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## Cites: Banning the Ivory Trade—An Attempt to Save the African Elephant from Extinction

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## CITES: BANNING THE IVORY TRADE — AN ATTEMPT TO SAVE THE AFRICAN ELEPHANT FROM EXTINCTION

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### I. INTRODUCTION

International trade in wildlife species and products is a highly profitable business.<sup>1</sup> The World Wildlife Fund estimates that the global trade in wildlife totals between two and five billion dollars annually,<sup>2</sup> making it one of the world's largest industries.<sup>3</sup> This extensive trade has substantially contributed to the extinction of hundreds of species and threatens even more species with the possibility of extinction.<sup>4</sup>

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1. See Comment, *International Trade in Wildlife: How Effective Is the Endangered Species Treaty?*, 15 CAL. W. INT'L L.J. 111 (1985); Wasserman, *Washington Wildlife Convention*, 14 J. WORLD TRADE L. 362 (1980).

2. Comment, *supra* note 1, at 111 (quoting from interviews with Linda McMahan who was the Director of Trade Record Analysis of Flora and Fauna in Commerce (U.S.A.) [hereinafter TRAFFIC], in Washington, D.C. (Jan. 3 & 6, 1984)). TRAFFIC is a program of the World Wildlife Fund. *Id.* at 111 n.1.

3. *Id.* at 111; see Rea, *The Fortune Directory of the Largest U.S. Industrial Corporation*, FORTUNE, May 2, 1983, at 228.

4. Note, *Regulation of International Trade in Endangered Wildlife*, 1 B.U. INT'L L.J. 249 (1982). "The Department of the Interior estimates that every ten years twenty species become extinct in the United States and an even greater number become endangered. Assuming a constant rate around the world, the Department estimates that 300 species become extinct each decade." *Id.*

Ivory is currently one of the most valuable wildlife products sought in international trade.<sup>5</sup> The primary source of ivory is the tusks, or upper incisor teeth, of African elephants.<sup>6</sup> The elephants usually must be killed to excise the tusks. Therefore, the high demand for ivory has caused a rapid decline in the African elephant population over the past several years, prompting international action.<sup>7</sup>

The United Nations<sup>8</sup> has responded to the general problem of species depletion by enacting a multilateral treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>9</sup> CITES regulates the international trade of endangered species, including the African elephant, in an attempt to prevent any species from becoming extinct or threatened with extinction because of trade.<sup>10</sup>

This article will briefly discuss the structure of CITES and focus on the provisions which specifically affect the African elephant. The recent CITES decision regarding the international ivory trade has both advantages and disadvantages, not only for the African elephant,

5. United Press Int'l, Mar. 17, 1983. More than 55,000 African elephants die each year as part of the \$100 million a year export trade. *Id.* More recent estimates state that the ivory trade is worth more than \$500 million a year. Manchester Guardian Weekly, May 21, 1989, at 24. The tusks of one elephant can bring poachers \$2,000 or more. Boston Globe, May 30, 1989, at 2. The ivory trade is of great antiquity. According to Herodotus, Africans offered gifts of elephant teeth to the Persian kings. The people of Judea built ivory palaces; the Etruscan royalty owned scepters and thrones of ivory. Even the ancient Roman kings and magistrates had ivory chairs. C. HOLDER, *THE IVORY KING* (1972).

6. The scientific name for the African elephant is *Loxodonta africana*; C. HOLDER, *supra* note 5, at 217.

7. Christian Sci. Monitor, Oct. 19, 1989, at 4. Over the past ten years the African elephant population has dropped from an estimated 1.4 million to approximately 750,000, with some estimates as low as 350,000. Many conservationists believe that if poaching continues at its present rate, African elephants will become extinct by the year 2000. Sunday Telegraph, May 21, 1989, at 7. An elephant cannot survive without its tusks, which it uses mainly to forage for food. When older members of a herd are killed for their larger tusks, younger members suffer from the lack of their elders' experience and from a critical loss of affection. Christian Sci. Monitor, Oct. 19, 1989, at 4.

8. Although the Convention on International Trade in Endangered Species of Wild Fauna and Flora [hereinafter CITES] comes under the auspices of the United Nations, its Ivory Control Unit is funded separately by member nations, governments, conservation groups, and the ivory trade itself. The ivory trade provides an estimated two-thirds of its budget. Christian Sci. Monitor, Oct. 19, 1989, at 4.

