

Global Ivory Legislation: Is it a Case of Material Culture vs the Elephant?

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Abstract

While concerns surrounding elephant conservation and the contentious ivory trade have been subjects of academic discourse throughout modern history, there exists a relative absence of scholarly examination regarding the impact of the emerging no-trade consensus on the ivory art market, in response to the Convention on International Trade in Endangered Species of Wilde Fauna and Flora (CITES) Regulations 1975. This knowledge gap is particularly pronounced in countries that have recently implemented bans on ivory trade, such as the United Kingdom. This analysis takes into consideration the historical and contemporary roles of these countries in the sourcing, production and trade of elephant ivory, as well as the cultural and historical significance of ivory within their respective societies. The inclusion of such factors enables the assessment of the effectiveness of each nation's domestic ivory legislation in combatting the concerns that CITES sought to address and evaluates whether such legislative mechanisms are proportionate in their objectives and outcomes. As such the main argument of this discourse will propose that not all the observed effects of new ivory legislation can be justified when alternative, more effective measures could be implemented, which do not necessitate a total prohibition on the trade of ivory.

1 Introduction

The poaching of elephants for the purpose of collecting their sought-after ivory is far from a new concept. In fact, it is a phenomenon which has endured for nearly 40,000 years.¹ Yet it has taken millennia of artisanal ivory use and the perilous decline of elephant populations for the world to recognise the urgent need for international conservation and ivory trade legislation. Campbell Pederson's work, which delves into the material's intricate history, usage and composition, has illuminated the profound cultural disparities in humanity's relationship with ivory. Such disparities will be shown in this article to ultimately shape the divergent international stance on ivory legislation, morality and ethics.²

This article will display the intricate challenges posed by these cultural and historical disparities, not only for conservation and legislation but also for the international ivory art markets, where ivory has been legally traded since antiquity. There will be focus on the pivotal role played by the Convention on International Trade in Endangered Species of Wilde Fauna and Flora (CITES) Regulations 1975, which has been the catalyst in the growing development of the international 'no-trade consensus'³ on ivory, the implications of which will be thoroughly explored. This research spans continents, encompassing the legislative approaches of Africa, China, the US and the UK, comparing how various CITES member states have adopted CITES Regulations within their own domestic legislation. In doing so this article will consider the profound influence of diverse socio-cultural and historical factors and as such, how the significance of ivory within different cultures affects the formation and enforcement of domestic ivory legislation. Ultimately showing the complex interplay between cultural diversity, historical context and contemporary conservation efforts; all of which converge in the legislation which now governs international art markets and the trade of ivory.

2 The Elephant in the Art Market

¹ Maggie Campbell Pedersen, *Ivory* (Crowood Press 2015) 11.

² *Ibid* 15–19.

³ Jennifer Sills and others, 'Ivory Crisis: Growing No-Trade Consensus' (2018) 360 *Science* 227.

2.1 Material Culture

Ivory has been traded for thousands of years, with virtually all countries across the world having used ivory in some form since antiquity.⁴ However, the complex interrelationship between humans and ivory has perhaps been overlooked until recently.

The 2017 British Museum exhibition ‘Living with Gods’ showcased a mammoth ivory artefact dating to the Ice Age some 40,000 years ago. Known simply as ‘Lion Man’, the figure is sculpted with great technical skill and features the head of a cave lion with a partly human body, as such, it is considered the world’s oldest known anthropomorphic statue.⁵ The complex relationship between humans, ivory and religious/spiritual practice is also shown by Palaeolithic finds such as grave goods carved in the form of female figures collectively termed ‘Venuses’ and ‘considered to be the first representations of a complete human form’.⁶ The association between religion and ivory was well developed through early antiquity with the Greeks. Ivory’s first association to Christianity appears in the devotional objects of the Byzantine empire, with its secular use spreading across the whole of Europe in the form of diptychs, statues and panels.

The trade routes for such objects can be traced back to ancient Egypt and across every major continent, with the main sources of ivory remaining the same as in the present day, Africa and India. ‘While sources for early elephant hunts are scarce, the accounts that do exist depict the brutal methods that were used to kill them’.⁷ From longbows to traps and the use of javelins, historical methods of elephant poaching were undoubtedly violent and dangerous to those who participated. With the development and trade of firearms in Africa in the ‘later 19th century hunting elephants was no longer dangerous’ and killing them became more efficient.⁸ The evolution of hunting

⁴ Campbell Pedersen (n 1) 169–177.

⁵ ‘The Lion Man: An Ice Age Masterpiece’ (*The British Museum*, 2017) <www.britishmuseum.org/blog/lion-man-ice-age-masterpiece> accessed 6 September 2023.

⁶ Campbell Pedersen (n 1) 180.

⁷ Julia Martinez, ‘Elephant in the Gallery: The Problem of Historic Ivory Collections’ (Saving Earth Encyclopaedia Britanica, 2024) <www.britannica.com/explore/savingearth/elephant-in-the-gallery-the-problem-of-historic-ivory-collections> accessed 27 August 2023.

⁸ Campbell Pedersen (n 1) 35.

technology and international popularity of ivory resulted in the African elephant population going from approximately ‘five million’⁹ in the 19th century to just ‘415,000’¹⁰ at present.

3 International Responses to Elephant Endangerment

3.1 The Development of CITES

In light of such statistics there is an international acknowledgement that elephants have been in decline and should be protected, as is evident from the internationally accepted treaty, the Convention on International Trade in Endangered Species of Wild Fauna and Flora Regulations. The drafting of CITES in 1973 was in response to the International Union for Conservation of Nature (IUCN) concerns regarding a lack of international awareness as to the mass elephant poaching that had been occurring throughout the 20th century. The CITES treaty was the first international attempt at protecting endangered species. Today, CITES has conservation agreements with 184 parties, covering more than 40,000 species of animals and plants.¹¹

Asian Elephants have been included in Appendix 1 of CITES since its enforcement in 1975. Species of an Appendix 1 classification are ‘species threatened with extinction ... [and] ... Trade in specimens of these species is permitted only in exceptional circumstances.’¹² Whereas the African Elephant is classed as Appendix 1 for elephant populations bar Botswana, Namibia, South Africa and Zimbabwe which are classed as Appendix 2. Appendix 2 ‘includes species not necessarily threatened with extinction, but in which trade must be controlled.’¹³ Member states are expected to implement these classifications and trade restrictions within their own domestic

⁹ Marianna Szczygielska, ‘Elephant Ivory, Zoos, and Extinction in the Age of Imperialism (1870s–1940s)’ (*MPIHS*, 2019) <www.mpiwg-berlin.mpg.de/feature-story/elephant-ivory-zoos-and-extinction-age-imperialism-1870s-1940s#:~:text=According%20to%20the%20World%20Wildlife,as%20a%20result%20of%20hunting> accessed 27 August 2023.

