

Section 7. Science of law

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CITES AND THE INTERNATIONAL LAW ON THE PROTECTION OF WILD ANIMALS

Abstract. Learning about wild animals, their protection and welfare is an important issue for researchers, students and those interested in environmental science and animal welfare. The following article focuses on the role of CITES for the protection of wild animals within the framework of international wildlife law and in light of EU accession to the Convention. The article briefly addresses the question of animal welfare in relation to wild animal protection and emphasises the need for future actions to bridge the gap between wildlife conservation and animal welfare.

Keywords: CITES, protection of wild animals, animal welfare.

Introduction

Throughout human history perceptions about animals have changed significantly and our understanding of other-than-human beings has evolved to embrace the idea that some, including many wild animals, are sentient and are hence capable of experiencing pain, pleasure and suffering. A lot of people value non-human animals for their awareness and cognitive abilities and are prone to believe that we have certain obligations towards them, especially towards sentient creatures whose welfare is important and whom we are more likely to want to protect [1, 46]. Nonetheless, conservation measures have paid little attention to animal sentience [2, 465] and animal cruelty has increased despite animal protection laws [3, 2]. Unsustainable wildlife exploitation threatens the very existence of many endangered species with irreversible biodiversity loss, whereas wildlife trafficking has become “one of the most profitable international crimes” [4, 4]. The above phenomena require a closer look at international law on

the protection of wild animals and the regulation of wildlife trade in particular by taking into account the question of wild animal welfare.

International wildlife law

Early legislation for the protection of wildlife on national level can be traced back thousands of years ago to ancient Babylon and Egypt but the use of international instruments is a more recent phenomenon originating in the last quarter of the 19th century [5].

Today’s international instruments for wildlife conservation vary in terms of their scope, the geographical area and the species they cover, as well as the number of parties involved. They include global conventions, regional legal instruments with general scope, instruments with specific scope, treaties, memoranda of understanding, special species initiatives and bilateral instruments [6, 785–786]. The most significant of these are the conventions of global scale known as the “Big 5”: The Ramsar Convention on Wetlands of International Importance Es-

pecially as Waterfowl Habitat (1971), the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), the Convention on the Conservation of Migratory Species of Wild Animals (1979) and the Convention on Biological Diversity (1992). Individually and collectively these international legal instruments have contributed to the conservation of wildlife and wild animals in particular. Among their positive outcomes are the designation of protected areas, the regulation of wildlife exploitation, increased cooperation between government and non-government stakeholders, conservation of species and development of national legislation regulating wildlife exploitation, to name but a few [6, 787].

Among the “Big 5”, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) [7], which entered into force in 1975, stands out as the most successful and effective international agreement [8, 32] with straightforward basic principles ensuring that it is better enforced than other treaties [5, 484].

CITES and its role for the protection of wild animals

Following the dramatic increase of international trade in wildlife during the 1960s and 1970s [5, 483] the General Assembly of the International Union for Conservation of Nature and Natural Resources (IUCN) called for a convention to regulate the trade in wildlife species. Today, CITES success lies within the control it exercises over the import, export, re-export and introduction from the sea of specimens of species through the implementation of a licensing system. CITES prohibits the international trade in specimens of species included in its appendices without the prior grant of a permit by the national Management and Scientific Authorities. Thus, CITES becomes the first international wildlife treaty to require the establishment of national authorities to administer its provisions [5]. Currently,

there are more than 38.700 species included in the appendices, covering 5.950 wild animal species protected by CITES against over-exploitation through international trade.

Appendix I includes “all species threatened with extinction which are or may be affected by trade” [7, Article II (1)].

Appendix II contains “all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation” [7, Article II (2)].

Appendix III includes “all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade” [7, Article II (3)].

While any type of wild animal may be included in the list of species protected by CITES, specific amendments to Appendices I and II must be submitted in the form of proposals by the parties to the Convention and are then voted at the Conference of the Parties, the decision-making authority of CITES. The Secretariat is responsible for organising meetings, drafting resolutions and preparing annual reports. Other structural bodies include the Standing Committee, in charge of monitoring compliance, implementation and enforcement, and the Plants and Animal Committees. The latter is the authority providing specialized knowledge on wild animal species covered by the Convention.