9. CITES, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243, ELR Stat. 40336. As of October, 1989, CITES is composed of 103 member nations. The Endangered Species Act, 16 U.S.C. §§ 1531-1544 (1989) (ESA) implements CITES in the United States. ESA listings of endangered species are distinct from CITES appendix listings. Since 1978, the ESA has listed the African elephant as an endangered species.

10. Notices, Dep't of the Interior, 52 Fed. Reg. 19448-01 (1987).

but also for the nations involved with the trade. Some problems inherent within the CITES framework are discussed also and used to support the conclusion that CITES alone is probably insufficient to save the African elephant from extinction.

## II. BACKGROUND

CITES establishes a system of import and export permits which a member country must obtain to trade in certain species of wildlife.<sup>11</sup> Countries that trade in these species must present permits at customs before shipments will be granted entrance to or exit from a country that is a member of CITES.<sup>12</sup> The permit requirements, implemented by each party to the Convention, are designed to prevent international trade in species where such trade presents a significant threat to a particular species' survival.<sup>13</sup>

CITES only regulates the specified fauna and flora that are listed in the three Appendices to the Convention.<sup>14</sup> The Appendices limit commercial trade in listed species to varying degrees depending upon the extent to which a particular species is threatened with extinction.

### A. CITES Regulatory Framework: Appendices I, II and III

Appendix I of CITES regulates all species that are threatened with extinction and that are or may be affected by trade.<sup>15</sup> CITES authorizes trade in these species only under exceptional circumstances to prevent further endangerment to their survival, and only under the strictest regulations.<sup>16</sup> CITES requires both import and export permits from respective member countries before allowing any trade in Appendix I species.<sup>17</sup>

The national management authority<sup>18</sup> of each party to CITES has

11. CITES, *supra* note 9, arts. III(2)-(4), IV(2); see Comment, *supra* note 1, at 118.

12. Comment, *supra* note 1, at 118; see Grove, *Wild Cargo: The Business of Smuggling Animals*, 159 NAT'L GEOGRAPHIC 287, 294 (1981).

13. See Note, *supra* note 4, at 254.

14. Note, *International Trade in Endangered Species Under CITES: Direct Listing vs. Reverse Listing*, 15 CORNELL INT'L L.J. 107, 108 (1982).

15. CITES, *supra* note 9, art. II(1).

16. *Id.* art. III(2)-(5).

17. *Id.* art. III(2).

18. National authorities cooperate to implement the Convention's provisions. The Federal Wildlife and Permit Office (WPO) acts as the United States Management Authority, and the Division of Law Enforcement implements its directives. Comment, *supra* note 1, at 123 n.81, (quoting a telephone interview with Bill Brown of the Environmental Defense Fund (Sept. 3, 1983). Mr. Brown was the first director of the United States Scientific Authority, from 1977-78). *Id.*

the responsibility for issuing these permits.<sup>19</sup> The management authority only issues permits after it has determined that the removal of the species from the country of origin will not be detrimental to the species' survival and will not be primarily for commercial purposes.<sup>20</sup> Additionally, for imported living species, the management authority must be satisfied that the proposed recipient has adequate facilities to house and care for the species.<sup>21</sup>

Appendix II regulates all species which are not necessarily presently threatened with extinction but may become so unless their trade is subject to strict regulation.<sup>22</sup> By controlling trade, Appendix II attempts to ensure that these species will not be used in any manner inconsistent with their continued survival.<sup>23</sup> CITES does not require import permits to trade in these species, while the requirements for export permits under Appendix II are similar to those under Appendix I.<sup>24</sup> To obtain an export permit, the exporting state must determine that trade will not be detrimental to the species' survival and that the species were not obtained in contravention of that particular state's wildlife protection laws.<sup>25</sup> Unlike Appendix I species, however, Appendix II species may be used for commercial purposes.<sup>26</sup>

Appendix III includes all species which any party to the Convention decides to regulate within its own jurisdiction for the purposes of preventing or restricting exportation.<sup>27</sup> This Appendix primarily enables CITES members to protect and preserve the species which they consider to be threatened with extinction within their jurisdiction.<sup>28</sup> CITES requires export permits for these species only when the export is from a member nation that has included that species on its Appendix III list.<sup>29</sup> In order to import an Appendix III species, the importer

19. CITES, *supra* note 9, art. IX(1).

20. *Id.* arts. III(2)(a), (3)(a)-(b), (5)(a), IV(2)(a), (3), (5)(b), (6)(a).

