



## INTERNATIONAL LEGAL STREAK FOR BIODIVERSITY CONSERVATION

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### Abstract

*We have seen that Environmental and Ecological constraints have symbolized our thinking towards new goals, or goals which have been neglected under the influence of a culture of mass production and consumption. The concept of respecting and protecting the human environment has its objective the fulfillment of the legislature, immediate ambitions of individuals and nations as well as the interests of future generation. The rectification of past errors, wherever possible, has its objects the provisions of better opportunities for development and progress. After Second World War, a new phase started in which nations started addressing the environmental issues and started forming international organizations. It was also during this period that there was a growing awareness about the relationship between economic development and environmental degradation and its preservation. During this period, the main reasons for the development of international environmental law were the advancement in science and technology and the unprecedented unscientific exploitation of the natural resources.*



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**INTRODUCTION:** The state of the conservation of biodiversity at the outset of the twenty first century is not the same as it was decades ago. The proliferation of private enterprise and neoliberal practices, combined with rapid integration of global processes, have reduced the potential impact of international accords and protocols on the environment and sustainable development to meager symbols of complacency and indifference. Major environmental issues have become muddled in international bargaining processes, with hardly any direct focus or financial resources devoted to their alleviation. Today the goals commonly expressed by environmentalists include reduction and clean up man made pollution, with future goals of zero pollution, reducing societal consumption of non-renewable fuels, development of alternative green, low-carbon or renewable energy sources, conservation and sustainable use of scarce resources such as water, land and air, protection of representative or unique or pristine ecosystems, preservation and expansion of threatened or endangered species or ecosystems from extinction, the establishment of natural and biosphere reserves

under various types of protection and most generally, the protection of biodiversity and ecosystems upon which all human and other life on earth depends.<sup>1</sup>

The development of international environmental law can be traced back at least to the 19th century by the adoption of a number of bilateral treaties concerning fishing stocks. Thereafter, other bilateral and regional treaties were adopted, which tended to cover things like species conservation. First attempt of International concern for protection of Environment began with the formation of the American Fisheries Society in 1870, which was extended in 1902 and renamed as International Association of Game, Fish and Conservation Commission. Thereafter, other bilateral and regional treaties were adopted, which tended to cover things like species conservation. Although some bilateral treaties sought to regulate transboundary pollution, on the whole developments in treaty law were adhoc, sporadic and limited in scope<sup>2</sup>. The approach of international law generally to environmental problems is well illustrated by two international arbitrations. In the Behring *Fur Seals Arbitration*<sup>3</sup>, the dispute was between US and Great Britain over alleged over – exploitation of fur seals in areas beyond the (then) three nautical miles limit of US territorial waters. The Panel found that the US had no right of „Protection and Property“ in the seals, despite the importance of their conservation for local US citizens and their migration between the high seas and the US territories. However, the outcome of the dispute was a series of provisions, binding on the two parties to regulate seal fishing in the area, displaying many of the features of modern conservation treaties. On 8 November 1933, the „London Convention Relative to the Preservation of Fauna and Flora in their Natural State“ was signed. This Convention had similar objectives to the aborted 1900 Convention, namely to protect species of values as hunting trophies and to create protected majority of African States, it was replaced by the new African Convention on the Conservation of Nature and Natural Resources, signed in Algiers on 15 September 1968. The last Convention to be signed before the war, in Washington on 12 October 1940, was the „Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere“, which remains in force to this day although it is of relatively little influence. It was based on the 1933 London Convention on Africa and was intended to serve as its counterpart for the American Continent. It too combines measures for the protection of both species and areas, its broad objective being the production and preservation in their natural habitats of all species of native fauna and flora. The early trend in International conservation law was therefore, either regional dealing with specific geographic areas, or sectoral, dealing with particular subjects of species.<sup>3</sup>

**Convention on International Trade in Endangered species of Wild Fauna and Flora** The idea of a World Treaty on Conservation was originally launched before the First World War. A meeting in Berne in 1913 agreed on a text established a Standing Committee of Government representatives, which was given the task of collecting and publishing data on international nature protection and of issuing propaganda for that purpose. However, nothing further happened after the outbreak of war.

