

## NOTE

### PROTECTING THE PACHYDERM: THE SIGNIFICANCE OF IVORY TRADE REGULATION FOR AFRICAN ELEPHANT CONSERVATION

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I.	INTRODUCTION .....	122
II.	UNDERGROUND INTERNATIONAL TRADE ROUTES .....	125
	A. The Cultural Significance of Ivory .....	125
	B. Pathways of Demand .....	126
	C. Of Poachers and Smugglers .....	128
III.	REGULATING ILLEGAL IVORY TRADE .....	131
	A. The Convention on International Trade in Endangered Species (CITES) .....	131
	B. The Ivory Trade Ban of 1989 .....	132
	C. The One-Off Sales .....	134
IV.	CoP16 PROPOSAL 12 .....	136
	A. CoP16 Proposal 12 Proponents .....	136
	B. Criticisms of CoP16 Proposal 12 .....	137
V.	SUGGESTIONS FOR IVORY TRADE REFORM .....	142
	A. Moratorium on Ivory Trade .....	142
	1. Criticisms of Ivory Trade Moratoriums .....	144
	B. Supplemental Nation-Specific Conservation Efforts .....	145
	1. Monitoring .....	146
	2. Public Education .....	147
	3. Alleviating Human-Elephant Conflict .....	148
	4. Improving Security Control .....	150
VI.	CONCLUSION .....	151

“They say that somewhere in Africa the elephants have a secret grave where they go to lie down, unburden their wrinkled gray bodies, and soar away, light spirits at the end.”<sup>1</sup>

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## I. INTRODUCTION

In the sweltering heat of an African summer, the stench of leathery carcasses and death hangs in the air, intermingled with settling dust plumes and the echoes of helicopter blades. Beside a massive, now-faceless elephant corpse, the poachers laboriously lift their prize: one of the animal's bloodied tusks, which can reach over ten feet in length and weigh as much as two hundred pounds.<sup>2</sup> With 35,000-38,000 elephants killed each year, equating to over 104 animals a day, this carnage has remained an all-too-familiar scene in recent years.<sup>3</sup> Fueled by the booming illegal ivory trade, poacher ambushes severely threaten endangered elephant populations in Africa and Asia.<sup>4</sup>

The Convention of International Trade in Endangered Species (CITES) was enacted to protect endangered species populations from the harmful effects of wildlife trade and is the leading international agreement to oversee the global ivory trade.<sup>5</sup> CITES is an international treaty that aims to ensure that international trade of certain wild animals and plants does not threaten the survival of the species in the wild.<sup>6</sup> While activities such as poaching are not technically a violation of CITES obligations, the convention prohibits trade in protected plants and animals to eliminate the incentive to harm such species.<sup>7</sup> Since CITES does not require member nations to protect their endangered species populations via specific conservation measures, it is largely at each member nation's discretion to determine how to implement the CITES trade requirements.<sup>8</sup> The Conference of the Parties (CoP) is composed of representatives from the member nations of CITES and meets every two to three years to review the implementation of the convention.<sup>9</sup> CoP gives member nations the opportunity to consider

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writing process. Special thanks to my parents and brother Josh, for their love and support; and to Osama, for proofreading and being a constant source of encouragement.

<sup>1</sup> ROBERT R. MCCAMMON, *BOY'S LIFE* 79 (1992).

<sup>2</sup> See *The Living Edens: Elephant*, PBS, <http://www.pbs.org/edens/etosha/elephant.htm>.

<sup>3</sup> See Matt Forde, *Why the African Elephant Could Be Extinct by 2020*, Environmental Graffiti (2011), <http://www.environmentalgraffiti.com/animals/news-african-elephants-be-extinct-2020>.

<sup>4</sup> *Id.*

<sup>5</sup> See *What is CITES?*, CITES, <http://www.cites.org/eng/disc/what.php>.

<sup>6</sup> See *id.* There are currently 175 Parties to CITES, or all but seventeen of the members to the United Nations.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Conference of the Parties*, CITES, <http://www.cites.org/eng/disc/cop.php>.

and, where appropriate, adopt amendments to species lists.<sup>10</sup> In March 2013, the Sixteenth meeting of the Conference of the Parties (CoP16)<sup>11</sup> met in Bangkok, Thailand to assess a provisional list of proposals to amend CITES.<sup>12</sup> Burkina Faso and Kenya proposed that the CoP refuse to accept any future proposals that would allow the trade of elephant ivory originating from certain elephant populations.<sup>13</sup> Based on the premise that even legal ivory trade is detrimental to the survival of elephant populations, this measure was an attempt to limit opportunities to make ivory more readily available under CITES.<sup>14</sup> However, on March 7, 2013 during CoP16, this proposal (known as CoP16 Proposal 12) was withdrawn.<sup>15</sup>

The purpose of this Note is to argue that CITES should have accepted CoP16 Proposal 12<sup>16</sup> at the Sixteenth meeting of the Conference of the Parties in March 2013.<sup>17</sup> This Note will reveal how the enforcement of such measures that call for greater restrictions on ivory trade would be beneficial for the threatened African elephant population and in agreement with CITES' goals. While Asian elephant populations also suffer egregiously from the effects of poaching,<sup>18</sup> the focus of this Note will be the African elephant, specifically.<sup>19</sup> This

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<sup>10</sup> *Id.*

<sup>11</sup> The shorthand for any given Conference of the Parties is "CoP" followed by the number that particular conference happens to be. *See id.*

<sup>12</sup> *See Sixteenth Meeting of the Conference of the Parties, First Provisional List of Proposals for Amendment of Appendices I and II*, CITES (Oct. 5, 2012, updated Oct. 16, 2012), <http://www.cites.org/eng/cop/16/prop/raw/index.php>.

<sup>13</sup> *See Sixteenth Meeting of the Conference of the Parties, Proposals for Amendment of Appendices I and II*, CITES, <http://www.cites.org/eng/cop/16/prop/index.php>.

<sup>14</sup> *See Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, at 2, CoP16 Prop.12, Mar. 14 2013, available at* <http://www.cites.org/eng/cop/16/prop/E-CoP16-Prop-12.pdf>.

<sup>15</sup> *See* iisd Reporting Services, *CITES CoP16 Highlights Thursday March 7 2013*, 21;78 EARTH NEGOTIATIONS BULLETIN 2 (Mar. 8, 2013), *available at* <http://www.iisd.ca/vol21/enb2178e.html>.

<sup>16</sup> *Sixteenth Meeting of the Conference of the Parties, First Provisional List of Proposals for Amendment of Appendices I and II*, *supra* note 12.

<sup>17</sup> *Conference of the Parties*, *supra* note 9.

<sup>18</sup> *See Asian Elephant*, WORLD WILDLIFE FUND, <http://worldwildlife.org/species/asian-elephant>.

<sup>19</sup> *See Differences Between African and Asian Elephants*, ELEAID, <http://www.eleaid.com/index.php?page=differencesbetweenafricanandasianelephants>. African elephants are especially susceptible to poaching because all African elephants (both male and female) have tusks whereas only some male Asian elephants have tusks. Furthermore, African elephant tusks tend to be larger, and therefore more valuable, than their Asian elephant counterparts. Thus, since African elephant ivory is particularly lucrative and therefore valuable and underground trade routes frequently stem from African range states, the focus of this Note is African elephant conservation.

Note will also argue that member parties to CITES should implement nation-specific enforcement measures, such as stricter wildlife preserve security and border control, to reduce the slaughter.

Part II will demonstrate how African elephant populations, hunted for their valuable tusks, are dwindling in number as the result of a thriving ivory black market.<sup>20</sup> Part III will focus on the mechanisms of CITES, which regulates the trade of over 30,000 endangered species in total.<sup>21</sup> In particular, the Note will discuss CITES' implementation in 1989 of an international agreement between its member countries to ban ivory trade<sup>22</sup> and the use of ivory embargos since that time. Notably, while initially ivory seizure volumes steadily declined in the early years of the ban, 2011 proved to be the bloodiest year for elephants since 1989.<sup>23</sup> Part IV will analyze why the adoption of CoP16 Proposal 12, which sought to ensure that CITES does not accept future proposals allowing trade in elephant ivory during the agreed nine-year period,<sup>24</sup> would have improved CITES' ability to regulate illegal ivory trade and stabilize the population of the African elephant. Thus, this section will argue that CoP16 should have accepted CoP16 Proposal 12. Part V will propose ways in which the deficiencies in current ivory regulations can be addressed by implementing a total ban on the sale of all ivory. Furthermore, Part V will also discuss how CoP proposals could be complemented by institutional reform on the national level among the thirty-eight African range states, such as strengthening border patrol capability to reduce corruption. This Note will ultimately argue that CoP16 Proposal 12 was a step in the right direction and that the international goal of the 1989 ban, which is to reduce poaching worldwide,<sup>25</sup> could be realized with a nation-specific approach that forces member countries to be held more accountable for illegal trade practices occurring within their own borders. A combination of

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<sup>20</sup> See Marc Kaufman, *Increased Demand for Ivory Threatens Elephant Survival*, WASH. POST (Feb. 27, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/26/AR2007022600932.html>.

<sup>21</sup> *What is CITES?*, *supra* note 5.

<sup>22</sup> See Aminta Raffalovich, "White Gold": *The Ivory Trade Ban*, BERKLEY 6 (2009), available at <http://are.berkeley.edu/courses/EEP131/fall2006/NotableStudent05/The%20Ivory%20Trade%20BanAmintaR.pdf>.

<sup>23</sup> See The Associated Press, *Deadliest Year on Record for Elephants*, N.Y. TIMES, Dec. 29, 2011, at A9, available at [http://www.nytimes.com/2011/12/30/world/africa/deadliest-year-on-record-for-elephants.html?\\_r=0](http://www.nytimes.com/2011/12/30/world/africa/deadliest-year-on-record-for-elephants.html?_r=0).

<sup>24</sup> See Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, *supra* note 14.

<sup>25</sup> *Id.* at 5.

restricting ivory trade via CITES amendments and implementing conservation efforts in African range states will provide African elephant populations a greater opportunity to stabilize.