¹⁰ ‘A US Ban on Elephant Ivory Carves out a Better Future for the Species’ (*WWF*, 2016). <<https://www.worldwildlife.org/magazine/issues/winter-2016/articles/a-us-ban-on-ivory-carves-out-a-better-future-for-the-species?>> accessed 27 August 2023.

¹¹ ‘What is CITES?’ (*CITES*, 2024) <<https://cites.org/eng/disc/what.php>> accessed 27 August 2023.

¹² ‘How CITES Works?’ (*CITES*, 2024). <<https://cites.org/eng/disc/how.php#:~:text=Appendix%20I%20includes%20species%20threatened,utilization%20incompatible%20with%20their%20survival.>> accessed 27 August 2023.

¹³ *Ibid.*

legislation. It is the aim of CITES ‘to ensure that international trade in wild animals and plants is legal, sustainable and traceable, and does not threaten the survival of the species in the wild.’¹⁴

Yet, despite CITES Regulations and increasing international domestic law on the trade of ivory, ‘between 2010 and 2012 poachers killed more than 100,000 African elephants to supply the black-market demand’.¹⁵ Consequently, a pivotal ethical dilemma emerges as specific elephant populations confront mortality rates outpacing their ability to reproduce, hindering any sustained growth in their numbers. Furthermore, this article contends that the unwarranted extermination of contemporary elephants, driven to the brink of extinction for the sake of tourist trinkets and artworks, lacks ethical and moral justification.

However, there remains ‘contentious global debate over which ivory policy would best protect elephants: banning all ivory trade or enabling regulated trade to incentivize and fund elephant conservation’.¹⁶ Movement towards a total ivory trade ban within consumer and manufacturing countries is increasing, while regions within ivory source countries remain dramatically unresolved as to the best course of conservation (as will be discussed below). This dichotomy between source and consumer countries regarding legislation in the opinion of CITES Secretary-General Willem Wijnstekers, is reflective of socio-economic differences.¹⁷ ‘While richer countries can often afford to promote conservation through strict protection, many poorer nations must do so in ways that benefit local communities and bring in much-needed cash for conservation.’¹⁸

While this article agrees that socio-economic needs play an important role in domestic ivory legislation, it also aims to highlight that ivory legislation has and continues to be effected by a country’s cultural history and role within the ivory art market, amongst other factors. Additionally, while there may appear an international consensus on the immorality of sourcing and use of modern ivory, there is no such consensus regarding the trade, use and preservation of antique ivory.

¹⁴ What is CITES? (n 11).

¹⁵ Kimbra Cutlip, ‘Where Do Important Ivory Artifacts Fit in the Race to Save Elephants from Poaching?’ *Smithsonian Magazine* (Washington, 18 June 2015) <www.smithsonianmag.com/smithsonian-institution/where-do-important-ivory-artifacts-fit-race-save-elephants-poaching-180955636/> accessed 27 August 2023.

¹⁶ Duan Biggs and others, ‘Breaking the Deadlock on Ivory’ (2017) 358 *Science* 6369.

¹⁷ CITES Press Release, ‘CITES Sets Strict Conditions for Any Possible Future Ivory Sales’ (*CITES*, 12 January 2021) <https://cites.org/fra/news/pr/2002/021112_ivory_decision.shtml> accessed 6 September 2023.

¹⁸ *Ibid.*

The following sections will discuss the effect of such influencing factors upon different domestic ivory legislation, while analysing their effectiveness with regard to CITES' aims.

3.2 Africa: The Source of the Problem?

'Ivory was one of the earliest commodities exported from Africa' and also one of the most valuable.¹⁹ Prior to the CITES Regulations Africa had a prominent history of ivory trading, due to it being the natural habitat of the African elephant but also as a consequence of its natural coastal geography making it a prime trade route. As such, Africa has acted as an international exporter of ivory since the time of the ancient Egyptians, and with the development of transportation, trade routes and colonisation its elephant population has dwindled significantly.²⁰

Historically, the trade of ivory in Africa was subject to the rule of its colonial governments whom Galaty refers to as 'gatekeepers' of the ivory trade.²¹ During this time Galaty argues the economic value of ivory to the colonial governments outweighed any concerns as to conservation.²² Moreover, Galaty links Africa's long history of war, violence, colonialism and lack of domestic independence to the historical lack of ivory legislation and reduced elephant populations.²³ Therefore the listing of the African elephants on Appendix 1 of CITES in 1989, prohibiting the commercial trade of ivory was a dramatic socio-legislative change for Africa.

There are a recognised fifty-two African states/territories many of which suffer from 'political instability, civil strife, war, economic underdevelopment and weak legal systems' as such it is difficult to access any accurate ivory legislation which has been enforced since CITES 1989.²⁴ However, fifty of the fifty-two recognised African states are now signatory members of CITES and as such are expected not to deal in ivory unless exceptional circumstances apply. To qualify as an exceptional circumstance the import of such ivory must not be primarily for commercial

¹⁹ John Galaty, *Ivory: Power and Poaching in Africa* by Keith Somerville' (2017) 50 *International Journal of African Historical Studies* 533.

²⁰ Campbell Pedersen (n 1) 169–171.

²¹ Galaty (n 19).

²² *Ibid.*

²³ *Ibid.*

²⁴ Jane Williams (updated by Vincent Moyer), 'Sources of Online Legal Information for African Countries' (*GLOBALEX*, 2019) <www.nyulawglobal.org/globalex/African_Law1.html> accessed 27 August 2023.

purposes or detrimental to the survival of the species, likewise exportable ivory must be legally obtained.²⁵ Such expectations do not apply to the African states of Botswana, Namibia, South Africa and Zimbabwe, for which African elephants are classed as Appendix 2 which only requires the control of their trade.

Since the induction of CITES in 1989, Africa has been a point of regular academic and political dispute regarding its trading of ivory. Some of Africa's ivory trading, such as the 1997 CITES agreed sale of 50 tonnes (5,446 tusks) from African stockpiles to Japan, was legalised under the justification that such funds would be used for elephant conservation.²⁶ Yet many academic researchers suggest there is large scale illegal poaching and exporting of ivory occurring across Africa irrespective of CITES Regulation. Supporting this theory is the fact at least 30,000 African elephants have been poached annually since their listing in Appendix 1.²⁷ The continuation of illegal poaching in Africa is reiterated by the 2019 research by Sosnowski and others who quote 'almost 600,000kg of illegal ivory has been seized since 1991'.²⁸ With scientific testing proving that many such seizures made between 2002 and 2004 of African exports featured ivory 'derived from animals that had died less than 3 years before ivory was confiscated'.²⁹ While these figures broadly suggest poor and ineffective enforcement of CITES-influenced domestic legislation across Africa, African states remain in contention regarding the most effective solution to their illegal poaching problem.