21. *Id.* art. III(3)(b).

22. *Id.* art. II(2)(a). Appendix II also encompasses species that must be regulated to facilitate effective trade controls on potentially threatened species. *Id.* art. II (2)(b).

23. *See* Comment, *supra* note 1, at 119.

24. CITES, *supra* note 9, art. IV(2)(a)-(c).

25. *Id.*

26. Compare CITES, *supra* note 9, art. II(2) with art. III(2)-(3).

27. CITES, *supra* note 9, art. II(3).

28. Chopra, *Introduction: Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 5 B.U. INT'L L.J. 225, 226 (1987). "Article II(3) provides a mechanism through which a party to the Convention can seek help from other countries in enforcing its own domestic legislation." *Id.*

29. CITES, *supra* note 9, art. V(2)-(4).

must present a certificate of origin or an export permit.<sup>30</sup> Under these guidelines, CITES enables any member nation to regulate Appendix III species to the same extent that it regulates Appendix II species.

### B. *CITES Regulation of Ivory from the African Elephant*

In response to the international concern over the rapid depletion of the African elephant population, CITES has taken strong measures to control the ivory trade. CITES goal is to regulate all trade in ivory to the extent necessary to prevent the African elephant from becoming extinct.

Until recently, CITES listed the African elephant under Appendix II.<sup>31</sup> This listing permitted limited trade in ivory. Appendix II required ivory producing nations to adopt export quotas to safeguard existing elephant populations from depletion.<sup>32</sup> Under CITES Ivory Control System,<sup>33</sup> ivory could be imported only from producer countries which submitted a quota to the Secretariat of CITES.<sup>34</sup> Each exporting country had to obtain an export permit for every tusk it placed in international trade.<sup>35</sup> Additionally, each tusk was assigned a unique serial number which, theoretically, allowed the tusk to be traced as it moved in trade through various countries.<sup>36</sup>

The CITES Ivory Control System (the System) generally failed to produce satisfactory results in most elephant-producing nations.<sup>37</sup> The System's limited success was apparently caused by several nations with elephant herds. These nations ignored their ivory quotas and exported as much ivory as they could produce.<sup>38</sup> Falsified export docu-

30. *Id.* art. V(3).

31. Proposed Rules, Dep't of the Interior, 54 Fed. Reg. 19416-02. The African elephant was placed on Appendix II on Feb. 4, 1977. *Id.*

32. *Id.* "At the fifth meeting of the parties to CITES in 1985, the Secretariat was authorized to establish the Ivory Control System (Resolution Conf. 5.12). The procedures were designed to maximize the flow of data on international commerce in African elephant ivory to and from the Secretariat, which acts as a central clearinghouse of information on the ivory trade. It is the responsibility of individual party countries to effectively control the ivory trade within their own jurisdiction." *Id.* See Notices, Dep't of the Interior, 54 Fed. Regs. 11449-01, 8008-03 (1989).

33. *Id.*

34. The CITES Secretariat is responsible for coordinating the party's national authority. CITES, *supra* note 9, art. XII(1). CITES requires parties to keep detailed records of their trade in wildlife and to forward them to the Secretariat. Comment, *supra* note 1, at 124.

35. Notices, Dep't of Housing & Urban Dev., 46 Fed. Reg. 45821-03 (1981).

36. *Id.*

37. See Gup, *Trail of Shame*, TIME, Oct. 16, 1989, at 66.

38. See United Press Int'l, Sept. 25, 1989; Reuters, Sept. 27, 1989; Daily Telegraph, Aug. 14, 1989, at 12.

ments were discovered in numerous nations,<sup>39</sup> and corrupt officials in collusion with traders found ways to avoid the System.<sup>40</sup>

In response to the international dissatisfaction with the limited ivory trade, CITES, at its seventh biennial meeting,<sup>41</sup> moved the African elephant from Appendix II to Appendix I.<sup>42</sup> This listing prohibits all trade in African elephant ivory, including hundreds of tons of supplies already stockpiled.<sup>43</sup> CITES members agreed that the ban will last for two years and that a special task force will monitor the results of the decision and report back to the next CITES conference.<sup>44</sup>