## II. UNDERGROUND INTERNATIONAL TRADE ROUTES

### A. *The Cultural Significance of Ivory*

For thousands of years, ivory has been a global symbol of prosperity, longevity, and spiritual devotion.<sup>26</sup> In the hands of a talented craftsman, ivory can be meticulously polished and intricately carved in a way that could make one forget its bloody origins.<sup>27</sup> Worshipped from the Philippines to Japan, ivory pieces are a central component of spiritual ceremonies and religious offerings, particularly among Buddhists and Christians.<sup>28</sup> Considered more valuable than gold in some societies, worshipers aspire to own relics made of this holy material to indicate their utmost devotion to the divine.<sup>29</sup> For example, revering the religious icon, Santo Niño de Cebu as the embodiment of Christ himself, many Christian Filipinos believe that “what you invest in devotion to your own icon determines what blessings you will receive in return.”<sup>30</sup> Furthermore, certain Thai Buddhist Monks believe that ivory has the power to remove bad spirits.<sup>31</sup> Some individuals adhere strongly to beliefs of ivory’s alleged powerful health benefits as well; strongly enough, in fact, to kill.<sup>32</sup> Even though such remedies may have little to no actual medical value, ivory is used in traditional Chinese medicine and ground up to be used as an aphrodisiac.<sup>33</sup> Thus, the religious and medicinal significance of ivory has been a contributing factor behind the demand for this material, resulting in thriving underground ivory markets in spiritual communities from the Philippines to Thailand to China.<sup>34</sup>

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<sup>26</sup> See Bryan Christy, *Blood Ivory: Ivory Worship*, NAT’L GEOGRAPHIC, Oct. 2012, available at <http://ngm.nationalgeographic.com/print/2012/10/ivory/christy-text>.

<sup>27</sup> See Michael J. Glennon, *Has International Law Failed the Elephant?*, 84 AM. J. INT’L L. 1, 4 (1990).

<sup>28</sup> See Carey L. Biron, *Ivory Ban Fails to Stem Surge in Elephant Poaching*, INTER PRESS SERVICE (Sept. 15, 2012), <http://www.ipsnews.net/2012/09/surge-in-poaching-tied-to-weakened-ivory-ban/>; see also, Christy, *supra* note 26.

<sup>29</sup> Christy, *supra* note 26.

<sup>30</sup> *Id.* at 39.

<sup>31</sup> *Id.* at 46.

<sup>32</sup> *Elephant Ivory Trade Ban*, TED CASE STUDIES, <http://www1.american.edu/ted/elephant.htm>.

<sup>33</sup> *Id.*

<sup>34</sup> Christy, *supra* note 26.

Furthermore, with exceptional ivory pieces fetching tens of thousands of U.S. dollars, not only is ivory the ultimate symbol of spiritual piety, but it is also an indication of the owner's status and wealth.<sup>35</sup> To illustrate, new wealth in China and the flourishing of its middle class have enabled more individuals to afford luxurious ivory pieces: ostentatious items ranging from chopsticks to ivory rings that signify their owners' good fortune.<sup>36</sup> A prized commodity once reserved exclusively for the imperial court and aristocrats, ivory has the potential to confer status upon even middle class high-society-hopefuls.<sup>37</sup> Ivory's distinguished aesthetic appeal, a seductive combination of affluence, historical importance, and enduring beauty, entices buyers from countries with strong economies to purchase this material at exorbitant prices.<sup>38</sup> In short, ivory's social, religious, and medicinal significance account for the powerful cultural factors that produce an enormous, insatiable demand.<sup>39</sup>

### B. Pathways of Demand

Driven by this cultural demand for ivory, trading patterns emerge indicating where illegal ivory shipments originate as well as where they are typically destined.<sup>40</sup> Although CITES effectively banned the international commercial trade of ivory in 1989,<sup>41</sup> if ivory has been imported into a particular country prior to the ban's enactment, that ivory may be owned, sold, and exported.<sup>42</sup> Thus, the struggle for customs officials is a matter of distinguishing between legal pre-ban ivory and illegal post-ban ivory. Ivory seizures in the past three years suggest that most illegal ivory had originated in Kenya and Tanzania and was bound for markets in China.<sup>43</sup> In the simplest terms, this

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<sup>35</sup> *Id.*

<sup>36</sup> See Kelly Zhou, *Elephant Poaching in Africa: China's Lust for Ivory Spurs a Bloodbath*, TAKE PART (Sept. 5, 2012), <http://www.takepart.com/article/2012/09/05/chinas-demand-ivory-causes-jump-elephant-slaughter>.

<sup>37</sup> See Christina M. Russo, *How China Is Driving The Grim Rise In Illegal Ivory*, THE GUARDIAN (Jan. 23, 2012), <http://www.guardian.co.uk/environment/2012/jan/23/china-rise-illegal-ivory>.

<sup>38</sup> *Id.*

<sup>39</sup> See, e.g., Christy, *supra* note 26; Zhou, *supra* note 36.

<sup>40</sup> See *Illegal Ivory Trade*, N.Y. TIMES (Sept. 3, 2012), <http://www.nytimes.com/interactive/2012/09/04/world/africa/illegal-ivory-trade.html>.

<sup>41</sup> See *Background on CITES and the International Trade in African Ivory*, HUMANE SOCIETY INT'L (Apr. 17, 2007), [http://www.hsi.org/campaigns/dont\\_buy\\_wild/african\\_ivory\\_trade.html](http://www.hsi.org/campaigns/dont_buy_wild/african_ivory_trade.html).

<sup>42</sup> Christy, *supra* note 26.

<sup>43</sup> *Illegal Ivory Trade*, *supra* note 40.

suggests that most illegal ivory originates from African elephant populations in African range states and is then smuggled into Asian countries such as China, Japan, and Thailand via illicit trade routes.<sup>44</sup> China is currently the largest ivory consumer<sup>45</sup> and the final destination of an estimated seventy percent of the world's ivory.<sup>46</sup> Alarming reports suggest that ninety percent of the ivory in China is illegal<sup>47</sup> and that Hong Kong officials have seized at least sixteen tons of ivory bound for China in the last five years.<sup>48</sup> Furthermore, from 2006 to 2011, the price of ivory in China tripled.<sup>49</sup> At the time of this writing, the cost of raw ivory in China is more than \$1,300.00 per pound.<sup>50</sup> Despite these findings, CITES has designated China and Japan with Approved Buyer status, enabling these countries to purchase several tons of stockpiled African ivory in 1999 and 2008.<sup>51</sup> Organizations such as the Environmental Investigation Agency contend that a major factor in the rise of elephant slaughter has been the CITES-approved introduction of stockpiled ivory sales to these approved buyers, known as "one-off sales".<sup>52</sup>

It is important to note that the distressing rates of illegal ivory seizures reported by border control units across Asia represent only a fraction of the ivory that circumvents these security measures.<sup>53</sup> Between 2011 and 2012 alone, over thirty tons of ivory were seized

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<sup>44</sup> *Id.*

<sup>45</sup> See Jethro Mullen & Dayu Zhang, *Booming Illegal Ivory Trade Taking Severe Toll On Africa's Elephants, Groups Say*, CNN NEWS, (Sept. 5, 2012), <http://www.cnn.com/2012/09/05/world/africa/africa-ivory-elephant-slaughter/index.html>.

<sup>46</sup> See Jeffery Gettleman, *Elephants Dying in Epic Frenzy as Ivory Fuels Wars and Profits*, N.Y. TIMES (Sept. 3, 2012), <http://www.nytimes.com/2012/09/04/world/africa/africas-elephants-are-being-slaughtered-in-poaching-frenzy.html?pagewanted=all>.

<sup>47</sup> See Dan Levin, *From Elephants' Mouths, an Illicit Trail to China*, N.Y. TIMES (Mar. 1, 2013), <http://www.nytimes.com/2013/03/02/world/asia/an-illicit-trail-of-african-ivory-to-china.html>.

<sup>48</sup> *Elephants Face Extinction If Beijing Does Not Ban Ivory Trade: China Accounts for Nearly Half of the 40,000 Killed Every Year for Their Tusks*, MAIL ONLINE (June 17, 2013), <http://www.dailymail.co.uk/news/article-2343137/Elephants-face-extinction-Beijing-does-ban-ivory-trade-China-accounts-nearly-half-40-000-killed-year-tusks.html>.

<sup>49</sup> See *Elephant Ivory Sales Creating "Deadly New Currency in China"*, SAVE THE ELEPHANTS (June 7, 2012), <http://www.savetheelephants.org/news-reader/items/elephant-ivory-sales-creating-deadly-new-currency-in-china.html>.

<sup>50</sup> Levin, *supra* note 47.

<sup>51</sup> See *Blood Ivory: Exposing The Myth Of A Regulated Market*, EIA 1, 2-3 (Mar. 23, 2012), <http://www.eia-international.org/wp-content/uploads/EIA-Blood-Ivory.pdf>.

<sup>52</sup> *Strip China of Ivory 'Approved Buyer' Status*, EIA (Mar. 23, 2012), <http://www.eia-international.org/strip-china-of-ivory-approved-buyer-status>.

<sup>53</sup> See Holly Williams, *Wealthy Chinese Drive Illegal Ivory Trade Boom*, CBS NEWS (Nov. 27, 2012), [http://www.cbsnews.com/8301-18563\\_162-57555258/wealthy-chinese-drive-illegal-ivory-trade-boom/](http://www.cbsnews.com/8301-18563_162-57555258/wealthy-chinese-drive-illegal-ivory-trade-boom/).

globally, which accounts for the death of over 3,000 elephants.<sup>54</sup> In addition, Thailand is the biggest unregulated ivory market in the world and currently one of the primary drivers of poaching and illegal trade.<sup>55</sup> Since CITES put the 1989 ivory ban into effect, well over 47,100 tons of illegal ivory has been seized in Thailand alone.<sup>56</sup> This can be attributed at least partially to the fact that criminal networks exploit the legal loophole that prohibits the sale of African ivory in Thailand but permits the sale of ivory from domestic Thai elephants.<sup>57</sup> Specifically, the current regulatory regime in Thailand makes it easy for smugglers to pass off African ivory as legal domestic ivory derived from Thai elephants, which highlights how even legal ivory trade can exacerbate problems associated with criminal trade.<sup>58</sup> In sum, seizures of illegal ivory from Asia's borders and black markets indicate a high demand from Eastern nations for ivory originating in African countries.<sup>59</sup>

The ivory black market is mainly supplied by elephants slaughtered in African range states such as Cameroon, the Democratic Republic of the Congo, and Tanzania.<sup>60</sup> Most of the illegal large-scale shipments of ivory in the past three years originated in Kenya and Tanzania, with 21.8 tons of ivory having been seized from Tanzania alone.<sup>61</sup> These large illegal consignments are egregious and disturbing not only because poaching threatens biodiversity,<sup>62</sup> but also because the African elephant serves important ecological functions, including dispersing seeds of Central African forests (the second most important carbon capture forests in the world).<sup>63</sup> Part II. C. will discuss how poachers procure ivory from elephant populations residing in these African range states and how smugglers then transport the ivory across national borders to be sold in Asian markets.

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<sup>54</sup> *Blood Ivory: Exposing The Myth Of A Regulated Market*, *supra* note 51.