States such as Kenya would support a total African ban on the trade of ivory, and the destruction of ivory stockpiles as promoted by their 2016 ivory burn.³⁰ Such support stems from the belief that in banning ivory trade and burning the stockpiles they will 'eliminate demand for ivory and put value instead on living elephants' thus allowing elephant conservation.³¹ Other states such as Zimbabwe remain opposed to a complete ivory ban, suggesting in their 2022 CITES amendment

²⁵ How CITES Works? (n 12).

²⁶ CITES Press Release (n 17).

²⁷ Dhiren Sehgal, 'Elephants, Ivory and CITES' (2017) 47 *Envtl Poly L* 2, 5.

²⁸ Monique C Sosnowski and others, 'Global Ivory Market Prices since the 1989 CITES Ban' (2019) 237 *Biological Conservation* 392.

²⁹ *Ibid.*

³⁰ Paula Kahumbu, 'Why It Makes Sense to Burn Ivory Stockpiles' *The Guardian* (London, 23 April 2016) <www.theguardian.com/environment/africa-wild/2016/apr/23/why-it-makes-sense-to-burn-ivory-stockpiles> accessed 6 September 2023.

³¹ *Ibid.*

proposal that a complete ban would be detrimental to local communities, and reduce their economic ability to fund elephant conservation.³²

Zimbabwe and other Southern African states propose new amendments to their Appendix 2 elephant listing which would allow the sale of specified amounts of legally sourced ivory, under the justification that the economic income of sales would contribute to urgently needed funds for ‘the community conservation programmes’.³³ Moreover, states such as Zimbabwe have proved to a certain extent that control and enforcement measures can effectively allow population replenishment while allowing some legal trade. Monitoring of the elephant populations of Botswana, Namibia, South Africa and Zimbabwe through Monitoring the Illegal Killing of Elephants (MIKE) sites, shows ‘either increasing trends or mild and non-significant declines recently’.³⁴

However, despite some statistics supporting that elephant populations in Southern and East Africa have increased annually by 5% since CITES, it is apparent when viewing Africa as a whole, with regard to continually decreasing elephant populations as well as seized export statistics, that anti-poaching enforcement and CITES-influenced legislation are failing.³⁵ All the while, government stockpiling and ivory destruction has reduced the commercial supply of ivory but not reduced the commercial demand. Consequently, analysis indicates that prices have been increasing since the elephant CITES listing, with illegal raw ivory being the most expensive and as such, incentives for the poorer African populations to illegally poach ivory are increased.³⁶

In turn there undoubtedly remains a need for effective and unanimous legislative measures and enforcement in Africa to stop poaching and the illegal export of ivory, a task which the CITES Regulation alone has not achieved.

³² ‘Consideration of Proposals for Amendment of Appendices I and II’ (CITES Nineteenth Conference of Parties, Panama, November 2022).

³³ Ibid.

³⁴ Ibid.

³⁵ African Wildlife Foundation, ‘Elephant Conservation Progress Report’ (2022) <<https://www.awf.org/sites/default/files/2022-08/2022%20Elephant%20Conservation%20Progress%20Report.pdf>> accessed 5 June 2024.

³⁶ Sosnowski and others (n 28).

3.3 China: Craft and Culture vs Conservation

The Chinese have long revered ivory as a symbol of wealth and status, a luxury material rooted deep into the country's rich cultural tapestry.³⁷ The historical significance of ivory in China is profound with recorded ivory usage dating back to the Han Dynasty, spanning from 209 BC to 220 AD.³⁸ Throughout these 3,600 years of material use, China has established itself as a global hub for ivory craftsmanship. One of the common uses of ivory in Chinese culture was the art of carving figurines, traditionally those depicting religious and mythical icons.³⁹ China's historic and cultural associations with ivory have meant the manufacture of such items persists today.

Following its membership to CITES in 1981 China was expected to prohibit the commercial trade of ivory in accordance with its membership but, since the early 20th century Chinese ivory manufacture has been enjoying a renaissance in popularity.⁴⁰ The Chinese Government in response to CITES membership enacted its Wildlife Protection Law in 1989 with the aim of protecting endangered species and wildlife. Following the Wildlife Protection Law 1989 and the addition of the African elephant to CITES Appendix 1, the Chinese Government 'stockpiled raw ivory, considering these stockpiles an official and legalised supply'.⁴¹ Efforts were then made to control manufacture and trading rights through the implementation of a 'licensed legal regime that sanctions ivory trade as long as the ivory is being traded within the country'.⁴²

Under this regime the Chinese government supplies 'legal' ivory from its stockpile to licenced factories with limited retail outlets. In theory this regime should only allow legally obtained raw ivory to be manufactured and sold by a set number of suppliers, thus disallowing illegal ivory into the market. However, enforcement of the licensing regime has proven ineffective on multiple levels.

³⁷ Campbell Pedersen (n 1) 241.

³⁸ Ibid.

³⁹ 'Myth and Magic in the East Asian Ivory and Jade Collections' (*PMAG*, 2021). <www.stokemuseums.org.uk/pmag/myth-and-magic-in-the-east-asian-ivory-and-jade-collections/#:~:text=The%20sea%20port%20city%20of,also%20exported%20to%20the%20West> accessed 6 September 2023.

⁴⁰ Ibid.

⁴¹ Sehgal (n 27) 2.

⁴² Ibid.

First, non-licenced retail outlets continued to sell ivory of unknown provenance with only forty-five of Beijing's one hundred and fifty-six outlets being licenced.⁴³ Therefore, without effective enforcement of the licencing regime, the legalisation of some ivory trade has acted 'as a screen, shielding the parallel illegal ivory trade which is highly prevalent in China'.⁴⁴ Second, the problem of illicit ivory trade is added to by a lack of scientific and gemmological testing at both points of manufacture and sale to distinguish modern from historic ivory sources/materials.⁴⁵ With a licencing system that relies on the self-certification by manufacturers to provenance their ivory stockpiles, without scientific verification it is hardly surprising illicit ivory is being worked and traded for profit.