The concept of a World Treaty was subsequently revived at an IUCN meeting in Fontainebleau in 1948 and discussed at the first UNESCO-IUCN International Technical Conference on Nature Protection at Lake Success (USA) in 1949. Many delegations felt that disparities between the conditions and legislations of countries would make such a treaty almost unworkable. The feeling of the meeting was that it would be better to continue to work through regional and sectoral treaties. It was decided that IUCN should undertake further work on a world conservation treaty in the future, but at a date which could not yet be set.<sup>4</sup>

One of the major events in the first half of the twentieth century was the Convention on Preservation of Flora and Fauna in their Natural State in the year 1933. The aim of this convention was to preserve the natural fauna and flora of certain parts of the world, particularly of Africa, by means of national parks and reserves, and regulating, hunting and collection of species. It also had provisions for the preservation of forests and to encourage domestication of wild animals of economic importance and prohibition of certain methods of hunting e.g. use of poison, explosives, dazzling lights, nets, pits and snares. etc. It also put restrictions on trade of trophies and export of certain skins and furs. Major drawback of this convention was that there was no institutional arrangement for the administrator of provisions and compliance of the provisions.<sup>5</sup>

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments, which was drafted as a result of a resolution adopted in 1963 at a meeting of members of the World Conservation Union (IUCN). The main aim and objective of this Convention is to ensure that international trade in specimens of wild animals and plants does not threaten their survival and it accords varying degrees of protection to more than 33,000 species of animals and plants, and to recognize the ever growing value of wild flora and fauna from aesthetic, scientific, cultural, recreational and economic point of view, and that international cooperation is essential for the protection of certain species of wild flora and fauna against over exploitation through international trade.<sup>6</sup> The main aims and objectives of this Convention are the following:

□ to ensure that international trade in specimens of wild animals and plants does not threaten their survival and it accords varying degrees of protection to more than 33,000 species of animals and plants;

□ to recognize the ever growing value of wild flora and fauna from aesthetic, scientific, cultural, recreational and economic point of view, and that international cooperation is essential for the protection of certain species of wild flora and fauna against over exploitation through international trade;

□ to recognize that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of earth which must be protected for this and the generations to come

The Convention has divided such species into three categories (Appendix I, II & III). Appendix I include all species threatened with extinction (endangered).

Appendix II includes species not necessarily threatened with extinction but which may become extinct if trade in such species is not subjected to strict regulation. Appendix III includes such species which are identified by the party nations and need cooperation in control of trade by other party nations.<sup>7</sup>The export and import of any specimen of a species included in Appendix I, II and III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species and the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora. Further, any living specimens will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.<sup>8</sup>

Similarly the re-export of any specimen of a species included in Appendix I , II and III shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when a Management Authority of the State of re-export is satisfied that the specimen was imported into the State in accordance with the provisions of the present Convention and that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment and the Authority is satisfied that an import permit has been granted for any living specimen.<sup>9</sup>

An export permit shall contain the information specified in the model set forth in Appendix IV and may only be used for export within a period of six months from the date on which it was granted. A separate permit or certificate shall be required for each consignment of specimens.<sup>10</sup> There are certain exemptions relating to the trade, for example, the provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or

in the territory of a Party while the specimens remain in Custom control and where a Management Authority of the State of export and re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where in case of specimens of a species included in Appendix I and II, they were acquired by the owner outside his State of usual residence, and are being imported into that State.<sup>11</sup>

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentations issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party. The Convention also calls upon the States to make domestic laws for restricting or prohibiting trade, taking possession or transport of specimens of species and penalties for the contravention of such provisions. The Convention has also prohibited the trade between non-parties unless such non-party substantially conforms to the documentation requirement of the Convention. Roughly 5,000 species of animals and 28,000 species of plants are protected by CITES against over exploitation through international trade. These species are threatened with extinction if trade is not halted. Trade in wild-caught specimens of these species is illegal. In case of trade of captive bred animals or cultivated plants the management authority of the exporting country must make a non-detriment finding, assuring that export of the individuals will not adversely affect the wild population. Any trade in these species requires export and import permits. The Management Authority of the exporting state is expected to check that an import permit has been secured and that the importing state will be able to care for the specimen adequately. Notable animal species include the gorilla, the chimpanzee, tigers, Asiatic lion, leopards, jaguar, cheetah, Asian elephant, some populations of African elephant and all Rhinoceros species.

### **References**

- See generally, Bell and McGillivray, Environmental Law, IUCN, An Eye on Nature, online: [www.iucn.org](http://www.iucn.org); (2008);*  
*B. Ward and R. Dubos, Only One Earth: The Care and Maintenance of a Small Planet, 1972;*  
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