

Questions Relating to Cultural Property and the Protection of Elephants

(Federal States of Aliya / Republic of Rincossi)

RECORD



**Twentieth Annual
Stetson International Environmental
Moot Court Competition
2015–2016**



SURANA & SURANA INDIA NATIONAL ROUNDS

**Rajiv Gandhi National University of Law, Punjab, Patiala
(RGNUL)**

27 – 29 November 2015



STETSON LAW

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NOTIFICATION, DATED 25 JUNE 2015, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ALIYA
AND

THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RINCOSSI

The Hague, 25 June 2015.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 19 June 2015. I have the further honor to inform you that the case of Questions Relating to Cultural Property and the Protection of Elephants (Federal States of Aliya/Republic of Rincossi) has been entered as 2015 General List No. 162. The written proceedings shall consist of memorials to be submitted to the Court by 20 November 2015. Oral proceedings are scheduled for 13–16 April 2016.

/s/ _____
Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 19 JUNE 2015, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 19 June 2015.

On behalf of the Federal States of Aliya and the Republic of Rincossi, and in accordance with Article 40, paragraph 1, of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between the Federal States of Aliya and the Republic of Rincossi for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Cultural Property and the Protection of Elephants, signed at Libreville, Gabon, on 19 June 2015.

For the Federal States of Aliya:

/s/ _____
Art I. March
Minister of Foreign Affairs

For the Republic of Rincossi:

/s/ _____
Ana P. Theeler
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
THE FEDERAL STATES OF ALIYA
AND
THE REPUBLIC OF RINCOSSI
FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING QUESTIONS RELATING TO
CULTURAL PROPERTY
AND
THE PROTECTION OF ELEPHANTS

The Federal States of Aliya and the Republic of Rincossi,

Recalling that the Federal States of Aliya and the Republic of Rincossi are Members of the

United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that poaching and illegal ivory trade have greatly diminished the Thornon elephant population,

Recognizing that differences have arisen concerning the prosecution of crimes involving illegal ivory trade and the return of confiscated ivory,

Noting that the Federal States of Aliya and the Republic of Rincossi have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as “the Court,” consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Aliya and the Republic of Rincossi, hereinafter referred to as “the Parties,” shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules of the 2015–2016 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the Regional Round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Libreville, Gabon, this 19th day of June 2015, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Aliya:

/s/ _____

Art I. March

Minister of Foreign Affairs

For the Republic of Rincossi:

/s/ _____

Ana P. Theeler

Minister of Foreign Affairs

Annex A

1. The Federal States of Aliya (hereinafter Aliya) and the Republic of Rincossi (hereinafter Rincossi) are coastal nations on two different continents. Aliya is located on the western coast of the continent of Thorno. Rincossi is located on the eastern coast of the continent of Rabab. Aliya and Rincossi (and the continents of Thorno and Rabab) are completely separated by the Bomud Ocean.
2. The Thornon elephant (*Loxodonta thornona*) is indigenous to the continent of Thorno. The physical characteristics and behavior of the Thornon elephant are almost identical to those of the African elephant (*Loxodonta africana*). In the 1940s, around 3,000,000 Thornon elephants lived on Thorno, but the population has decreased since then, largely due to hunting and illegal poaching. In 2005, around 600,000 Thornon elephants lived in Thorno, 20,000 of which lived in Aliya. As of May 2015, only around 300,000 Thornon elephants remained in the wild, 10,000 of which live in Aliya. The Thornon elephant is listed as vulnerable on the IUCN Red List of Threatened Species. No other species of elephant lives on Thorno.
3. Aliya is a developing country with a population of approximately 10,000,000 people. The country is around 200,000 km² in size. About 40% of the population lives on less than \$1.25 per day. The gross domestic product of Aliya is around \$6 billion (USD). Aliya's economy is based primarily on mining, agriculture, and ecotourism.
4. Rincossi is a rapidly developing country with a population of approximately 600,000,000 people. The country is around 5,500,000 km² in size. About 10% of the population lives on less than \$1.25 per day. The gross domestic product of Rincossi is around \$4.7 trillion (USD). Rincossi's growing economy is based primarily on manufacturing, agriculture, and consumerism. Rincossi is involved extensively in international trade.
5. Aliya and Rincossi are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
6. Aliya and Rincossi are Parties to the Vienna Convention on the Law of Treaties.
7. Aliya and Rincossi are Contracting Parties to the Convention on Biological Diversity (CBD).
8. Aliya and Rincossi are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). All populations of the Thornon elephant have been listed on Appendix I of CITES since 1977.
9. Aliya and Rincossi are Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS). The Thornon elephant is listed on Appendix II of CMS. Rincossi is not a range state for the Thornon elephant.
10. Aliya and Rincossi are Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Cultural Property Convention).
11. Aliya and Rincossi are Parties to the United Nations Convention against Corruption (UNCAC).
12. Aliya and Rincossi are Parties to the United Nations Convention against Transnational Organized Crime (UNTOC).