Consequently, following international blame for the 'ivory holocaust'⁴⁶ as a result of its major manufacturing and consumerism role in the ivory trade, China announced in 2016 that it would impose a complete domestic ivory ban. The ban has been praised by conservationists as a complete U-turn in Chinese policy, ceasing the manufacture and retail abilities of all previously accredited ivory outlets by December 2017.⁴⁷

The Wildlife Trade Monitoring Network (TRAFFIC) organisation following the 2018 ban surveyed the previously legal ivory outlets for compliance to the ivory ban finding 76% of retailers were still in business but selling alternative products such as 'mammoth ivory, emerald and jade products'.⁴⁸ Additionally despite 'some small accessories (below 0.5 g) which were suspected to be elephant ivory products, no other elephant ivory products were found'.⁴⁹ However, assessment of the other (not previously licenced) outlets found 354 illegal retailers with approximately 2,812 ivory products for sale, TRAFFIC suggest these figures show an increase of 22% in the amount of

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Benjamin Haas, 'Under Pressure: The Story behind China's Ivory Ban' *The Guardian* (London, 29 August 2017) <www.theguardian.com/environment/2017/aug/29/story-behind-china-ivory-ban> accessed 27 August 2023.

⁴⁷ Yu Xiao, 'China's Ivory Market After the Ivory Trade Ban in 2018' (TRAFFIC Briefing 2018).

⁴⁸ Ibid.

⁴⁹ Ibid.

illegal ivory products available between 2017–2018 despite the ivory ban.⁵⁰ Moreover, it is stated that of the 2,812 products available 2,126 were the product of new ivory (post-1989).⁵¹

Organisations such as TRAFFIC suggest the illicit trade and manufacture of ivory is now more limited to cities bordering Vietnam, and as such the illicit trade of ivory has become less internalised within China.⁵² Yet, academics such as Gao suggest that while conservationists may have hoped the ban would reduce Chinese consumer demand, after the ban analysis of media coverage suggests that the ‘macro-public opinion throughout China became more positive about elephant ivory’.⁵³ In fact academic Gao suggests ‘the ban may have drawn more attention to the perceived value of ivory in art and culture, making ivory seem more desirable’.⁵⁴ But, such assertions as to China’s current domestic attitude on ivory are widely contradicted.⁵⁵ Organisations such as WWF claim that based on annual statistical study China’s consumer demand for ivory continues to fall in response to the 2017 ban, with demand now ‘less than half of pre-ban levels’.⁵⁶

This article proposes that whilst assertions such as those made by WWF that the demand amongst Chinese ivory consumers has lessened, this appears to be contradicted when confronted with statistics regarding the continued illegal trade of ivory within China. While there has undoubtedly been a reduction in manufacture as shown by TRAFFIC’s report, the increase in available new ivory products would suggest continued ivory consumerism within China.⁵⁷ This article finds that such conclusions appear logical when considering the historical, cultural and spiritual value of ivory in China, in turn this article would conclude that there has yet to be a complete change in China’s domestic consumer attitude towards one of its most culturally treasured materials.

3.4 US: Consumers and Risks to other Cultural Crafts

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Kat J McAlpine, ‘Examining Changes in Public Opinion on Ivory in China’ (*Yale School of Environment*, 7 February 2023) <<https://environment.yale.edu/news/article/examining-changes-public-opinion-ivory-china>> accessed 27 August 2023.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ ‘Demand for Elephant Ivory in China Drops to Lowest Level Since National Ban’ (*WWF*, 2021) <www.worldwildlife.org/press-releases/demand-for-ivory-in-china-drops-to-lowest-level-since-national-ban> accessed 27 August 2023.

⁵⁷ Xiao (n 47).

Unlike the other countries discussed in this article, the US does not have as long of a cultural history of carving or consuming ivory products. In fact, ivory products were introduced by the people of the British colonies and from ‘the turn of the twentieth century, huge amounts of ivory were being imported into the United States’.⁵⁸ In response to increasing ivory imports and concerns with conservation the US introduced three federal laws to govern its ivory trade.

Chronologically these laws were the Lacey Act 1900, the Endangered Species Act 1973 and the African Elephant Conservation Act 1988. Together the aforementioned laws reduced the categories of legal ivory imports drastically, imposing age restrictions which only accepted pre-1979 tusks and antiques of over 100 years in age.⁵⁹ The effectiveness of this legislation is reflected in Stiles and Martins research study of the US ivory market, which discovered the market was reducing in 2007 with only 120 ivory craftsmen left of the 1,400 documented in 1989.⁶⁰ However, despite such changes to manufacturing levels the same study also found that in 2008 the US had ‘the second largest ivory retail market in the world after China/Hong Kong’.⁶¹

In 2016 following the outcry by CITES for more to be done to tighten ivory control, ‘the US Fish & Wildlife Service announced new federal regulations implementing a nearly complete ban on commercial elephant ivory trade in the United States’.⁶² These regulations prohibit the import or export of any ivory commercially, aside from those under the antiques exemption of the Endangered Species Act 1973.⁶³ The regulations on non-commercial ivory import and export are broader in scope but still limited to scientific specimens or ivory acquired before 1976 which forms part of a household, inheritance, musical instrument or is an antique.⁶⁴ Following these new regulations the organisation TRAFFIC identified ‘1,589 ivory items offered in physical retail premises’⁶⁵ in 2016, this is a major reduction in ivory trade from the ‘24,004 ivory items in the

⁵⁸ Campbell Pedersen (n 1) 264.

⁵⁹ US Fish and Wildlife Services, ‘Guidance on What Can I Do with My Ivory’ (FWS, 2016) <https://www.fws.gov/sites/default/files/documents/What%20Can%20I%20Do%20With%20My%20Ivory_%20%281%29.pdf> accessed 5 June 2024.

⁶⁰ Ibid.

⁶¹ E Martin and D Stiles, *Ivory Markets in the USA* (Save the Elephants 2008) 5.

⁶² WWF (n 10).

⁶³ FWS (n 59).

⁶⁴ Ibid.

⁶⁵ Rachel Kramer and others, ‘The US Elephant Ivory Market: A New Baseline’ (TRAFFIC Report 2017) 5.

657 outlets'⁶⁶ found in 2008. Such statistics undoubtedly show the effectiveness of US ivory legislation in reducing commercial trade but, there is concern that 'the impacts of broadly written State ivory bans' are indirectly and unfairly penalising other non-elephant ivory craftspeople within the US.⁶⁷

While the US does not have an established cultural history of working elephant ivory, North American states have a rich history in working marine ivory species such as walrus, narwhals and whales.⁶⁸ Likewise, states in Southern America have an ancient culture of bone carving from fossil ivories such as mammoth and mastodon.⁶⁹ In his address to the US Senate, Dan Sullivan Senator for Alaska directly addressed his concerns that new US regulations were now being used to ban the 'selling of, tooth or tusk from a species of elephant, hippopotamus, mammoth, walrus, whale, narwhal, or piece thereof, whether raw ivory or worked ivory'.⁷⁰ The Senator's concern was that the broadening of scope to cover all ivory sources would be detrimental to Alaskan natives who rely on such materials/animals not only as a cultural craft capable of economic profit, but also as a food source.⁷¹

Although some conservationists may argue the selling of all ivory is morally/ethically wrong, this article would point out that the ivory usage in Alaska is not wasteful, as Walruses are hunted primarily as a food source not as an ivory source like elephants. In addition, the use/crafting of extinct ivory species such as mammoth which 'can be differentiated from elephant ivory by a simple field test' is 'a legitimate and ethical trade' which does not involve the killing of animals.⁷² Moreover, neither of the aforementioned species are listed on the CITES endangered species list. In fact, the Marine Mammal Protection Act 1972 'explicitly allows Alaska Natives to harvest

⁶⁶ Martin and Stiles (n 61).