<sup>55</sup> *See Thai Ivory Ban Needed to Help Save Elephants*, WORLD WILDLIFE FUND (Jan. 15, 2013), <http://worldwildlife.org/stories/thai-ivory-ban-needed-to-help-save-elephants>.

<sup>56</sup> *See* Christy, *supra* note 26, at 45.

<sup>57</sup> *Thai Ivory Ban Needed to Help Save Elephants*, *supra* note 55.

<sup>58</sup> *Id.*

<sup>59</sup> *See Illegal Ivory Trade*, *supra* note 40.

<sup>60</sup> *See* Christy, *supra* note 26.

<sup>61</sup> *Illegal Ivory Trade*, *supra* note 40.

<sup>62</sup> *See* Matthew R. Filteau, *Deterring Defiance: 'Don't Give a Poacher a Reason to Poach'*, 1 INT'L J. OF RURAL CRIMINOLOGY 236, 237 (2012).

<sup>63</sup> *See* Wasser et al., *Elephants, Ivory, and Trade*, 327 SCIENCE MAGAZINE 1331 (Mar. 12, 2010).

*C. Of Poachers and Smugglers*

While information regarding the mechanisms of the illegal ivory trade is incomplete,<sup>64</sup> it is known that organized criminal syndicates, insurgency groups, and military units are among the primary actors involved in large-scale, commercial wildlife trafficking.<sup>65</sup> According to Tom Milliken, Director of the Elephant Trade Information System (ETIS),<sup>66</sup> these smugglers are “Africa-based, Asian-run crime syndicates.”<sup>67</sup> Poaching remains the greatest threat to elephant population survival and feeds the international trade of illegal ivory.<sup>68</sup> Wild African elephant populations, as well as those that reside in African range state national park preserves, are vulnerable to poacher raids.<sup>69</sup> The poacher groups may consist of rebel militias and even government armies, able to overwhelm wildlife rangers who are older, fewer in number, and not as well armed.<sup>70</sup> Many elephants, like those found in the Democratic Republic of Congo’s Garamba National Park in 2012,<sup>71</sup> are shot in the head from helicopters and truck convoys by poachers, who then saw the tusks off.<sup>72</sup> However, recently poachers have even been known to use Temik, a deadly agricultural chemical, in strategically placed fruits to poison and ultimately kill elephants.<sup>73</sup>

Once the slaughter is complete, the tusks are smuggled within Africa across borders, often by truck or bicycle.<sup>74</sup> The tusks are then cleaned and typically smuggled in suitcases through airport security, often by obscuring the smaller pieces in clothing or by forging

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<sup>64</sup> See Andrew M. Lemieux and Ronald V. Clarke, *The International Ban on Ivory Sales and Its Effects on Elephant Poaching in Africa*, 49 BRIT. J. CRIMINOL. 451, 456 (2009).

<sup>65</sup> See LIANA SUN WYLER AND PERVAZE A. SHEIKH, CONG. RESEARCH SERV., RL34395, INTERNATIONAL ILLEGAL TRADE IN WILDLIFE: THREATS AND U.S. POLICY 18 (2008).

<sup>66</sup> Implemented at CoP10 in 1997, “ETIS is a comprehensive information system used to track illegal trade in ivory and other elephant products.” See *The Elephant Trade Information System*, CITES, <http://www.cites.org/eng/prog/etis/index.php>.

<sup>67</sup> Gettleman, *supra* note 46.

<sup>68</sup> Glennon, *supra* note 27, at 3.

<sup>69</sup> Gettleman, *supra* note 46.

<sup>70</sup> See Jeffrey Gettleman, *Rangers In Isolated Central Africa Uncover Grim Cost of Protecting Wildlife*, N.Y. TIMES (Dec. 31, 2012), <http://www.nytimes.com/2013/01/01/world/africa/central-africas-wildlife-rangers-face-deadly-risks.html?pagewanted=all>.

<sup>71</sup> Gettleman, *supra* note 46.

<sup>72</sup> *Id.*

<sup>73</sup> See *Elephants and Oranges - The Fight Against Poaching in Southern Africa*, WILDLIFE EXTRA, <http://www.wildlifeextra.com/go/world/mozambique-poaching.html#cr>.

<sup>74</sup> See *A Bloody Business*, CONDE NAST TRAVELER, (June 2010), <http://www.cntraveler.com/features/2010/06/A-Bloody-Business>.

certificates stating that the ivory was obtained legally.<sup>75</sup> Other common practices among smugglers are to paint ivory with removable brown watercolor to give it a wooden appearance or to apply resin to make illegal post-ban ivory look like legal pre-1989 ivory.<sup>76</sup> The ivory is often shipped from Africa to the Persian Gulf and Asian nations as unaccompanied baggage, in freight containers with secret compartments, or labeled as miscellaneous objects, from cell phone parts to cashew nuts.<sup>77</sup> As previously discussed, the vast majority of these shipments arrive in China.<sup>78</sup> Syndicate middlemen traders who move large consignments of ivory and ultimately bridge Africa and Asia stand to turn a quick profit because they have eager buyers at the end-use location.<sup>79</sup>

Corruption among customs officers is also common, as they facilitate the international illegal ivory trade by purposefully overlooking unlawful activity.<sup>80</sup> In China, ivory seized by border control departments may “disappear” into government ivory stocks, which may later be sold on the domestic market.<sup>81</sup> Chinese border controls are lax, with various government departments operating with conflicting responsibilities.<sup>82</sup> This creates cracks in China’s customs system, which makes it difficult to ascertain “whether confiscated ivory is kept in storage, destroyed, or released on to the domestic market.”<sup>83</sup> Similar border control weaknesses have been reported among other Asian government entities, enabling the importation of African ivory with unlawful origins.<sup>84</sup> Thus, as long as poaching and smuggling practices remain profitable and national governments remain inept at quelling the steady stream of the illegal ivory crossing international borders, these underground trade routes will likely continue, to the detriment of endangered African elephant populations.<sup>85</sup>

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<sup>75</sup> See Christy, *supra* note 26, at 41.

<sup>76</sup> *Id.*

<sup>77</sup> See *A Bloody Business*, *supra* note 74.

<sup>78</sup> *Id.*

<sup>79</sup> See Russo, *supra* note 37.

<sup>80</sup> See *Made In China: How China's Illegal Ivory Trade Is Causing A 21st Century African Elephant Disaster*, EIA 1 (2007), <http://www.eia-global.org/PDF/Report—MadeInChina—Species—May07.pdf>.

<sup>81</sup> *Id.* at 6.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 13, 16. (Specifically, Tibet and Hong Kong).

<sup>85</sup> See Glennon, *supra* note 27, at 3.

## III. REGULATING ILLEGAL IVORY TRADE

A. *The Convention on International Trade in Endangered Species (CITES)*

The devastating effects of these poaching and smuggling practices have not gone unnoticed by the international community. Entering into force on July 1, 1975, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or CITES, was enacted to regulate the international trade of endangered plants and animals.<sup>86</sup> There are currently 175 parties to CITES, which protects approximately 5,000 species of animals and 29,000 species of plants from the detrimental effects of internationally trading these vulnerable populations.<sup>87</sup>

Based on the extent to which each species is threatened, the treaty categorizes protected species according to three Appendices, which vary in strictness regarding trade controls.<sup>88</sup> The various species are placed on a schedule of Appendices I, II, and III, with classification depending upon the degree of protection that the particular species requires to preserve its numbers in the wild.<sup>89</sup> The Conference of the Parties, either at its regular meetings or by postal procedure, is the only means by which species may be added to or removed from Appendix I and II.<sup>90</sup>

Appendix I lists species threatened with extinction.<sup>91</sup> CITES prohibits the international trade of Appendix I animals or plants except where the purpose is non-commercial, such as for scientific research.<sup>92</sup> Article VII also provides for a number of exemptions to this general prohibition on commercial international trade of Appendix I species, including for import/export permits.<sup>93</sup> Appendix II lists species not necessarily threatened with extinction but still protected under trade controls in order to avoid threatening the species' current population numbers.<sup>94</sup> Importantly, CITES authorizes international trade in Appendix II species via export permits or re-export certificates.<sup>95</sup> Article IV stipulates that such permits and certificates may only be

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<sup>86</sup> *Id.* at 10.

<sup>87</sup> *What is CITES?*, *supra* note 6.

<sup>88</sup> *See How CITES Works*, CITES, <http://www.cites.org/eng/disc/how.php>.

<sup>89</sup> *Id.*

<sup>90</sup> *See The CITES Appendices*, CITES, <http://www.cites.org/eng/app/index.php>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

granted if “trade will not be detrimental to the survival of the species in the wild.”<sup>96</sup> Finally, Appendix III contains species that receive protection in at least one country that has asked other CITES Parties for assistance in controlling trade to prevent exploitation.<sup>97</sup> While Appendix III, like Appendix II, also requires individuals trading these species to provide the appropriate documentation, member parties that regulate the species trade may unilaterally add or remove Appendix III species.<sup>98</sup> This Note will focus on Appendices I and II listings, which can only be changed by CoP at meetings or by postal procedure.<sup>99</sup> Furthermore, since the conservation needs of a particular species may vary between populations located in different countries, the Appendices may be annotated to separate these populations into different Appendices.<sup>100</sup> For example, some African countries have successfully “downlisted” their elephant populations from Appendix I to Appendix II.<sup>101</sup> This is significant because commercial trade of species categorized in Appendix I is strictly prohibited while other trade, including hunting trophies and scientific research, is heavily regulated.<sup>102</sup> On the other hand, African countries that have successfully downlisted their elephant populations to Appendix II are permitted to sell their stockpiles in regulated markets,<sup>103</sup> as discussed *infra* in Part III. B.

### B. *The Ivory Trade Ban of 1989*

In 1975, CITES placed the Asian elephant in Appendix I.<sup>104</sup> A few years later, CITES also placed African elephants in Appendix I, which effectively banned all international commercial trade in ivory in

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* CITES provides wolf populations as an illustration of how differently perceived conservation needs can cause animals of the same species to be listed differently pursuant to their residing country. For example, Appendix I only includes the wolf populations of Bhutan, India, Nepal, and Pakistan, but Appendix II contains the wolf populations of all other member countries. *Id.*

<sup>101</sup> See *Analysis of CoP16 Proposal 12*, TRAFFIC, <http://www.traffic.org/cop16-table/>. “The populations of Botswana, Namibia, and Zimbabwe were transferred to Appendix II in 1997, and the population of South Africa in 2000.” *Id.*

<sup>102</sup> Lemieux and Clarke, *supra* note 64, at 453.

<sup>103</sup> *Id.* at 454.

<sup>104</sup> See *Asian Elephants*, U.S. FISH AND WILDLIFE SERVICE, <http://www.fws.gov/international/animals/asian-elephants.html>.