13. Aliya and Rincossi are Parties to the Vienna Convention on Diplomatic Relations.
14. High-level representatives from Aliya and Rincossi attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; the 2012 Rio+20 Conference at Rio de Janeiro; the 2014 London Conference on the Illegal Wildlife Trade at London; the first session of the United Nations Environment Assembly (UNEA) in 2014 at Nairobi; and the 2015 United Nations Congress on Crime Prevention and Criminal Justice at Doha.
15. Elephants—in particular the Thornon elephant—play a significant role in Aliyan culture, as they are important figures in Aliyan myths, history, and religion. Elephants have been portrayed in Aliyan art for centuries, and Aliyan temples typically have large elephant statues on the temple grounds. Many Aliyans believe that elephants carry the souls of the dead safely to the afterlife. The Thornon elephant is the national animal of Aliya, is featured prominently on the Aliyan national flag (see Annex B), and appears on Aliyan currency (see Annex B). The Thornon elephant is considered a “keystone species,” and the elephants are ecologically important to Aliya and the other countries in Thorno because they disperse seeds, beneficially modify habitats, and help maintain biodiversity, among other things. In 1990, the Aliyan government enacted legislation declaring, in part, that “Thornon elephants and their parts and derivatives are of historical and scientific importance to Aliya.”
16. The Thornon Elephant National Park was established in Aliya in 1975. The park is around 15,000 km² in size and is home to approximately 2,000 Thornon elephants. Rangers, guards, and a series of fences protect the park, but due to limited resources, poachers still manage to kill elephants and remove their tusks within the park. Scientists have determined that the population of Thornon elephants in the park has a distinct DNA signature that differentiates that population from the populations of Thornon elephants outside the park. The park maintains information about the DNA signature of the population of elephants within the park’s borders and maintains a general inventory of the animals within the park. The inventory includes estimates about the overall number of elephants, as well as estimates about the various families and herds, but because of the large number of animals in the park, the inventory does not list individual animals.
17. In 1977, the “Aliyan Wildlife Protection Act” (Wildlife Act) went into force in Aliya. The purposes of the Wildlife Act were to protect wildlife and to implement Aliya’s obligations under CITES. The Wildlife Act criminalizes CITES violations, and a violation is punishable by a maximum of ten years in prison and a fine. The Wildlife Act also provides for the confiscation of illegally traded wildlife specimens and provides that such confiscated specimens shall be returned to the country of origin, if practicable.
18. In 1977, Rincossi also enacted legislation to protect wildlife and implement CITES. Under the “Rincossi Flora and Fauna Trafficking Act” (Trafficking Act), international trade in violation of CITES is prohibited, and the Trafficking Act provides for the confiscation of illegally traded specimens. Although international trade in violation of CITES is prohibited, a legal ivory market exists in Rincossi. Rincossi law does not prohibit domestic trade of legal ivory, which includes ivory that was obtained before 1977 and ivory that was legally obtained. Ivory is a status symbol in Rincossi, and small ivory carvings are often given as gifts, especially among the wealthier citizens.

