

Mapping the History of Illegal Wildlife Trade and Construction

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Introduction

The idea of wildlife conservation is deeply embedded in human conscience since antiquity for the reasons such as - sympathy in general, religious and philosophical injunctions and systemic understanding of the economic and environmental viability of a healthy biodiversity. There is a broad spectrum of conservation history which starts from era preceding Christ till as recent as today. It is impossible to account every bit in detail but the attempt in this article is to brush stroke the symbolic developments so as to give reader an idea as to how the process has evolved over the period of time and what are the historical factors behind the scheme of things as we have them today. The article brings out different considerations deployed in different eras of conservation – from pre-historic to colonial times and from there to post World War II developments till the establishment of CITES in 1973. It should be understood that although international trade in wildlife got a distinct treatment through CITES, but before that also, it was an intrinsic part of conservation efforts in general. Therefore, for the purpose of focusing on trade history specifically, facts have been retrieved in a way that they corroborate with the theme to the maximum extent possible.

Early evidences

While institutionalization of wildlife conservation on a global scale is a modern western construct, the idea *per se* is not new and was present in the conscience, laws and ethos of various populations around the world in ancient and medieval times. The notion of *Abhayaranya* (inner sanctuaries) as propagated in Kautilya's *Arthashastra*¹ (c. 2500 BP) was similar to the modern day conceptualization of a national park.² Some village communities

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¹ *Arthashastra* is an ancient Indian treatise on statecraft written by Kautilya (also known as Chanakya) who was the teacher and guardian of Emperor Chandragupta Maurya, founder of the Mauryan Empire.

² See Shekar Singh, *Biodiversity Conservation through Eco-development: Planning and Implementation Lessons from India*, UNESCO (South-South Co-

were so close to their environment that they fiercely protected trees, forests and wild animals in their surroundings even at the cost of their lives.³ Forests were sacred and had to be preserved in a way that their components evolve and grow as nature intended them to, without compromising with the genetic diversity that it was blessed with.⁴ Similarly, in ancient Chinese traditions, dating as far back as twenty-sixth century B.C. evidence can be found for the restrictions related to forests, mountains, rivers and lakes.⁵ Taking fish and removing timber in violation of the law were criminal offences from the time of the Tang Code (619 to 907 A.D.) till the era of the Qing Code in 1740.⁶ Although there are not very explicit records of the effective enforcement of these codes, they nevertheless evince presence of deep consciousness in the psyche of ancient civilizations with regards to the impact of their conduct on nature and surroundings.⁷

Along with empires and civilizations, religions also played a crucial role in instilling sympathetic approach towards animals. Islam, for instance, postulated certain norms that invalidated any harm or cruelty towards animals without a just cause.⁸ Buddhism is also widely acknowledged to be in line with the concerns of

operation Programme for Environmentally Sound Socio-Economic Development in the Humid Tropics), Working Papers No. 21, 1996, available at <http://unesdoc.unesco.org/images/0011/001138/113896Eo.pdf>.

³ *Id.*

⁴ *Id.*

⁵ See Lawrence Watters and Wang Xi, *The Protection of Wildlife and Endangered Species in China*, 14 *Geo. Int'l Env'tl. L. Rev.* 493,494 (2001-2002).

⁶ *Id.* See also Vincent Chang Yang, *Punishing for Environmental Protection? - Enforcement Issues in China*, 44 *INT'L & COMP. L.Q.* 671, 672 (1995).

⁷ *Id.* Along with these civilizations, there are also evidences of forestry conservation laws adopted in Babylon in 1900 BC and law for the establishment of nature reserves promulgated in Egypt in 1370 BC. See Michael Bowman, Peter Davies (et.al), *Lyster's International Wildlife Law*, Cambridge University Press, Cambridge, 2010, p.3.