1989.<sup>105</sup> As such, this decision to list both Asian and African elephants in Appendix I effectuated an ivory trade ban.<sup>106</sup> Although the United States, Canada, Australia, and a few European countries forbade the commercial import of ivory a few months before CITES agreed on the 1989 ban, several African countries refused to sign on to the decision to list African elephants in Appendix I until CITES enacted several exceptions and special treatment clauses.<sup>107</sup> One very important loophole to the 1989 ivory trade ban that continues to this day is that ivory that had been imported into a particular country prior to the ban's enactment, may be owned, sold, and exported.<sup>108</sup> This means that African elephant ivory imported prior to 1989 and Asian elephant ivory imported prior to 1976 may be legally traded.<sup>109</sup> This exemption also applies to ivory imported into a country before that country joined CITES.<sup>110</sup> Herein lies the crucial difference between legal, pre-ban ivory and illegal ivory that has been procured and traded in a manner that is impermissible under CITES. Since there is no wholesale ban on ivory in general, it can be difficult to distinguish between pieces that were smuggled illegally and those that are legally traded.<sup>111</sup> For example, CITES does not have jurisdiction over whether and how individuals within member nations domestically trade ivory, limiting its reach to international transactions.

Initially, the 1989 international ivory ban was seen as a success; the amount of illegal ivory seized decreased and many elephant populations stabilized.<sup>112</sup> However, the number of elephants slaughtered for their tusks has increased since 1999, with 2011 being the bloodiest year yet.<sup>113</sup> The CITES Standing Committee presented several reports at the 62nd Standing Committee meeting that indicate “a very close correspondence between trends in elephant poaching and

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<sup>105</sup> See Convention on International Trade in Endangered Species of Wild Fauna and Flora, Amendments To Appendices I And II Of The Convention: Adopted by the Conference of the Parties at Its Seventh Meeting in Lausanne, Switzerland, from 9 to 20 Oct. 1989, 73, available at <http://www.cites.org/eng/cop/07/E07-Amendments-to-Appendices.pdf>.

<sup>106</sup> *Id.*

<sup>107</sup> CITES History, ELEPHANT INFO. REPOSITORY, [http://elephant.elehost.com/About\\_Elephants/Stories/CITES\\_History/cites\\_history.html](http://elephant.elehost.com/About_Elephants/Stories/CITES_History/cites_history.html). Led by Zimbabwe, several Southern African countries claimed that African elephants were not endangered.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Christy, *supra* note 26.

<sup>112</sup> *Background on CITES and the International Trade in African Ivory*, *supra* note 41.

<sup>113</sup> Associated Press, *supra* note 23.

trends in large-scale ivory seizures.”<sup>114</sup> Thus, despite the 1989 commercial ban on ivory, elephant populations have continued to dwindle over the decades due to poaching as well as nations taking a passive role in the protection of their elephants.<sup>115</sup> African range states like Tanzania failing to enforce national anti-poaching laws, and countries such as China permitting gaps in border control security has resulted in a perfect storm of noncompliance with CITES.

### *C. The One-Off Sales*

“One-off sales” are the legal sale of post-1989 ivory stockpiles from one CITES member nation to another.<sup>116</sup> Several countries, including Tanzania, South Africa, Zambia, and Zimbabwe, have applied to CITES seeking for approval to sell their ivory stockpiles in one-off sales through downlisting their elephant populations from Appendix I to Appendix II.<sup>117</sup> In 2007, at CoP14, the African elephant range states agreed to a nine-year suspension of ivory trade.<sup>118</sup> However, the parties stipulated that the agreement would not take effect until South Africa, Namibia, Botswana, and Zimbabwe completed a one-off sale that these nations had agreed to at CoP12.<sup>119</sup> These four southern African countries, which had been permitted to downlist their elephant populations, could consequently sell stocks of ivory registered before January 31, 2007.<sup>120</sup> As a result, these countries sold several tons of stockpiled ivory to Japan and China.<sup>121</sup> According to the agreement, only “registered, government-owned stocks that originate from natural

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<sup>114</sup> See *Press Release: CITES Meeting to Tackle Massive Smuggling of Elephant Ivory and Rhino Horn*, CITES, (July 24, 2012), [http://www.cites.org/eng/news/pr/2012/20120724\\_SC62.php](http://www.cites.org/eng/news/pr/2012/20120724_SC62.php).

<sup>115</sup> See Convention on International Trade in Endangered Species of Wild Fauna and Flora, *Elephant Conservation, Illegal Killing and Ivory Trade*, at 16, SC62 Doc. 46.1 (Rev. 1) (Jul. 23-27, 2012), available at <http://www.cites.org/eng/com/SC/62/E62-46-01.pdf>.

<sup>116</sup> Erwin H. Bulte et al., *The Effects of One-Off Ivory Sales on Elephant Mortality*, 71(2) J. OF WILDLIFE MGMT 613, 613 (Apr. 2007).

<sup>117</sup> See *Open Season: The Burgeoning Illegal Ivory Trade in Tanzania and Zambia*, EIA 13, <http://eia-global.org/news-media/open-season-the-burgeoning-illegal-ivory-trade-in-tanzania-and-zambia>.

<sup>118</sup> See James C. Njogu, *Wildlife Management and Conservation in View of International Conventions*, 29 GEORGE WRIGHT FORUM 109, 113 (2012).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> See Melissa Gray, *Controversial Legal Ivory Sale Raises \$1.2M*, CNN (Oct. 28, 2008), [http://www.cnn.com/2008/WORLD/africa/10/28/ivory.auction/index.html?eref=rss\\_world&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+rss%2Fcnn\\_world+%28RSS%3A+World%29](http://www.cnn.com/2008/WORLD/africa/10/28/ivory.auction/index.html?eref=rss_world&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+rss%2Fcnn_world+%28RSS%3A+World%29).

mortality or problem animals” could be used in the one-off sale.<sup>122</sup> Furthermore, all revenues from the sale were to be invested in elephant conservation and community development.<sup>123</sup>

Opponents of one-off sales argue that such sales “facilitate the marketing of illegal ivory, thereby promoting demand and encouraging poaching.”<sup>124</sup> By flooding domestic Chinese markets with legal ivory, one-off sales have the potential to create a smokescreen for illegal ivory as smugglers conceal it among legal ivory by using methods such as forged certificates.<sup>125</sup> Compelling evidence indicates that one-off sales exacerbate poaching and illegal trade in ivory.<sup>126</sup> While a 1999 one-off ivory sale to Japan was followed by a decline in the volume of illegal ivory trade for the next five years,<sup>127</sup> the aftermath of this latest one-off sale has indicated an increase in killing.<sup>128</sup> In light of this trend, member nations have urged that CITES not permit one-off sales and prohibit the downlisting of any additional African elephant populations.<sup>129</sup> At CoP15 in 2010, Kenya, Ghana, Liberia, Mali, Sierra Leone, Togo, the Democratic Republic of Congo, and Rwanda urged the African range states to refrain from proposing or adopting further proposals to amend the existing listings of African elephants on the CITES appendices, including amendments to existing annotations for a period of nine years from the date of the 2008 one-off sale.<sup>130</sup> CoP Proposal 12 sought to amend this annotation to ensure that no member nations may submit proposals to CITES seeking to downlist their African elephant populations until the year 2017, which would be nine years from the 2008 one-off sale.<sup>131</sup>

<sup>122</sup> Njogu, *supra* note 118.

<sup>123</sup> *Id.*

<sup>124</sup> Bulte et al., *supra* note 116.

<sup>125</sup> See Jo Adetunji, *One-Off Ivory Sale to China Condemned as ‘Poaching Smokescreen’*, THE GUARDIAN (July 14, 2008), <http://www.theguardian.com/environment/2008/jul/14/conservation.wildlife>.

<sup>126</sup> Lawrence Karol, *Pachyderm Payoff: Tanzania Seeks Approval to Sell Its Ivory Stockpile*, TAKE PART (Oct. 9, 2012), <http://takepart.com/article/2012/10/09/pachyderm-payoff-tanzania-seeks-international-approval-sell-its-stockpile-ivory>.

<sup>127</sup> See *First Ivory Auction from Southern Africa Takes Place*, TRAFFIC (Oct. 28, 2008), <http://www.traffic.org/home/2008/10/28/first-ivory-auction-from-southern-africa-takes-place.html>.

<sup>128</sup> Bulte et al., *supra* note 116.

<sup>129</sup> See Daniel Stiles, *CITES-Approved Ivory Sales and Elephant Poaching*, 45 PACHYDERM 150, 150 (2008-2009).

<sup>130</sup> See *Summary of the Fifteenth Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora: 13-25 March 2010*, IISD REPORTING SERVICES, 13-14 (Mar. 29, 2010) <http://www.iisd.ca/download/pdf/enb2167e.pdf>.

<sup>131</sup> Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, *supra* note 14, at 1.

## IV. COP16 PROPOSAL 12

As discussed in the preceding section, the Conference of the Parties decided at the 14th meeting (CoP14, The Hague 2007) “that there should be no further elephant proposals to allow trade in ivory submitted for the consideration of CITES Parties for a period of at least nine years” after the one-off sale of ivory stock piles from Botswana, Namibia, and South Africa, which occurred in November 2008.<sup>132</sup> However, this CoP14 annotation “only applies to those Parties with African elephants *already* on Appendix II (i.e. Zimbabwe, South Africa, Botswana, and Namibia)” (emphasis added).<sup>133</sup> CoP16 Proposal 12 sought to amend the wording of the CoP14 annotation “to ensure that no proposals to allow trade in elephant ivory can be submitted during the agreed nine-year period from any population on Appendix II”.<sup>134</sup> As such, proponents of the amendment believed that CoP16 Proposal 12 would make clear that no proposals for trade in elephant ivory shall be submitted by *any* range State within the agreed-upon timeframe and would clarify the agreement reached in CoP14.<sup>135</sup> In other words, CoP16 Proposal 12 called for a blanket ban on ivory trade proposals until 2017 from all thirty-eight African elephant range countries, not just the four countries subject to the CoP14 annotation, “to ensure that African elephants are not put under any further threat from legalized ivory sales.”<sup>136</sup> CoP16 Proposal 12’s proposed amendment to the previous language is as follows:

h) no further proposals to allow trade in elephant ivory from any populations ~~already~~ in Appendix II shall be submitted to the Conference of the Parties for the period from CoP14 and ending nine years from the date of the single sale of ivory that is to take place in accordance with provisions in paragraphs g) i), g) ii), g) iii), g) vi) and g) vii). In addition such further proposals shall be dealt with in accordance with Decisions 14.77 and 14.78 (Rev. CoP15).<sup>137</sup>  
(additional text underlined, deleted text struckthrough)  
CoP16 Proposal 12.