In recent years CITES has contributed significantly to the conservation of species affected by trade [6, 787] and thus, to the protection of wild animals in particular. A major impediment, however, remains the problem of enforcement due to ideological differences and economic interests resulting in various and sometimes insufficient penalties and punishments inflicted, problems with confiscation, inadequate training of officials and ineffective control mechanisms, especially in developing countries [5; 6].

Nonetheless, the Gaborone amendment to the Convention [9], in force since 2013, allowing for the

accession of regional economic organizations, such as the EU, holds great potential for more successful implementation and the acquisition of higher standards in terms of enforcement.

EU implementation and enforcement beyond CITES

The EU accession to CITES took place on 8 July 2015 following Council Decision 2015/451, though the EU had implemented the Convention since 1984 through a number of regulations directly applicable to Member States but requiring enforcement by means of national legislation transference.

The most significant of these regulations is Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [10], amended by Commission Regulation (EU) No 1320/2014. It exercises control over the import, export, re-export, and internal EU trade of specimens through a licensing system of permits. The Regulation has four annexes indicative of how provisions regulating wildlife trade go beyond CITES in including species not covered by the Convention [11].

Annex A to Council Regulation (EC) No 338/97, for example, includes: all CITES Appendix I species, some CITES Appendix II and III species, for which the EU has adopted stricter domestic measures, as well as some non-CITES species.

Annex B covers all other CITES Appendix II species, some CITES Appendix III species and some non-CITES species.

Annex C refers to all other CITES Appendix III species, whereas Annex D is concerned with some CITES Appendix III species for which the EU holds a reservation and with some non-CITES species.

The EU imposes stricter import restrictions for species included in Annexes A and B and prohibits the purchase, sale and any commercial use of Annex A species. Wild animals included in Annexes A and B are further protected and import permits can be issued only provided that the intended accommodation for a live specimen at the place of destination

is adequately equipped to conserve and care for it properly. In addition, Article 4 (1f) of the Regulation, in compliance with CITES Guidelines for Transport and IATA Live Animals Regulations for air transport, protects all animals introduced from the sea from “risk of injury, damage to health and cruel treatment” during transport.

Furthermore, the adoption of EU Action Plan against Wildlife Trafficking [12] in 2016 is of paramount importance for the enhancement of cooperation and the fight against illegal wildlife trade.

Animal welfare implications

Both wild animal conservation and animal welfare reflect our social concerns about animals but the two are often in conflict [2, 468] and wild animal conservation law seldom focuses on welfare issues [2, 463; 13, 935; 14, 1]. A good example is the culling of wildlife for conservation purposes, which raises serious welfare concerns. As an international trade agreement CITES contains provisions related to animal welfare, particularly in articles III, IV and V, but the parties to CITES disregard such concerns in preference of conservation measures and the only welfare policies adopted by the Convention are those of the International Air Transport Association [13, 935].

International conventions on wild animal protection focus predominantly on sustainable use [14, 17] and CITES Strategic Vision: 2021–2030 states that by 2030 “all international trade in wild fauna and flora is legal and sustainable” [15, 3]. That may prove beneficial in reducing trade in endangered species but remains, nonetheless, ineffective in addressing the welfare of individual animals, a phenomenon that will require a more “welfare-centric ethic” [2, 471].

The EU has proven that trade restrictions can be grounded in animal welfare concerns [1]. It successfully banned trade in seal products because of the use of inhumane killing methods and the subsequent ruling of the World Trade Organization in 2014 in favour of EU was a move in the right direction.

Furthermore, Article 13 of the Treaty on the Functioning of the European Union [16] which rec-

ognizes animal sentience and welfare requirements, as well as the proposed Universal Declaration on Animal Welfare and its potential adoption as a resolution by the United Nations may raise awareness and trigger legal action to protect wild animals on welfare grounds [2, 482].

Therefore, acknowledgement and acceptance of a broader definition of “animal protection”, one that includes concerns about individual welfare and not simply about species conservation, may be warranted [2, 482].

Conclusion

Among the many important wildlife international laws, CITES has the capacity to act as a powerful tool in the protection of wild animals, despite some difficulties with implementation and enforcement. It provides an opportunity for the imposition of stricter conditions on international wildlife trade in view of EU accession and its regulation policy. Arguably, wild animal protection legal instruments and actions may benefit from bringing animal welfare to the forefront of both international and national agendas.

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