

## OPINION

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### The proposed sale of ivory from Botswana, Namibia and South Africa: conditions and verification

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#### Abstract

In November 2002 in Santiago, CITES parties agreed to a one-off sale of up to 60 tonnes of ivory from Botswana, Namibia and South Africa, but not before May 2004 and subject to conditions. Approval was achieved by a small margin and many countries supporting the proposal did so only on the understanding that the conditions would be defined and applied rigorously to minimize the possibility that the sale would result in an increase in the illegal killing of elephants and ivory trading. These conditions for the sale are now being defined by the CITES Standing Committee. Compliance by trading countries will then need to be verified before final approval of the sale. This paper assesses the conditions and definitions, identifies loopholes, and makes recommendations for improving verification and compliance. It concludes that the conditions are flawed since they do not allow for verification of trade controls in exporting countries or implementation of recommendations to improve law enforcement coordination. Ivory trade controls in prospective trading countries, particularly Japan, are assessed and found to be inadequate. Detailed guidelines on standardized controls are needed, on the basis of which it is proposed that an independent review team verifies compliance. An assessment of MIKE (Monitoring Illegal Killing of Elephants) concludes that time is needed free of any approved ivory sales to resolve issues of methodology, enable linked analysis with ETIS (the Elephant Trade Information System) and collect baseline data on elephant populations, poaching and illegal trade. To determine detrimental impacts of renewed ivory trade on elephant populations, adequate trend data will be needed, as well as a robust multivariate analysis capable of assessing the significance of different factors on any observed changes in trends. Estimated timelines to achieve a baseline preclude any ivory trade before 2005 at the earliest, and acquiring the data set to allow determination of detrimental impacts is likely to push this horizon significantly further into the future.

#### Résumé

En novembre 2002, à Santiago, les Parties à la CITES ont accepté la vente unique de 60 tonnes d'ivoire venu du Botswana, de Namibie et d'Afrique du Sud, mais pas avant mai 2004, et à certaines conditions. L'accord

fut obtenu à une courte majorité, et de nombreux pays n'ont soutenu la proposition que parce qu'ils étaient convaincus que les conditions seraient bien définies et appliquées rigoureusement, pour réduire le plus possible les risques que cette vente aboutisse à une augmentation du massacre illégal d'éléphants et du commerce d'ivoire. Le Comité Permanent de la CITES est occupé à définir des conditions et il faudra encore vérifier leur respect par les pays vendeurs avant l'approbation définitive de la vente. Cet article évalue les conditions et les définitions, identifie les lacunes et fait des recommandations pour améliorer la vérification et le respect des conditions. Il conclut que les conditions imposées sont imparfaites dans la mesure où elles ne permettent pas de vérifier les contrôles qui sont faits dans les pays exportateurs, ni la réalisation des recommandations destinées à améliorer la coordination de l'application des lois. Les contrôles du commerce de l'ivoire dans les futurs pays acheteurs, et spécialement au Japon, sont aussi évalués et jugés inadéquats. Il faut donner des directives détaillées pour des contrôles standardisés, sur base desquelles on propose qu'une équipe de révision indépendante vérifie le respect des conditions. Une évaluation de MIKE conclut qu'avant de vendre le moindre ivoire, on a besoin de temps pour résoudre les problèmes de méthodologie, pour permettre l'analyse jointe avec ETIS et récolter les données de base sur les populations d'éléphants, le braconnage et le commerce illégal. Il faudra disposer des données adéquates sur la tendance des populations d'éléphants, pour déterminer l'impact négatif du nouveau commerce d'ivoire, ainsi que d'une solide analyse multivariée capable d'évaluer la signification de différents facteurs dans tout changement de tendance constaté. On estime que le temps nécessaire pour réaliser cette base empêcherait toute vente d'ivoire avant 2005, au plus tôt, et que l'acquisition du set de données qui permettrait de déterminer les impacts négatifs pourrait repousser cet horizon plus loin encore dans le futur.

## Introduction

In Santiago in November 2002, the 12th meeting of the Conference of the Parties (CoP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) decided to allow a one-off sale of up to 60 tonnes of ivory from Botswana, Namibia and South Africa, but not before May 2004 and subject to certain conditions. The convention's executive body, the Standing Committee, is tasked with defining and assessing compliance with the conditions, which it started at its 49th meeting in Geneva in March 2003 (SC49) and will continue at its 50th meeting in March 2004 (SC50).

This is the second one-off sale approved since the ban on ivory trade was agreed in 1989. The first involved 50 tonnes of ivory from Botswana, Namibia and Zimbabwe, exported to Japan in July 1999. Beforehand, eight African range states had expressed concerns to the Standing Committee that a poorly drafted set of conditions imposed on the sale had not been met (Burkina Faso et al. 1999). They cited problems with proposed international monitoring systems, MIKE (Monitoring Illegal Killing of Elephants) and ETIS (Elephant Trade Information System), and considered that trading states had failed to commit themselves to international cooperation on law enforcement. Nevertheless, the Standing Committee,

in what was considered a politically motivated decision, approved the sale (Reeve 2002).

On its Web site the CITES Secretariat states: 'It is crucial that the decisions taken by CITES on elephant issues are based, and seen to be based, on the best possible information'. The main sources of this information are MIKE and ETIS. MIKE in particular is central to deciding whether the latest proposed sale should go ahead. Many early criticisms have been addressed but the programme remains controversial. With a view to ensuring that future decisions on ivory trade are indeed based on 'the best possible' verified information and not political expediency, this paper assesses the Santiago conditions imposed on the sale, the status of MIKE and the ability of potential trading states to control ivory trade, and it makes recommendations accordingly.