19. Under the “Aliyan Ivory Trade Prohibition Act” (Ivory Act), enacted in 1980, all ivory trade—both international and domestic—is illegal in Aliya. Despite the Ivory Act, an underground market for illegal ivory still exists in Aliya. The Aliyan government prosecutes many cases involving ivory trafficking, but due to Aliya’s limited financial resources, some cases have not been prosecuted.
20. Over the last 15 years, companies owned by the Rincossi government have established various railway, roadway, port, and other infrastructure projects in Aliya and other countries in Thorno. The companies often bring over Rincossi citizens to work on the projects. The large numbers of Rincossi workers in Aliya helped to stimulate the market for illegal ivory in both Aliya and Rincossi, and Rincossi has become the primary destination for illegal ivory from Aliya.
21. Recognizing the pressing nature of protecting Thornon elephants and the growth of the illegal ivory markets in Aliya and Rincossi, the Rincossi government amended its Trafficking Act in 2010 to strengthen the act. In particular, the amendments increased the maximum penalty for a CITES violation to eight years in prison. The 2010 amendments also provided that it is the policy of Rincossi to destroy confiscated ivory, if practicable.
22. Since the 2010 amendments, the Rincossi government has prosecuted only two cases involving illegal ivory trade under the Trafficking Act. Most instances of ivory smuggling have not resulted in criminal prosecutions. The Rincossi government has, however, made numerous confiscations of illegal ivory, and in 2013, the Rincossi government publicly destroyed several tonnes of illegal ivory. Over the last few years, other countries in Rabab have also held similar public events to destroy illegal ivory.
23. In July 2014, an ambassador from Rincossi named Pam C. Cusi traveled throughout Thorno on a diplomatic mission to meet with various government officials and to visit some of the Rincossi-funded infrastructure projects located in Thorno. One of Cusi’s visits was to a port project on the coast of Aliya. Upon Cusi’s return to Rincossi several days later, Rincossi officials discovered that Cusi had transported 25 kg of illegal ivory back into Rincossi. Law enforcement officials in Rincossi notified Aliyan officials, the two countries agreed to launch a joint investigation, and the ivory was confiscated.
24. During the joint investigation, investigators obtained a security video of Cusi’s visit to the port in Aliya. The video clearly shows Cusi talking with two suspected poachers about purchasing ivory from them to transport back to Rincossi. On the video, Cusi asks the men how she can purchase ivory. One of the men responds that it is illegal and asks Cusi who she is and why she is interested. Cusi replies, “Yes, I know it is illegal, but I don’t have to worry about getting into trouble because I have diplomatic immunity. The Aliyan government can’t touch me, and I will pay your asking price in cash. I plan to sell the ivory back in Rincossi, where some ivory trade is legal.” They then negotiate the terms of the deal. Video footage from a couple of days later shows Cusi completing the ivory purchase at the port.
25. In November 2014, investigators discovered that Cusi’s illegal ivory purchase had been part of a larger criminal operation that transported illegal ivory between Aliya and Rincossi. The evidence also implicated several members of a private group called the Barnum Uritovsky. The Barnum Uritovsky is made up of over 100 Rincossi citizens, and the group runs a large international transport business. The members of the group are politically well connected. For years, Rincossi law enforcement officials have been monitoring the group’s activities. A few members of the group have been arrested for minor crimes over the years, but the group has remained largely intact.

26. In December 2014, a confidential informant revealed that 20 members of the Barnum Uritovsky were involved in trafficking illegal ivory from Thornon elephants poached in Aliya and that the members of the group had been actively doing so for around three years. The informant explained that members of the group worked with poachers in Aliya and transported the ivory back to Rincossi. Later that month, after obtaining additional evidence, Rincossi law enforcement officials raided several transport containers owned by the Barnum Uritovsky and discovered a large supply of illegal Thornon elephant ivory. In accordance with Article 31 of UNCAC and Article 13 of UNTOC, officials confiscated all of the illegal elephant ivory (approximately 1,500 kg). Members of the Barnum Uritovsky were briefly detained and questioned, but no arrests were made.
27. The Aliyan government learned that Cusi and the 20 members of the Barnum Uritovsky had not yet been arrested or prosecuted, and on 15 January 2015, the following diplomatic note was forwarded to the Government of the Republic of Rincossi:

The Embassy of the Federal States of Aliya presents its compliments to the Government of the Republic of Rincossi and wishes to convey its great concern about the dwindling numbers of Thornon elephants and the growing illegal markets for Thornon elephant ivory in Aliya and Rincossi. The Government of the Federal States of Aliya is most grateful for the continued assistance of the Republic of Rincossi during our ongoing joint investigation into the transnational ivory smuggling operation that was uncovered in 2014.

