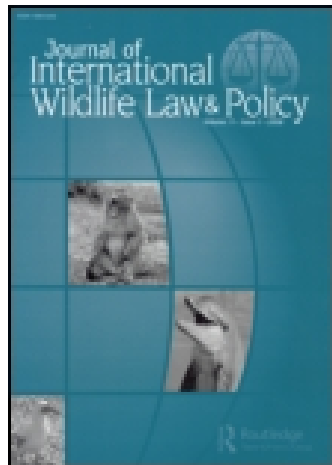


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Poaching Cultural Property: Invoking Cultural Property Law to Protect Elephants

ETHAN ARTHUR*

1. INTRODUCTION

Traditional methods of fighting elephant poaching in Africa¹ are not working.² Illegal poaching is wreaking havoc on Africa's elephant populations.³ In 2012, approximately 15,000 of Africa's elephants were killed illegally.⁴ Poachers kill elephants for their ivory; selling poached ivory nets massive profits.⁵ The enormous potential for riches paired with the slight likelihood of apprehension

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¹ E.g., Convention on International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

² See Joseph Vandegrift, *Elephant Poaching: CITES Failure to Combat the Growth in Chinese Demand for Ivory*, 31 VA. ENVTL. L.J. 102 (2013); see also Kibiwott Koross, *CITES Convention 'Fails to Protect the African Elephant'*, THE STAR (Mar. 20, 2013), <http://www.the-star.co.ke/news/article-113025/cites-convention-fails-protect-african-elephant>.

³ See U.N. ENV'T PROGRAMME [UNEP] ET AL., ELEPHANTS IN THE DUST THE AFRICAN ELEPHANT CRISIS 5 (Christian Nellemann et al. eds., 2013), available at http://www.unep.org/pdf/RRaIvory_draft7.pdf [hereinafter ELEPHANTS IN THE DUST] (explaining that "the extent of the [elephant] killings . . . far exceeds the natural population growth rates, forcing . . . elephants into widespread decline"). Africa is home to two distinct species of elephants, the African savanna elephant (*Loxodonta africana*) and the African forest elephant (*Loxodonta cyclotis*). Brian Handwerk, *African Elephants Really Two Wildly Different Species?* NAT'L GEOGRAPHIC SOC'Y, (Dec. 22, 2010), <http://news.nationalgeographic.com/news/2010/12/101222-african-elephants-two-species-new-science/> (emphasis in original). However, for the purposes of this article, "elephant" refers to African elephants generally, i.e., both savanna and forest elephants.

⁴ *New Figures Reveal Poaching for the Illegal Ivory Trade Could Wipe out a Fifth of Africa's Elephants over Next Decade*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA & FLORA (Dec. 2, 2013), http://www.cites.org/eng/news/pr/2013/20131202_elephant-figures.php. The number of elephants killed in 2012 may actually be as high as 22,000. *Id.*

⁵ See James Reinl, *Anti-Poaching Drones to Take Off in Africa*, ALJAZEERA, <http://www.aljazeera.com/indepth/features/2013/01/2013117135422298209.html> (last updated Jan. 20, 2013) (explaining that elephants were lost "last year in a 'global surge in poaching, fuelled by high demand for ivory in Asian countries'" (quoting Kenyan Prime Minister Raila Odinga)); IAN J. SAUNDERS, THE TSAVO TRUST, THE CRISIS AFFECTING THE AFRICAN ELEPHANT 14 (2013), available at <http://iccfoundation.us/downloads/briefings/An%20Overview%20of%20Poaching.pdf> (noting that the

makes the ivory trade ideal for criminal cartels.⁶ Organized crime and militias have flocked to the illegal ivory industry.⁷ With Africa's elephants on the brink, African nations must consider all options to protect their elephants. African states should classify elephants as cultural property⁸ and utilize the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention)⁹ as an elephant conservation tool.

Section 2 of the article outlines how the 1970 Convention works, including its definition of cultural property and the responsibilities it places on member states. Section 2 also highlights the treaty's compliance mechanisms and mentions some criticisms of the treaty. Section 3 argues that elephants fall under the 1970 Convention's definition of cultural property. This section also argues that many elephants meet further requirements of the 1970 Convention and thereby qualify for full protection under the treaty. Section 4 highlights some of the benefits that defining elephants as cultural property and protecting them under the 1970 Convention could yield.

2. HOW THE 1970 CONVENTION PROTECTS CULTURAL PROPERTY

International cultural property law is a relatively new, fast-growing area of law.¹⁰ Cultural property can be defined, generally, as movable objects with significant scientific or cultural value.¹¹ According to cultural nationalism, a

price of ivory reached “\$2,357 per kilogram in 2012” and the average tusk weighs 13.6 kg). *Id.* As a result of the these high prices, ivory has earned the nickname “white gold.” *Id.* at 7.

⁶ ELEPHANTS IN THE DUST, *supra* note 3, at 57.

⁷ See *id.* at 57–58 (highlighting examples of elephant poaching carried out by criminal organizations and paramilitary units). Trade in poached ivory is being used to fund terror networks. SAUNDERS, *supra* note 5, at 10–11.

⁸ See *infra* note 11 and accompanying text (discussing the meaning of cultural property).

⁹ Nov. 14, 1970, 96 Stat. 2329, 823 U.N.T.S. 231 [hereinafter 1970 Convention]. There are other cultural property instruments that could be utilized to stifle poaching. *E.g.*, Intergovernmental Committee for Promoting the Return of Cultural Property to Its Country of Origin or Its Restitution in Case of Illicit Appropriation, UNESCO Res. 4/7.6/5, Oct. 24–Nov. 28 1978, UNESCO Gen. Conference 20th Sess. at 92; Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151; UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322. The author selected the 1970 Convention for this article because the 1970 Convention allows member states designate their own cultural property; it also contains advantageous language and has a large number of member states.

¹⁰ IRINI A. STAMATOUDI, CULTURAL PROPERTY LAW AND RESTITUTION A COMMENTARY TO INTERNATIONAL CONVENTIONS AND EUROPEAN UNION LAW 1 (Evangelos Kyriakidis ed., 2011).

¹¹ See *id.* at 5–11 (discussing different definitions of cultural property contained in various international instruments). Cultural property is difficult to define. John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831, 831 n.1 (1986). The definition is variable, depending on the characteristics of the defining state or treaty. STAMATOUDI, *supra* note 10, at 4. While cultural property covers objects made by humans, it has been interpreted to encompass completely natural

leading theory concerning the protection of cultural property,¹² nations have “a special interest” in their cultural property.¹³ The United Nations Educational Scientific and Cultural Organization (UNESCO) is the leading international organization for the protection and return of cultural property¹⁴ and the organization that enacted the 1970 Convention. UNESCO and, consequently, the 1970 Convention are founded on the principle of cultural nationalism¹⁵ and thus focus on returning cultural property to the country of origin.¹⁶

As a non-self-executing treaty, the 1970 Convention’s member states must pass legislation in order to enforce its provisions domestically.¹⁷ The drafters of the 1970 Convention recognized that effective protection of cultural property requires international cooperation amongst states.¹⁸ All member states recognize that “[t]he import, export[, or transfer of ownership of cultural property effected contrary to the [1970 Convention’s] provisions . . . shall be illicit.”¹⁹ Articles 1 and 4 define “cultural property”²⁰ and “cultural heritage,”²¹ respectively. Other articles outline the responsibilities of member states²² as well as compliance mechanisms.²³ While the 1970 Convention has been used to combat the illicit transfer of cultural property for more than 40 years, it has not done so without criticism;²⁴ however, critiques notwithstanding, the 1970 Convention is an important tool for international cultural property protection.

objects as well. *See, e.g.*, Douglas G. Schmitt, *The law of ownership and control of meteorites*, 37:S12 METEORITICS & PLANETARY SCI., 2002, at B5, B8–B9 (applying Article 1 of the 1970 Convention to meteorites); *see also* Merryman, *supra*, at 831 n.1 (acknowledging that many nations treat similarly, objects of cultural and natural importance).

¹² Merryman, *supra* note 11, at 846. Another theory in cultural property protection is cultural internationalism. *Id.* According to cultural internationalism, the entirety of humanity holds an equal interest in all cultural property. *Id.* at 831.

¹³ *Id.* at 832.

¹⁴ STAMATOUDI, *supra* note 10, at 178.

¹⁵ JAMES CUNO, WHO OWNS ANTIQUITY? MUSEUMS AND THE BATTLE OVER OUR ANCIENT HERITAGE 26 (2008). Cultural nationalism forms the foundation of 1970 Convention because “UNESCO, like the United Nations itself, exists only as a cooperative venture between nations.” *Id.* at 27.

¹⁶ *See* 1970 Convention, *supra* note 9, at 232 pmbl. (stating that “cultural property constitutes one of the basic elements of . . . national cultural” and that “every [s]tate [must be] . . . alive to the moral [obligation] to respect . . . [every nation’s] cultural heritage”); STAMATOUDI, *supra* note 10, at 178 (describing one of UNESCO’s goals as “restitution of cultural property to its country of origin”).

¹⁷ *Ancient Coin Collectors Guild v. U.S. Customs & Border Prot.*, 801 F. Supp. 2d 383, 388 (D. Md. 2011).