A. *CoP16 Proposal 12 Proponents*

Proponents of CoP16 Proposal 12 contended that even the legal

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<sup>132</sup> *Id.* at 2.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 1.

sale of ivory posed a serious threat to elephant populations and asserted that there is no legitimate evidence indicating that legal ivory trade is not detrimental to the survival of the species.<sup>138</sup> The Proposal asserted that, lacking this definitive evidence, CITES should act in the best interest of the species and adopt measures that are appropriate in light of the risks to the population pursuant to Rio Principle 15 (Precautionary Approach).<sup>139</sup> The proponents of CoP16 Proposal 12 also submitted that, “the Parties, when considering this Proposal, take into account the importance of implementing the prioritized objectives of the African Elephant Action Plan (AEAP) before any further sales are considered for approval.”<sup>140</sup> In sum, CoP16 Proposal 12 urged the Parties to consider the risk of exacerbating illegal ivory trade by participating in one-off sales or other means of legal ivory trade.<sup>141</sup> The solution posed by CoP16 Proposal 12 was a nine-year moratorium on proposals to permit such trade.<sup>142</sup>

### B. Criticisms of CoP16 Proposal 12

While there was strong support for CoP16 Proposal 12 among wildlife conservation groups, the Secretariat of CITES,<sup>143</sup> TRAFFIC,<sup>144</sup> and the IWMC World Conservation Trust<sup>145</sup> recommended that member parties reject the proposal.<sup>146</sup> The

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<sup>138</sup> *Id.* at 2.

<sup>139</sup> See U.N. Conference on Env't and Dev., *Rio Declaration on Environment and Development*, UN. Doc. A/CONF.151/26 (Aug. 12, 1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>140</sup> Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, *supra* note 14, at 2.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> See *The CITES Secretariat*, CITES, <http://www.cites.org/eng/disc/sec/index.php>. The CITES Secretariat plays a pivotal role in the Convention, including making recommendations regarding the implementation of the Convention and distributing information to the Parties. *Id.*

<sup>144</sup> See *About TRAFFIC*, TRAFFIC, <http://www.traffic.org/overview>. TRAFFIC is a wildlife trade-monitoring network that works closely with the Secretariat of CITES and delivers conservation solutions based on the latest information. *Id.*

<sup>145</sup> See WORLD CONSERVATION TRUST FOUNDATION, <http://www.conservingwildlife.org> (last visited Aug. 22, 2013). IWMC World Conservation Trust is “a global coalition of experts and wildlife managers promoting the conservation of habitat and wildlife resources and advocating the use of science-based techniques in managing environmental issues.” *Id.*

<sup>146</sup> See Convention on International Trade in Endangered Species of Wild Fauna and Flora, Proposals to Amend Appendices I and II, at 2-3, CoP16 Doc. 77, Mar. 3-14, 2013, available at <http://www.cites.org/eng/cop/16/doc/E-CoP16-77.pdf>; see also IWMC WORLD CONSERVATION TRUST, TOWARDS COP16 OF CITES: IWMC RECOMMENDATIONS ON PROPOSALS FOR AMENDMENT OF APPENDICES I AND II 14 (2013), available at <http://iwmc.org/home/images/pdf/CoP16-IWMC%20Rec-Props-E.pdf>; IUCN GLOBAL SPECIES

Secretariat of CITES stated that while “the proponents claim that the suggested language would better reflect ‘the intention’ of what the Parties meant at CoP14, . . . this is questionable given that the current annotation was collectively agreed and proposed there by all African Parties, and adopted by consensus.”<sup>147</sup> The recommendation continued by noting that agreements regarding the regulation of this species “are the result of protracted, difficult negotiations and compromises, and consequently have become particularly lengthy and detailed.”<sup>148</sup> Thus, the Secretariat contended that any amendments to African elephant regulations should be made in “a similar spirit of continent-wide consent and agreement” as they were originally established.<sup>149</sup> Therefore, since concessions regarding ivory trade are typically the result of extensive negotiations in which a majority of African range states participate,<sup>150</sup> the Secretariat appeared to be primarily concerned about making sweeping ivory trade reform without full participation from the nations that would be affected.<sup>151</sup> Furthermore, the Secretariat’s recommendation implied that the proposed wording of the amendment is nonsensical in that the amendment states “the date of the single sale of ivory that is to take place.”<sup>152</sup> This was problematic because this single sale referred to a 2008 one-off sale, which has clearly already taken place.<sup>153</sup>

Similarly, TRAFFIC also suggested that CITES reject CoP16 Proposal 12 on technical grounds due to this reference to a previous ivory sale.<sup>154</sup> Furthermore, since the original provision applies to nations whose elephant populations are already listed in Appendix II, it was not clear whether “the proposed amendment would indeed prevent any other elephant range State from exercising the rights conferred by Articles XV<sup>155</sup> and XVI of the Convention.”<sup>156</sup> Essentially, TRAFFIC

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PROGRAMME, SPECIES SURVIVAL COMM’N & TRAFFIC, SUMMARIES OF THE IUCN/TRAFFIC ANALYSES OF THE PROPOSALS TO AMEND THE CITES APPENDICES AT THE 16TH MEETING OF THE CONFERENCE OF THE PARTIES 23-24 *available at* <http://www.traffic.org/cop16-table/>.

<sup>147</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, List of Proposals to Amend Appendices I and II and CITES Secretariat’s Recommendations, at 4, CoP16 Doc. 77 Annex 1, Mar. 3-14, 2013, *available at* <http://www.cites.org/eng/cop/16/doc/E-CoP16-77.pdf>.

<sup>148</sup> *Id.* at 5.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 4.

<sup>153</sup> *Id.*

<sup>154</sup> See IUCN GLOBAL SPECIES PROGRAMME, SPECIES SURVIVAL COMM’N & TRAFFIC, *supra* note 146.

<sup>155</sup> Articles XV and XVI permit any Party to propose amendments to the CITES Appendices,

asserted that CoP16 Proposal 12 would not have any practical effect because member parties would be entitled to submit proposals via these two Articles.<sup>157</sup> Finally, TRAFFIC found the contention—that CoP16 Proposal 12 would make clear that *no* proposals for trade in elephant ivory would be submitted by *any* range State—was flawed because the proposal only explicitly addresses Appendix II populations, rather than encompassing both Appendix I and II populations.<sup>158</sup>

IWMC World Conservation Trust argues that CoP16 Proposal 12 lacks a factual basis regarding the link between ivory trade and rates of elephant kill.<sup>159</sup> IWMC submitted that a link between ivory trade and declining elephant population is not established by findings of the CITES Standing Committee or the Secretariat, or more specifically, “it can be said that there is no adequate, robust, scientific and peer-reviewed evidence that clearly shows that legal ivory sales have been detrimental to the survival of the species.”<sup>160</sup> For the foregoing reasons, IWMC and others opposed the adoption of CoP16 Proposal 12 and recommended that CITES reject this proposal. In response to these criticisms, CoP16 Proposal 12 was withdrawn from consideration during CoP16 in March 2013.<sup>161</sup>

The Secretariat of CITES, TRAFFIC, and IWMC are reputable authorities whose recommendations are seriously and heavily weighed by the member parties when considering whether or not to adopt a proposal.<sup>162</sup> Certainly, a poorly drafted amendment could have detrimental impacts on the very species it is meant to protect and therefore voting parties should thoroughly consider criticisms of proposals to amend Appendices I and II. However, not only can CITES and its member parties likely overcome the alleged shortcomings of CoP16 Proposal 12, but also they assuredly should attempt to do so in

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both at meetings of the Conferences of the Parties or between the meetings. Article XV in particular allows any Party to place a reservation against any amendment to the Appendices within 90 days of its acceptance. *See Text of the Convention, CITES, available at* <http://www.cites.org/eng/disc/text.php#XV>.

<sup>156</sup> *See* IUCN GLOBAL SPECIES PROGRAMME, SPECIES SURVIVAL COMM’N & TRAFFIC, *supra* note 146.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> IWMC WORLD CONSERVATION TRUST, *supra* note 146.

<sup>160</sup> *Id.*

<sup>161</sup> *See Final Decisions on Proposals to Amend the Appendices Considered at CITES CoP16, CITES, available at* [http://www.cites.org/eng/news/pr/2013/cop16\\_final\\_%20decisions.pdf](http://www.cites.org/eng/news/pr/2013/cop16_final_%20decisions.pdf).

<sup>162</sup> *See* THE CITES SECRETARIAT, *supra* note 143; *see also, About TRAFFIC, TRAFFIC, http://www.traffic.org/overview/; see* WORLD CONSERVATION TRUST FOUNDATION, *supra* note 145.

the wake of catastrophic levels of illegal elephant deaths.<sup>163</sup> The following is an assessment of the arguments against CoP16 Proposal 12, concluding that CITES should have adopted it and that any similar future CoP Proposals should be supplemented with additional conservation efforts.

Firstly, in regard to the Secretariat's reservations about enacting the amendment<sup>164</sup> without input and approval from all of the African range states, all of the member parties had the opportunity to vote on adoption of CoP16 Proposal 12.<sup>165</sup> Therefore, while the other African range states did not have a hand in drafting the amendment, they play a significant role in its enactment.<sup>166</sup> Furthermore, as the Secretariat pointed out, ivory trade regulations are frequently a product of compromise between CITES and particular African range states.<sup>167</sup> Since all parties are familiar with such proceedings, the range states could simply have negotiated the CoP16 Proposal 12 stipulations just as they have done with previous agreements.<sup>168</sup> However, CITES should not indulge in overly lenient negotiations with African nations, since exceptions and strong-armed compromises can render the ivory trade controls ineffectual.<sup>169</sup>

Secondly, while member parties are entitled to submit proposals,<sup>170</sup> this does not necessarily mean that these nations will in fact submit a proposal to trade ivory. CoP16 Proposal 12 should not have been withdrawn merely because member nations have the option of submitting proposals.<sup>171</sup> In fact, several powerful conservation advocates are pressuring member parties to cease ivory trade,<sup>172</sup> making

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<sup>163</sup> Lemieux and Clarke, *supra* note 64.

<sup>164</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, List of Proposals to Amend Appendices I and II and CITES Secretariat's Recommendations, *supra* note 147.

<sup>165</sup> See *Conference of the Parties*, *supra* note 9.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *CITES History*, *supra* note 106.

<sup>170</sup> IUCN GLOBAL SPECIES PROGRAMME, SPECIES SURVIVAL COMM'N & TRAFFIC, *supra* note 146. Member parties are entitled to submit proposals pursuant to Article XV and XVI of CITES. See generally *supra* note 155.