At this juncture of the investigation, we request that our law enforcement officials, prosecutors, and other government officials meet to discuss the case against Ambassador Cusi and members of the Barnum Uritovsky, and to determine how to proceed expeditiously with their arrests and prosecutions. The Government of Aliya wishes to offer its continued and dedicated assistance to the Government of Rincossi in this matter. It also would be prudent for us to request assistance from a Wildlife Incident Support Team from the International Consortium on Combating Wildlife Crime.

Please accept the assurance of my highest consideration.

/s/ _____
Ellen H. Aberson
Ambassador

28. On 2 February 2015, the following diplomatic note was forwarded to the Government of the Federal States of Aliya:

The Embassy of the Republic of Rincossi presents its compliments to the Government of the Federal States of Aliya and has the honor to acknowledge receipt of the diplomatic note dated 15 January 2015.

The Government of Rincossi shares the concern expressed by the Government of Aliya regarding the Thornon elephant and illegal ivory trafficking. We sincerely appreciate the assistance provided by the Government of Aliya during the joint investigation and are pleased that the investigation was successful and has put an end to a significant portion of the illegal ivory trade occurring between our two countries.

While the Government of Rincossi is grateful for your offer of continued assistance, we have decided not to make any arrests or pursue prosecutions of Ambassador Cusi or members of the Barnum Uritovsky. The Government of Rincossi has issued a written warning to Ambassador Cusi and the 20 members of the Barnum Uritovsky and will continue to monitor their activities closely. Given that their entire ivory supply has been confiscated and that they will be monitored, it is our position that no further action is needed to deter them from future ivory trafficking.

Please accept the assurance of my highest consideration.

/s/ _____

J.D. Brunhoff

Ambassador

29. On 19 February 2015, the Government of the Federal States of Aliya sent a diplomatic note to the Government of the Republic of Rincossi that stated in part:

We believe that Rincossi is violating international law by refusing to prosecute Ambassador Cusi and the 20 members of the Barnum Uritovsky, as they have clearly violated CITES. Under the Articles on the Responsibility of States for Internationally Wrongful Acts, Rincossi is responsible for the international violations of Ambassador Cusi and the 20 members of the Barnum Uritovsky, and Rincossi should act to remedy this situation. The evidence against these criminals is overwhelming, and the Rincossi government should prosecute them immediately.

By failing to arrest and prosecute these individuals, Rincossi is in violation of, inter alia, Article 30(3) of UNCAC, Article 11(2) of UNTOC, Article VIII and Resolution 10.10 of CITES, Article 8 and other provisions of CBD, the Rio Declaration, the Declaration of the London Conference, the Doha Declaration, and UNEA Resolution 1/3.

Rincossi is failing to enforce its domestic legislation to the detriment of the Thornon elephant and the citizens of Aliya. Thornon elephants are an integral part of the culture and history of Aliya, and they need to be protected for current and future generations. Allowing these crimes to go unpunished means that these dangerous criminals remain free to continue trafficking in illegal ivory, and many more Thornon elephants will be killed for their tusks. Moreover, Rincossi's failure to prosecute these criminals demonstrates to other wildlife traffickers that they will not have to pay for their crimes. Protecting biodiversity is a common concern of humankind, and we accordingly request the Government of Rincossi to cooperate with us on this matter to protect Thornon elephants from future harm.

30. On 3 March 2015, the Government of the Republic of Rincossi sent a diplomatic note to the Government of the Federal States of Aliya that stated in part:

Initially, we wish to clarify that the Government of Rincossi is in no way responsible for the purely private conduct of Ambassador Cusi or the members of the Barnum Uritovsky.