¹⁸ 1970 Convention, *supra* note 9, at 234 pmbl.

¹⁹ *Id.* art. 3.

²⁰ *Id.* art. 1.

²¹ *Id.* art. 4.

²² *Id.* arts. 2, 5–7, 10, 13.

²³ *Id.* arts. 8–9.

²⁴ *See infra* Section 2.4

2.1 Definitions of “Cultural Property” and “Cultural Heritage”

The 1970 Convention protects objects that meet the treaty’s definition of cultural property.²⁵ In order for an object to meet the 1970 Convention’s definition of cultural property, it must satisfy both elements of Article 1’s two-part test: first, the property, on either “religious or secular grounds,” must be “designated by [a member s]tate as being of importance for archaeology, prehistory, history, literature, art or science.”²⁶ This requirement means that states must officially designate the property “of importance” within its domestic legal scheme.²⁷ This broad definition allows each member state to determine what property it wishes to protect under the 1970 Convention.²⁸ Second, the property must fit into any of Article 1’s 11 categories, including²⁹ “[r]are collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest.”³⁰

²⁵ 1970 Convention, *supra* note 9, art. 1.

²⁶ *Id.* Member states may officially designate their property as “of importance” in different ways: using the express language of the 1970 Convention is not required. *See, e.g.*, Cultural Property Export Act, 1974–75–76, ch. 50, § 1 (art. 38) (Canada) (mandating that “for the purposes of Article 1 of the [1970 Convention] any item included on the Control List is hereby designated by Canada as being of importance for archaeology, prehistory, history, literature, art or science”); General Law of Cultural Heritage of the Nation, Law No. 28296 (Peru) (classifying categories of “movable property” which are protected as “part of the Cultural Heritage of the Nation”); Law of the People’s Republic of China on Protection of Cultural Relics (promulgated by Standing Comm. Nat’l People’s Cong., Dec. 29, 2007, effective Dec. 29, 2007), *translated in* http://www.npc.gov.cn/englishnpc/Law/2009-02/25/content_1472452.htm (defining categories of “cultural relics,” which the state owns and protects). However, regardless of *how* member states choose to designate their property as “of importance,” the property must *be* “of importance” to qualify as cultural property under Article 1. STAMATOUDI, *supra* note 10, at 36–37.

²⁷ *See* STAMATOUDI, *supra* note 10, at 38 (explaining that property “will not be covered by the [1970] Convention unless it has been designated as [of importance] by” a member state).

²⁸ *Id.* at 36–37. Allowing member states to designate their own cultural property illustrates the 1970 Convention’s foundation in cultural nationalism. *See supra* note 15 and accompanying text.

²⁹ 1970 Convention, *supra* note 9, art. 1.

³⁰ *Id.* art. 1(a). Article 1(a) is most relevant for the purpose of this article; however, other categories include the following:

- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) objects of ethnological interest; . . . (k) articles of furniture more than one hundred years old and old musical instruments.

Id. art. 1. Sometimes a “theoretical distinction is made between cultural and natural heritage.” STAMATOUDI, *supra* note 10, at 10–11. Stamatoudi points out that many objects that could be considered natural heritage are considered cultural heritage as well. *Id.* at 11. Article 1(a) demonstrates the overlap between natural and cultural heritage. *Id.* at 11 n.24.

Member states also recognize that cultural property “forms part of the [state’s] cultural heritage” when the cultural property belongs to one of the categories contained in Article 4, which includes “cultural property found within the national territory [of the state].”³¹ Once cultural property has been designated as forming part of the cultural heritage of a state, it is entitled to specific protections under the 1970 Convention.³²

2.2 Responsibilities of Member States

The 1970 Convention’s member states agree to take steps to oppose illicit transfers of ownership of cultural property.³³ Member states agree to regulate the movement of cultural property and effect its return in certain circumstances,³⁴ as well as preventing the illicit import, export, and transfer of ownership of cultural property through education.³⁵

Member states “undertake to oppose [illicit import, export[, and transfer of ownership of cultural property] with the means at their disposal, and particularly by removing their causes.”³⁶ Article 2 aims to curb the demand within member states that drives the illegal import, export, and trade in cultural property.³⁷ Member states also agree, “consistent with the laws of each [s]tate[, . . . [t]o prevent by all appropriate means transfers of ownership of cultural property likely to promote [its] illicit import or export.”³⁸ Member states have taken different approaches to comply with this provision. For example, Egypt and Jordan have outlawed the antiquities trade, while Greece and Cyprus regulate the transfer of certain types of cultural property.³⁹

The obligation to undertake certain responsibilities, “consistent with the laws of each [s]tate,” surfaces in provisions throughout the 1970 Convention.⁴⁰ Some have argued that the phrase should be interpreted as limiting member states’ obligations to those that are recognized by (and do not run counter to) each state’s domestic law.⁴¹ Stamatoudi contends, however, that the former

³¹ 1970 Convention, *supra* note 9, art. 4(b). The 1970 Convention’s definition of cultural heritage properly identifies cultural property as part of, and not the same as, cultural heritage. Kathryn Last, *The Resolution of Cultural Property Disputes: Some Issues of Definition*, in *RESOLUTION OF CULTURAL PROPERTY DISPUTES* 53, 57 (Int’l Bureau of the Permanent Court of Arbitration ed., 2004).

³² *E.g.*, 1970 Convention, *supra* note 9, art. 5(f) (requiring member states to “tak[e] educational measures to stimulate and develop respect for the cultural heritage of all [s]tates”).

³³ *Id.* arts. 2, 13.

³⁴ *Id.* arts. 6–7.

³⁵ *Id.* arts. 5, 10.

³⁶ *Id.* art. 2(2).

³⁷ Craig Forrest, *Australia’s Protection of Foreign States’ Cultural Heritage*, 27 U. N.S.W. L.J. 605, 615 (2004).

³⁸ 1970 Convention, *supra* note 9, art. 13(a).

³⁹ STAMATOUDI, *supra* note 10, at 52 & 52 nn.56–57.

⁴⁰ *E.g.*, 1970 Convention, *supra* note 9, art. 13; *id.* art. 7 (phrasing the obligation “consistent with national legislation”).

⁴¹ STAMATOUDI, *supra* note 10, at 47, 51 (citing Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 378 (1982)).

interpretation is incompatible with the ordinary concept of what it means to agree to a treaty.⁴² States that agree to be bound by a treaty do so “in full knowledge and conscience of the obligations it undertakes.”⁴³ Agreeing to a treaty means that “[s]tates should make their best efforts to conform to [the treaty’s] obligations, even if conformity impels them to supplement, update[,] or otherwise make their existing laws more effective.”⁴⁴ The 1970 Convention does not mandate how member states should execute their obligations; it merely indicates that nations can decide for themselves how to achieve the mandated result.⁴⁵

Member states must implement measures to protect cultural property. Specifically, member states must establish import and export controls for cultural property.⁴⁶ Members are obligated to work to prevent cultural property from illegally leaving their borders by establishing and publishing a system of mandatory export certificates.⁴⁷ Any cultural property exported from a member state must be accompanied with appropriate certification.⁴⁸

In the event that the source nation’s measures fail to prevent the illicit export of cultural property, market nations must take further steps to protect the cultural property, provided the cultural property meets certain requirements.⁴⁹ Only “cultural property [that was] stolen from a museum . . . or similar institution” and documented in that institution’s inventory is covered by Article 7’s protective measures.⁵⁰ Member states must prohibit the importation of such property.⁵¹ Furthermore, member states must “take appropriate steps to recover and return [the] cultural property.”⁵² For example, in 2005, a golden brooch seahorse was stolen from a Turkish museum.⁵³ German authorities recovered

⁴² *Id.* at 51.

⁴³ *Id.* at 48.

⁴⁴ *Id.* at 51–52. This interpretation seems to conform with Article 31 of the Vienna Convention on the Law of Treaties. See *infra* note 130.

⁴⁵ STAMATOUDI, *supra* note 10, at 48.

⁴⁶ 1970 Convention, *supra* note 9, art. 6.

⁴⁷ *Id.*

⁴⁸ *Id.* art. 6(a)–(b).

⁴⁹ See *infra* note 77 (highlighting the distinction between source nations and market nations).

⁵⁰ 1970 Convention, *supra* note 9, art. 7(b)(i). The 1970 Convention hints at the meaning of “similar institutions.” Article 5 mandates that member states establish “scientific and technical institutions . . . required to ensure the preservation and presentation of cultural property.” *Id.* art. 5(c). The definition includes a non-exhaustive list of examples: “museums, libraries, archives, laboratories, workshops.” *Id.* As the 1970 Convention allows each member state to designate its own cultural property, Article 5 must allow each state to determine what types of institutions are necessary to preserve and present its particular cultural property.

⁵¹ *Id.* art. 7(b)(i).

⁵² *Id.* art. 7(b)(ii). While vague, the term “appropriate steps” should supplement, rather than replace, existing recovery measures. STAMATOUDI, *supra* note 10, at 50.