## The Santiago conditions

Conditions for the proposed ivory sale require that

- Baseline information (such as elephant population numbers, incidence of illegal killing) is reported by the MIKE programme to the Secretariat.
- The Secretariat must verify, in consultation with the Standing Committee, that prospective importing countries have sufficient national legislation and domestic trade controls to ensure that the imported



Sign in front of a hanko shop in Japan. The sign says 'Ivory Ban Lifting Commemoration Sales, Elephant Ivory—50% Off'.

ivory will not be re-exported and will be managed in accordance with all CITES requirements.

- Only registered government-owned stocks of raw ivory originating in the exporting countries can be traded, despatched in a single shipment under Secretariat supervision. Seized ivory and ivory of unknown origin are excluded. The maximum allowed is 60 tonnes—20 from Botswana, 10 from Namibia and 30 from South Africa.
- Proceeds of the trade are to be used exclusively for elephant conservation and for community conservation and development programmes within or adjacent to elephant range.

The above conditions are to be agreed by the Standing Committee. A safety mechanism provides that 'on a proposal from the Secretariat, the Standing Committee can decide to cause this trade to cease partially or completely in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other el-

ephant populations'. The Standing Committee was also tasked with

- defining the geographical scope and the nature of the data that constitute the baseline information from MIKE
- determining how it would conclude that a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory
- recommending measures for improving coordination of law enforcement between ivory-producing and ivory-importing states

## MIKE

### *Origin, objectives and methodology*

MIKE, which originated from the 1997 decision to downlist elephant populations in Botswana, Namibia and Zimbabwe and allow a one-off ivory sale, is a programme to monitor elephant populations, inci

dence of killing and threats at selected sites across Africa and Asia. Its objective, shared by ETIS, which monitors illegal trade in elephant products, is to establish an information base to support decision-making on elephant-related management, protection and enforcement. Initially another objective was to assess whether trends in illegal killing were the 'result' of CITES decisions on elephants or the resumption of ivory trade. But criticism that the systems could not demonstrate a causal link led to a change in the objective to assessing whether and to what extent trends are 'related' to CITES decisions concerning elephants or resumption of ivory trade or both. A further objective to build capacity to manage and conserve elephants in range states was given increased emphasis following criticism that MIKE was imposing a top-down approach.

MIKE is ambitious, young and controversial. It was formally implemented in Africa in October 2001 (although some southern African countries started in 2000). Of the 35 African range states, 31 are involved, 2 have expressed interest and 29 have identified between 1 and 5 sites each, giving a total of 55 sites across Africa, divided among four subregions (Anon 2002a). The sites cover habitat ranging from savannah to forest. Some are relatively secure while others, such as in the Democratic Republic of Congo (DRC), are affected by war. The extent to which MIKE has been implemented varies greatly between sites and subregions. In Asia, where 28 sites have been identified (15 in South Asia and 13 in South-East Asia) MIKE was expected to begin in August 2003 (Nigel Hunter, MIKE director, pers. comm.).

At site level there are essentially three types of data collection—population surveys, law enforcement monitoring (LEM) and information on elephant carcasses (Anon 2002b). The aim is to conduct population surveys every two to three years, while LEM and the collection of data on elephant deaths and possible causes is a continuous process. LEM is considered important since the more effort put into enforcement the less illegal killing is expected. It can also be used to inform site managers where to deploy rangers for maximum effect. LEM is being conducted through a standardized ground patrol form for recording patrol effort (when and where personnel went) and observations. In addition, all elephant carcasses found on patrol or in other circumstances, within or outside sites, and the possible cause of death are to be reported, using standard carcass-reporting forms. The

use of GPS (global positioning system) is encouraged to assist with mapping and locating carcasses. Two main population survey techniques are being used— aerial surveys in savannah ecosystems and ground surveys using dung count methods in forested areas.

Data from LEM forms are compiled into monthly and annual reports and entered into a computerized database at site level along with population survey results and other relevant geographic or socio-economic data. This information is transferred to the national office (usually the wildlife authority headquarters) where further information, such as national law enforcement capacity and other influencing factors, is entered and analysed. MIKE has identified over 20 variables that could affect population numbers and trends, for example, human access, conflict, and land use adjacent to sites (Anon 2002b). Information on national trends in elephant population and patterns of illegal killing, law enforcement effort and other influencing factors is sent to a central database at the MIKE Central Coordinating Unit (CCU) in Nairobi for subregional and continental analysis. Advice on methodology is provided by a technical advisory group (TAG) composed of subregional representatives and persons with expertise in elephant conservation. TAG's full potential has not been realized; it has held only three meetings since it became operational in December 2000, but more frequent meetings are planned (Nigel Hunter, pers. comm.).

The Asian MIKE programme is far behind Africa's. As fewer data exist on Asia's forest elephants than on the African savannah populations, it will take relatively longer to gather baseline information. And with the different circumstances that exist in Asian range states it is expected that some of the methodology may need to be adapted (Nigel Hunter, pers. comm.). The TAG is currently deliberating population survey methods to suit Asian circumstances.