⁸ http://www.bbc.co.uk/religion/religions/islam/islamethics/animals_1.shtml. Islamic injunctions specifically dealt with prohibition of use of tiger skin (Abu Dawud , 4129) and hunting of birds (Al-lulu wal-Marjan, 1279). Ibn Taymiyyah, an Islamic jurist, has extended this prohibition to hunting in general and established that it is permissible only out of necessity (al-fatawa, vol.4 p.619). It is interesting to note that in 2014 Indonesia's highest Islamic clerical body has issued a fatwa against illegal hunting and wildlife trafficking by deriving inferences and analogies from Quran.

See <http://www.bbc.com/news/world-asia-26452346>;

See also Lisa M. Meissner, *A Hypothetical Engagement: GATT Article XX(a) and Indonesia's FATWA against Trade in Endangered Species*, 90 *Notre Dame L. Rev. Online* 97 (2015).

environmentalists and endorse the proposal that endangered species ought to be conserved.⁹

Effects of colonization

There was an inextricable link between indigenous people or traditional societies with the wildlife around them (and the system continues even today) wherein they interacted in a mutually dependent and sustainable way.¹⁰ Considerations for escalation of efforts towards institutionalizing wildlife conservation and restricting trade in endangered species from late nineteenth century were different and did not necessarily take on board the concerns of local communities while being stipulated. Most of the world was colonized in the nineteenth century and before the conservation/regulation movement gained momentum it was preceded by an unprecedented overexploitation of wild flora and fauna by the imperial regimes. Sense of conservation and preservation, if at all any, existed only in form of moral precepts and there was no institutional arrangement to check the sharp dwindling of precious species around the world. In the period between 1600 and 1900 some seventy five known mammal species became extinct, much of which was due to the direct consequence of imperial exploitation of nature.¹¹ Martin and Tim in their work cite a research that reflects upon the degree of exploitation of species in the imperial era-

“The opening of Canada by the French and English via the Hudson Bay, the St Lawrence River and the Great Lakes held out the prospect of a lucrative and seemingly inexhaustible new source of furs, especially much prized beaver skins. The resultant trade was massive and horrific. In just one year, 1742, Fort York handled 130,000 beaver skins and 9,000 marten pelts; in the 1760s, one of the ports of the Hudson Bay Company supplied

⁹ See Simon P. James, *Buddhism and the Ethics of Species Conservation*, Environmental Values, Vol. 15, No. 1 (February 2006), pp. 85-97.

¹⁰ For instance, The Germans enacted the first wildlife law that prohibited hunting by Africans in 1891 impacting significantly on the livelihood strategies of the local population. Survival was further compromised after the enactment of the Game Preservation Ordinance of 1921 by British regime and subsequent declaration of Serengeti as the partial game reserve in 1921 which was later upgraded to a full game reserve in 1929. See Jafari R. Kideghesho, *Co-existence between the Traditional Societies and Wildlife in Western Serengeti, Tanzania: It's Relevancy in Contemporary Wildlife Conservation Efforts*, Biodivers Conserv (2008) 17:1865.

¹¹ See Martin Phillips and Tim Mighall, *Society and Exploitation through Nature*, Routledge: Taylor and Francis, New York, 2013, p. 87; See also Peres, C.A. 2009. *Over-exploitation* in N.S. Sodhi and P.R. Ehrlich (eds.), *Conservation Biology for All*, p. 109, Oxford University Press, Oxford, 2010.

nearly 100,000 beaver skins...In 1743 the single French port of La Rochelle imported 127,000 beaver skins, 30,000 martens, 12,000 otters, 110,000 raccoons and 16,000 bears...By 1831 the beaver was extinct in the northern Great Plains, and by the 1830s, after barely 200 years of hunting and trapping, North America's fur trade was effectively over. There were few animals left to trap and a whole rich spectrum of American wildlife had disappeared."¹²