Responding to pressure from African countries with healthy elephant populations, CITES designation of the African elephant under Appendix I includes an important caveat.<sup>45</sup> The caveat allows for the possibility that countries with well-managed elephant populations will be able to resume controlled trade in ivory after the two year ban.<sup>46</sup> CITES members are to establish an expert panel to determine which countries this caveat will affect.<sup>47</sup>

39. Facts on File, June 16, 1989, at 437, col. G1. "Some of the worst poaching has occurred in areas of Africa wracked by military conflicts. A coalition of conservationists charged that . . . rebels . . . killed more than 100,000 elephants to help finance their guerrilla war." *Id.*

40. Daily Telegraph, Aug. 14, 1989, at 12. "Kenya and Tanzania have lost control of the poachers and allowed corruption to run rife." *Id.*

41. This conference was held in Lausanne, Switzerland on Oct. 9-22, 1989. Delegates voted 76 to 11 with four abstentions to move the African elephant from Appendix II to Appendix I, effective Jan. 18, 1990. Wash. Post, Oct. 17, 1989, at A13. CITES delegates suggested that countries could take unilateral measures prior to the intended effective date. Reuters, Oct. 19, 1989. The ban applies to all ivory taken since 1976. Reuters, Oct. 16, 1989.

42. The ban will last for at least two years since the Convention holds only biennial meetings. Wash. Post, Oct. 17, 1989, at 15, col. 2.

43. The CITES Secretariat proposed that the sale of existing stockpiles of ivory be exempt from the ban, but delegates rejected this and endorsed, by consensus, a decision to apply the ban to all ivory. The Secretariat made the proposal because some CITES member nations feared that smugglers would meet the demand for ivory if the sale of legally acquired stocks was outlawed. Associated Press, Oct. 19, 1989. Burundi wanted to sell its stockpile of 84 tons of seized elephant tusks before the ban. The tusks are worth about \$17 million as of October, 1989. This is a surprising figure because Burundi has no elephants of its own. Government officials seized the ivory as it passed through the country in illegal trade. Reuters, Oct. 20, 1989.

44. Critics feel this is a worthless gesture because the task force is highly unlikely to suggest moving the African elephant back to Appendix II at the next CITES meeting. United Press Int'l, Oct. 18, 1989.

45. Christian Sci. Monitor, Oct. 19, 1989, at 4. The caveat came after some of the 11 countries who opposed the ban threatened to withdraw from CITES if the caveat was not approved. Among the objectors were Zimbabwe and Botswana, who have relatively healthy, growing herds of elephants and who have often been upheld as good examples of CITES ivory control system. *Id.*

46. *Id.*

47. Reuters, Oct. 18, 1989, at 3, col. 1. The decision to create an expert panel normally

To save the African elephant from extinction, concerned nations agree that international cooperation is necessary. However, not all nations agree that banning the ivory trade is the answer. The international quota system for ivory under Appendix II of CITES generally failed to produce satisfactory results. The question of whether banning all ivory trade under Appendix I of CITES will save the African elephant remains unanswered.

### III. ANALYSIS

#### A. *Advantages to Listing the African Elephant under Appendix I*

By listing the African elephant as an endangered species under Appendix I of CITES, concerned nations hope to close all markets for ivory.<sup>48</sup> These nations believe that the absence of an ivory market will decrease its demand and drastically lower its value.<sup>49</sup> They also believe that a total ban on the ivory trade will inform the general public that they legally cannot buy ivory. Once the public understands that they cannot buy ivory, a significant decrease in its demand should result.

Decreasing the demand for ivory is the key to saving the African elephant. Once there is no demand for ivory, the monetary rewards for killing elephants no longer will exist. In addition, once the ivory market ceases to exist hunters and poachers will no longer risk being caught killing elephants.<sup>50</sup>

Only a complete ban on the ivory trade will decrease sufficiently the demand for ivory and therefore stop those interested in the ivory trade from killing elephants. If CITES allowed any legal trade in ivory, an ivory market would become available and with it a demand for ivory.<sup>51</sup> This would enable those opposed to the ban to find ways

would not have been made until the next CITES conference, probably in early 1992, but the delegates voted for an earlier decision by mail to express their earnestness to countries opposed to the ban such as Zimbabwe and Botswana. *Id.*

48. Reuters, June 19, 1989. Richard Leakey, the Kenyan Director of Wildlife, says that banning the ivory trade would eliminate the poachers' market and drive prices down to a level where elephant hunting would be less attractive. Opponents of the ban say that the real incentives for elephant hunting are the competition for land, lack of effective controls over elephant populations, and poverty. All of these incentives make ivory a valuable commodity. *Id.*