<sup>171</sup> *Id.*

<sup>172</sup> *Thai Ivory Ban Needed to Help Save Elephants*, *supra* note 55. The World Wildlife Fund is calling on Thai Prime Minister Yingluck Shinawatra to ban all ivory trade in Thailand. *Id.* Organizations such as Born Free Foundation and the Environmental Investigation Agency, among others, also advocate for the eradication of ivory trade. See *Ivory Trade, Worldwide*, BORN FREE FOUNDATION, <http://www.bornfree.org.uk/animals/african-elephants/projects/ivory-trade/>; see also *Stop Stimulating the Ivory Trade; Just Stop Trade*, A VOICE FOR ELEPHANTS, <http://www.bornfree.org.uk/animals/african-elephants/projects/ivory-trade/>.

it less likely that proposals will be submitted in the future. Regarding the proposal's "nonsensical"<sup>173</sup> wording, notably TRAFFIC itself suggested that this shortcoming could be remedied "by altering the phrasing simply to refer to the date in question ('no proposals shall be submitted to the Conference of the Parties. . . until November 2017 at the earliest')."<sup>174</sup> Despite its recommendation to reject the proposal, TRAFFIC acknowledged that CITES could take certain measures to improve CoP16 Proposal 12 and did not illuminate any fatal flaws its drafting.<sup>175</sup>

Thirdly, it is certainly true, as IWMC suggested,<sup>176</sup> that data regarding the extent to which ivory trade impacts poaching patterns and rates of elephant kill are often inconclusive.<sup>177</sup> However, Rio Principle 15, though not legally binding, states, "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."<sup>178</sup> The rates of elephant slaughter by poachers and the number of wildlife crimes related to unlawful ivory smuggling have reached unprecedented levels in recent years.<sup>179</sup> Although the link with one-off sale ivory and pre-1989 ivory has yet to be concretely established, these trends nonetheless constitute a grave threat to the African elephant's survival and warrant regulatory caution.<sup>180</sup> Furthermore, IWMC's assessment only referenced the Standing Committee and the Secretariat as persuasive fact-finding authorities.<sup>181</sup> However, there are alternative credible, empirical sources of information concerning this relationship that make compelling arguments for a connection between legal ivory trade and the vitality of African elephant populations.<sup>182</sup> Since strong evidence other than that provided by CITES authorities can establish a likely relationship and because the existence of wild African elephant populations is severely endangered, it would have been in this species' best interest for CITES to have accepted CoP16 Proposal 12.

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<sup>173</sup> IUCN GLOBAL SPECIES PROGRAMME, SPECIES SURVIVAL COMM'N & TRAFFIC, *supra* note 146, at 24.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> IWMC WORLD CONSERVATION TRUST, *supra* note 146.

<sup>177</sup> Stiles, *supra* note 129, at 151.

<sup>178</sup> U.N. Conference on Env't and Dev., *supra* note 139.

<sup>179</sup> The Associated Press, *supra* note 23.

<sup>180</sup> *Id.*

<sup>181</sup> IWMC WORLD CONSERVATION TRUST, *supra* note 146.

<sup>182</sup> Lemieux and Clarke, *supra* note 64, at 455.

## V. SUGGESTIONS FOR IVORY TRADE REFORM

Any future CoP proposals regarding the African elephant must be supplemented with additional conservation efforts to adequately reduce rates of elephant slaughter for the purpose of obtaining ivory. In a market that is already defined by corrupt border-control and counterfeit smuggling practices, any additional leniency in regulating trade can have grave unintended consequences.<sup>183</sup> Therefore, in the absence of hard data refuting the correlation between ivory trade and elephant slaughter, CITES should apply precautionary principles<sup>184</sup> and implement a blanket ban on ivory trade. Furthermore, carcass counts and reports of ivory seizures, important metrics of elephant population and illegal ivory markets respectively, indicate that countries like Tanzania and Zambia are failing to control their illegal trade.<sup>185</sup> Crucial information such as this can only be obtained by adequate monitoring, and therefore CITES and its member parties should also strive to improve their monitoring programs.<sup>186</sup> In addition, member nations should encourage public education regarding the elephant's threatened existence and promote efforts to improve village relationships with local elephant populations.<sup>187</sup> Finally, the persistence and scale of illegal ivory trade demonstrate that most range states lack adequate controls to protect their elephant populations.<sup>188</sup> Therefore, range states must adequately address these security breaches to both deter poaching and prevent smugglers from exporting ivory.<sup>189</sup> These conservation approaches, namely a moratorium on ivory trade, monitoring, public education, alleviating the human-elephant conflict, and strengthening border control, will each be addressed below.

A. *Moratorium on Ivory Trade*

Any curb on the legal sale of ivory also reduces *illegal* ivory trade because legal sales (a) are a means to launder illicit ivory and (b)

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<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> See Wasser, *supra* note 63, at 1332.

<sup>186</sup> CITES                      MIKE                      PROGRAMME,                      available                      at <http://www.cites.org/common/prog/mike/brochure.pdf>.

<sup>187</sup> See Paul Jepson and Susan Canney, *Values-led Conservation*, 12 GLOBAL ECOLOGY AND BIOGEOGRAPHY 271, 273 (2003).

<sup>188</sup> Wasser, *supra* note 63, at 1332.

<sup>189</sup> See also, Michael A. McPherson and Michael L. Nieswiadomy, *African Elephants: The Effect Of Property Rights and Political Stability*, 18 CONTEMPORARY ECON. POLICY 14, 14 (2000).

stimulate demand. As a result, even when trade is limited to existing stocks, it leads to an increase in the poaching of elephants.<sup>190</sup> Ivory trade bans call for the end of the regulated domestic ivory markets, which may result in the importation of ivory from other nations as local sources dry up or enable poachers from neighboring countries to sell their ivory in the unregulated market.<sup>191</sup> Advocacy groups like the Amboseli Trust for Elephants also implore parties to CITES to “aim for a permanent ban on the sale of ivory both internationally and within nations”<sup>192</sup> and, given evidence that stockpile sales to Japan and China have fuelled demand for ivory, “no further stockpile sales should be sanctioned.”<sup>193</sup> It is likely that a ban on the sale of all ivory would result in less counterfeit smuggling because, since the trade of *any* ivory would be forbidden, criminals would be unable to use false certificates or alterations to the ivory as a means of fooling customs officers.<sup>194</sup>

A 2009 study conducted by Andrew M. Lemieux and Ronald V. Clarke indicates that the 1989 ban on the international trade in ivory has succeeded in reversing the decline in the African elephant population.<sup>195</sup> Furthermore, economic analyses reveal that ivory stocks, a metric of ivory obtained illegally, are greater when trade bans are in place than when there is a moratorium on ivory trade.<sup>196</sup> In response to such findings, many conservation groups urge CITES to adopt an absolute ban on ivory trade to send a clear message to the international community that the unauthorized slaughter will not be tolerated.<sup>197</sup> Groups like WildlifeDirect<sup>198</sup> assert that range states should “step up enforcement, crush the cartels, increase penalties, enact new laws, and

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<sup>190</sup> *Blood Ivory: Exposing The Myth Of A Regulated Market*, *supra* note 51, at 1.

<sup>191</sup> Lemieux and Clarke, *supra* note 64, at 455.

<sup>192</sup> See *The African Elephant Coalition: FactSheet 02*, THE KENYA ELEPHANT FORUM 2 (Jan. 2010), [http://www.savetheelephants.org/files/pdf/CITES/KEF\\_Fact\\_Sheets\\_All.pdf](http://www.savetheelephants.org/files/pdf/CITES/KEF_Fact_Sheets_All.pdf).

<sup>193</sup> *Id.*

<sup>194</sup> See Patrick Winn, *Time To Ban Ivory For Good?*, GLOBAL POST (July 23, 2012, 6:00 AM), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/thailand/120720/ivory-smuggling-trade-black-market-poaching>.

<sup>195</sup> Lemieux and Clarke, *supra* note 64, at 464, finding that while some countries continue to experience population declines, overall the CITES ban has had a positive effect on elephant conservation efforts. Importantly, the authors argue some range states continue to have persistent declines because “[p]oachers in these countries have greater access to ‘unregulated’ domestic markets for ivory, perhaps facilitated by corruption and civil war.” *Id.*

<sup>196</sup> See Erwin H. Bulte and G. Cornelis van Kooten, *Economics of Antipoaching Enforcement and the Ivory Trade Ban*, 81 AM. J. OF AGRIC. ECON. 453, 464 (1999).

<sup>197</sup> See Paula Kahumbu, *Why It's Time to Ban the Ivory Trade for Good*, MONGABAY (Dec. 12, 2012), <http://news.mongabay.com/2012/1212-kahumbu-op-ed-poaching.html>.

<sup>198</sup> See WILDLIFE DIRECT, <http://wildlifedirect.org/about/mission-statement/>. Wildlife Direct is a Kenya and US registered charitable organization that allows conservationists to network and preserve African, Asian, and South American endangered species. *Id.*

create awareness and genuine benefits for communities who live with elephants” to combat this issue.<sup>199</sup> Supplementing an ivory trade ban with this comprehensive approach—one that combines stricter regulation with public awareness—is perhaps the most effective means of replenishing elephant populations, as will be discussed *infra* in Part V. B.

### 1. *Criticisms of Ivory Trade Moratoriums*

Proposals for a total ban on ivory trade are controversial and have been met with much criticism.<sup>200</sup> In fact, decisions regarding ivory trade bans are routinely among the most heatedly contested issues at the Conferences of the Parties.<sup>201</sup> In July of 2012, CITES published a blueprint for legalizing the ivory trade that explained that “[a] legal trade in ivory, elephant hide and meat could change current disincentives to elephant conservation into incentives to landholders and countries to conserve them.”<sup>202</sup> In other words, CITES posits that local farmers would protect elephants from poachers because elephants will be a valuable commodity.<sup>203</sup> “Equally important, regular legal sales would lower prices, reducing the incentive for poaching.”<sup>204</sup> Additionally, some opponents of the trade moratorium argue that a legal ivory market would allow for greater transparency because the sales would not be pushed underground.<sup>205</sup> Finally, still others argue that an ivory ban will not effectively prevent all or even a significant amount of illicit transactions from taking place.<sup>206</sup> Doubtlessly, there will be traders who will persevere as market participants despite the embargo,

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<sup>199</sup> Paula Kahumbu, *Poaching Is Reducing Kenya’s Elephants*, WILDLIFE DIRECT (Dec. 3, 2012), <http://baraza.wildlifedirect.org/2012/12/03/poaching-is-reducing-kenyas-elephants/>.

<sup>200</sup> See Randy T. Simmons & Urs P. Kreuter, *Banning Ivory Sales Is No Way to Save the Elephant*, POLICY, Sept. 9, 1990, at 46; see also Michael Burton, *An Assessment of Alternative Methods of Estimating the Effect of the Ivory Trade Ban on Poaching Effort*, 30 ECOLOGICAL ECON. 93, 93 (1999).