Emergence of new world view

There was an emergence of the new world view in nineteenth century when hunting and study of natural history was at its peak. Both of them were considered honorable ventures and were available only to a privileged few. While studying natural history was inextricably linked with European exploration and expansion, hunting developed further as a sport of aristocracy after colonial avenues of Africa and Asia gave it an open call.¹³ A steep downward percolation of elite values characterized this period of history. Then, two things happened. One, Darwin's *Origin of Species* was published and it broke the myth of humans as divinely created beings by replacing it with possibility of kinship with animals. It was tipped as the greatest revolution in western thought of that time.¹⁴ Two, naturalists saw proof of the negative impacts of collecting and industrialization of flora and fauna and hunters also realized the quantum of degradation their activities wreaked on animal populations.¹⁵ Both these factors combined, implanted the concept of human induced extinction in the public mind and undercurrents of reassessment started to get stronger.¹⁶

¹² *Id.* The sharp decline of wildlife was natural, considering the conduct of population in that era which were largely characteristic of the combined agrarian and early industrial society of the times. Nature was regarded as an obstacle in the progress of civilization and was treated like a commodity. The agrarian mindset of the time was often frightened by abundant wild animals and uncontrolled wild ecosystems, and thus thought nature should be tamed and controlled. See Peter Moyle and Mary A. Orland, *A History of Wildlife in North America*, MarineBio.org, July 2014.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* As many species of mammal went extinct between 1851 and 1990 as between 1 A.D. and 1850. Sense of loss was exacerbated by the fact that once abundant species such as the Passenger Pigeon (1899 wild/1914 captive) and the vast North American Bison herds (1870s and 1880s) got suddenly extinct and this laid to rest the widely held view 'that only the same blind forces which had caused it (a species) to be there, could in the fullness of time cause it to perish'. See also W.T. Hornaday, *Wild Life Conservation in Theory and Practice*, Yale University Press and Oxford University Press, New Haven and Oxford, 1914, p.19.

¹⁶ *Id.*

Now was the time for the 'translation of these new worldviews into social values and public policy goals, namely designation of protected areas and enforcement of wildlife legislation, by groups of prominent men who established international lobbying networks'.¹⁷

From Sarasin to IUCN

Immediately after the nineteenth century, two personalities significantly contributed in changing the way wildlife was perceived in global imagination- Paul Sarasin and the then American president Theodore Roosevelt. In the brief discussion below I will be giving more deference to the contributions of Paul Sarasin because in my analysis of the available literature his work was comparatively more constructive and honest than Roosevelt. Roosevelt can be given credit for effectively lobbying in favor of wildlife protection; however, his integrity as a conservationist is irreparably marred by the infamous Smithsonian-Roosevelt African Expedition, the purpose of which was to collect specimens for the Smithsonian's Natural History Museum.¹⁸ In that expedition 13,000 specimens were shot and till date it is cited as an upsetting example of excessive killing and waiving of game laws on the part of the elite.¹⁹ Therefore, I find it hard to give detailed academic due to Roosevelt's contribution. Although for some, the expedition he led was simply 'the most elaborate scientific collecting *trip* in history'.²⁰

Sarasin's expeditions do not give any evidence of such killings.²¹ He was a respected Swiss naturalist, scientist and political activist of his time and also happened to be among the firsts to conceive the idea of an international organization which assumes the task of coordinating and uniting the efforts of worldwide conservation.²² It must be noted that Sarasin's time was one in

¹⁷ *Id.*

¹⁸ See William O. Craig, *Around the World with the Smithsonian*, Llumina Press, U.S.A, 2004, p.19

¹⁹ J.M. MacKenzie, *The Empire of Nature: Hunting, Conservation and British Imperialism*, Manchester University Press, Manchester, 1988, p. 219.

²⁰ Paul Jepson and Robert J. Whittaker, *Histories of Protected Areas: Internationalization of Conservationist Values and their Adoption in the Netherlands Indies (Indonesia)*, *Environment and History* 8 (2002): 136.