⁵³ *Recent Restitution Cases of Cultural Objects Using the 1970 Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/recent-restitution-cases-of-cultural-objects-using-the-1970-convention/> (last visited Aug. 17, 2013) [hereinafter *Recent Restitution*].

the brooch in 2012 and returned it to Turkey in March of 2013.⁵⁴ Also, member states are bound “to prevent [their] museums and similar institutions . . . from acquiring [such] cultural property.”⁵⁵ While this section may be considered the teeth of the 1970 Convention, it also represents one of the 1970 Convention’s greatest weaknesses.⁵⁶

Member states have the right to designate objects as inalienable.⁵⁷ If the inalienable object is somehow exported, all member states are obligated “to facilitate [the object’s] recovery.”⁵⁸ For example, China has declared much of its cultural property inalienable.⁵⁹ As a result, Australia complied with a Chinese request for the return of dinosaur eggs stolen from within China’s borders.⁶⁰

Finally, member states agree to take steps to combat the illicit transfer of cultural property through education. They must utilize education to restrict the movement of cultural property illegally exported from another member

Cases]. While this article includes examples of cultural property returned in accordance with 1970 Convention, sometimes the 1970 Convention may not have actually been utilized to effect the return of the property but may, nonetheless, exemplify the specific principle of the 1970 Convention. See UNESCO, The Fight Against the Illicit Trafficking of Cultural Objects—The 1970 Convention: Past and Future, Mar. 15–16, 2011, *Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 Years After Its Adoption*, 4, CLT/2011/CONF.207/7 (highlighting that “there have been returns of cultural property in conformity with the 1970 Convention, [however] many of these have taken place without direct use of the [1970 Convention’s] mechanisms”).

⁵⁴ *Recent Restitution Cases*, *supra* note 53. Source states must request such action through diplomatic channels. 1970 Convention, *supra* note 9, art. 7(b)(ii).

⁵⁵ 1970 Convention, *supra* note 9, art. 7(a).

⁵⁶ See *infra* Section 2.4 (outlining some weaknesses of the 1970 Convention).

⁵⁷ 1970 Convention, *supra* note 9, art. 13(d).

⁵⁸ *Id.* Article 13(d) “should . . . be considered in conjunction with other provisions [of the 1970 Convention] which seek the same end.” STAMATOUDI, *supra* note 10, at 53. Member states, consistent with their domestic laws, “undertake . . . to admit actions for recovery of lost or stolen items of cultural property brought by . . . the rightful owners.” 1970 Convention, *supra* note 9, art. 13(c). Furthermore, aggravated member states may expect that their cultural property laws will be enforced by the courts of other member states. John Alan Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, 28 ENVIRONS ENVTL. L. & POL’Y J. 1, 45 (2004). For example, China, “[i]n adherence with the . . . [1970] Convention, [utilized the Danish legal system to effect] the return of . . . 156 [illegally exported] cultural relics.” *Recent Examples of Successful Operations of Cultural Property Restitutions in the World*, UNESCO, http://portal.unesco.org/culture/en/ev.php-URL_ID=36505&URL_DO=DO.TOPIC&URL_SECTION=201.html (last visited Aug. 17, 2013).

⁵⁹ China, *Report on the Application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, §6(d) (2011), <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/china.2010-11natrep.1970.en.pdf> [hereinafter Report from China]; STAMATOUDI, *supra* note 10, at 52 & n.55. The Chinese government established ownership over its cultural relics and greatly regulates and, in some circumstances, prohibits export thereof. Gao Sheng, *International Protection of Cultural Property: Some Preliminary Issues and the Role of International Conventions*, 2008 SING. Y.B. INT’L L. 57, 69–71.

⁶⁰ See Forrest, *supra* note 37, at 605 (explaining that the dinosaur eggs “should be impossible to obtain on the market since China imposes a strict export prohibition” on cultural property).

state.⁶¹ Member states must “tak[e] educational measures to stimulate and develop respect for the cultural heritage of all [s]tates.”⁶²

2.3 Compliance Mechanisms and the 1970 Convention

The 1970 Convention contains a single compliance mechanism. Member states agree to “impose penalties or administrative sanctions on any person responsible for [violating] . . . Articles [6(b)] and [7(b)].”⁶³ The 1970 Convention provides no further mandate, leaving member states to adopt penalties and sanctions as they see fit.⁶⁴ When a dispute occurs, UNESCO will “extend its good offices” to member states.⁶⁵ “Good offices” refers to an organization that facilitates negotiations between disputing parties.⁶⁶ The 1970 Convention requires that at least two parties to the dispute request good offices.⁶⁷

2.4 Some Criticisms of the 1970 Convention

The 1970 Convention plays a major role in the protection of member states’ cultural property,⁶⁸ however, critics point out that it has underperformed in

⁶¹ 1970 Convention, *supra* note 9, art. 10(a). The provision also requires antique dealers to maintain records of the origins of cultural property that they buy and sell. *Id.* However, even though Article 10’s records requirement is limited by the text to antique dealers, experts have interpreted the obligation to extend to “all dealers in cultural goods.” STAMATOUDI, *supra* note 10, at 62 & n.90 (citing *Convention Concernant les Mesures à Prendre pour Interdire et Empêcher l’Importation l’Exportation et le Transfer de Propriété Illicites des Biens Culturels* (Paris, 1970) *Commentaire et Aperçu de Quelques Mesures Nationales d’Exécution*, 83, CC-86/WS/40 (1986) (by Ridha Fraoua)). The education provisions of the 1970 Convention give the member states latitude to use discretion when implementing these provisions. *Id.* at 61. The states are, however, bound to implement them. *Id.*

⁶² 1970 Convention, *supra* note 9, art. 5(f).

⁶³ *Id.* art. 8.

⁶⁴ STAMATOUDI, *supra* note 10, at 54. Some argue that people will not be dissuaded from violating Articles 6(b) and 7(b) by the presences heavy sanctions unless the laws are strictly enforced. *See* UNESCO, *National Legal Control of Illicit Traffic in Cultural Property*, 64, CLT-83/WS/16 (May 11, 1983) (by Lyndel V. Prott & P.J. O’Keefe) (discussing issues that lawmakers should be aware of when implementing sanctions and penalties in domestics schemes).

⁶⁵ 1970 Convention, *supra* note 9, art. 17(5).

⁶⁶ *See* VRATISLAV PECHOTA, *THE QUIET APPROACH; A STUDY OF THE GOOD OFFICES EXERCISED BY THE UNITED NATIONS SECRETARY-GENERAL IN THE CAUSE OF PEACE* 13 (1972)) (explaining that “in their traditional meaning, [good offices] consist [of] a third party—[g]overnment, international organization, individual—attempting to bring conflicting parties to a negotiating table without interfering in the negotiation themselves”); Sabine von Schorlemer, *UNESCO Dispute Settlement*, in *STANDARD-SETTING IN UNESCO* 73, 75 (Abdulqawi A. Yusuf ed., 2007) (describing the general role of good offices as “mediation or dispute management”; however, “[t]he functions of good offices [ultimately] depend on the mandate given”). The 1970 Convention grants its good offices a “far-reaching mandate.” *Id.*

⁶⁷ 1970 Convention, *supra* note 9, art. 17(5).

⁶⁸ *See* Souren Melikian, *How UNESCO’s 1970 Convention Is Weeding Looted Artifacts out of the Antiquities Market*, BLOUINARTINFO.COM (Aug. 31, 2012), <http://www.blouinartinfo.com/news/story/822209/how-unescos-1970-convention-is-weeding-looted-artifacts-out-of-the-antiquities-market> (describing the factors the make the 1970 Convention “increasingly effective “ in “reconfiguring the [art] market”).

certain respects.⁶⁹ Some weaknesses of the 1970 Convention include the limited scope of protection it provides and its requirement that requesting states pay the costs of returning their cultural property.

One criticism of the 1970 Convention is the scope of its protection.⁷⁰ Many of the 1970 Convention's protections apply only to cultural property that was stolen from certain institutions⁷¹ and was also documented in the institution's inventory.⁷² These limitations mean that neither cultural property taken from private collections nor cultural property taken from a qualifying institution but unaccounted for in that institution's inventory are protected by certain provisions of the 1970 Convention.⁷³ In other words, only cultural property that falls under these provisions is given the full protection of the 1970 Convention. Moreover, the 1970 Convention is not retroactive; it applies only to cultural property stolen after the convention was in force in both nations.⁷⁴

Another critique of the 1970 Convention concerns its mandate requesting that states pay the cost of returning their stolen cultural property.⁷⁵ This provision may bar source nations from effecting (or requesting) the return of their cultural property.⁷⁶ The economic disparity that exists between many source nations and market nations magnifies this problem.⁷⁷

While certain limitations have been identified, the 1970 Convention continues to protect cultural property throughout the world. Its broad definition of cultural property allows each nation to determine which property is worthy of international protection. With measures designed to quell demand and others geared toward repatriation, the 1970 Convention utilizes a comprehensive

⁶⁹ Sheng, *supra* note 59, at 64.

⁷⁰ *Id.*

⁷¹ See *supra* note 50 and accompanying text (discussing which institutions are covered by Article 7(b)(i)).

⁷² 1970 Convention, *supra* note 9, art. 7(b)(i).

⁷³ See Sheng, *supra* note 59, at 64 (highlighting that Article 7 protects "only objects stolen from museums, public monuments or similar institutions, and listed as part of the inventory of such institutions" (emphasis added)). Sheng notes that "the scope for import control is narrowed to a large extent." *Id.*

⁷⁴ Cohan, *supra* note 58, at 48. The text of the treaty requires that the 1970 Convention be "[in] force . . . in both [s]tates concerned." 1970 Convention, *supra* note 9, art. 7(b)(ii).