<sup>201</sup> See Charles Tjatindi, *Namibia to Continue Trading in Omakipa*, WILDLIFE DIRECT (Apr. 19, 2010), <http://banivory.wildlifedirect.org/2010/04/19/namibia-to-continue-trading-in-omakipa/>. Debate on the African elephant, which proved prominent in the conference, intensified during the two-week meeting as parties locked horns over the issue. A long-running global debate over the African elephant has focused on the benefits that income from ivory sales may bring to conservation. *Id.*

<sup>202</sup> See Doug Bandow, *When You Ban the Sale of Ivory, You Ban Elephants*, FORBES (Jan. 21, 2013), <http://www.forbes.com/sites/dougbandow/2013/01/21/when-you-ban-the-sale-of-ivory-you-ban-elephants/>.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

especially among the more powerful multinational wildlife crime syndicates.<sup>207</sup>

On the other hand, one-off sales and other means of legally trading ivory may increase demand by the public for ivory, which may in turn “lead to a rise in elephant poaching to supply this additional demand.”<sup>208</sup> Furthermore, critics of legal ivory trade assert that, “ivory is laundered in some way when legal international sales are allowed.”<sup>209</sup> There is evidence to support the view that trade bans generally result in lower levels of ivory market scale and elephant poaching than those documented prior to 1990.<sup>210</sup> This is probably due, in part, to the fact that trade bans limit the supply of ivory and drive up the cost of supplying the product.<sup>211</sup> Some of this cost might get passed on to consumers in the form of higher prices, which in turn limits consumption as some consumers become priced out of the market.<sup>212</sup> In addition, some of the supply cost must be borne by the smugglers, and if they cannot absorb this cost, they too will drop out of this market when smuggling no longer becomes profitable enough.<sup>213</sup> Thus, the purpose of a moratorium on ivory trade would be to create sufficient disincentives for poachers and smugglers so that they will no longer slaughter elephants as a means of making a profit.<sup>214</sup> Ultimately, if a trade ban effectively reduces incidents of elephant slaughter overall, adopting and implementing such a measure would nonetheless be worthwhile to begin restoring elephant populations. However, if CITES adopts such a measure, member nations will need to supplement a trade ban with additional regulatory controls as well as cultural and public policy efforts to ensure compliance with such a sizeable trade restriction.

### *B. Supplemental Nation-Specific Conservation Efforts*

Member nations should implement institutional reform on a national level to strengthen border patrol capability and dis-incentivize

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<sup>207</sup> Gettleman, *supra* note 46.

<sup>208</sup> Stiles, *supra* note 129.

<sup>209</sup> *Id.*

<sup>210</sup> See Daniel Stiles, *The Ivory Trade and Elephant Conservation*, ASEAN CENTRE FOR BIODIVERSITY (Sept. 2004), <http://www.aseanbiodiversity.info/abstract/51006445.pdf>.

<sup>211</sup> Brendan Moyle, *Regulation, Conservation and Incentives*, in *THE TRADE IN WILDLIFE* 41, 49 (Sara Oldfield ed., 2003).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

border officer corruption.<sup>215</sup> For example, Kenya's president has called for a ban on legal domestic ivory trade and to shut down all ivory markets.<sup>216</sup> A total ban will not necessarily prevent customs officers who can be bribed into allowing the importation of ivory, regardless of its status, from violating the treaty. There will always be some customs officers willing to look the other way if paid the right price. Therefore, the Environmental Investigation Agency<sup>217</sup> recommends implementing the following measures to counteract border officer corruption and to deter illegal poaching practices: "[e]nforce domestic legislation, conduct detailed investigations into the role of individuals, government officials and syndicate leaders involved in large ivory shipments, prosecute and convict perpetrators appropriately, and publicize case results to create a tangible deterrent to others and increase transparency."<sup>218</sup> Furthermore, at least one study has found that levels of elephant poaching and illegal ivory trading in a country are more likely to be related to wildlife management practices, law enforcement, and corruption than to the choice of CITES appendix listings and the consequent extent of trade restrictions.<sup>219</sup> The most effective means of reducing elephant slaughter, therefore, is an approach that supplements an ivory trade ban with these additional protective measures.

### *1. Monitoring*

Adequate enforcement and border control requires effective monitoring to determine whether such precautions successfully reduce illegal ivory smuggling and poaching. At the CoP10 in 1997, CITES implemented the Monitoring the Illegal Killing of Elephants (MIKE) program, which is a site-specific monitoring system used to determine levels of illegal killing of elephant populations across both African and Asian range states.<sup>220</sup> Data obtained via MIKE has proven to be an

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<sup>215</sup> See Jamie Schwartz, *Endangered Species and International Law*, in *INTERNATIONAL LAW AND INSTITUTIONS* 247 (EOLSS Publishers Co. Ltd. ed., 2009), available at <http://www.eolss.net/Sample-Chapters/C14/E1-36-02-05.pdf>.

<sup>216</sup> Paula Kahumbu, *China Must Send a Clear Message to Consumers on Ivory Trade*, *THE GUARDIAN* (Mar. 4, 2013) <http://www.guardian.co.uk/environment/blog/2013/mar/04/china-message-consumers-ivory-trade>.

<sup>217</sup> See *THE ENVIRONMENTAL INVESTIGATION AGENCY*, <http://www.eia-international.org/>. The EIA is an "independent campaigning organization committed to bringing about change that protects the natural world from environmental crime and abuse." *Id.*

<sup>218</sup> See *Open Season*, *supra* note 117, at 13.

<sup>219</sup> Stiles, *supra* note 129, at 151.

<sup>220</sup> CITES MIKE PROGRAMME, *supra* note 186.

important source of poaching pattern information.<sup>221</sup> While MIKE measures the vitality of elephant populations,<sup>222</sup> the Elephant Trade Information System (ETIS) is also used to record and analyze levels and trends of illegal trade.<sup>223</sup> It is crucial that these monitoring systems are continually improved upon so that regulatory entities, including CITES and the governments of its member nations, may make informed policy decisions regarding elephant conservation.

In addition, monitoring efforts can be further enhanced by the advancement of DNA sequencing to discover the origins of unregistered smuggled ivory.<sup>224</sup> The geographic origin of DNA samples obtained from tusks of unknown origin can be inferred from geographic-specific allele frequency estimates.<sup>225</sup> With this information, advocates can potentially better identify current poaching “hot spots,” monitor “impacts of international trade decisions on elephant poaching throughout the African continent, and determin[e] whether stockpiles of illegal ivory across Africa are being consolidated and exported.”<sup>226</sup> DNA sequencing technology, coupled with accurate and updated monitoring systems, holds great potential for enhancing knowledge of criminal patterns of ivory import and export as well as ascertaining the safety needs of particular elephant populations.

## 2. Public Education

A trade ban should be supplemented by additional measures because “[u]nless elephants have preservation value as expressed by people’s willingness to prevent them from going extinct, the elephant is most likely to remain a species under threat of extinction.”<sup>227</sup> In other

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<sup>221</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Elephant Conservation, Illegal Killing and Ivory Trade, *supra* note 115, at 10. This 2012 analysis of data collected from 37 countries found that “infant mortality in and around MIKE sites, which is used as a proxy for poverty at the site level, continues to be the single strongest site-level predictor of PIKE [Proportion of Illegally Killed Elephants], with sites suffering from higher levels of poverty experiencing higher levels of elephant poaching.” *Id.* Importantly, this same study indicates that sites with a better law enforcement capacity tend to experience lower levels of poaching. *Id.* at 12.

<sup>222</sup> CITES MIKE PROGRAMME, *supra* note 186.

<sup>223</sup> *The Elephant Trade Information System*, *supra* note 66. Implemented at CoP10 in 1997, ETIS is a comprehensive information system used to track illegal trade in ivory and other elephant products. *Id.*

<sup>224</sup> Samuel K. Wasser et al., *Assigning African Elephant DNA to Geographic Region of Origin: Applications to the Ivory Trade*, 101 PROCEEDINGS OF THE NAT’L ACAD. OF SCIENCES OF THE U.S.A. 14847 (2004).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 14852.

<sup>227</sup> See G. Cornelis van Kooten, *Elephant Economics in the Rough: Modelling Ivory Trade* 19

words, if people deem elephants to be more valuable as living organisms than as a means of ivory production, then economics dictates that the market will protect living elephants.<sup>228</sup> As such, a trade ban coupled with education and public outreach regarding the importance of biodiversity can be more effective in alleviating the decline in elephant populations than a trade prohibition alone.<sup>229</sup> Since “charisma provides an opportunity for conservation and several prominent examples of consumer advocacy for charismatic . . . species illustrate public interest in an increasing diversity of . . . species,” charismatic megafauna species like elephants might benefit from the education of the public about the ivory trade.<sup>230</sup> This approach was wildly successful with dolphins, another example of a charismatic megafauna species, when conservationists appealed to the public’s sympathetic view towards intelligent animals and effectively introduced dolphin-safe practices to the tuna industry.<sup>231</sup> Public education could also help dispel misconceptions people may have about the ivory trade and its connection to elephant welfare, enabling them to become more informed consumers and potentially decrease demand.<sup>232</sup> For example, one survey found that “70% of Chinese consumers did not know that elephants were killed for ivory” and that “[s]ome people thought elephants lose tusks the way people lose teeth.”<sup>233</sup> Thus, educating the public about the importance of preserving biodiversity could be a positive contribution to the cause of preventing further elephant population decline.<sup>234</sup>

### 3. *Alleviating Human-Elephant Conflict*

One way in which living elephants can be profitable is by generating tourism revenue from zoos and natural habitat preserves.<sup>235</sup>

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(2005), available at <http://web.uvic.ca/econ/research/seminars/Kooten.pdf>.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> See Loren McClenachan et al., *Extinction Risk and Bottlenecks in the Conservation of Charismatic Marine Species*, 5 CONSERVATION LETTERS 73, 78 (2012).

<sup>231</sup> *Id.*

<sup>232</sup> See Alexandra Wexler, *Chinese Demand Revives Ivory Trade*, THE WALL STREET JOURNAL (Sept. 20, 2011), <http://online.wsj.com/article/SB10001424053111904106704576580020012406078.html>.

<sup>233</sup> *Id.*

<sup>234</sup> Jepson and Canney, *supra* note 187 (stating that the growth in public concern for nature and the environment creates the possibility to raise substantial funds from public subscription, philanthropic and corporate donations and governments).