49. Reuters, Sept. 29, 1989.

50. See Gup, *supra* note 37. Simply arresting poachers is useless because the actual gunmen killing the elephants are expendable. *Id.*

51. Wash. Post, Oct. 1, 1989, at D3. "[A] government ban on a valued commodity never wholly eliminates demand. Three things do happen: prices increase; people with a comparative advantage at avoiding detection . . . take over the formally legal market; and, in the case of a resource owned in common, the resource disappears. . . . Trade bans have consistently failed to protect species for which there is a commercial demand." *Id.*

to avoid the restrictions imposed by CITES. Loopholes might encourage poaching in critical areas, increasing the possibility of the African elephants' extinction. Theoretically, by banning the ivory trade all nations will be forced to reject any product made from ivory, thereby closing all markets for ivory.

Additional support for listing the elephant under Appendix I is found in encouraging results produced by unilateral moratoriums on ivory, enacted by several countries prior to the CITES decision to ban all trade in ivory.<sup>52</sup> Studies show that the threat to African elephant populations has declined since these countries took international action a year ago.<sup>53</sup> CITES members must now ban all trade in ivory. The elephant population should continue to improve because of the concerted worldwide effort.

In addition to the primary advantage of possibly saving the African elephant from extinction, an Appendix I listing also serves several secondary purposes. The international ban on ivory trade will shift part of the burden of enforcement away from the African Nations. Enforcement costs are often prohibitive in the countries with the elephant herds.<sup>54</sup> CITES mandates worldwide enforcement by its members. International enforcement, especially from the wealthier Western nations, that have imported most of the world's ivory,<sup>55</sup> could be instrumental in saving the elephant.

A ban on all ivory trade also will simplify the administrative difficulties inherent in enforcing the quota system of Appendix II.<sup>56</sup> CITES members no longer will need to concern themselves with maintaining quotas. Because all ivory trade is illegal, all CITES members must reject importing or exporting any ivory.

Banning the ivory trade should improve the economies of those nations which rely on elephants remaining alive for revenue. Many

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52. The United States, the European Economic Community, Canada, Australia, and Switzerland had already banned trade in ivory, independently of CITES. These measures eliminated over 35% of the ivory market. Reuters, Oct. 18, 1989.

53. Associated Press, Oct. 17, 1989.

54. See Kosloff & Trexler, *The Convention on International Trade in Endangered Species: Enforcement Theory and Practice in the United States*, 5 B.U. INT'L L.J. 329, 342 (1987); see also Heppes & McFadden, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage*, 5 B.U. INT'L L.J. 229 (1987) (discusses the general global enforcement requirements of CITES).

55. Japan, the world's largest purchaser of ivory, accounts for 40% of all ivory imported. The United States, the European Economic Community, Canada, Australia, Switzerland, and Taiwan, together, account for an additional 35% of the world's ivory market. Reuters, Oct. 18, 1989.

56. See Kosloff & Trexler, *supra* note 54.

African countries depend upon the revenue generated from tourism for their survival.<sup>57</sup> African countries that provide a view of exotic wildlife attract tourists. These countries need healthy populations of African elephants to continue to attract these tourists. An Appendix I listing will help ensure that this need is met.

The decision to list the elephant under Appendix I also will keep elephant herds together since killing them for their ivory is now illegal. This serves important ecological and environmental functions. For example, elephants uproot trees in dense woodland, encouraging new growth and clearing it for use by other wildlife.<sup>58</sup> They also open waterholes with their feet, providing drinking water for other creatures.<sup>59</sup>

### B. *Disadvantages to Listing the African Elephant under Appendix I*

Although the Appendix I listing theoretically appears to solve the African elephant depletion problem, weaknesses inherent within the CITES framework may prevent CITES from being effective. CITES allows any member nation to opt out of extending protection to a particular species.<sup>60</sup> The opting nation may accomplish this by filing a reservation to an amendment to Appendix I or Appendix II within ninety days of the amendment.<sup>61</sup> This means that any CITES member can file a reservation to the Appendix I classification of the African elephant and still consider its elephants to be listed under Appendix II.<sup>62</sup>

57. Boston Globe, May 30, 1989, at 2. Elephants are very valuable to tourism which brings an estimated \$50 million a year into Kenya alone. This tourism revenue is the primary reason that nations such as Kenya and Tanzania favor the ban on the ivory trade. Associated Press, Oct. 7, 1989.