⁶⁷ US Subcommittee on Fisheries, Water and Wildlife, *Examining the Impacts of the Federal African Elephant Ivory Ban and Related State Laws* (US Government 2016) 2 <<https://www.gpo.gov/fdsys/pkg/CHRG-114shrg22605/pdf/CHRG-114shrg22605.pdf>> accessed 5 June 2024.

⁶⁸ Campbell Pedersen (n 1) 264–267.

⁶⁹ Ibid.

⁷⁰ US Subcommittee on Fisheries, Water and Wildlife (n 67).

⁷¹ Ibid.

⁷² Erin Hogarth and Duncan Pay, 'Fossil Ivory Update with Lee Downey' (*GIA*, 2020) <www.gia.edu/gems-gemology/summer-2020-gemnews-fossil-ivory-update-with-lee-downey> accessed 27 August 2023.

walrus for subsistence purposes and permits the sale of authentic articles of Native handicraft fashioned from them'.⁷³

However, ivory craftsman Lee Downey has recognised that the new ivory ban has made customers reluctant to purchase fossil and other ivories despite the legality of their trade, so much so he will be leaving the fossil ivory trade.⁷⁴ Not only are non-elephant ivory craftspeople suffering from the ethical/legal concerns of the public in light of increased elephant ivory restrictions, in consequence of new in-state bans covering all tusks and teeth they now face legal restrictions beyond the federal standard and exceeding CITES' ivory trade intent.⁷⁵ So, while the US federal ivory law may be effectively reducing the trade and crafting of elephant ivory, it is also negatively affecting non-elephant ivory craftspeople by imposing new legal burdens without the same level of ethical justification which corresponds to species conservation.

Whilst conservation organisation WWF praise the US' near total-ban as 'a major victory' which shows 'the US government will not tolerate the slaughter of elephants'.⁷⁶ This article would actively disagree with that statement as the US Government actively allows and encourages the unnecessary slaughter of elephants through one of its statutory import provisions. Under section 4(d) of the Endangered Species Act 1973 the US Government allows for the import of sport-hunted trophies limited to two African elephant trophies per hunter per year. This article would argue that the inclusion of such an exception actively promotes the commercial slaughter of elephants in Africa and as such is an unjustifiable and direct conflict with CITES' aims of conservation and ethics.

3.5 UK: A new Era of Ivory Legislation

The oldest ivory artefacts in the UK serve as a reminder of the expanse of the Roman Empire and since the Roman's introduction of ivory its 'use never ceased'⁷⁷ in the UK until the Ivory Act 2018

⁷³ US Subcommittee on Fisheries, Water and Wildlife (n 67) 3.

⁷⁴ Hogarth and Pay (n 72).

⁷⁵ US Subcommittee on Fisheries, Water and Wildlife (n 67).

⁷⁶ WWF (n 10).

⁷⁷ Campbell Pedersen (n 1) 190–191.

effectively banned the trading of ivory. Although the UK is not a source of raw ivory nor viewed as a prolific manufacturer of ivory goods, it has undeniably acted as a consumer and trader of ivory goods throughout history.

However recent legal history shows the UK has made efforts to reduce its role in the illicit ivory trade. First, through its CITES membership and adoption of the European Unions Commission Regulations (EEC) 3418/83⁷⁸ and 3626/82,⁷⁹ which introduced import and export controls of endangered species. The aforementioned regulations were later adopted in domestic legislation by the Control of Trade in Endangered Species Regulations (COTES) 1997. The COTES⁸⁰ Regulations, which set out the UK's domestic ivory legislation, were heavily scrutinised as 'open to abuse and fraud'.⁸¹ As a consequence of such criticisms and the continued international decrease of elephant populations, the UK recently enacted the Ivory Act 2018.

The Ivory Act 2018 diminishes the ability to trade both antique and new ivory objects within the UK and abroad and is praised as 'an extraordinary achievement'.⁸² This article will now set out the current law under the Ivory Act 2018 with regard to trade, while analysing its effect on elements of the art market such as traders, antique dealers and auction houses.

The largest alteration to UK ivory legislation comes under section 1 of the Ivory Act 2018 which states 'dealing in ivory is prohibited'.⁸³ As such it is no longer legal to buy, sell, hire, offer to buy, sell or hire and import or export ivory goods within the UK in accordance with section 1(2) of the Act.⁸⁴ However, since ivory is understood as the 'ivory from the tusk or tooth of an elephant',⁸⁵

⁷⁸ Commission Regulation (EEC) 3418/83 of 28 November 1983 laying down provisions for the uniform issue and use of the documents required for the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora [1983] OJ L344/1.

⁷⁹ Commission Regulation (EEC) 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora [1982] OJ L384/1.

⁸⁰ The Control of Trade in Endangered Species Regulations (COTES) 1997.

⁸¹ Caroline Cox, 'The Elephant in the Sales Room: Ivory and the British Antiques Trade' (2016) 23 IJCP 321.

⁸² Caroline Cox, 'The Elephant in the Courtroom: An Analysis of the United Kingdom's Ivory Act 2018, Its Path to Enactment, and Its Potential Impact on the Illegal Trade in Ivory' (2021) 24 Journal of International Wildlife Law & Policy 105.

⁸³ The Ivory Act 2018.

⁸⁴ *Ibid* s 1 (2).

⁸⁵ *Ibid* s 37(1).

the Act does legislate the ability to include other species where appropriate within its section 37(2).⁸⁶

Section 1⁸⁷ is responsible for the prohibition of all trade in elephant ivory across the UK art market. This is a dramatic evolution from the COTES⁸⁸ Regulations which did not directly prohibit the trade of ivory but merely regulated trade in keeping with the EU certification scheme as set out by the Commission Regulations (EEC) 3418/83⁸⁹ and 3626/82.⁹⁰ Under COTES⁹¹ Regulations antique traders could ‘sell worked ivory provided that the sellers can certify that the item in question has been carved before June 1947’.⁹² In doing so COTES⁹³ theoretically allowed the maintenance of a legal and legitimate antique ivory trade while illegalising the sale of modern post-1947 ivory. This exemption was contentious however, as it relied on the self-certification of traders and as such was ‘open to abuse and fraud’.⁹⁴ The Ivory Act⁹⁵ while still allowing some exemptions to trade (to be discussed accordingly), has a certification process which is instead overseen by the Secretary of State as stated in its section 2(2)⁹⁶ and with the assistance of appropriate advisory bodies section 2(5).⁹⁷ In removing the self-certification method the Ivory Act 2018 should avoid the trader bias to profit on illegally obtained ivory, while allowing within the exemptions some minor trade within the art market to continue.