⁷⁵ 1970 Convention, *supra* note 9, art. 7(b)(ii) (noting the source nation must compensate an innocent purchaser).

⁷⁶ See John Moustakas, Note, *Group Rights in Cultural Property: Justifying Strict Inalienability*, 74 CORNELL L. REV. 1179, 1219 (1989) (explaining that "[s]ome foreign museums are so well-endowed that they may outpace culturally rich, yet [less] economically [developed], states bidding on the open market, merely to maintain their own cultural patrimony").

⁷⁷ See Michael L. Dutra, *Sir, How Much is that Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China*, 5 ASIAN-PAC. L. & POL'Y J. 62, 65 (2004) (explaining that source nations are generally less developed countries that are rich in cultural property with governments that often lack the means or will to protect their cultural property from illicit appropriation or exportation). Market nations are usually economically developed, lack a supply of cultural property, and have citizens with the means and desire to own the cultural property of another state. *Id.* at 65–66. The governments of market nations may lack the political will to stem the demand for cultural property within their borders. *Id.* at 75.

approach to protecting cultural property. This comprehensive approach has made it an effective cultural property protection treaty.

3. ELEPHANTS AND THE 1970 CONVENTION

African member states can use the 1970 Convention to protect elephants. Elephants will meet the 1970 Convention's definition of cultural property. While most of the 1970 Convention's provisions apply to all cultural property, the protective measures of Article 7 are reserved for cultural property that meets further specifications.⁷⁸ Certain elephant populations can qualify for these provisions and would be entitled to protection under Article 7.

3.1 Elephants as Cultural Property Under the 1970 Convention

Elephants must meet the 1970 Convention's definition of cultural property to benefit from the treaty's protection. African member states must designate elephants, and parts thereof, as property "of importance for . . . history . . . or science."⁷⁹ Upon receiving official designation, elephants qualify as cultural property for the purposes of the 1970 Convention because elephants belong to a category listed in Article 1.

3.1.1 African Member States Must Officially Designate Elephants as Property "of [I]mportance for . . . [H]istory . . . or [S]cience"

In order to protect elephants under the 1970 Convention, African member states must first officially designate elephants, on either "religious or secular grounds," as property "of importance for . . . history . . . or science"⁸⁰ within their domestic legal schemes.⁸¹ Elephants can be designated as objects "of importance" because of the elephant's significance to either the environment or the cultural history of a particular member state. Accordingly, African member states should follow the Japanese model and protect elephants under cultural property law.

3.1.1.1 Elephants are "of [I]mportance for [the] . . . [S]cience" of Many African Member States

African member states can designate elephants, "on secular grounds," as property "of importance for . . . science"⁸² because elephants are a keystone species.⁸³ The term "keystone species" denotes "a species that has a disproportionate effect on the persistence of other species and whose removal

⁷⁸ See *supra* note 50 and accompanying text (discussing the requirements for protection under Article 7).

⁷⁹ 1970 Convention, *supra* note 9, art. 1.

⁸⁰ *Id.*

⁸¹ See *supra* note 26 (highlighting different approaches taken by member states to officially designate their cultural property).

⁸² 1970 Convention, *supra* note 9, art. 1.

leads, often indirectly, to the loss of many other species in the community.”⁸⁴ Elephants are very important to their ecosystems because they increase biodiversity.

Elephants increase plant biodiversity by spreading seeds.⁸⁵ Elephants eat many different types of plants; the level of diet diversity is contingent on available food sources and varies between habitats.⁸⁶ Elephants can also roam over a vast territory.⁸⁷ During their travels, elephants deliver seeds to the environment through dung expulsion.⁸⁸ Elephants disperse more seeds, over longer distances, than any other animal in the elephant’s habitat.⁸⁹ Moreover, a number of plants have seeds that are dispersed exclusively by elephants.⁹⁰ If elephant populations were significantly reduced or wiped out entirely, these ecosystems would suffer greatly.⁹¹

Also, elephants benefit their ecosystems by creating gaps in heavily vegetated areas.⁹² Dense forests create a habitat dominated by a limited number of plant species that form a thick canopy, blocking much of the sunlight from reaching the forest floor.⁹³ Elephants act as natural “bulldozers,” creating space in densely vegetated forests, which allows more plant species access to the sunlight.⁹⁴ The gaps cleared or expanded by elephants open the forest floor for other animals as well.⁹⁵ These open areas give other animals access to water and sunlight, leading to a more diverse and productive habitat.⁹⁶ As a keystone species, removing elephants from their ecosystem would likely “reduce biological diversity and increase extinction rates over much of Africa.”⁹⁷ Therefore, any African nation that has elephants within its borders

⁸³ Graham I.H. Kerley et al., *Effects of Elephants on Ecosystems and Biodiversity*, in ELEPHANT MANAGEMENT A SCIENTIFIC ASSESSMENT FOR SOUTH AFRICA 146, 155 (R.J. Scholes & K.G. Mennell eds., 2008).

⁸⁴ KRISTINA A. VOGT ET AL., ECOSYSTEMS: BALANCING SCIENCE WITH MANAGEMENT 65 (1997).

⁸⁵ Joyce Poole, *The African Elephant*, in STUDYING ELEPHANTS 1, 6 (Kadzo Kangwana ed., Afr. Wildlife Found. Technical Handbook Ser. 7, 1996).

⁸⁶ Ahimsa Campos-Arceiz & Steve Blake, *Megagardeners of the Forest—The Role of Elephants in Seed Dispersal*, 37 ACTA OECOLOGICA 542, 543 (2011).

⁸⁷ See Poole, *supra* note 85, at 6 (explaining that “[i]ndividual home ranges vary from 15 to 3,700 km²” (internal citations omitted)).

⁸⁸ Campos-Arceiz & Blake, *supra* note 86, at 548.

⁸⁹ *Id.*

⁹⁰ *Id.* at 547 & tbl.3.

⁹¹ See *id.* at 550 (determining that the consequences of losing elephant populations would include “an increase in the vulnerability of ecosystem function”).

⁹² David Western, *The Ecological Role of Elephants in Africa*, 12 PACHYDERM, 1989, at 42, 43.

⁹³ *Id.* (noting that few plants can survive in the low-light environment).

⁹⁴ *Id.* at 43–44.

⁹⁵ *Id.* at 44. The ancestors of elephants may have made gaps in the prehistoric African landscape, which created conditions conducive for human’s forest-dwelling ancestors to move into open spaces. John A. Van Couvering, *Proboscideans, Hominids, and Prehistory*, in ELEPHANT THE ANIMAL AND ITS IVORY IN AFRICAN CULTURE 63, 71 (Doran H. Ross ed., 1992) (explaining that “adaptation to open country [was] basic to human evolution”).

⁹⁶ Van Couvering, *supra* note 95, at 63, 70.

could designate elephants “on secular grounds” as property “of importance for . . . science.”⁹⁸

3.1.1.2 Elephants are “of [I]mportance for [the] . . . [H]istory” of Many African Member States

The elephant’s importance to science seems sufficient for a member state to classify elephants as cultural property; however, elephants are also “of importance for [the] . . . history”⁹⁹ of many African member states.¹⁰⁰ In Cameroon, the elephant is traditionally linked to local leadership.¹⁰¹ Rulers surrounded themselves with elephant ivory, for example, by placing large tusks around their thrones.¹⁰² In Zimbabwe, some members of the Shona people consider the elephant to be their totem animal.¹⁰³ Consuming the wrong part of the totem animal constitutes a taboo and can result in mystical harm befalling the trencherman.¹⁰⁴ In Angola, the elephant plays a central role in Kongo genesis mythology.¹⁰⁵ These are merely a few examples of the elephant’s influence on different cultures throughout Africa. Losing the elephants upon which these traditions are based would sever a connection between each culture’s past and future.¹⁰⁶ Thus, member states could designate elephants as “property which, on religious or secular grounds,” are “of importance for . . . history.”¹⁰⁷

⁹⁷ Western, *supra* note 92, at 45.

⁹⁸ 1970 Convention, *supra* note 9, art. 1.

⁹⁹ *Id.*

¹⁰⁰ See *Wild Fauna and Flora as a Cultural and Economic Asset*, in CONSERVATION OF NATURE AND NATURAL RESOURCES IN MODERN AFRICAN STATES, at 47, 47 (Gerald G. Watterson et al. eds., IUCN Publications New Ser. No. 1, 1963) [hereinafter *Cultural and Economic Asset*] (highlighting that Africa’s fauna has helped to shape many cultures therein).

¹⁰¹ Geary, *Elephants, Ivory, and Chiefs the Elephant and the Arts of the Cameroon Grassfields*, in ELEPHANT THE ANIMAL AND ITS IVORY IN AFRICAN CULTURE, *supra* note 95, at 229, 230 (explaining that when an elephant was killed, the leader claimed parts of the animal and distributed other parts to important community members, thereby strengthening political alliances). Elephants also represented the wilderness, a place of danger that only leaders could enter without fear of being killed by its dangerous inhabitants. *Id.* at 231.

¹⁰² *Id.* at 232.