Some of the MIKE methodology has been questioned, notably dung counts and LEM methods. It was claimed following work by the MIKE Central Africa Pilot Project and in Ghana that results of dung counts are now comparable with aerial surveys (Anon 2002b). But despite its rapid evolution dung count methodology is less developed; it measures secondary indicators (not the elephants themselves); and results differ depending on the analytical software (Patrick Omondi, Kenya Wildlife Service Elephant Programme Coordinator, pers. comm.). Many dung count surveys are not of good quality and the meth-

odology is difficult to apply in tropical forests (Nishihara 2003). They have the potential to produce results comparable with aerial surveys, but they need to be well conducted according to minimum guidelines (Julian Blanc, IUCN African Elephant Specialist Group, pers. comm.). Even then they are comparable only with sample surveys, not total counts (Iain Douglas-Hamilton, elephant biologist, pers. comm.). Genetic analysis of dung, of which MIKE has contracted a study, offers the potential for improving the value of dung counts. The methodology involves extracting genetic material from dung to enable identification of the number of unique individuals within an area surveyed (Julian Blanc, pers. comm.).

Some experts have questioned MIKE's LEM methodology. LEM was originally developed as a management tool, a standardized recording of law enforcement effort that can be used to control illegal activities and improve management strategies. In the context of MIKE, the purpose of LEM is to measure effort and link it to carcass numbers and illegal activities concerned with killing of elephants. But effort is hard to measure and standardize to produce comparable data. The MIKE forms were initially considered by some to be too complex (although they were subsequently simplified) and the requirements at site level too sophisticated. One TAG member considered that a cruder proxy value for effort is needed (Iain Douglas-Hamilton, pers. comm.). Meanwhile another expert thought that MIKE is aiming at too much precision too soon and that there is a need to work gradually towards sophistication (Kes Hillman Smith, LEM coordinator for UNESCO/UNF/DRC, pers. comm.). Rather than imposing a highly sophisticated system from the top down, Hillman Smith, who wants MIKE to work as a practical tool, considers a standardized system should be developed from

the bottom up. It should take into account site-specific needs—particularly the fact that the main task of the guards is to protect their ecosystems, not to collect data—and, where available, existing monitoring systems. For example in Garamba National Park in DRC, LEM has been successfully conducted for many years with the purpose of protecting the site through optimizing anti-poaching (Hillman Smith et al. 2002). Rangers can accommodate a higher level of sophistication than at other sites in the DRC where LEM has not been conducted before (Kes Hillman Smith, pers. com.). The CCU has attempted to address this by harmonizing existing systems (MIKE CCU 2003).



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Some 6.5 tonnes of raw ivory, plus 40,810 hanko seal blanks were seized in Singapore on 28 June 2002 while being transshipped.

In forested sites where carcasses are difficult to find and other sites where large areas are unprotected LEM through patrolling alone is insufficient to measure effort. In a recent study of Samburu and Laikipia in Kenya, most of which is unprotected, 80% of the carcasses discovered were found through intelligence (community information) while only 4% were found through patrolling. Similarly, in sites where there is intense research effort this needs to be taken into account (the more research activity the less poaching) (Iain Douglas-Hamilton, pers. comm.). The MIKE process is encouraging use of local information networks as a LEM approach, but since it is more complex than deriving information from patrols advice is being sought from TAG (MIKE CCU 2003).

Another controversial issue is the restricted area that some of the sites cover. Kenya has taken an ecosystem approach to site selection, covering different types of areas and different threats. But several sites, particularly in southern Africa, fail to cover unprotected parts of the elephants' range, Chobe National Park being one example. Meanwhile in other countries, selected sites experience less poaching than others (for example, Zambia's choice of Luangwa but not Kafue, where poaching has been more prevalent). The CCU argues that sites with different characteris-

tics are needed to minimize bias but recognizes and is addressing the bias towards protected area coverage in some areas (MIKE CCU 2003).

A number of field problems are evident. One is lack of GPSs, which are restricted to three per site. The aim is to increase them to five (Nigel Hunter, pers. comm.), but even this will be inadequate for large sites with more than five daily patrols. Tsavo in Kenya, for example, has 26 patrols going out every day (Patrick Omondi, pers. comm.). Other issues that will take time to resolve are the logistics involved in establishing solar-powered computer facilities on site and training field personnel lacking a scientific background in data analysis.

### **Comparison and links with ETIS**

Developed in parallel, MIKE and ETIS share the same objectives. But while MIKE is active, ETIS, which depends largely on voluntary reporting of seizures by CITES parties, has been criticized for being too passive (Paula Kahumbu, former Kenya Wildlife Service assistant director, Protected Areas and CITES coordinator, pers. comm.). Initially reporting to ETIS was poor, most parties failing to report as required within 90 days of a seizure (Milliken and Sangalaku



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More of the Singapore seizure.

2000). However, TRAFFIC, which manages the ETIS database, now contacts key countries to solicit data, yielding a better response than reliance on passive information (Milliken et al. 2002).

A further concern is that ETIS does not directly measure effort by enforcement officers to implement national legislation and intercept illegal shipments (Kes Hillman Smith, pers. comm.). Proxy measures are used to monitor law enforcement. The CITES national legislation project, which ranks parties' legislation according to whether it meets all, some or none of the requirements for implementing CITES, is used to assess law enforcement effort; the Corruption Perceptions Index of Transparency International is used to assess law enforcement efficiency; and annual reporting of trade data by parties is used to assess rates of reporting concerning the seizure data, a proxy that TRAFFIC considers might also serve to assess law enforcement efficiency (Milliken et al. 2002). However, problems can be identified with two of these approaches. Parties may have model legislation (category 1) but no means to enforce it, a case in point being the DRC (Reeve 2002). Meanwhile, national agencies other than the CITES Management Authority, which compiles annual reports, may be responsible for wildlife law enforcement or customs controls. Thus annual reporting may be efficient but this is not necessarily reflected in law enforcement. Advice from the TAG may be needed with a view to ETIS becoming more proactive and, if possible, developing a direct measure of effort.