²¹ *Id.*

²² Fred Van Dyke, *Conservation Biology: Foundations, Concepts, Applications*, Springer, 2nd Edition, U.S.A, p.19. It is said that Sarasin's interest in wildlife conservation may have been stimulated by the signs of environmental destruction in the Alps ensuing from widespread floods and landslides following deforestation and overgrazing. Sarasin was also sensitive to the effects on indigenous people living in many parts of the world. See Martin

which European hold on colonies started diluting. Till then, Great Britain had been able to create organizations, laws and policies having an international effect because their influence extended to all their colonies around the world.²³ Organizations such as The Society for the Preservation of Wild Fauna and Flora of the Empire established (1903) were thoroughly British, yet they affected species protection in Asia, Africa and South America.²⁴ However, as the colonial domination faded there was a need to think of a more representative alternative which takes care of the newly founded concern for species conservation.²⁵ The idea of international conservation body with a broader mandate was proposed at the International Congress for the Protection of Nature, 1909.²⁶ Environmental groups from across Europe gathered in Paris and conservationists presented papers documenting environmental conditions in their respective countries.²⁷ It is important to note that the idea was the brain child of Paul Sarasin, and, after the Congress he relentlessly continued to lobby the Swiss government to invite other countries to discuss a potential intergovernmental body.²⁸ Sarasin approached a range of industrialized countries (including Japan, Argentina and United States) to create an international conservation body and thereafter, finally in 1913, delegates from 17 countries signed an Act of Foundation of a Consultative Commission for the International Protection of Nature in Berne.²⁹ The Commission was formally constituted in 1914 by 14 countries and a large conference was planned in the month of August to

Holdgate [hereinafter Holdgate], *The Green Web: A Union for World Conservation*, Earthscan, New York, 2013, p.11. In one of his famous statements at the Eighth International Congress of Zoology which met at Graz, Sarasin proposed – ‘a Committee charged to establish an international or world Commission for the protection of nature...throughout the world, from the North Pole to the South Pole, and covering both continent and seas.’ See Holdgate.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ William M. Adams, *Against Extinction: The Story of Conservation*, Earthscan, London, 2013, p.45. The second meeting of this Congress happened in 1931 after the death of Sarasin in 1929. In this meeting revision of the London Convention of 1900 was emphasized which was actually done in 1933.

²⁷ See Thomas Hale, David Held (et.al), *Gridlock: Why Global Cooperation is Failing When We Need it Most*, Polity Press, United Kingdom, 2013, p.196.

²⁸ *Id.* Also, Sarasin was the first to demand for controls on the international wildlife trade when in 1911 he called for restrictions on the import and export of bird feathers because of the effect of the vogue for plumed hats on bird populations. See Simon Lyster, *International Wildlife Law*, Grotius Publications, Cambridge, 1985, p.239

²⁹ See William M. Adams, *Against Extinction: The Story of Conservation*, Earthscan, London, 2013, p.45.

discuss whaling, hunting, and trade in certain species among other topics.³⁰ However, this momentum towards institutionalization was interrupted by the outbreak of the First World War and consequently the Commission (world's first global environmental body) never got a chance to meet and became defunct.³¹ After the war got over and peace was more imminent, the movement regained pace in 1923 when the International Congress for the Protection of Flora, Fauna and Natural Sites and Monuments met at Paris after a series of lobbying efforts by Sarasin.³² One of the tasks of this Congress was to assert the reconvening of the Commission³³ along with assessing the relationship between protection of nature and use of its resources.³⁴ Unfortunately there was no substantive outcome this time as well. It was only after the assembly of the International Union of the Biological Sciences in 1928 that an Office *International de Documentation et de Correlation pour la Protection de la Nature* was established and some stability in the institution building was achieved.³⁵ It is so, because this office later consolidated into the International Office for the Protection of Nature (IOPN) in 1934 that was further joined by the International

³⁰ Thomas Hale, David Held (et.al), *Gridlock: Why Global Cooperation is Failing When We Need it Most*, Polity Press, United Kingdom, 2013, pp.196-197.

³¹ *Id.*

³² See Patrick Blandin, *Towards Eco Evo Ethics*, in Donato Bergandi (ed.), *The Structural Links between Ecology, Evolution and Ethics*, Springer, New York, 2013, p.87.