The first exemption to the prohibition on ivory trade is set out under section 2 of the Ivory Act 2018 which makes an item exempt if ‘(a) the item is pre 1918, and (b) the item is of outstandingly high artistic, cultural or historical value’.⁹⁸ Where the owner of the ivory item believes the aforementioned conditions are relevant they can apply to the Secretary of State for an exemption certificate. The conditions of certification as previously mentioned are much stricter than the

⁸⁶ Ibid s 37(2).

⁸⁷ Ibid s 1.

⁸⁸ The Control Of Trade In Endangered Species Regulations 1997.

⁸⁹ Commission Regulation (EEC) 3418/83 [1983] OJ L344/1.

⁹⁰ Commission Regulation (EEC) 3626/82 [1982] OJ L384/1.

⁹¹ The Control Of Trade In Endangered Species Regulations 1997.

⁹² Cox (n 81).

⁹³ The Control Of Trade In Endangered Species Regulations 1997.

⁹⁴ Cox (n 81).

⁹⁵ The Ivory Act 2018.

⁹⁶ Ibid s 2(2).

⁹⁷ Ibid s 2(5).

⁹⁸ Ibid s 2.

previous law, while taking into account additional factors such as rarity under section 2(3),⁹⁹ the current legislation also requires the institution ascribed by the Secretary of State to be able to physically inspect the item to assure the conditions are met section 3(3).¹⁰⁰

Additionally made exempt under the Ivory Act 2018, are ivory items with small ivory surface areas or content. Under section 6 pre-1918 portrait miniatures with a surface area of no more than 320 cm² are exempt from the ivory prohibition.¹⁰¹ Similarly under section 7 items that predate 1947 with an ivory volume of less than 10% can be exempt.¹⁰² Likewise section 8 allows the trade of musical instruments predating 1975 with an ivory volume of less than 20%.¹⁰³ Unlike the section 2¹⁰⁴ exemption however, the aforementioned exemptions do not require the Secretary of State to arrange a physical inspection. Certification for small volume ivory items remains as it was under COTES,¹⁰⁵ under section 10(1(d)) of the Ivory Act 2018¹⁰⁶ the applicant need only provide an explanation of how the item satisfies the relevant conditions thus traders may self-certify their own ivory. Provided the Secretary of State is satisfied the relevant conditions have been met for an exemption certificate to be granted, these ivory items may continue to be traded within the UK art market.

Import and export regulations under the Ivory Act 2018 remain practically unchanged from COTES, in order to deal in ivory which under section 1(2) includes the import and export of items, the ivory item must be accompanied by the relevant exemption certificate.¹⁰⁷ Although domestic trade under COTES was poorly enforced, case law would support that customs management of illegal ivory exports was highly effective and consistent. Comparing cases shows an unbiased approach to applying section 49 of the Customs and Excise Management Act 1979 which enforces the forfeiture of improperly imported goods. Whether the importer is an art gallery such as in *Mayfair Gallery Ltd*¹⁰⁸ importing goods for commercial purposes, or an individual importing for

⁹⁹ Ibid s 2(3).

¹⁰⁰ Ibid s 3(3).

¹⁰¹ Ibid s 6.

¹⁰² Ibid s 7.

¹⁰³ Ibid s 8.

¹⁰⁴ Ibid s 2.

¹⁰⁵ The Control Of Trade In Endangered Species Regulations 1997.

¹⁰⁶ The Ivory Act 2018.

¹⁰⁷ Ibid s 1(2).

¹⁰⁸ *Mayfair Gallery Ltd v Director of Border Revenue* [2017] UKFTT 233.

non-commercial purposes as in *Sidhom v The Director of Border Revenue*,¹⁰⁹ customs enforcement under COTES was unbiased and strict where the correct certification was not provided. The judgment in *Sidhom v The Director of Border Revenue* stated: ‘Ignorance of the law is no excuse in the eye of the law’ a lack of knowledge as to the legal requirements for ivory imports is not a sufficient justification for the restoration of illegally imported goods.¹¹⁰ Likewise, the retrospective filing for import certification after goods have been seized would not be accepted in *Mayfair Gallery Ltd v Director of Border Revenue*.¹¹¹ Considering the strict and consistent approach of courts and customs under COTES and given the Ivory Act 2018 has reduced the number of items available for certification, while simultaneously strengthening the certification application system, it is reasonable to presume equally successful import/export control will be maintained.

4 Proposed Alternatives and Amendments to Ivory Bans

The call for a global prohibition on the trade of ivory is a sentiment echoed by many academics and conservationists, who argue such measures would effectively reduce poaching and protect elephants.¹¹² While there is a growing ‘no-trade consensus’,¹¹³ with countries such as the US, China and the UK implementing domestic trade bans, there is yet to be a comprehensive global ivory trade ban. Critics of these trade bans raise significant concerns that such bans paradoxically increase the perceived value and in turn the scarcity of both legal and illegal ivories.¹¹⁴ However, many of the proposed alternatives are not viewed without criticism or controversy.

4.1 Destruction

Many conservationists remain unsatisfied by current international ivory laws suggesting that preservation of any ivory regardless of justifications such as education, art, history and culture are

¹⁰⁹ *Sidhom v The Director of Border Revenue* [2015] UKFTT 664 (TC).

¹¹⁰ *Ibid.*

¹¹¹ *Mayfair Gallery Ltd v Director of Border Revenue* (n 108).

¹¹² Elizabeth L Bennett, ‘Legal Ivory Trade in a Corrupt World and its Impact on African Elephant Populations’ (2015) 29 *Conservation Biology* 54.

¹¹³ Biggs and others (n 16).

¹¹⁴ *Ibid.*

not proportionate. Instead they propose destruction of ivory artifacts as a radical and controversial alternative.¹¹⁵ In both UK and international law the right to destroy is an inherent component of the right to property, under this reasoning an owner is entitled to treat their property as they see fit regardless of whether doing so results in the wasting of a valuable resource or destruction of cultural heritage.¹¹⁶ Consequently, in recent years multiple mass ivory destructions have been held in public with the aim of raising awareness of conservation and poaching.