Finally, the lack of a clear link between MIKE and ETIS has been cited as a potential stumbling block to achieving their shared objectives (Paula Kahumbu and Kes Hillman Smith, pers. comm.). According to the CCU, achieving as much linkage as possible has always been an objective; use of the two systems to monitor each other and linking the analyses is currently being addressed (MIKE CCU 2003). Once linked the two programmes should provide a more sensitive means to detect change following ivory trade decisions. But linkage is not a condition of the ivory sale, and when it will be achieved is unclear.

## Geographical scope and nature of baseline information

At SC49 CCU/IUCN recommendations on the geographical scope and nature of the baseline information to be provided by MIKE were agreed with no amendments. It was unfortunate that TAG, scheduled

to meet only after the Standing Committee, had no input to the definitions, although MIKE Director Nigel Hunter confirmed that it will be involved in reviewing MIKE data. Nevertheless there could still be a need for external peer review since there will be situations when the TAG would be reviewing its own inputs and could not be considered independent.

The geographical scope will constitute 45 sites in Africa (82% of the total) and around 15 in Asia (MIKE CCU and IUCN 2003). Kenya questioned why all 55 African sites could not be included but the Standing Committee failed to address the question. Instead the MIKE director clarified that the geographical scope chosen was the one already agreed at the 41st Standing Committee meeting. Concerning the nature of baseline information, the following will be required from each site:

- at least one population survey
- levels of illegal killing derived from a minimum of 12 months of data from African sites and 6 months data from Asian sites
- a descriptive report of the patterns of influencing factors
- an assessment of effort made in providing the illegal killing information
- a preliminary baseline analysis of the above information

Kenya thought that trends were needed, but Hunter responded they had been asked for a baseline, not a trend analysis. Israel was concerned that six months was inadequate to collect data on illegal killing in Asia due to seasonal influences. Hunter explained that this affected southern India rather than elsewhere in Asia, the basis for the timeframe being the low levels of illegal killing in most Asian range states, the majority from human conflict. He also stated that a longer period was not precluded where such data existed. NGOs who prepared briefings for SC49, the International Fund for Animal Welfare (IFAW) and Species Survival Network considered two population surveys should be required, particularly where baseline information does not exist such as in central and West Africa and Asia (IFAW 2003; SSN 2003). To iron out methodology, address field problems and test analysis, IFAW proposed a minimum of three years of carcass and effort data (IFAW 2003). The Standing Committee ignored the suggestions.

The David Shepherd Wildlife Foundation took up the issue of influencing factors, expressing concern that a 'descriptive report' was vague, questioning



A shamisen (part for a musical instrument), jewellery, pipes, ornaments and other accessories made of elephant ivory in a retail shop window in Japan.

whether factors had been identified for each baseline site, and commenting that ideally changes should be recorded over time. Holly Dublin, chair of the IUCN African Elephant Specialist Group, stated that while influencing factors will be looked at on a site-specific basis, the analytical system (GIS spatial analysis) will not be up and running for the baseline data, a factor that the Standing Committee also chose to ignore.

Hunter considers that baseline information cannot easily be provided before early 2005. Given the considerable obstacles still to be overcome, this is optimistic. MIKE needs to be established properly to avoid defeating its objective. This demands resources, time and patience. MIKE is open to evolution, demonstrated by its change from a top-down process to one more inclusive of range states. But time is needed to resolve controversial areas of methodology through more active involvement of TAG and collaboration

with experts whose constructive criticism is aimed at making MIKE work; to overcome field problems and provide adequate training; to implement the Asia programme; and to enable reliable peer-reviewed data analysis.

### **Determining detrimental impacts of CITES decisions**

At SC49 Germany suggested a working group should deal with how a detrimental impact on other elephant populations can be determined in order to stop trade, but the suggestion failed to gain support. Instead the secretariat will address the issue for SC50. It stated that defining a protocol earlier rather than later would allow detrimental impacts to be determined before trade has occurred and if necessary prevent the trade. However, the wording agreed in Santiago for this 'safety mechanism' implies that trade has to have



occurred before detrimental impacts may be detected, which makes no sense for a one-off sale and contradicts the Secretariat's intention. This is probably because the wording was drafted in the context of an initial proposal for annual export quotas (which was rejected by CoP12).

The safety mechanism also fails to account for limitations of MIKE and ETIS. It states that the detrimental impacts need to be 'proven' to cease trade. Proof and a causal link are required, but the information systems cannot satisfy this, leading to a catch-22 situation.

This is not the first time the Conference of the Parties has agreed wording for a safety mechanism that would be problematic in its implementation. As a precondition to the first ivory sale following the downlisting of three elephant populations to Appendix II, it was decided at CoP10 that the Standing Committee should agree to a mechanism 'to halt trade and immediately re-transfer to Appendix I populations that have been transferred to Appendix II' in the event, *inter alia*, of an escalation of illegal hunting of elephants and/or trade in elephant products due to the sale (CITES Decision 10.1). Since the Standing Committee cannot transfer populations back to Appendix I without contravening the Convention, it had to clarify that this should be by a postal vote of CITES parties on a proposal by Switzerland (the depositary government).