³³ *Id.* Sarasin tried to pitch for the reconstitution of the defunct Consultative Commission through the platform of League of Nations this time, but Swiss Federal Government refused to take action saying that they deemed political circumstances to be unpropitious. In this entire process however an interesting precedent of NGOs lobbying IGOs, with both groups serving as norms entrepreneurs was set. If there would have been cooperation from Swiss government, the attempt had a high likelihood of succeeding because activists including Sarasin did manage to convince Inazo Nitobe, the head of the League's International Bureau Section to take up the cause and lobby governments and other members of the League's bureaucracy for support. See Holdgate. See also Thomas Hale, David Held (et.al), *Gridlock: Why Global Cooperation is Failing When We Need it Most*, Polity Press, United Kingdom, 2013, p.197

³⁴ Michael D. Mehta, Eric Ouellet, *Environmental Sociology: Theory and Practice*, Captus Press, Canada, 1995, p.222.

³⁵ See W.M. Adams, *Green Development: Environment and Sustainability in the Third World*, Routledge, London and New York, 2001, p.29.

Committee for Bird Preservation (ICBP)³⁶ to deliver a holistic institutional touch to varied issues related to wildlife.³⁷

IOPN was looked upon as a private version of Sarasin's original version.³⁸ It was constituted as a 'non-governmental organization financed through a separate Foundation for International Nature Protection and steered by a General Council with members from Belgium, France, Great Britain, Italy, the Netherlands, Switzerland and the USA.'³⁹ The office had an excellent library (some of which remains as the Tienhoven Library at the IUCN) and it published the 'International Review of Legislation for the Protection of Nature'. But it had barely started functioning before the war spread across Europe and disrupted the whole venture once again.⁴⁰

Post World War II, the process of convening international conferences re-resumed. In previous conferences there was not much official participation from governments *per se*; though, with expanding governmental responsibilities after the war, governments and intergovernmental organizations increasingly became involved in conservation and environmental conferences.⁴¹

IOPN had resumed its information sharing function in mid-1940s and the latent transnational communities began meeting again, strategizing the move forward.⁴² In an important meeting of nature protection groups held at Basel in 1946, delegates made a declaration– 'It is desirable that there should be an active international organization, widely international and representative in character, adequately financed and with adequate terms of reference'.⁴³ Thereafter, in July 1947 the Swiss League for the

³⁶ Now known as Birdlife International, ICBP came into existence in 1922 to serve as a transnational umbrella group for many of the North American and European bird advocacy groups. See Hale at 197.

³⁷ See W.M. Adams, *Green Development: Environment and Sustainability in the Third World*, Routledge, London and New York, 2001, p.29; See also M.R. Redclift, *Sustainability: Sustainable Development*, Routledge, Oxfordshire, 2005, p.74.

³⁸ Hale at 197.

³⁹ See Holdgate at 12.

⁴⁰ *Id.*; IOPN nevertheless did some constructive work before the war broke out by publishing a series of reports on African colonial territories. See M.R. Redclift, *Sustainability: Sustainable Development*, Routledge, Oxfordshire, 2005, p.74.

⁴¹ Lynton Keith Caldwell and Paul Stanley Weiland, *International Environmental Policy: From the Twentieth to the Twenty First Century*, Duke University Press, United States, 1996, p.50.

⁴² Hale at 199.

⁴³ *Id.* See also Thomas Princen, *The Ivory Trade Ban, Ivory Teaching Case*, 4/20/03, p.14, available at