<sup>235</sup> See EDWARD BARBIER ET AL., *ELEPHANTS, ECONOMICS, AND IVORY* 20 (David Pearce ed. 1991) (regarding existence value, where people derive satisfaction from just knowing that

However, it should not be understated that preserve revenue often only indirectly assists local populations and mainly benefits the range state.<sup>236</sup> In addition, many preserve rangers are poorly equipped to combat highly organized wildlife crime syndicates, thus defeating the purpose of investing in protective wildlife sanctuaries.<sup>237</sup> Some conservationists argue that wealthier parties to CITES should subsidize the efforts of African range states that are financially unable to implement these measures and enforce border control themselves.<sup>238</sup> Financially assisting range states with enforcement costs would hopefully prevent instances in which “[p]oorly equipped rangers, often missing basic gear, are confronted by organi[z]ed gangs that use the newest vehicles, communications technology and firearms.”<sup>239</sup>

While nature preserves can highlight the positive symbiotic relationship that sometimes blossoms between human and elephant, studies link human-elephant conflicts to increased incidents of poaching.<sup>240</sup> Roaming wild elephant herds have been known to destroy crops within local African communities.<sup>241</sup> In stark contrast to the aforementioned Asian cultures that revere the elephant as a religious symbol,<sup>242</sup> there are African communities that regard the elephant as a pest and therefore readily accept (or sometimes assist) poaching groups.<sup>243</sup> Therefore, it is important to not only promote education about the African elephant via ecotourism and nature preserves, but also educate local communities about the importance of conserving this species.<sup>244</sup> Early warning detection of elephants before the herd enters

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elephants will be preserved).

<sup>236</sup> Lemieux and Clarke, *supra* note 64, at 465-66.

<sup>237</sup> Claire Sterling, *Elephants and the Ivory Trade*, BRIDGE THE GAP FOUNDATION, <http://www.thebridgethegapfoundation.org/ivory-trade.html> (urging the EU to take action and support range states that are requesting assistance to fight poaching).

<sup>238</sup> WYLER AND SHEIKH, *supra* note 65, at 33 (suggesting that the U.S. Congress could appropriate funds to assist foreign wildlife trade officials in monitoring, detecting, and investigating wildlife trafficking).

<sup>239</sup> Sterling, *supra* note 237.

<sup>240</sup> See Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, *supra* note 14, at 6.

<sup>241</sup> See *The Poaching Problem*, PBS, available at <http://www.pbs.org/wnet/nature/elephants/poaching.html>.

<sup>242</sup> Christy, *supra* note 26.

<sup>243</sup> Convention On International Trade In Endangered Species of Wild Fauna and Flora, Consideration of Proposals for Amendment of Appendices I and II, *supra* note 14, at 6.

<sup>244</sup> Justine Braby, *The Efficacy of Down-listing the African Elephant Under CITES: A Critical Assessment*, INSTITUTE OF MARINE AND ENVTL LAW AT UNIVERSITY OF CAPE TOWN 47 (2010); see also, Theophane E. Damiba and Ernest D. Ables, *Promising Future for an Elephant Population- A Case Study in Burkina Faso, West Africa*, 27 ORYX 97 (1993). (A case study demonstrating the success of a Burkinabe game ranch that provides refuge for elephants while

village farms, combined with a front line communal guarding strategy, has proven successful in reducing incidents of elephant crop raids.<sup>245</sup> In addition, applying chili grease to rope barriers encircling farms can completely deter elephants in a relatively harmless manner.<sup>246</sup> The promotion of violence-free alternatives has the potential to effectively and safely control elephant crop raids, thus reducing resentment among villagers towards elephant and therefore also reducing the likelihood that the public will be indifferent towards elephant slaughter.<sup>247</sup>

#### 4. *Improving Security Control*

Notably, it is unlikely that educating the public about the importance of elephants will have a significant effect on impoverished poachers and ivory peddlers who rely on trading illegal ivory as a means of supporting themselves and their families.<sup>248</sup> The same holds true for those members of cultures that value ivory for its religious significance, which may very well be priceless.<sup>249</sup> Moreover, the demand for ivory from prosperous societies as a means of indicating the owner's wealth may also outweigh the price African governments may be willing to pay to protect elephants for their intrinsic value.<sup>250</sup> This suggests that in addition to an ivory trade ban and public education initiatives, illegal ivory should be stigmatized in other ways to drive the market price down, rendering poaching less lucrative.<sup>251</sup> According to CITES estimates, the market price of raw ivory was \$700.00 per kilogram on average in 2010 and by 2012, the black market price of ivory was \$900.00 per pound in China alone.<sup>252</sup> Studies indicate that because confiscations and official production are withheld from consumer markets, ivory bans increase black market prices paid to

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simultaneously both educating the local villagers about elephant conservation and protecting their crops from elephant damage).

<sup>245</sup> See Noah W. Sitati and Matthew J. Walpole, *Assessing Farm-Based Measures For Mitigating Human-Elephant Conflict In Transmara District, Kenya*, 40 *ORYX: THE INT'L J. OF CONSERVATION* 279 (July 2006).

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> See Rasmus Heltberg, *Impact of the Ivory Trade Ban on Poaching Incentives: A Numerical Example*, 36 *ECOLOGICAL ECONOMICS* 189 (2001).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> Audrey Yoo and Catherine Traywick, *Blood Ivory: Hong Kong Fights a Losing Battle Against Smugglers*, *TIME* (Oct. 15, 2012), <http://world.time.com/2012/10/15/blood-ivory-hong-kong-fights-a-losing-battle-against-smugglers/>.

poachers despite reducing international ivory demand.<sup>253</sup> It appears that “a trade ban is likely to improve the protection of endangered species from poachers if (i) it has a large moral demand-reducing effect; (ii) it facilitates interception of smuggled goods; (iii) there is little ivory from official production piling up; and (iv) it does not negatively affect law enforcement effort.”<sup>254</sup> In Ghana, an improved system of governance and increased law enforcement tactics, like monitoring the patrolling effort of the Wildlife Guards and doubling patrolling time, has also successfully reduced elephant poaching since the government implemented the program in 2004.<sup>255</sup> Also, apparent increases in elephant poaching occur in range states that exhibit “low levels of law enforcement and high levels of corruption and political instability.”<sup>256</sup> If governments implement programs aimed at improving border and preserve security, it is likely that an ivory trade ban will reduce poaching incentives and therefore reduce incidents of elephant slaughter.<sup>257</sup>

## VI. CONCLUSION

While there still remains a great deal to be learned about the illegal ivory trade, one aspect of the problem is clear: rates of elephant kill have reached unprecedented levels in recent years,<sup>258</sup> inhibiting the species’ ability to recover<sup>259</sup> and endangering the lives of humans that interact with elephants.<sup>260</sup> This is due at least in part to a perfect storm of “impoverished populations, incapable governments, corrupt officials, and limited resources,”<sup>261</sup> creating ideal conditions for poachers and multinational crime syndicates to thrive. A moratorium on ivory trade would curb the slaughter.<sup>262</sup> A total ban on ivory trade would not only

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<sup>253</sup> Heltberg, *supra* note 250.

<sup>254</sup> *Id.* at 195.

<sup>255</sup> See Esmond Martin, *Effective Law Enforcement in Ghana Reduces Elephant Poaching and Illegal Ivory Trade*, 48 *PACHYDERM* 24, 31 (2010).

<sup>256</sup> Stiles, *supra* note 129, at 151.

<sup>257</sup> *Id.*

<sup>258</sup> The Associated Press, *supra* note 23.

<sup>259</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Elephant Conservation, Illegal Killing and Ivory Trade, *supra* note 115, at 24. “Illegal killing of elephants for the illegal international trade in ivory is currently a very serious threat to elephant populations in many range States and may be leading to dramatic declines in some populations, particularly in central Africa.” *Id.*

<sup>260</sup> See Louisa Lombard, *Dying for Ivory*, N.Y. TIMES (Sept. 20, 2012), <http://www.nytimes.com/2012/09/21/opinion/elephants-dying-for-ivory.html>.

<sup>261</sup> Bandow, *supra* note 202.

<sup>262</sup> See, e.g., Lemieux and Clarke, *supra* note 64.

make it easier to distinguish legal ivory from illegal specimens and thereby ease some of the burden off customs officers,<sup>263</sup> but would also reduce the incentive to poach by increasing the costs of production.<sup>264</sup> Therefore, the adoption of CoP16 Proposal 12, which prohibits proposals to trade in elephant ivory from any populations listed on CITES Appendix II,<sup>265</sup> would have been congruent with the vision of CITES by ensuring that the trade of ivory does not threaten the survival of the African elephant.<sup>266</sup> In addition to a trade ban, member parties to CITES should implement nation-level measures such as improving both law enforcement and border controls, expanding public education, and encouraging coordination with local village populations to maximize the effectiveness of elephant conservation. Monitoring and empirical studies are crucial for understanding the extent to which these factors have an impact on ivory trade and whether they increase elephant populations, but they do not tell the entire story. They cannot quantify the terror and sorrow that have become commonplace in some range state villages, ripped asunder by poacher militias.<sup>267</sup> Likewise, statistics do not capture the suffering of traumatized elephants that survive poacher raids and afterwards wander listlessly in what appears to be mourning for the loss of their fallen herd members.<sup>268</sup> Certainly, they could not begin to measure the tragedy of the day one of history's most sacred and celebrated creatures no longer walks the savannahs. In light of the chilling statistics regarding this decades-old conflict, CITES should adopt a precautionary approach<sup>269</sup> in protecting the elephant (notably the subject of the CITES CoP16 logo<sup>270</sup>) and cease its de facto endorsement of slaughtering these exceptional animals for profit.

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<sup>263</sup> Christy, *supra* note 26.

<sup>264</sup> Moyle, *supra* note 211.

<sup>265</sup> CITES 2013: ANALYSIS OF THE PROPOSALS TO AMEND APPENDICES I AND II, [http://www.hsi.org/assets/pdfs/ssn\\_cop16\\_props.pdf](http://www.hsi.org/assets/pdfs/ssn_cop16_props.pdf).

<sup>266</sup> *What is CITES?*, *supra* note 6. The aim of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. *Id.*

<sup>267</sup> Lombard, *supra* note 260. *See also*, McPherson and Nieswiadomy, *supra* note 189, at 18.

<sup>268</sup> Glennon, *supra* note 27, at 4. Interestingly, elephants have been known to caress the bones of their herd members and bury their dead or even trample humans, signifying complex patterns of social behavior and profound cognition. *Id.* at 2.

<sup>269</sup> *See* U.N. Conference on Env't and Dev., *supra* note 139.

<sup>270</sup> *See* NOTIFICATION TO THE PARTIES: USE OF THE CITES LOGO IN RELATION TO THE 16TH MEETING OF THE CONFERENCE OF THE PARTIES, <http://www.cites.org/eng/notif/2012/E056.pdf>. The CITES logo bears the distinctive characteristics of an elephant. *Id.*