¹⁰³ Nisbert Taringa, *How Environmental Is African Traditional Religion?*, 35 EXCHANGE 191, 193, 206 (2006).

¹⁰⁴ *Id.* at 206 (specifying that eating “the heart or trunk of an elephant” could cause the offender’s teeth to fall out).

¹⁰⁵ Cosentino, *Talking (Grey) Heads Elephant as Metaphor in African Myth and Folklore*, in ELEPHANT THE ANIMAL AND ITS IVORY IN AFRICAN CULTURE, *supra* note 95, at 81, 87.

¹⁰⁶ See *Cultural and Economic Asset*, *supra* note 100, at 47 (noting that the loss of the values instilled by local traditions would be detrimental to the human experience).

¹⁰⁷ 1970 Convention, *supra* note 9, art. 1.

3.1.1.3 African Member States Should Emulate the Japanese Framework for Protecting Important Animals Under Cultural Property Law

Japan utilizes cultural property law to protect important animals.¹⁰⁸ In 1950, Japan created the Law for the Protection of Cultural Property (Japan's Law).¹⁰⁹ Japan's Law defines animals and plants, "which are of significant scientific value to Japan" as cultural property.¹¹⁰ As of April 1, 2012, the Japanese government had officially designated 193 animals as cultural property,¹¹¹ including the dugong (*Dugong dugon*).¹¹² While Japan protects animals under traditional conservation regimes,¹¹³ species classified as cultural property benefit from additional legal protections,¹¹⁴ both within Japan and abroad.

In 1997, the United States Department of Defense (DOD) issued a plan to build a military facility in Henoko Bay, Okinawa, Japan.¹¹⁵ In response, environmental groups filed *Dugong v. Rumsfeld*,¹¹⁶ "alleging that [the DOD] failed to comply with the . . . National Historical Preservation Act (NHPA)."¹¹⁷ The NHPA mandates that before the United States starts an "undertaking," it must "take into account the effect of the undertaking on [protected] property for purposes of avoiding or mitigating any adverse effects."¹¹⁸ This requirement applies to projects that affect property listed on a foreign nation's "equivalent of the National Register."¹¹⁹ In denying the DOD's motion for summary

¹⁰⁸ Bunkazai hogo-hō [Law for the Protection of Cultural Property], Law No. 214 of 1950, art. 2, para. 4 (Japan), translation available at http://www.tobunken.go.jp/~kokusen/ENGLISH/DATA/Htmlfg/japan/japan01e.html#_CHAPTER_I#_CHAPTER_I, amended by Law No. 7 of 2007.

¹⁰⁹ See generally, *id.*

¹¹⁰ *Id.* art. 2(4). The law seems to encompass animals with significant cultural value as well. See *infra* note 121 (discussing the cultural significance of a particular protected species).

¹¹¹ AGENCY FOR CULTURAL AFFAIRS, POLICY OF CULTURAL AFFAIRS IN JAPAN—FISCAL 2012, at 42 (2012) (Japan), available at http://www.bunka.go.jp/english/pdf/h24_chapter_06.pdf.

¹¹² Memorandum of Points and Authorities in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss at 3, *Dugong v. Rumsfeld*, No. C 03-4350 MPH, 2005 WL 522106 (N.D. Cal. 2005) [hereinafter *Dugong Memo*]. Dugong are similar to manatees: both are "sirenians, a group of marine mammals that scientists believe evolved from elephants about 60 million years ago." John Roach, *Rare Japanese Dugong Threatened by U.S. Military Base*, NAT'L GEOGRAPHIC SOC'Y (Aug. 23, 2007), <http://news.nationalgeographic.com/news/2007/08/070823-dugongs.html>.

¹¹³ CYRILLE DE KLEMM IN COLLABORATION WITH CLARE SHINE, BIOLOGICAL DIVERSITY CONSERVATION AND THE LAW: LEGAL MECHANISMS FOR CONSERVING SPECIES AND ECOSYSTEMS 68 (IUCN Env'tl. Policy & Law Paper No. 29, 1993) (including Japan's environmental protection agency and CITES).

¹¹⁴ *Id.*

¹¹⁵ *Dugong v. Rumsfeld*, No. C 03-4350 MPH, 2005 WL 522106, at *2 (N.D. Cal. Mar. 2, 2005). Henoko bay is "the best of the last habitat for the dugong." Roach, *supra* note 112 (quoting "Peter Galvin, conservation director for the Center for Biological Diversity in Shelter Cove, California").

¹¹⁶ No. C 03-4350 MPH, 2005 WL 522106 (N.D. Cal. Mar. 2, 2005).

¹¹⁷ *Id.* at *1.

¹¹⁸ 16 U.S.C. § 470a-2 (2012).

¹¹⁹ *Id.*

judgment,¹²⁰ the court determined that the dugong was “property” for the purposes of the NHPA¹²¹ and thus entitled to the NHPA’s protection.¹²²

African member states should follow Japan’s example and classify elephants as cultural property within their own domestic legal schemes. African states could designate elephants as “of importance for . . . science”¹²³ because elephants play a vital role in their ecosystems by sustaining biodiversity. Moreover, like their dugong cousins,¹²⁴ elephants contribute to the cultural history of their host nation. Thus, African countries could designate elephants as property “of importance for . . . history.”¹²⁵ Regardless of whether elephants are “of importance for [either] . . . history . . . or science,”¹²⁶ official designation is required for elephants to enjoy the protection of the 1970 Convention.

3.1.2 *Elephants Belong to a Category Listed in Article 1*

To receive protection under the 1970 Convention, elephants must satisfy the second element of the treaty’s definition of cultural property: elephants must belong to a category listed in Article 1(a)–(k).¹²⁷ Article 1(a) extends the 1970 Convention’s protection to “[r]are collections and specimens of fauna, flora, minerals.”¹²⁸ Utilizing standard methods of treaty interpretation,¹²⁹ Article 1(a) can and should be interpreted to include

¹²⁰ *Dugong*, 2005 WL 522106, at *20. Initially, the DOD filed a motion to dismiss; however, it was later “converted into a motion for summary judgment.” *Id.*

¹²¹ *Id.* at *11–12. The dugong plays a central role in “Okinawan creation mythology,” sometimes as the creator of the local people. Dugong Memo, *supra* note 112, at 3 (citing Declaration of Isshu Maeda in Support of Plaintiffs’ Opposition to Defendants’ Motion to Dismiss ¶¶ 6–7, *Dugong v. Rumsfeld*, No. C 03-4350 MPH, 2005 WL 522106 (N.D. Cal. 2005) [hereinafter Maeda Decl.]). According to local tradition, dugongs can both create tsunamis and act as good luck for fisherman. *Id.* (citing Maeda Decl., ¶¶ 8–9, 22, 26–30). Traditionally, dugong meat has been considered sacred and was to be consumed by royalty. *Id.* (citing Maeda Decl., ¶¶ 10–12).

¹²² *Dugong*, 2005 WL 522106, at *12. The court also determined that Japan’s Law was equivalent to the National Register. *Id.* at *8. In a later case, the court “reaffirm[ed] that the Okinawa dugong is protected property under the NHPA.” *Okinawa Dugong v. Gates*, 543 F. Supp. 2d 1100, 1086 (N.D. Cal. 2008). The court determined that the DOD did not take the dugong into account as required by the NHPA and “ordered [the DOD] to comply with [§ 470a-2].” *Id.* at 1112. While the legal actions created procedural roadblocks to protect the dugong, the United States military recently received approval to move forward with construction of the base. Hiroko Tabuchi & Thom Shanker, *Deal to Move Okinawa Base Wins Approval*, N.Y. TIMES, Dec. 27, 2013, http://www.nytimes.com/2013/12/27/world/asia/deal-to-move-okinawa-base-wins-approval.html?_r=0.

¹²³ 1970 Convention, *supra* note 9, art. 1.

¹²⁴ See *supra* note 112 (noting the relationship between elephants and dugongs).

¹²⁵ 1970 Convention, *supra* note 9, art. 1.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* art. 1(a).

¹²⁹ Articles 31 and 32 of the Vienna Convention on the Law of Treaties outline standard treaty interpretation methods. See Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 VA. J. INT’L L. 431, 433 (2004) (describing the Vienna Convention as a treaty “that codifies the customary international canons governing international agreements”).

elephants. Treaty interpretation involves looking first to the ordinary meaning of the treaty's words¹³⁰ and, if necessary, confirming that interpretation by referring to the treaty's preparatory work.¹³¹ The ordinary meaning of Article 1(a)'s words require the inclusion of living elephants under Article 1(a). The 1970 Convention's preparatory work confirms that elephants belong to Article 1(a).

3.1.2.1 According to the Ordinary Meaning of the 1970 Convention's Words, Elephants Belong to Article 1(a)

When interpreting a treaty clause, the first step is to determine the ordinary meaning of the words,¹³² "in light of [the treaty's] object and purpose."¹³³ Read as a single "term[,] object and purpose refers broadly to a treaty's goals and the character of the means employed to achieve them."¹³⁴ The goal of the 1970 Convention is preventing the loss of cultural property resulting from "illicit import, export[,] and transfers of ownership."¹³⁵ The treaty recognizes that nations must cooperate to achieve this goal.¹³⁶ Therefore, the ordinary meaning of the 1970 Convention's words must be interpreted in light of the 1970 Convention's object and purpose: protecting all member states' cultural property from illicit import, export, and transfer of ownership through international cooperation.