We reject the notion that Rincossi is somehow in violation of international law for its prosecutorial decisions and note that Article 4 of UNCAC and Article 4 of UNTOC emphasize "non-intervention in the domestic affairs of other States." Furthermore, Rincossi's stringent national legislation fully complies with its obligations under Article VIII of CITES. In addition, CBD Parties are obligated to

comply with its provisions only “as far as possible and appropriate.” The other declarations and resolutions on which the Government of Aliya relies are all non-binding, and even if they were binding, Rincossi has fully complied with any obligations it may have under those documents.

This is a purely domestic matter, and it is well within our discretion to decide not to prosecute Ambassador Cusi, especially given her diplomatic status and very limited involvement in the operation. Further, the Government of Rincossi has other more pressing national issues on which it must spend the vast amount of resources and time that would be required to prosecute approximately 20 members of the Barnum Uritovsky.

The Government of Aliya has not prosecuted some ivory trafficking cases and is in no position to criticize the Government of Rincossi’s decision. The Government of Rincossi plans to destroy all of the confiscated ivory publicly, which will send the necessary deterrent message and will help to educate the public.

31. On 11 March 2015, it was determined that all of the ivory confiscated from Cusi and the 20 members of the Barnum Uritovsky matched the DNA signature of the population of elephants living in the Thornon Elephant National Park in Aliya. That same day, the Government of the Federal States of Aliya sent a diplomatic note to the Government of the Republic of Rincossi that stated in part:

The Government of the Federal States of Aliya maintains that the Government of the Republic of Rincossi is violating international law by failing to prosecute Ambassador Cusi and the 20 members of the Barnum Uritovsky. This is not a purely domestic matter and is instead having a direct and negative effect on the Thornon elephants and the people of Aliya. Aliya’s lack of resources and previous inability to prosecute some ivory trafficking cases does not give Rincossi carte blanche to violate international law.

Additionally, now that the origin of the confiscated ivory has been determined, the Government of Aliya formally requests that the Government of Rincossi return all of the confiscated ivory to Aliya. This ivory is important cultural property that belongs to

Aliya and should be returned in accordance with Article 7(b) of the Cultural Property Convention.¹

32. On 31 March 2015, the Government of the Republic of Rincossi sent a diplomatic note to the Government of the Federal States of Aliya that stated in part:

The Government of the Republic of Rincossi is unable to comply with the request of the Government of the Federal States of Aliya to return the confiscated ivory to Aliya. We dispute whether the ivory even qualifies as ‘cultural property’ that would be protected under the Cultural Property Convention. Therefore, the Convention does not require Rincossi to return the ivory.

33. On 8 April 2015, the Government of the Federal States of Aliya sent a diplomatic note to the Government of the Republic of Rincossi that stated in part:

¹ See generally Ethan Arthur, *Poaching Cultural Property: Invoking Cultural Property Law to Protect Elephants*, 17 J. Int’l Wildlife L. & Pol’y 231, 231–53 (2014), available at <http://www.stetson.edu/cultural-property-article>

The Government of the Republic of Rincossi is violating international law by refusing to return the ivory to Aliya as requested by the Government of the Federal States of Aliya. The Cultural Property Convention applies to Thornon elephant ivory, which is of cultural, scientific, and historic importance to Aliya. Further, the Government of Rincossi should return the ivory to Aliya pursuant to Article VIII(1)(b) of CITES. The return of the ivory is also mandated by Article 14 of UNTOC and Articles 51 and 57(3)(c) of UNCAC. We request that the Government of Rincossi return the confiscated ivory to Aliya immediately.

34. On 17 April 2015, the Government of the Republic of Rincossi sent a diplomatic note to the Government of the Federal States of Aliya that stated in part:

CITES Article VIII(1)(b) does not require the Government of Rincossi to return the ivory and instead provides that Parties must take measures “to provide for the confiscation *or return* to the State of export of such specimens.” CITES Resolutions 9.9 and 9.10 indicate that destruction is actually preferable.