The Standing Committee should provide a clear interpretation of the Santiago wording on detrimental impacts. To be a true safety mechanism, it needs to be able to prevent the sale from taking place in the event the *decision* to trade leads to detrimental impacts. Furthermore, given the difficulty of proving those impacts, correlations between trends observed by MIKE and ETIS and the decision to trade should be adequate 'proof' that detrimental impacts have resulted from the approved trade in ivory.

The issues are complex, and arriving at answers will be more so, which is why Germany's proposal for a working group merits further consideration at SC50. In any event the Standing Committee should seek advice from TAG before drawing conclusions.

A simplified way to look at the issue is to see MIKE sites as potential warning lights across two continents. There is a need to decide:

- How many of these warning lights must flash red in order to show a correlation with the sale, taking into account the inability of some sites, for example, those affected by conflict, to detect a change?

- What data are needed to indicate a red light?
- How will the analysis be linked with data from ETIS?
- Who will peer review the analysed data?

Answering these questions is akin to defining the 'geographical scope' and 'nature' of the baseline information, except that the purpose is to provide an indicator of detrimental impacts of CITES decisions based on jointly analysed data from MIKE and ETIS. To determine detrimental impacts, *trends* in elephant populations, illegal killing and trade, and patterns of influencing factors at sites in non-exporting countries will be needed. Moreover we need to know the number of years of data required for the MIKE and ETIS results to conclude, with reasonable levels of confidence, whether and to what extent trends are 'related' to CITES decisions concerning elephants. Given the number of variables that could affect population numbers and trends and the complexity of the multivariate analysis, it has been suggested that TAG may need to seek guidance on this from other independent statistical experts (IFAW 2003).

Establishing a genuine baseline and determining trends are contingent on collecting data in a period free of trade or anticipated trade; otherwise detrimental impacts of resumed trade cannot be determined. The 1999 ivory sale and the CoP12 decision may have contaminated the baseline information in ways we cannot determine.

## Legislation and trade controls

### Importing countries

The Santiago conditions do not specify an importing country. Japan, however, has declared its interest in importing the ivory, and with its emerging market China may come under domestic pressure to import the stocks. However, according to TRAFFIC there are 'serious deficiencies in the current regulation of sales of elephant products in China' (O'Connell-Rodwell and Parry-Jones 2002). This alone deems it an unlikely candidate. China's legislation is also inadequate to implement CITES, having been assessed under the national legislation project as category 2 (legislation believed generally *not* to meet all the requirements for CITES implementation) (CITES Secretariat 2002; Reeve 2002). Meanwhile, according to ETIS results, China (along with Thailand) has one of 'largest unregulated ivory markets in the world' and

demonstrates ‘very poor law enforcement effort and efficiency’ (Anon 2002c). The findings on Thailand, excluding it too as a serious contender, are supported by another study, which reports a large domestic market (mainly for sale to tourists) and a significant illegal trade (Martin and Stiles 2002).

China, Thailand and Japan are among 10 countries ETIS has identified as having active domestic ivory markets. As a result of ETIS findings all are due to have their internal legislative, regulatory and enforcement measures with regard to internal ivory trade controls assessed by the Secretariat. Countries failing to comply with CITES requirements will be required to produce an action plan to adopt controls and could face wildlife trade restrictions if they fail. While this verification exercise ought to be completed before any ivory sale, it has not been made a precondition.

#### JAPAN

The Santiago conditions require legislation and domestic controls sufficient to ensure imported ivory will not be re-exported and internal legislative, regulatory and enforcement measures to

- register or license all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products
- establish a nationwide procedure, particularly in retail outlets, informing tourists and non-nationals not to purchase ivory if it is illegal to import it into their home countries
- introduce recording and inspection procedures to enable monitoring of internal ivory flow, particularly through
  - compulsory trade controls over raw ivory
  - a comprehensive and de-

monstrably effective reporting and enforcement system for worked ivory

Japan’s ability to fulfil the Santiago requirements will be assessed point by point, based on the findings of two studies, one by the Japan Wildlife Conservation Society (Sakamoto 2002) and the other by TRAFIC East Asia (Kiyono 2002).

**Preventing re-export.** Although ivory is mostly smuggled into Japan rather than out it is still necessary to assess Japan’s ability and will to prevent re-export of imported ivory. An indicator is its record in preventing illegal trade. Illegal imports to Japan continue (there were 208 seizures from 1994 to 2001)



A netsuke – a Japanese ornament carved from ivory.

(Sakamoto 2002). One case where ivory was smuggled from Singapore in April 2000 involved a board member of the Tokyo Ivory Arts and Crafts Association, but he was fined just 300,000 yen (about USD 2500) and not suspended from operating as a registered ivory dealer (Kiyono 2002; Sakamoto 2002). On 28 June 2002, 6.5 tonnes of African ivory bound for Japan was seized in Singapore. The seizure was one of several shipments by an ivory-smuggling syndicate operating since 1994 (Hastie et al. 2002). Japan was criticized for its reluctance to investigate the consignee, a Japanese customs clearance company, only announcing preliminary results of an investigation in a closed session at SC49, nine months after the seizure.

Currently there is nothing to prevent re-export of imported ivory as tourist souvenirs, and Japan's inadequate penalties and lacklustre record on enforcement inspire little confidence that it has the will to prevent smuggling.