The 1970 Convention's object and purpose, however, does not seem to alter the ordinary meaning of any language contained in Article 1. The word "rare" retains its original meaning: "unusual" or "uncommon."¹³⁷ Similarly, the meaning of "collection" remains unchanged and refers to a group of "specimens, [artwork,] writings, etc., gathered together."¹³⁸ The definition of "collection" notably contains the word "specimens." Next, the term

¹³⁰ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

¹³¹ *Id.* art. 32.

¹³² The ordinary meaning of a treaty's words can be ascertained by using dictionaries. *See, e.g.*, Abbott v. Abbott, 130 S. Ct. 1983, 1991 (2010) (using a dictionary to define a word at issue within a treaty provision); *Oil Platforms (Iran v. U.S.)*, 1996 I.C.J. 803, ¶ 45 (Dec. 12) (utilizing multiple dictionaries to determine a word's meaning).

¹³³ Vienna Convention, *supra* note 130, art. 31.

¹³⁴ David S. Jonas & Thomas N. Saunders, *The Object and Purpose of a Treaty: Three Interpretive Methods*, 43 VAND. J. TRANSNAT'L L. 565, 580 (2010).

¹³⁵ *See* 1970 Convention, *supra* note 9, art. 2(1) (mandating that member states "recognize that the illicit import, export and transfer of ownership of cultural property is [a primary cause] of the impoverishment of [a country's] cultural heritage" and that member states must "undertake to oppose such practices").

¹³⁶ *Id.* at 234 pmbl. The preamble may be used in treaty interpretation. Vienna Convention, *supra* note 130, art. 31(2).

¹³⁷ THE AMERICAN COLLEGE DICTIONARY 1004 (C. L. Barnhart & Jess Stein et al. eds., 1965) [hereinafter 1965 AMERICAN]; 8 THE OXFORD ENGLISH DICTIONARY 154 (James A. H. Murray et al eds., reprt. 1961) [hereinafter OXFORD 1961].

¹³⁸ 1965 AMERICAN, *supra* note 137, at 236; 1 OXFORD 1961, *supra* note 137, at 620–621 (defining collection as "a number of objects collected or gathered together, viewed as a whole; a group of things collected

“specimen” means “an individual taken as exemplifying a whole mass or number; a typical animal, plant, mineral, part, etc.”¹³⁹ Finally, the word “fauna” is “[a] collective term applied to the animals or animal life of any particular region.”¹⁴⁰

Applying the ordinary meaning of the 1970 Convention’s words to elephants indicates that elephants fit perfectly into Article 1(a). African elephants are rare. Populations of African elephants are cataloged in Appendices I and II of CITES.¹⁴¹ Appendix I lists animals that are “threatened with extinction,”¹⁴² while Appendix II lists “all species which although not necessarily now threatened with extinction may become so unless” preventative measures are taken.¹⁴³ A country’s elephant population, gathered together within a nation’s borders (or a national park), qualifies as a collection. Similarly, each elephant is a specimen because it serves as an example of the nation’s elephant population. Elephants, as animals of a particular region, are clearly fauna.

Under the ordinary meaning of the 1970 Convention’s language, elephants qualify as “[r]are collections and specimens of fauna.”¹⁴⁴ Accordingly, elephants, in no uncertain terms, belong to a category listed in Article 1. Thus, elephants fulfill the second step necessary to meet the 1970 Convention’s definition of cultural property.

3.1.2.2 *The 1970 Convention’s Preparatory Work Confirms that Elephants Fall Under Article 1(a)*

An evaluation of the 1970 Convention’s preparatory work confirms that Article 1 encompasses elephants.¹⁴⁵ “[T]he preparatory work of the treaty [may be utilized] . . . to confirm the [treaty’s] meaning resulting from the [initial interpretation].”¹⁴⁶ Examining the treaty’s preparatory work indicates that the

and arranged: . . . scientific specimens, objects of interest, works of art, etc.”). The 1970 Convention offers no insight as to the requisite size of a particular collection.

¹³⁹ 1965 AMERICAN, *supra* note 137, at 1159; 10 OXFORD 1961, *supra* note 137, at 549 (defining specimen as “[a]n animal, plant, or mineral, a part . . . serving as an example . . . for purposes of investigation or scientific study”). Article 1(a) of the 1970 Convention seems to mirror contemporary definitions of specimens. Compare 1970 Convention, *supra* note 9, art. 1(a) (“fauna, flora, mineral, anatomy . . .”), with 1965 AMERICAN, *supra* note 137, at 1159 (“animal, plant, mineral, part, etc.”), and 10 OXFORD 1961, *supra* note 137, at 549 (“animal, plant, or mineral, a part”).

¹⁴⁰ 1965 AMERICAN, *supra* note 137, at 440; 4 OXFORD 1961, *supra* note 137, at 106.

¹⁴¹ CITES, *supra* note 1, apps. I–II.

¹⁴² *Id.* art. II(1).

¹⁴³ *Id.* art. II(2)(a). Appendix II notes that “[o]nly the populations of Botswana, Namibia, South Africa and Zimbabwe [are listed in Appendix II]; all other populations are included in Appendix I.” *Id.* app. II.

¹⁴⁴ 1970 Convention, *supra* note 9, art. 1(a).

¹⁴⁵ Preparatory work, also known as *travaux préparatoires*, consists of materials created during the treaty drafting process. Martin Ris, Comment, *Treaty Interpretation and ICJ Recourse to Travaux Préparatoires: Towards a Proposed Amendment of Articles 31 and 32 of the Vienna Convention on the Law of Treaties*, 14 B.C. INT’L & COMP. L. REV. 111, 112 (1991).

¹⁴⁶ Vienna Convention, *supra* note 130, art. 32.

parties may have intended the term “[r]are collections and specimens of fauna, flora, mineral and anatomy” to have a special meaning.¹⁴⁷

The preparatory work contains definitions of cultural property from various international instruments.¹⁴⁸ One definition included the phrase “type specimens of flora and fauna.”¹⁴⁹ This phrase has a precise meaning: a “type specimen” is the specimen upon which a species’ zoological name is based.¹⁵⁰ The parties left “type specimens” out of the initial draft of the 1970 Convention. Instead, the preliminary draft defined cultural property as “rare specimens of *flora and fauna*.”¹⁵¹ This phrase also “cover[ed] notions [that had] a precise meaning for specialists.”¹⁵² While it is unclear what meaning was associated with the phrase, the parties—unwavering in their preference for language with a special meaning—settled on the term “[r]are collections and specimens of fauna, flora, minerals” for the 1970 Convention.¹⁵³

A search of historical writings turns up the phrase “rare collections and specimens of fauna, flora, mineral” used in two contexts: the term refers to animals, plants, and geological materials of a given location.¹⁵⁴ The term also refers to museums.¹⁵⁵ If the parties utilized the phrase “[r]are . . . specimens of fauna, flora, minerals” in Article 1(a), intending it to encompass wild organisms, then Article 1(a) clearly covers live elephants. Therefore, focus shall be turned to Article 1(a)’s words in the context of museums.

¹⁴⁷ According to the Vienna Convention, “[a] special meaning shall be given to a term if it is established that the parties so intended.” *Id.* art. 31(4).

¹⁴⁸ UNESCO, Preliminary Report Prepared in Compliance with Article 10.1 of the Rules of Procedure Concerning Recommendations to Member States and International Conventions Covered by the Terms of Article IV, Paragraph 4, of the Convention, ¶¶ 22–25, UNESCO Doc. SHC/MD/3 (Aug. 8, 1969) [hereinafter Preliminary Report].

¹⁴⁹ *Id.* ¶ 25.

¹⁵⁰ See *What Is a Type?* INT’L COMM’N ON ZOOLOGICAL NOMENCLATURE, <http://iczn.org/content/what-type> (last updated Aug. 24, 2012) (explaining that “type specimens” are the “objective standard of reference for the application of zoological names”) (citing INT’L COMM’N ON ZOOLOGICAL NOMENCLATURE, INTERNATIONAL CODE OF ZOOLOGICAL NOMENCLATURE art. 72.1 (W.D.L. Ride et al. eds., 4th ed. 1999)).

¹⁵¹ Preliminary Report, *supra* note 148, annex art. 1(g) (emphasis added).

¹⁵² *Id.* ¶ 35.

¹⁵³ 1970 Convention, *supra* note 9, art. 1(a).

¹⁵⁴ See, e.g., FRANCIS MASON, THE NATURAL PRODUCTION OF BURMAH, OR NOTES ON THE FAUNA, FLORA AND MINERALS OF THE TENASSERIM PROVINCES, AND THE BURMAN EMPIRE 239 (1850) (“Wild elephants are numerous in the interior . . . but they usually avoid settlements. I have often come upon them on the wild, lone banks of the Tenasserim.”); *The Royal Geographical Society of Australasia*, TRANSACTIONS, June 1894, at v (describing one of the society’s objectives as “obtain[ing] information on [Australasia’s] physical features, [its] fauna, flora, mineral resources [and] geological formation” through exploration). The terms “rare,” “collections,” and “specimens” were absent in this context.