58. Christian Sci. Monitor, Oct. 19, 1989, at 4.

59. *Id.*

60. See Note, *Enforcement Problems in the Endangered Species Convention: Reservations Regarding the Reservation Clauses*, 14 CORNELL INT'L L.J. 429 (1981); see also Thomsen & Brautigam, *CITES in the European Economic Community: Who Benefits?*, 5 B.U. INT'L L.J. 269 (1987) (discussing the European experience with the reservation clauses of CITES).

61. CITES, *supra* note 9, art. XV(3). The provision states,

During the period of 90 days provided for . . . any party may by notification in writing to the Depository Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a party to the present Convention with respect to trade in the species concerned.

*Id.*

62. Associated Press, Oct. 16, 1989.

Some African nations have already filed their reservations.<sup>63</sup> The elephant populations of those nations technically are no longer under the control of CITES.<sup>64</sup> Those nations can trade ivory with member nations that also file reservations or with the more than sixty countries that are not members of CITES.<sup>65</sup>

No solution to the African elephant problem can be effective without full participation of the African nations where the elephants exist. All markets must be closed for a total ban to be successful. Under the current CITES framework, a total ban is improbable because any nation can choose to continue trading ivory.

Another problem exists with the Appendix I listing because all nations are not CITES members. Therefore, all nations are not prohibited from trading ivory. This leaves open a fairly large market for legal trade in ivory and produces an illegal market for poachers in member countries. CITES ban on the ivory trade therefore may be ineffective against illegal ivory trading. As long as any ivory market exists, ivory probably will continue to be moved from Africa, where official corruption and inefficient customs allow poachers to export.<sup>66</sup>

African nations opposed to the ban claim that poaching for illegal ivory is the primary reason for the decline in the elephant population, not the ivory trade.<sup>67</sup> CITES cannot bring an end to poaching. The CITES framework even may encourage poaching where a legal ivory market exists because some nations have chosen not to adopt Appendix I regulations. If poaching continues, illegal trade in ivory will continue even in countries which seek to apply the ban. Banning the trade may place all ivory on the black market.<sup>68</sup> This may increase prices and

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63. Zimbabwe entered a reservation to the CITES amendment. It insisted that the ban was based on insufficient regional assessments on the number of elephants and on their management. Jiji Press Ticker Service, Oct. 17, 1989. Malawi, Mozambique, Botswana and Burundi said that they would also file reservations. Those countries and Zimbabwe, which already filed its reservation, contain about one-tenth of the African elephant population. Associated Press, Oct. 17, 1989. Hong Kong and China, two of the largest ivory markets in the world, recently decided not to abide by the ban. At the CITES convention in October, Hong Kong indicated it would abide by the ban. Wash. Times, Jan. 18, 1990, at A2.

64. Xinhua Gen. Overseas News Service, Oct. 19, 1989; see, Note, *supra* note 4, at 435; see also Favre, *Tension Points Within the Language of the CITES Treaty*, 5 B.U. INT'L L.J. 247 (1987), (discussing the ability to file reservations to any CITES amendment).

65. Associated Press, Oct. 17, 1989.

66. Two of the worst smuggling centers, according to CITES, are the United Arab Emirates and Taiwan, neither of which are signatories to CITES. Christian Sci. Monitor, Oct. 19, 1989, at 4.

67. Chi. Tribune, Oct. 11, 1989, at 1. Poachers are well armed and obtain their weapons from the military. They are also well-organized. *Id.*

68. L.A. Times, May 12, 1989, at 1, col. 5.

the number of potential suppliers. In turn, the number of elephants being killed for their ivory will increase.

An additional threat to CITES success comes from the nations which have been controlling their elephant populations. They claim that an Appendix I listing penalizes them. Several African nations have growing herds and cull elephants to prevent them from becoming too numerous.<sup>69</sup> Those nations claim that the ivory trade has paid for their successful conservation and anti-poaching programs and they intend to continue selling ivory as a vital source of income.<sup>70</sup> For the African elephant problem to be solved, the full cooperation of the nations which have the elephants is needed. CITES cannot ensure such cooperation because the member nations with the elephants can choose to disregard the ivory trade ban.