**Registration of businesses.** Under Japanese law all ivory manufacturers and wholesalers and retailers of ivory *hankos* (name-seal stamps accounting for over 80% of ivory used) are required to register their businesses. But no such requirement is demanded of wholesalers and retailers trading in ivory products other than hankos. Given the many kinds of ivory products on sale such as carved ornaments, accessories for dresses, parts for the *shamisen* (a traditional musical instrument), chopsticks and pipes, this is a loophole (Sakamoto 2002). Japan denies this on the basis that the volume of these products is negligible (Japan 2003), missing the point that *all* businesses involved in manufacture and trade must be registered to comply with the Santiago requirements.

To compound things, a significant proportion of ivory hanko retailers are not registered. Out of 1072 listed in the Tokyo phonebook in September 2002, 39% were unregistered. In a random selection of 218 of these unregistered dealers, 87% were confirmed by phone interview to be selling ivory hankos (Sakamoto 2002). Also noting this problem, TRAFIC concludes that the failure to register is 'abetted by current regulations which make it illegal for non-registered dealers to purchase cut pieces, but not illegal for registered dealers to sell or transfer cut pieces to non-registered dealers' (Kiyono 2002).

When IFAW drew to the attention of SC49 deficiencies in the registration system (IFAW 2003) Japan objected, claiming that they are strengthening

their effort to investigate non-registered ivory hanko retailers (Japan 2003).

**Nationwide information procedure for tourists at retail outlets.** This requirement has not been fully implemented in Japan.

**Trade controls for raw and worked ivory.** Both Sakamoto and Kiyono identified weaknesses in Japan's domestic ivory trade control system additional to those noted above. Compulsory registration applies only to whole tusks. Even then tusks need be registered only if the holder wishes to sell or transfer them, and there is no time limit for registration (Kiyono 2002). Since no registration is required to possess whole tusks, the total number of registered tusks does not represent the total stock of tusks in Japan, which is unknown (Sakamoto 2002).

According to Sakamoto there is no marking system for registered ivory, just a requirement to describe it and submit a picture (Sakamoto 2002). Japan informed SC49 that this is untrue but failed to elaborate further (Japan 2003). The transfer of whole tusks is tracked with a registration card system and each transaction is entered into a database. But the use of management cards is not compulsory for cut tusks (Kiyono 2002). A separate scheme manages cut pieces, under which registered owners are obliged to report the volume of stocks at the time of registration then record in a ledger the volume after each transaction. But there is no requirement for recording on the transaction ledgers cut pieces that originated from whole tusks in the owner's possession (which themselves are not required to be registered) (Sakamoto 2002). Because 'stocks of whole tusks and stocks of cut pieces continue to be managed under different schemes' it is 'impossible to get a clear picture of the total stock of ivory in the market place' (Kiyono 2002). Registered dealers are required to keep separate transaction ledgers for cut pieces and hankos, but the ledgers are not linked to ensure that the number of hankos produced matches the weight of cut pieces used (Sakamoto 2002).

The certification seal system is voluntary and not used by all manufacturers. Out of 50 shops that TRAFIC surveyed, 14 displayed seals for all hankos on view, 21 displayed only sample certification seals, and 15 did not display seals (Kiyono 2002). There is no clear link between the certification seal database and the ledger system. If a manufacturer chooses not to apply for seals then the stock data are not updated, and it is impossible to trace products back to the origi



Ivory hankos on sale in Japan.

nal tusk or cut piece. The Secretariat recommended in December 1999 that manufacturers and wholesalers record certification seal numbers in their ledgers so that database records could be traced through the ledgers to individual traders. As of September 2002 this recommendation had not been implemented (Kiyono 2002).

Registered dealers are required to submit annual returns from ledgers, but there is no specific reporting schedule (Kiyono 2002). In 2001, a quarter of manufacturers failed to submit ledgers for cut pieces and 18% failed to submit them for hankos; 34% of wholesalers and 29% of retailers failed to submit ledgers for hankos. None have been penalized as required by law (Sakamoto 2002).

It is hard to conclude anything other than that Japan's ivory trade controls fail to comply with CITES requirements, although the Secretariat has twice visited Japan to verify them, and twice approved them. Separating the schemes for cut pieces and tusks and

failing to require registration of tusks in possession are obvious flaws. The missing links between the schemes, the existence of unknown quantities of unregistered stocks of raw and worked ivory, and the ease with which ivory can be transferred to unregistered dealers or laundered into the system mean that the flow of ivory within Japan cannot be monitored. The reporting and enforcement system for worked ivory is neither comprehensive (it applies only to hankos) nor demonstrably effective given the failure rate for reporting.

### **Exporting countries**

The Santiago conditions only allow sale of registered government-owned stocks of raw ivory originating in the exporting countries. These countries therefore need an effective registration, marking and record-keeping system that separates stocks permitted for export from seized ivory and ivory of unknown ori-

gin, and secures the storeroom to ensure no mixing of the ivory. The last time this was verified was by the Secretariat in November 1998. Namibia was approved, but Botswana had to improve its system and be reverified before the 1999 sale could go ahead. Since South Africa was not involved in that sale, its system has not been verified by the Secretariat (other than through the Panel of Experts that assessed its downlisting proposal in 2000).

A loophole in the Santiago conditions is their failure to explicitly require adequate CITES legislation and trade controls in exporting countries and to provide for their verification as a prerequisite to trade. This is despite the fact that Botswana, Namibia and South Africa have all been assessed under the national legislation project as having category 2 legislation. The project required South Africa to adopt legislation by 31 January 2003, and if it had not done so by 31 March 2003 the Secretariat was supposed to notify parties of a recommended suspension of trade in CITES-listed species with South Africa. But on the basis of good legislative progress they were given a reprieve and are due for review again at SC50 (CITES Secretariat 2003). In fact, all South Africa has done is to publicly gazette draft legislation, which is still far from being enacted. Botswana and Namibia were required to submit a legislation plan by 31 May 2002 and adopt legislation by 31 December 2003. Namibia submitted its plan but not Botswana, which was due to receive a formal warning. If both countries fail to adopt adequate legislation by the deadline the Standing Committee is to recommend trade restrictions at SC50.