¹⁵⁵ See, e.g., GEORGE C. MORANT, CHILI AND THE RIVER PLATE IN 1891 REMINISCENCES OF TRAVEL IN SOUTH AMERICA 70 (1891) (describing a museum in Buenos Aires as “contain[ing] specimens of the fauna, flora, mineral” of the country); John Barrett, *Latin America and Columbia*, 17 NAT’L GEOGRAPHIC MAG. 692, 708 (1906) (highlighting that “[t]he National Museum in Bogota contains rare specimens of fauna, flora, mineral and geological development which interests both the laymen and the specialist”).

In order to properly evaluate the phrase, the initial step must be to determine what constituted a museum in the eyes of the parties. The ordinary meaning of “museum” was an institution used for “keeping and exhibiting [art], scientific specimens, etc.”¹⁵⁶ Nothing in the ordinary meaning of “museum” seems to preclude institutions with living animals; however, the definition is vague and inconclusive.

Two pertinent definitions may illuminate the parties’ intention. In 1960, UNESCO passed a recommendation that defined “museum” as “any permanent establishment administered . . . for the purpose of preserving [and] studying . . . specimens of cultural value: . . . [including] *zoological gardens* and *aquariums*.”¹⁵⁷ UNESCO’s definition was nearly identical to a definition set forth, in 1951, by the International Council of Museums (ICOM).¹⁵⁸ In 1961, ICOM revised its definition of “museum” to mean an “institution which conserves and displays . . . collections of objects of cultural or scientific significance” including “*zoological gardens, aquaria, vivaria*, and other institutions which display *living specimens*, [as well as] . . . *natural reserves*.”¹⁵⁹ Slight differences notwithstanding, both the 1960 UNESCO definition and the 1961 ICOM definition expressly allow “museum” to mean an institution that contains living animals.

The *travaux préparatoires* indicates that the parties may have intended “[r]are collections and specimens of fauna, flora, mineral”¹⁶⁰ to have a special meaning: the parties may have intended it to encompass wildlife in nature. Alternatively, the parties may have intended to limit Article 1(a) to the context of museums. In either case, the language, carefully chosen by the parties, allows living animals to fall under Article 1(a). Thus, the parties to the 1970 Convention must have *intended* Article 1(a) to encompass living animals. Therefore, the preparatory work confirms the initial interpretation of the 1970 Convention: elephants belong to Article 1(a).

¹⁵⁶ 1965 AMERICAN, *supra* note 137, at 801 (referring to a museum as “a building or place”); 6 OXFORD 1961, *supra* note 137, at 781 (defining museum as “[a] building or portion of a building used as a repository for the preservation and exhibition of objects illustrative of antiquities, natural history, fine and industrial art”).

¹⁵⁷ UNESCO Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone, General Conference of UNESCO, 11th Sess., Nov. 14–Dec. 15, UNESCO Doc. CPG.61.VI.11 A at 125 ¶ 2 (Dec. 14, 1960) (emphasis added).

¹⁵⁸ *Development of the Museum Definition*, INT’L COUNCIL OF MUSEUMS, http://archives.icom.museum/hist_def_eng.html (last updated Jan. 7, 2009). UNESCO and ICOM maintain a close working relationship. See, e.g., Preliminary Report, *supra* note 148, ¶ 83 (noting that UNESCO could “call on” ICOM for “expert advice” when implementing the 1970 Convention).

¹⁵⁹ *Development of the Museum Definition*, *supra* note 158 (emphasis added).

¹⁶⁰ 1970 Convention, *supra* note 9, art. 1(a).

3.2 Certain Elephant Populations Can Qualify for Protection Under Article 7

Article 7 of the 1970 Convention grants specific protection to “cultural property stolen from a museum . . . or similar institution . . . provided that such [cultural] property [was] documented” in the institution’s inventory.¹⁶¹ Member states must prevent the importation of such cultural property, and, if such property gets into the country, members must take steps to find it and return it.¹⁶² Elephants will likely qualify for this protection if they are poached from a national park or state-owned game reserve. As discussed *supra*, the 1970 Convention does not define museum, but contemporary definitions of museum include institutions that house living animals.¹⁶³ ICOM’s definition of museum expressly included “natural reserves.”¹⁶⁴ Moreover, Article 7’s protections extend to cultural property “stolen from a museum . . . *or similar institution*.”¹⁶⁵ Including the term “similar institution” expands the scope of locations that will satisfy Article 7’s requirement to those necessary to protect and preserve a nation’s cultural property.¹⁶⁶ National parks and game reserves exist to protect and preserve wildlife.¹⁶⁷ Therefore, once a nation designates elephants as cultural property, national parks and game reserves will fall within the scope of Article 7’s protection as either museums or similar institutions.

The 1970 Convention adds a further requirement that the cultural property must be documented in the institution’s inventory.¹⁶⁸ An inventory is merely a list describing and enumerating the property contained in an institution.¹⁶⁹ Pairing DNA analysis with an accurate count of elephant populations would suffice as a viable elephant inventory.

3.2.1 Elephant Description

Scientists have created a DNA map of elephant populations by collecting multiple samples of dung from elephants across Africa.¹⁷⁰ Elephants from different geographic locations have different DNA signatures.¹⁷¹ Variations in

¹⁶¹ *Id.* art. 7(b)(i).

¹⁶² See *supra* text accompanying notes 51–52 (highlighting the responsibilities of member states).

¹⁶³ See *supra* text accompanying notes 157–159 (discussing contemporary definitions of museum).

¹⁶⁴ *Development of the Museum Definition*, *supra* note 158.

¹⁶⁵ 1970 Convention, *supra* note 9, art. 7(b)(i) (emphasis added).

¹⁶⁶ See *supra* note 50 (discussing the meaning of “similar institutions”).

¹⁶⁷ *Introduction*, S. AFR. NAT’L PARKS, <http://www.sanparks.org/parks/kruger/> (last visited Aug. 4, 2014).

¹⁶⁸ 1970 Convention, *supra* note 9, art. 7.

¹⁶⁹ See 1965 AMERICAN, *supra* note 137, at 641 (defining inventory as “a detailed descriptive list of articles with number, quantity, and value for each”); 5 OXFORD 1961, *supra* note 137, at 453 (describing inventory as “a list, catalogue; a detailed account”).

¹⁷⁰ See Samuel K. Wasser, Bill Clark, & Cathy Laurie, *The Ivory Trail*, SCI. AM., July 2009, at 68, 72 (noting that Africa’s size remains a barrier to creating a comprehensive continent-wide DNA map).

¹⁷¹ See *id.* (explaining that “over time . . . [DNA] in one population come to differ among geographically separated populations”).

the DNA signatures act as a genetic description of local elephant populations.¹⁷² By matching the DNA contained in an elephant tusk to the DNA signature of the geographic location, scientists can determine the origin of a poached tusk.¹⁷³ In one instance, for example, a comparison of DNA from seized ivory with the DNA signatures collected from across Africa “provide[d] strong evidence that the [seized] ivory was poached in a relatively small area on the Tanzania and Mozambique border that includes the Selous and Niassa Game Reserves.”¹⁷⁴ Creating a detailed DNA fingerprint for member states’ national parks would act as a genetic description of elephants therein. Therefore, elephants within a national park or game reserve would likely satisfy the first component of the inventory requirement if member states compile and maintain DNA descriptions of the elephants within those institutions.¹⁷⁵

3.2.2 *Elephant Enumeration*

An inventory must also contain an enumeration of the institution’s property.¹⁷⁶ Elephants can be counted directly or indirectly.¹⁷⁷ Direct counts can be carried out either through a total count of elephants or through sampling.¹⁷⁸ The size of the census area may dictate the type of method employed.¹⁷⁹ The accuracy of sampling depends on a number of factors, including survey intensity.¹⁸⁰ While the level of intensity must be higher when attempting to appraise changes in elephant populations, a lower level of intensity is required for

¹⁷² See *id.* (pointing out that DNA map illustrates “how [the] DNA fingerprints vary across [Africa]”).

¹⁷³ *Id.* at 70.

¹⁷⁴ *Id.* at 72.

¹⁷⁵ Identifying the location of ivory is very important for inventory purposes, but another portion of the 1970 Convention may require further scientific analysis of the ivory. The 1970 Convention only protects cultural property that was illicitly imported after the treaty was signed by both parties involved. See *supra* note 74 and accompanying text. Therefore, the age of the ivory may be relevant. A technique of dating ivory known as “bomb-curve dating” can be used to achieve this goal. Roff Smith, *Cold War Radioactivity Can Date Illegal Elephant Ivory*, NAT’L GEOGRAPHIC (July 1, 2013), <http://news.nationalgeographic.com/news/2013/06/130701-elephants-ivory-poaching-trade-science-animals/>. Bomb-curve dating uses radioactive isotopes that were introduced into the atmosphere during nuclear bomb testing conducted prior to 1963. *Id.* Scientists have been measuring the increased levels of carbon-14 since the 1960s. *Id.* Plants absorb small amounts of carbon-14 from the atmosphere. *Id.* The carbon-14 collects in the tusks of elephants when they eat the plants. *Id.* Scientists can measure the carbon-14 and compare atmospheric measurements to date ivory to within a year of the elephant’s death. *Id.*

¹⁷⁶ See *supra* note 169 and accompanying text (describing the parts of an inventory).