CITES ban on the ivory trade also will affect economically the African nations which agree to abide by the ban. The ivory trade is crucial for the economies of many poor countries.<sup>71</sup> The trade has maintained its profitability even under generally poor economic conditions.<sup>72</sup> Ivory has retained or increased in value, even as other African export commodities have declined in value.<sup>73</sup> The African citizens who depend upon selling ivory for a livelihood may find themselves without any means of support. In addition, the ban will have a drastic impact on those nations, mostly in Asia, whose citizens carve and work ivory for their livelihood.<sup>74</sup> Many of those people are elderly and have de-

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69. Daily Telegraph, Aug. 14, 1989, at 12. The elephant populations in South Africa and Zimbabwe are doing very well. The sale of ivory is profitable in those countries because they took steps to end poaching. South Africa culls about 10% of its elephant population annually in order to prevent overgrazing. South Africa sold this ivory legally under the quota system of Appendix II. Zimbabwe, with a much larger elephant population, also culls a percentage of its elephants each year. Those countries feel that CITES is forcing them to give up their profitable ivory trade because other African countries, such as Kenya and Tanzania, have been unable to control poaching and official corruption. South Africa and Zimbabwe intend to continue selling ivory since it is a vital source of export income. *Id.*

70. Reuters, Oct. 20, 1989. Recent studies show that an African nation must spend about \$500 per square mile every year to keep poaching under control. The Zimbabwe government which has a successful elephant program, spends about \$600 per animal each year to protect their elephants from poachers. However, few African nations can afford this. Zaire, whose officials have been accused of hiring and protecting poachers, spends about \$23 per square mile in protection efforts. Chi. Tribune, Oct. 11, 1989, at 1.

71. Chi. Tribune, Oct. 11, 1989, at 1. Zimbabwe gets much of the money it spends on guarding its elephants from the legal sale of tusks and other wildlife products, totaling about \$200 million annually. Zimbabwe's Director of National Parks and Wildlife Management told the delegates at CITES, "If you remove the elephants (from international trade), you kill us." *Id.*

72. *Id.*

73. *Id.*

74. Hong Kong is the world's largest trading center for ivory. Over 3,000 people are actively involved in the ivory trade in Hong Kong. Some of Hong Kong's ivory factories, which once

pended upon the ivory trade as their sole source of income. As a result of the ban, they may find themselves unable to continue their lifelong occupation.<sup>75</sup>

#### IV. IS CITES ENOUGH TO SAVE THE AFRICAN ELEPHANT?

CITES attempts to protect the African elephant from extinction by listing it under Appendix I to the Convention. This listing theoretically prohibits all trade in ivory. However, more is needed to protect elephants than outlawing the ivory trade. Illicit traffic of ivory supports poachers, corrupt officials, and middlemen. Strong anti-poaching measures must be adopted by nations with elephant herds if Africa's elephants are to survive. Conservation measures also must be upgraded throughout Africa. Nations choosing to disregard the ivory trade ban and non-member parties to CITES must cooperate if any effort to save the elephant is to succeed. Until solutions to these problems can be found, the African elephant is still in danger of extinction, even with an international ban of the ivory trade.

#### V. CONCLUSION

The African elephant is in danger of becoming extinct because of the global demand for ivory. CITES attempts to save the elephant by prohibiting all international trade in ivory. Although strict adherence to a global ban by all nations might be adequate to save the elephant, the current CITES framework fails to provide a successful means to achieve this goal. CITES gives nations the ability to disregard the ban and to trade ivory with other CITES members that disregard the ban or with nations that are not members of CITES. Furthermore, CITES provides no real deterrence to poaching, which is a leading cause of elephant mortality.

CITES undoubtedly will reduce the market for ivory. However, the question of whether this will reduce the demand for ivory still remains unanswered. Ultimately, only a decreased consumer demand for ivory will save the African elephant from extinction. Although the CITES ban on the ivory trade alone is probably inadequate to save the elephant, it is certainly a step in the right direction.

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employed up to 80 people per factory, now employ less than 10. The factories have been losing \$40,000 to \$50,000 per month since many of the ivory importing nations declared moratoriums on ivory imports. Reuters, Oct. 23, 1989.

75. Although certain nations have used the loss of livelihood argument to oppose the ban, the people who depend upon the ivory trade for income in these nations, can have their interests best served by ensuring a continuing herd of elephants, regardless of CITES. Extinction of the African elephant would eliminate their livelihood just as a total ban on ivory would.