The largest ivory burn took place in Kenya in 2016, with one hundred and five tons of elephant tusk estimated to represent ‘8,000 elephants’ burnt in public.¹¹⁷ While this burn spiked public interest initially its response was found to be fleeting and failed to reach the intended demographic of consumers, dealers, poachers and traffickers.¹¹⁸ While conservationists such as John Calvelli of the US Wildlife Society argue destruction is effective on the basis that it acts as a ‘physical reminder of the commitment by governments, organizations, and the public to save elephants.’¹¹⁹ Anti-destructionists such as Michael ‘t Sas-Rolfes are sceptical and concerned that destructive acts ‘could backfire, reinforcing perceptions of ivory’s scarcity and supporting high black market prices’.¹²⁰ Moreover, there are concerns the destruction only acts as good PR for governments and does not tackle more prominent issues, such as increasing ‘the effectiveness of anti-poaching operations, improve law enforcement in demand countries, and reduce demand among consumers’.¹²¹

Aside from the aforementioned points regarding conservation concerns, a prevailing concern with destruction is that it removes cultural heritage, history and art irrevocably. Previous crushes and burns have not been limited to new ivory objects, for example the 2015 US crush included illegally seized antique ivory. Despite prominent conservationists such as Prince William who is royal

¹¹⁵ Caroline Good and others, ‘Elephants Never Forget, Should Art Museums Remember Too? Historic Ivory Collections as Ambassadors for Conservation Education’ (2019) 28 *Biodiversity and Conservation* 1331–1342.

¹¹⁶ John G Sprankling, *The International Law of Property* (1st edn, OUP 2014) 293.

¹¹⁷ ‘Largest Ivory Burn Kenya 2016’ (WWF, 2016) <https://wwf.panda.org/wwf_news/?267833/LARGEST-IVORY-BURN-KENYA-2016> accessed 27 August 2023.

¹¹⁸ Good and others (n 115).

¹¹⁹ Jani Hall, ‘Does Destroying Ivory Save Elephants? Experts Weigh In’ (*National Geographic*, 2017) <www.nationalgeographic.com/animals/article/wildlife-watch-ivory-crush-elephant-poaching> accessed 27 August 2023.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

patron of the TUSK charity, stating he wishes to destroy all ivory within the royal possession, even Charlie Mayhew co-founder and CEO of Tusk concedes the destruction of genuine antiques and items of real cultural value would be the act of a philistine.¹²²

Others have compared ivory to similarly controversial points of cultural heritage with Mark Dodgson secretary general of BADA stating, ‘we wouldn’t bulldoze the city of Bristol because it was built on the profits of slavery’,¹²³ a point which reiterates that in destroying historic ivory items we do not save the elephants which died for their production. In consideration of these points although the destruction of modern ivory and ivory stockpiles may reduce the quantity of illegal ivory capable of being illegally traded, this author is swayed to the arguments for conservation of cultural heritage for genuine historic ivory. Instead, a more effective international solution that directly tackles law enforcement issues, anti-trafficking measures and reduces demand amongst relevant demographics should be explored as an alternative to destruction.

4.2 Scientific Testing and Law Enforcement

One of the main arguments for the trade prohibition is that it is very difficult to distinguish legal ivory from illegal ivory in the markets, making the legal ivory trade a perfect cover for smuggling.¹²⁴ As in the case of many other gemstones, effective ivory identification has proven historically to be problematic with regard to establishing country of origin and accurate dating. If a combined scientific approach was able to create an effective non-destructive testing method to discern the origin and age of ivory, in both raw and worked form, then global law enforcers would be better equipped to identify legal/illegal ivory while preserving important historical artifacts and targeting key geographical poaching hotspots and trade routes.

While the visual non-destructive identification techniques are taught and promoted by CITES, WWF and TRAFFIC, to aid industry in distinguishing ivory species, these methods rely on the identification of Schreger lines which are not definitive to dating ivory. So, whilst these methods are promoted by CITES and others they should only be used for ‘preliminary’ identification, as

¹²² Good and others (n 115).

¹²³ Ibid.

¹²⁴Stefan Merker, ‘Identifying the Origin of Elephant Ivory with Isotopes’ (TRAFFIC Bulletin 2012) 56.

recognised by gemmologists Yin and others ‘identification of fossil and modern ivories based on Schreger angles requires caution.’¹²⁵

Developments in non-destructive conclusive ivory testing methods have expanded to include scanning electron microscopy (SEM), infrared spectral analysis (FTIR) and laser-induced breakdown spectroscopy (LIBS).¹²⁶ While the aforementioned testing is ideal for ivory artifacts as both methods are virtually non-destructive and capable of distinguishing species, none of these tests can provide distinctive answers as to age of the elephant ivory. Meanwhile the many date-oriented exceptions under sections 2, 6, 7 and 8 of the Ivory Act 2018 have made ivory dating intrinsic to enforcement in the UK. Whilst the use of carbon isotope testing may appear an obvious solution to ageing ivory, such testing is ‘invasive’¹²⁷ and requires the sacrifice of some material to produce results. Furthermore, there are concerns regarding the accuracy of carbon isotope dating as it is known there ‘is a margin of error of several years,’¹²⁸ under the Ivory Act 2018 a seven-year margin of error can make a significant difference between legal and illegal ivory.

4.3 Uniting Africa’s Legislation and Enforcement

Both academics and CITES recognise the need for an African solution to what at its source is a predominantly African problem. As previously discussed despite most African states’ membership to CITES, illegal poaching has continued with at least 30,000 African elephants being poached annually.¹²⁹ As recognised by Biggs this statistic is not only a result of poor individual state governance but reflective of the lack of unity in ivory enforcement across African states.¹³⁰ Within Africa there is what Galaty describes as a ‘conservation conundrum,’ with some African states supporting an outright ivory ban while other states encourage the trade of ivory as a mechanism of supporting conservation.¹³¹

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Sehgal (n 27) 5.

¹³⁰ Biggs and others (n 16).

¹³¹ Galaty (n 19).

With the aim of combatting this disunification CITES has enabled the African Elephant Conservation Meetings since 1996, bringing together African states to create an African Elephant Action Plan. Yet there has been ‘continued polarisation’ in creating a unified African lead solution, Biggs believes, to combat this recognition of ‘the different moral perspectives of stakeholders’ involved is required.¹³² An effective African Elephant Action Plan ought to recognise the need for such ‘trade-offs’ between the negotiating states, while some may be morally opposed to the ivory trade, other states may require trading ivory to fund their local economies and conservation so for a unified policy to exist concessions will have to be made.¹³³

While this article agrees with Biggs that a uniform policy to regulate the ivory trade in Africa needs to be established and enforced by the African states to which it applies, as opposed to a policy dictated by intervening international states, this article would highlight that as a poorer country, Africa most likely does not have the economic means to enforce this plan once established. If CITES and its member states genuinely intend to reduce ivory poaching and smuggling, they could pool together funding in support of new African elephant conservation measures. If CITES members were to economically support an African conservation and anti-poaching plan the need for trade bans would be significantly reduced, as modern ivory sources would be well policed and new ivory would not dilute the antiques trade.