¹⁷⁷ *Counting Elephants*, in *STUDYING ELEPHANTS*, *supra* note 85, at 20. Counting elephants directly means actually locating elephants and counting them, while indirect counting means determining elephant numbers based on signs of elephants, like dung or tracks. *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* (noting that other factors to consider when deciding which counting method to employ include “the size of the populations [to be counted] and the resources available” to execute the count). A total count of elephants is appropriate when the census area is no greater than 1,000 km², while sampling is the method of choice for larger areas. *Id.*

¹⁸⁰ Sam M. Ferreira & Rudi J. van Aarde, *Aerial Survey Intensity as a Determinant of Estimates of African Elephant Population Sizes and Trends*, 39 S. AFRICAN J. WILDLIFE RES. 181, 188 (2009) (“illustrat[ing] that survey intensity influences both [the] accuracy and the precision of estimates”). Survey intensity

“general inventory” purposes.¹⁸¹ Thus, an accurate census of elephants would constitute an enumeration of the elephants within a member state’s national park or game reserve for the purpose of creating an elephant inventory.

Therefore, if member states took the appropriate steps to create an inventory of elephants within a national park or game reserve, the elephants therein would qualify for Article 7’s protection.¹⁸² Poaching elephants and taking their ivory would equate to stealing artwork or antiquities from a national museum. In each case, member states would be obligated to prevent their importation and, if ivory made it into a member state, effect their recovery and return.¹⁸³

4. BENEFITS

Classifying elephants as cultural property and protecting them using the 1970 Convention could help curb poaching in Africa. Member states—like China—may change their policies on the ivory trade and education, based on elephants’ classification as cultural property. Despite the 1970 Convention’s status as a non-self-executing treaty,¹⁸⁴ member states are bound to their treaty obligations in international law regardless of whether the treaty was implemented in the nation’s domestic legislation.¹⁸⁵ Furthermore, member states must “interpret [the 1970 Convention] in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁸⁶

The 1970 Convention will be an important tool in the fight against elephant poaching because it can supplement (but certainly not replace) existing conservation measures such as CITES. CITES is limited to regulating trade in flora and fauna. One of CITES’ major shortcomings is that it has been

refers to “the percentage area that an aerial survey should cover.” *Id.* at 182. Further, the “density and distribution [of elephants] . . . determines the survey intensity needed to obtain the desired accuracy and precision.” *Id.* at 188. Accuracy refers to the estimate’s proximity to the actual number of elephants, while precision refers to the range of survey results. See Susan Mbugua, *Counting Elephants From the Air—Sample Counts*, in *STUDYING ELEPHANTS*, *supra* note 85, at 21, 22 (demonstrating the difference between accuracy and precision).

¹⁸¹ Ferreira & van Aarde, *supra* note 180, at 187, 188.

¹⁸² See 1970 Convention, *supra* note 9, art. 7(a) (requiring member states “[t]o prevent museums and similar institutions within their territories from acquiring [elephants] originating in another [member state]”); *id.* art. 7(b) (requiring member states “to prohibit the import of [elephants] from [and documented in] a museum or . . . similar institutions” and “to take appropriate steps to recover and return any such [elephants]”).

¹⁸³ See *supra* text accompanying notes 51–52 (outlining member states’ responsibilities). These elephants would have protection beyond those that were designated as cultural property but were not living and inventoried in a national park or game reserve.

¹⁸⁴ *Ancient Coin Collectors Guild v. U.S. Customs & Border Prot.*, 808 F. Supp. 2d 383, 388 (D. Md. 2011).

¹⁸⁵ See Vienna Convention, *supra* note 130, art. 27 (stating that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”).

¹⁸⁶ *Id.* art. 31.

unsuccessful in curbing the demand for ivory in China.¹⁸⁷ Stemming Chinese demand means convincing China to outlaw its domestic ivory trade.¹⁸⁸

The 1970 Convention could be used as a tool to compel China to ban its legal ivory trade. China is particularly committed to protecting its cultural property and works with the international community to secure and repatriate it.¹⁸⁹ If African member states designate elephants as cultural property, China's legal ivory market would likely place it in violation of the 1970 Convention. For example, China's illegal ivory trade would render China in violation of Article 13.¹⁹⁰ Pursuant to Article 13, member states must "[undertake t]o prevent by all appropriate means transfers of ownership of [elephants, if that transfer of ownership would be] likely to promote the illicit import or export of [elephants]."¹⁹¹ Every legal sale of ivory within the Chinese market transfers ownership of the ivory from one person to another. To keep up with the growing demand for ivory in China, poachers kill elephants and illegally export the ivory from Africa.¹⁹² The ivory is illicitly imported into China.¹⁹³ The ivory then makes its way onto the legal market, where it is sold.¹⁹⁴ Thus, China's legal ivory trade allows for transfers of ownership likely to promote both the illicit import and illicit export of ivory in violation of the 1970 Convention. China's ivory market, then, may hinder its efforts to effect the return of its own cultural property because international cooperation requires reciprocity. China's disregard for the cultural property of another nation would likely hurt its future requests for cooperation. Therefore, the 1970 Convention, used in conjunction with international pressure from the cultural property community,

¹⁸⁷ Vandegrift, *supra* note 2, at 103 (noting that CITES "may not be capable of preventing the continued importation of illegal ivory into China"). The author uses China as an example because China is the primary destination for illegal ivory exported from Africa. CITES, Sixty-Second Meeting of the Standing Committee, July 23–27, 2012, *Interpretation and Implementation of the Convention Species Trade and Conservation Elephants*, 24, SC62 Doc. 46.1 (Rev. 1) [hereinafter CITES Standing Committee].

¹⁸⁸ See Vandegrift, *supra* note 2, at 134 (arguing that an outright ban on the legal ivory trade is required to prevent an irreparable decline in elephant population). A vast majority of Chinese citizens polled stated that "they might stop buying ivory . . . if [the Chinese government] told them to stop." Bryan Christy, *China Ivory Prosecution: A Success Exposes Fundamental Failure*, A VOICE FOR ELEPHANTS (May 30, 2013), <http://newswatch.nationalgeographic.com/2013/05/30/china-ivory-prosecution-a-success-exposes-fundamental-failure/>.

¹⁸⁹ See *China Opposes Sale of Looted Cultural Relics: Diplomat*, PEOPLE'S DAILY ONLINE, <http://english.people.com.cn/90001/90782/6815371.html> (Nov. 17, 2009, 10:39 AM) (quoting Liu Zhenmin, a Chinese diplomat to the UN, "China attached great importance to the protection of cultural heritage"). During a statement to the UN, Zhenmin explained that "promoting the restitution of cultural property to the countries of origin are inalienable and fundamental cultural rights . . . as well as cultural responsibilities incumbent on all governments." *Id.*

¹⁹⁰ China would likely violate other of provisions of the 1970 Convention as well. See *supra* note 182 and accompanying text (highlighting how the 1970 Convention would apply to elephants if African nations designate elephants as cultural property).

¹⁹¹ See 1970 Convention, *supra* note 9, art. 13(a) (replacing the term "cultural property" with the term "elephant").

¹⁹² See CITES Standing Committee, *supra* note 187, at 24.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

would likely increase greatly the chances of China banning its domestic ivory trade.

However, the 1970 Convention may affect demand for ivory in other ways as well. The 1970 Convention requires nations to educate their citizens about cultural property.¹⁹⁵ In the context of elephant protection, education is an important tool. For example, most Chinese citizens do not know that ivory comes from poached elephants.¹⁹⁶ The vast majority of Chinese citizens would not buy ivory if they knew about its true origins.¹⁹⁷ The international cultural property community could pressure China to comply with its obligations under the 1970 Convention and restrict the ivory trade through education.

The 1970 Convention will garner its strength as a conservation tool because it also is used to protect other forms of cultural property. Forcing China to address the ivory trade outside the traditional sphere of conservation will change the analysis about its ivory policies; China will have to determine how the ivory trade will affect its cultural property interests. China may be particularly susceptible to pressures from the international cultural property community and may be disinclined to move forward in violation of the 1970 Convention, a status that classifying elephants as cultural property will likely convey onto China. Moreover, provisions of the 1970 Convention require nations to educate citizens about the origins of ivory, which could make them less likely to buy it.

5. CONCLUSION

The demand for ivory is causing elephants to die at an alarming rate. Traditional methods of combating elephant poaching are falling short, so additional measures must be taken. The 1970 Convention may be used to supplement CITES, which has failed to deal with the demand that leads to elephant poaching. Classifying elephants as cultural property and utilizing the 1970 Convention to protect them may give African member states the leverage needed to pressure countries, such as China, to ban the legal ivory trade and to educate their citizens as to ivory's true origins. Halting the legal sale of ivory may stem demand and give Africa's elephants a chance at long-term survival.

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¹⁹⁵ 1970 Convention, *supra* note 9, arts. 5(f), 10.

¹⁹⁶ Grace Ge Gabriel, *Promoting Animal Welfare in China*, INT'L FUND FOR ANIMAL WELFARE (Nov. 8, 2010), <http://www.ifaw.org/united-states/node/2485>.

¹⁹⁷ *Id.*