Protection of Nature sponsored a conference at Brunnen attended by delegates and observers from twenty four countries and nine international organizations. This conference adopted a draft constitution establishing a provisional International Union for Protection of Nature (IUPN) which, after a follow-up conference called by UNESCO⁴⁴ became the basic charter for IUCN, the principal nongovernmental international organization for environmental protection.⁴⁵ The new organization comprised an unusual blend of governmental and non-governmental organizations, and its main objectives were to promote the preservation of wildlife and the natural environment, public knowledge of the issues, education, research and legislation.⁴⁶ Even after fund constraints IUPN survived and in 1956 its name was finally changed to International Union for Conservation of Nature and its Natural Resources (IUCN)⁴⁷ which is, by latest assessment, 'the world's oldest and largest global environmental organization, with more than 1,200 government and NGO Members and almost 11,000 volunteer experts in some 160 countries...supported by over 1,000 staff in 45 offices and hundreds of partners in public, NGO and private sectors around the world'.⁴⁸

<http://people.duke.edu/~zsb2/teaching/princentradebansim/princentradebansim.pdf>.

⁴⁴ The conference was organized by UNESCO and French Government in Fontainebleau, IUPN was founded on the premise that both nature and its resources should be protected for the benefit of existing and future generations. British biologist Julian Huxley was the first Director General of UNESCO who is often given a credit for making a push towards the establishment of IUPN. See *Id.* See also Michael D. Mehta, Eric Ouellet, *Environmental Sociology: Theory and Practice*, Captus Press, Canada, 1995., p.222; A. Gillespie, *Conservation, Biodiversity and International Law*, Edward Elgar Publishing, U.K., p.7.

⁴⁵ See Lynton Keith Caldwell and Paul Stanley Weiland, *International Environmental Policy: From the Twentieth to the Twenty First Century*, Duke University Press, United States, 1996, p.50.

⁴⁶ W.M. Adams, *Green Development: Environment and Sustainability in the Third World*, Routledge, London and New York, 2001, p.29. The statute clearly identifies primary objective of the institution, which is- 'to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable'. See http://cmsdata.iucn.org/downloads/iucn_statutes_and_regulations_en_may_2015.pdf.

⁴⁷ It was further renamed as World Conservation Union in 1991.

⁴⁸ <http://www.iucn.org/about/>.

Parallel Undercurrents of Regulating Trade in Wildlife

Apart from the institutional developments discussed above, there were parallel movements in the form of 'conventions' that obliged signatories to adhere to the provisions of wildlife conservation-

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1940

Background

The Convention had its roots in the recommendation of the Eighth International Conference of American States that met in Lima in 1938, to the Pan American Union about establishing a committee of experts to study problems relating to nature in the American republics and prepare a draft convention to that effect.⁴⁹ After the adoption of recommendation, the committee drew up the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere⁵⁰ (Western Hemisphere Convention), which was opened for signature to Member States of the Pan American Union (now called the Organization of American States) on 12th October 1940 and subsequently entered into force on 30th April 1942.⁵¹

In Lyster's view, it was a 'visionary instrument, well ahead of its time in terms of the concepts' it espoused mainly because it was the first of its kind international treaty to include – protection of species from man induced extinction, the establishment of protected areas/national parks/reserves,⁵² the regulation of international trade in wildlife,⁵³ special measures for migratory birds⁵⁴ and international cooperation,⁵⁵ all under a single text.⁵⁶ One of the primary objectives of the Convention was to-

'...protect and preserve in their natural habitat representatives of all species and genera of native flora and fauna, including migratory birds, in sufficient numbers and over areas extensive enough to assure them from becoming extinct through *any agency within man's control*.'⁵⁷ (*emphasis supplied*)

⁴⁹ Lyster at 97.

⁵⁰ 161 U.N.T.S. 193.

⁵¹ Lyster at 97.

⁵² Article II, III, IV.

⁵³ Article IX.

⁵⁴ Article VII.

⁵⁵ Article VI.

⁵⁶ Lyster at 97-98.

⁵⁷ Preamble to the Western Hemisphere Convention.