It could be argued that only national legislation related to elephants and ivory trade is relevant, but the approval of ivory sales is a high-profile issue important to CITES. Countries considered in non-compliance with the Convention on such a fundamental issue as national legislation and under threat of trade restrictions should not be given the go-ahead to trade in ivory. South Africa in particular has drawn fire for its legislative failure and chaotic system of permit issue and record-keeping, largely due to reluctance of the provinces to hand over competence (IFAW 2002; see Bürgener et al. 2001 for an overview of legislation and the permit system). There has also been a generalized failure of cooperation and communication between national and provincial wildlife law enforcement agencies and customs, and recently South Africa disbanded the Endangered Species Protection Unit, a specialized wildlife crime unit opera-

tional since 1989. This backward step cannot fail to affect South Africa's ability to control ivory trade.

Another question that merits consideration is the ability of exporting countries to control smuggling through their territories. The Southern African Customs Union, in existence since 1969 between Botswana, Lesotho, Namibia, South Africa and Swaziland, has facilitated the smuggling of wildlife products, including ivory, by reducing border controls to expedite cross-border movement of goods (Austin et al. 1992). The implementation of a free trade area between 11 members of the Southern African Development Community (SADC) in 2000 has the potential to exacerbate the problem. The ivory seized in Singapore last year was sealed in a container in Malawi and passed unobstructed through several border posts before leaving South Africa through Durban (Hastie et al. 2002).

## Verification

The Secretariat has been tasked with verifying trade controls in importing countries in consultation with the Standing Committee. But given its anomalous approval of Japan's system and widespread problems of illegal trade and uncontrolled markets, there is a need for clear detailed guidelines on ivory trade controls and their enforcement in exporting and prospective importing countries against which an independent expert review team can verify compliance (IFAW 2003). Precedents for this approach exist in the CITES tiger technical missions and in-depth review teams that carry out on-site visits under the Climate Change Convention (Reeve 2002). The review team should be appointed by the Standing Committee from a roster of independent experts approved by the Conference of the Parties.

To ensure compliance with recommendations of the proposed review team, it is important that any approval of ivory trade be dependent on trading countries revising their systems in accordance with the guidelines.

## **Recommendations for minimum guidelines on ivory trade controls**

- Participation in a standardized, transparent international computerized system for registration, marking and record-keeping to enable tusk-to-product tracing and prevent laundering of illegal ivory

- Annual inspection of all businesses registered as dealing in ivory and of all their stocks, and the provision of publicly available reports to CITES
- An obligation to investigate nationals suspected of involvement in illegal trade, and temporary suspension of registration while under investigation
- Deterrent penalties for illegal trade (minimums to be specified) and permanent suspension of registration of convicted traders
- Enforced border controls adequate to prevent in-transit illegal trade as well as illegal imports and exports
- Cooperation and coordination among national CITES authorities and wildlife law enforcement agencies, including customs, through national CITES committees
- Participation in an effective system of law enforcement coordination between exporting and importing states through formal agreements or memoranda of understanding

## Law enforcement coordination

The Santiago conditions encourage the Standing Committee to recommend measures for improving law enforcement coordination between ivory-producing and ivory-importing states but there is no requirement for the recommendations to be implemented before trade is approved. This is another loophole. Unfortunately all that was recommended at SC49 was that ivory-producing and ivory-importing countries be encouraged to increase flows of information; open channels of communication and improve use of existing channels; and improve communication between relevant agencies. Germany made several concrete recommendations that the Standing Committee failed to take up, including the need for clear reporting lines for all illegal activities on elephants, encouraging parties to participate in regional law enforcement agreements, and providing contact points for information exchange.



R. Reeve

Ivory trade in Kinshasa market two weeks after the ivory sale was approved. The vendor stated, 'in 18 months the ivory trade is completely open. I read it in the newspaper.'

Lack of political support for improved coordination of wildlife law enforcement is a persistent problem (Reeve 2002). It was the reason for establishing the Lusaka Agreement Task Force (LATF), yet none of the three export countries is a member. South Africa signed the Lusaka Agreement but failed to ratify it. No equivalent mechanism for regional enforcement cooperation exists in Asia. Clearly the best way to improve coordination of law enforcement would be for all African elephant range states to ratify the Lusaka Agreement while Asian countries establish a counterpart, with both regional task forces mandated to cooperate. As a prerequisite to trade, states should be obliged to join the relevant agreement and to exchange information and coordinate their law enforcement operations and training through the two regional forces.

A less preferable alternative to an Asian regional task force would be memoranda of understanding (MoUs) between LATF and wildlife law enforcement agencies in ivory-importing states. The MoUs would need to include exchange of intelligence on illegal trade and offenders, lines of communication, training, and provision for cooperative enforcement operations between the agencies (for example, controlled deliveries).