4.4 An International Certification Scheme

As suggested by Sehgal, closing loopholes within ivory registration and enforcement by imposing a serial registration system could theoretically ensure the close monitoring of the ivory trade without the need for a complete ban.¹³⁴ Given that CITES ‘imposes upon each Member State the obligation to create a domestic permit system for the control of the trade of listed species’,¹³⁵ this article would propose modifying this system to certify and trace antique ivory items so that they may continue to be legitimately traded. This system would go beyond the current CITES permit system, by requiring the scientific testing/dating of any ivory item that the permit applicant may

¹³² Biggs and others (n 16).

¹³³ Ibid.

¹³⁴ Sehgal (n 27) 4.

¹³⁵ David Favre, ‘Elephants, Ivory and International Law’ (2001) 10 RECIEL 227.

wish to trade. CITES member states would be required to agree a unanimous cut-off date for antique ivory, in turn this would unify trade regulations across CITES members while allowing the trade of genuine antiques. Items which are dated via testing and classified as genuine antiques, would receive a certification featuring a detailed description, imagery, testing results and a unique serial number. This type of system was previously attempted by CITES in 1989 to a lesser extent, and only in application to marking raw ivory tusks with serial numbers.¹³⁶ This system was problematic as once raw ivory was worked serial numbers were removed and the traceability of legal and illegal tusks was lost.

However, this article proposes a serial number certification scheme that only applies to worked antique ivory objects. Such a scheme is not unheard of within gemmology and is currently used to certify and distinguish natural diamonds from laboratory grown diamonds. ‘The laboratory grown diamond's girdle is also laser inscribed with the report number as well as the words “lab grown”. These steps are taken in the interest of clear delineation for consumers.’¹³⁷ The same structure in laser engraving ivory antiques with serial numbers, while requiring some small-scale alteration to the antiques surface would allow the continued preservation and trade of ivory with artistic and historic value/significance. Moreover, there is proof within gemmology that a legally enforced international certification scheme can work to reduce ethical issues, with the Kimberly Process Certification Scheme boasting that now 99.8% of the world’s diamonds come from conflict-free sources’.¹³⁸ While these types of certification scheme would be a large improvement for ivory traceability, they can be prone to fraud and alteration as exterior surface inscriptions can be removed or faked by criminals.

Consequently, this suggests ivory certification could potentially go further and consider the possibility of a scheme mirroring the recently developed ‘emerald paternity test’ technology.¹³⁹ Gubelin Gem Labs have developed ground-breaking technology which uses DNA-based

¹³⁶ Ibid.

¹³⁷ ‘Laboratory Grown Diamond Report’ (IGI, 2022) <<https://www.igi.org/reports/lab-grown-diamond-jewelry-report/>> accessed 6 September 2023.

¹³⁸ ‘Working Together to Halt Conflict Diamonds’ (Kimberly Process, 2016) <<https://www.kimberlyprocess.com/en/kp-action>> accessed 6 September 2023.

¹³⁹ ‘Emerald Paternity Test’ (Gübelin, 2017) <www.gubelingemlab.com/tl_files/content/03%20Gemmology/Gem%20Lab/Documents/ggl_broschuere_provenance-proof.pdf> accessed 6 September 2023.

nanoparticles, infused by liquid, inserted into the tiniest internal fissures which build the structure of the gemstone.¹⁴⁰ This unique DNA code is encrypted with retrievable information regarding age and origin and is undetectable to the eye, such encryptions are only accessible by a specific gem testing device and thus not prone to fraud.¹⁴¹ As a porous material there is no feasible reason why ivory like emeralds could not be subject to DNA paternity encryption, such a scheme would allow the trade of not only antique ivory but also ethically sourced modern ivory, thus, allowing states in Africa to ethically fund their own conservation projects. As such there is nothing stopping the effective control of a legal ivory trade other than an international willingness to do so.

5 Conclusions

This article has consistently supported the ground-breaking nature of the listing of the African elephant in Appendix 1 of CITES. It was deemed a necessary step in the global effort to reduce illegal poaching and championing elephant conservation. While the importance of elephant conservation has remained undisputed within this article, the international legislative mechanisms created in response to CITES Regulations under the justification of elephant conservation have undergone rigorous interrogation. The effectiveness of CITES and CITES-inspired ivory bans as seen in the US, China and most recently the UK, have been called into question throughout this study. Whilst this article agrees that because of present-day poaching the stringent control of modern ivory manufacture and trade in countries where statistical and scientific data identified illicit trade is imperative, it does not maintain the view that the growing global consensus and movement towards a total ivory trade ban is a proportionate solution to the ivory crisis.

As pointed out in the preceding sections, trade bans have not been found to actively bolster conservation and anti-poaching efforts within the countries at the heart of the ivory crisis. Instead, international efforts have inadvertently hindered the abilities of these economically disadvantaged third world countries, hindering their ability to fund vital projects aimed at conservation and anti-poaching enforcement. Moreover, this article suggests that ivory trade bans are negatively

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

affecting all areas of the art market, with antique and indigenous non-elephant ivory manufacturers facing particularly severe repercussions, despite their ethical sourcing practices.

Whilst this article does not advocate that economic, historical, or artistic value should come before concerns of species conservation, it has highlighted that present day scientific and gemmological certification methods could effectively control and regulate an antique ivory market, much like those adopted by other gem species. A regulated antique ivory market could theoretically preserve significant historical, artistic and cultural items, without posing a threat to the current elephant population with which CITES is primarily concerned.

Nonetheless, this article remains sceptical about the feasibility of implementing such alterations to allow for a small-scale antique ivory trade given the associated costs and enforcement requirements. Instead, the trade of ivory will likely remain limited to the small number of exemptions made under each state's domestic legislation.

While these exemptions suggest a collective desire to protect high-value and artistically or historically important ivory artifacts, the limited scope of exemptions leaves a large proportion of ivory artifacts excluded. With no economic or appreciable value, these artefacts will likely be destined for destruction or fade into obscurity. Such outcomes appear unjust when exemptions such as those for hunting trophies are maintained over the preservation of art, history or indigenous crafts, effectively mocking the intent of CITES.

Therefore, whilst this article has demonstrated through comparative analysis, that CITES membership and regulations have laid the foundations for a ban on the trade of ivory, and consequently facilitated the removal of ivory from the legal art market in three out of the four countries discussed. This article has raised several important questions regarding the proportionality of impact on the art market versus the impact upon elephant conservation. In turn it has highlighted the complex interplay between legislation, cultural contexts, economic interest and the complex conservation requirements in the evolving world of ivory art and trade.