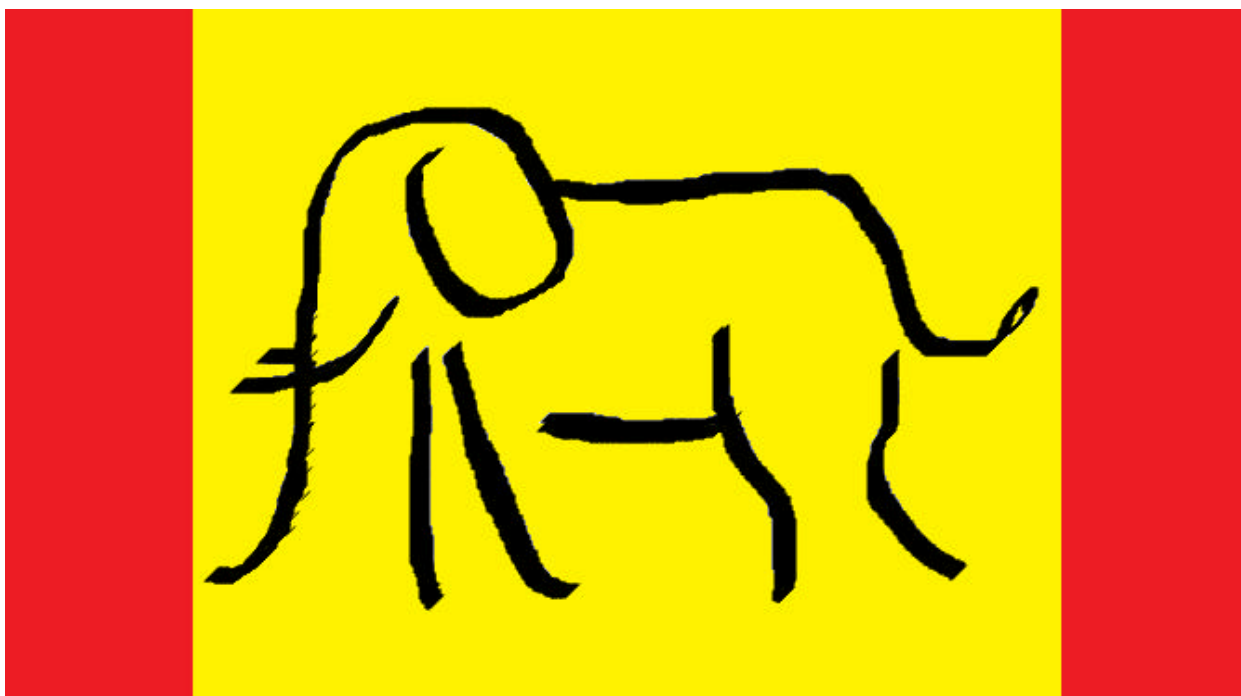
The articles upon which Aliya relies under UNTOC and UNCAC do not mandate the return of confiscated property.

Our national legislation provides that it is the policy of Rincossi to destroy confiscated specimens. Paragraph 15(II) of the London Declaration encourages destruction and provides further support for our position. Destroying this ivory would send a much stronger and more effective message to the public than would its return to Aliya, where it could end up back on the illegal ivory market.

The Government of Rincossi has scheduled the public destruction of the ivory for 7 July 2015.

35. Additional negotiations between the Federal States of Aliya and the Republic of Rincossi failed to resolve the dispute regarding both the failure to prosecute Ambassador Cusi and the 20 members of the Barnum Uritovsky and the requested return of the confiscated ivory. The Parties agreed to submit these matters to the International Court of Justice under a Special Agreement pursuant to Article 36, paragraph 1, of the Statute of the International Court of Justice. The Government of Rincossi agreed to suspend its planned destruction of the confiscated ivory until the International Court of Justice could consider the matter.
36. The Federal States of Aliya seeks an order declaring that the Republic of Rincossi violated international law by (1) failing to arrest or prosecute Ambassador Cusi and the 20 members of the Barnum Uritovsky for trafficking illegal Thornon elephant ivory; and (2) refusing to return the confiscated Thornon elephant ivory to Aliya.
37. The Republic of Rincossi opposes the claims in paragraph 36 and seeks an order declaring that the Republic of Rincossi has not violated international law with respect to any actions related to Thornon elephants.

Annex B



Aliyan National Flag



Aliyan Currency