroyed their stocks of ivory. In the past two years, this has been at its highest point with several countries, including France, America, China and Hong Kong, doing likewise. In 2011, Kenya again set fire to more than five tons of ivory, sending another clear message to poachers (BBC 2011b). However, in spite of these drastic measures, the public destruction of ivory may not be the solution. According to the BBC’s Wazir Khamsin, the ivory that went up in flames in 2011 represented only ten percent of Kenya’s stock-pile (ibid.). Since Kenya is one of the main States involved with the trade, burning a small percentage of its ivory could suggest that the ivory is perhaps more valuable to them than the elephant. If Kenya is serious about stopping the trade, they
should have destroyed a lot more ivory that ten percent. Are they waiting for another one-off sale, so that they too could make some much needed revenue? Maybe that is looking too sceptically at the situation.

In January 2014 China, for the first time, destroyed a large quantity of confiscated ivory; conservationists described the event as ‘a landmark move’ (BBC 2014). According to State media, the aim was ‘to discourage illegal ivory trade, protect wildlife and raise public awareness’ (ibid.). However, this ‘landmark move’ is not necessarily a step in the right direction. Whilst it is agreed that destroying stocked ivory sends out a clear message that China will not tolerate the trade anymore, in practical terms destroying ivory could increase the illegal killing of elephants and fuel the trade further. If stocked ivory is destroyed, poachers may see this as an opportunity to kill more elephants because prices would inevitably rise even further. Although positive moves have been made by both Kenya and China to end illegal trading and protect the endangered species, the effectiveness of destroying stock-piled ivory remains questionable.

We cannot give the stock-piled ivory back to the elephants, and it is argued that the stocked ivory could be used to undermine the trade. This could be achieved, not through one-off sales as already discussed, but through controlled mechanisms whereby stocked ivory is fed into the trade so that supply can be controlled. This would give time for elephants to recover and allow governments to co-operate and create tougher legislation to combat the trade further.

Many believe that the best way to combat the trade would be to tell everyone to stop buying ivory and completely destroy the market. Elizabeth Quat suggests they ban its use altogether (Virgin Unite 2015). This would be a dramatic solution. Perhaps it would be preferable to adopt a short to mid-term solution, in which it is argued that the stocked ivory should be supplied and controlled into the market. Any money from the sales should be put into enforcement, co-operation and co-ordination between States. Once this is achieved it should be possible to combat the trade along the whole line of the supply chain.

**Conclusion**

CITES has been in force for many years now and it is accepted that for all fauna and flora, its Regulations and Decisions are both necessary and vitally important, not least for elephants and the ivory trade. In terms of its implementation, co-operation between the Parties is essential. In theory,
law enforcement in China and Kenya should be adequate to deal with the trade. However, in practice, it is a different story.

As Stiles pointed out, there is a demand for ivory, so the basic principles of supply and demand need to be recognised. Furthermore, seizing tusks after the killing has taken place does not really help the elephants. The relevant authorities should intervene at the earliest opportunity, which is before the elephant is killed, although it is accepted that this can be difficult.

What to do with the stocked ivory, its disposal or destruction, remains problematic. Although many believe that the one-off sales were a bad idea, there is a case to be made for selling stocked ivory. But before any sale could take place, this would need to be scrutinised and closely monitored to understand the full implications. The destruction of ivory stocks is certainly positive, as it shows that countries will no longer stand for the trade. But countries are only destroying a small amount of existing stock, which means the problem will continue to persist. Consideration needs to be given to best decide what should be done with the stocked ivory.

CITES is, undoubtedly, an important tool to combat the illegal trade, but it is only as effective as those who use it, and whilst some progress has been made, more needs to be done. Ultimately, it is society at large who will stop the trade, and if, as Stiles argued, the majority of Chinese consumers do not know that ivory comes from an elephant and think it comes from a sustainable source, then people need to be educated. People have to understand what is happening to the elephants and learn to appreciate that ivory is of no real use to us.

This will be an ongoing issue for many years to come. The problem is that the elephants do not have ‘many years’. As mentioned in the introduction, elephants could be extinct by 2020. There are many reasons why the ivory trade flourishes and will continue to do so, but it could be reduced if everybody took a moment to understand that while elephants’ tusks are vital to their existence, we do not need them. We might desire them but we do not need them! Raising awareness around the world of the elephants’ plight would be a start. This is already happening. Attitudes are slowly beginning to change. However, we all need to work together because once the buying stops, the killing will too.
Note
This article has been extracted from a longer, final year dissertation (2014) and has been adapted slightly to include more recent figures and reports.

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