### ***Proceeds of the sale: conservation trust funds***

The condition that revenues from ivory trade were to be invested in elephant conservation was included in the last approved one-off sale. To date there has been no credible, detailed reporting to indicate how any of the funds generated were in fact used. An audited financial mechanism, separate from the government's general budget, with independent oversight and transparent reporting on projects will need to be established or designated to ensure that proceeds of the most recently proposed sale will be used, as stipulated, exclusively for elephant conservation and community conservation and development programmes within or adjacent to the elephant range. To avoid conservation in range states becoming dependent on ivory trade funds, a potentially risky scenario, qualifying projects should be additional to existing core conservation programmes. An option to be considered is a conservation trust fund with an independent board of trustees including a cross-section of NGO, government and community representatives (Resor 1998). At the outset, the governing instrument will need to clarify the types and size of activities that can be funded, and who will implement

them. To ensure transparency, independent auditing is essential, as is reporting on the projects to CITES and publishing of the reports on the CITES Web site.

### ***Compliance mechanism***

The Standing Committee has been delegated the task of deciding compliance with the Santiago conditions, and of stopping trade partially or completely if exporting or importing countries are not complying. Considering the controversy surrounding decisions on the ivory trade and their importance to CITES, the final arbiter of whether the conditions had been fulfilled should have been the Conference of the Parties. But since this is not the case, the mechanism whereby the Standing Committee assesses compliance and responds to non-compliance *in advance of the sales*, as well as during and after the sales, needs to be clearly defined.

The information on which to assess compliance should be provided by the independent review team recommended above. It should be tasked with drawing up recommendations on action to be taken following on-site visits to the trading countries. The Standing Committee should then set a deadline for implementing the action, after which the review team will assess compliance and report to the Standing Committee. In the event of non-compliance with any of the conditions or guidelines on the part of any of the trading countries, the Standing Committee should recommend that trade *not* take place. The review team should also be tasked with assessing compliance with the condition concerning the proceeds of the sale. To ensure transparency all its reports should be publicly available.

Implementing this mechanism will require considerable funds. But given the importance of the ivory issue and the extensive funds already devoted to MIKE—over USD 3 million for 2001–2003 (Anon 2002b)—trade controls and their enforcement must be stringent and verification unbiased and transparent. To avoid political bias or undue influence, donors to these activities, indeed to any elephant-related CITES activities such as range state dialogue meetings, should exclude parties or organizations that have any commercial interest in the ivory sale.

### **Conclusions**

Given the evidence that poaching and illegal ivory trafficking continue (Hastie et al. 2002; Martin and Stiles 2002; Milliken et al. 2002), neither the Standing Com

mittee nor the Conference of the Parties should authorize any ivory trade before both monitoring programmes are fully operational and providing jointly analysed data. MIKE is still in the development stage and not expected to produce baseline information until 2005 at the very earliest. Time is needed to iron out field problems and provide training, and for the TAG to resolve controversial areas of methodology and enable reliable peer-reviewed data analysis. ETIS needs to be more proactive and clearly linked with MIKE. To determine detrimental effects of ivory trade, decisions on other elephant populations will require trends based on data from both programmes. Obtaining this information is going to take far longer than establishing a baseline. The process cannot be rushed by three range states pressing to sell ivory as soon as the May 2004 deadline is passed. In any case, given the estimated timeline for producing baseline information, no sale will be possible before CoP13 in October 2004.

Ideally the protocol for the safety mechanism should have been settled and baseline information provided before any sales were considered. The Santiago decision was premature. The least to be done now is for the Conference of the Parties to suspend decision-making on further sales until the data requirements to enable the monitoring systems to achieve their objectives have been established and the safety mechanism is in place.

Ivory trade controls in exporting and prospective importing countries leave a lot to be desired, including in Japan, which is supposed to have one of the most rigorous systems in the world. Seizures indicate Japan as a destination for contraband ivory, which in turn indicates that some of the ivory on sale there could be from illegal sources. The missing links between management schemes, the inadequate reporting and enforcement system for worked ivory, and the inability to monitor flow of ivory within Japan or to know how much ivory is in the market at any given time all indicate the need to reassess Japan's system. Its previous approval by the Secretariat flies in the face of the evidence and calls for a more independent and transparent system of verification on the basis of more detailed and stringent guidelines than currently exist by a review team of independent experts. Providing for their appointment by the Standing Committee from a roster approved by the Conference of the Parties should help to ensure independence.

The Santiago conditions were integral to the CoP12 decision provisionally approving the sale of

ivory stockpiles, which achieved the necessary votes by only a narrow margin. Many parties agreed only on the understanding that the conditions would be stringently applied. But these conditions are flawed, as is the existing system to assess compliance and trade controls in exporting and importing countries, which places too much reliance on the Secretariat. The Standing Committee's lacklustre approach at SC49 to definitions for baseline information and recommendations on improved coordination of law enforcement inspires little confidence. If it fails to take a rigorous approach at SC50 there will be a strong case for revisiting the conditions and definitions at CoP13. In any case the Conference of the Parties will need to close loopholes such as failure to provide for verification of ivory trade controls in exporting countries and lack of a requirement to implement recommendations on improved coordination of law enforcement.

Only stringent conditions, standardized and enforced trade controls, an independent and transparent verification system, and coordinated law enforcement will ensure that the proposed sale does not result in increases in illegal ivory trade with consequent detrimental effects on wild elephant populations. Moreover, sufficient data from MIKE and ETIS need to have been collected in a period free of impending trade long enough to be able to relate trends to decisions on elephants and ivory trade and to determine detrimental consequences. If these steps cannot be taken on such a high-profile issue as ivory before any sale takes place, it will call into question not only the intent to base all elephant decisions on the 'best possible information' but the effectiveness of CITES itself.

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