However, in spite of such forward looking premise, the Western Hemisphere Convention's greatest weakness was its failure to set up an administrative structure to review and promote enforcement of its terms. Consequently, although it had stimulated the establishment of some protected areas, enactment of national conservation legislations and development of cooperative programmes, it has nevertheless become a 'sleeping treaty' of 'little or no practical value'.⁵⁸

Bearing on International Trade in Wildlife

Article IX of the Western Hemisphere Convention requires each Member State to regulate the export or transit of 'protected species' or parts thereof by issuing appropriate export or transit certificates.⁵⁹ It further obliges all Member States to prohibit the import of species or parts thereof which are 'protected by the country of origin' unless accompanied by lawful export certificate.⁶⁰ 'Protected species' are nowhere defined but apparently refer to species listed in the Annex; however, this mechanism raises the problem as to how an importing country can discover which species is protected in the country of origin and which is not.⁶¹

Although the convention has clear mandate on international trade in wildlife, it is submitted that the advent of CITES in 1973 superseded its trade related provisions. Article IX was relevant for those Member States who initially did not accede to CITES; but now, since most of them have acceded,⁶² Article IX, like the convention itself, holds no substantial relevance today.

African conventions

Background

Africa has been central to the issue of trade in wildlife mainly because of its colonial history and rich biodiversity. IUCN based its work mainly on African situation, to push for CITES on a global level. Formal part of story however, dates back to 1900

⁵⁸ Lyster at 98,111, Calls were made in both the 1970s and the 1990s to establish an effective regional forum for the purpose of dealing with hemispheric conservation issues, but proved unsuccessful. See Michael Bowman, Peter Davies (et.al), *Lyster's International Wildlife Law*, Cambridge University Press, Cambridge, 2010, p.242.

⁵⁹ Lyster at 107.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Out of the 22 signatories, Haiti is the only Party to the Western Hemisphere Convention which has yet not acceded to CITES.

when the first international agreement to conserve African wildlife was signed in London.⁶³ Its title was Conservation for the Preservation of Wild Animals, Birds and Fish in Africa (hereinafter 1900 Convention).⁶⁴ The then colonial powers who governed major portion of Africa were the signatories to it.⁶⁵ Its main objective was 'to prevent the uncontrolled massacre and to ensure the conservation of diverse wild animal species in their African possession which are useful to man or inoffensive'.⁶⁶ Lyster has noted that by 1900 (for the reasons mentioned in earlier discussion)- 'the teeming herds of African wild animals were starting to diminish, and the primary goal of the Convention was *to preserve a good supply of game for trophy hunters, ivory traders and skin dealers.*'⁶⁷ (*emphasis supplied*).

The 1900 Convention adopted a 'Table' system of listing which was divided into different 'series' further sub-divided into useful animals, and, rare and endangered animals.⁶⁸ Although it was the first international treaty to encourage national reserves, prohibit the hunting, killing or capturing of any bird or animal, it lacked sensitivity in its purest form. Numerous species were considered unworthy of protection under the convention and signatory governments were 'urged' to destroy the eggs of crocodiles, poisonous snakes and pythons⁶⁹ and to 'reduce' certain other species including lion, leopard, spotted hyena, wild dog and birds of prey (except owls and vultures).⁷⁰

The 1900 Convention never came into force for lack of ratification by the signatories as required under Article VIII⁷¹ and therefore, it could not survive World War I. It was eventually superseded by the Convention Relative to the Preservation of Fauna and Flora in their Natural State,⁷² also signed in London in 1933 [commonly

⁶³ The 1900 Convention had been convened at the initiative of the British and German governments. See I. Parker and M. Amin, *Ivory Crisis* (1983) 123-124; Maffei, *Evolving Trends in the International Protection of Species*, 36 *German Yearbook of International Law* (1993) 131.

⁶⁴ 94 B.F.S.P 715.

⁶⁵ France, Great Britain, Germany, Portugal, Italy and Spain.

⁶⁶ Preamble to the 1900 Convention.

⁶⁷ Lyster at 113.

⁶⁸ *Id.*

⁶⁹ Article II(15).

⁷⁰ Article II (13). The full list of species to be reduced is contained in Table V of the convention. See Lyster, 113.

⁷¹ Hayden, *The International Protection of Wild Life: An Examination of Treaties and Other Agreements for the Preservation of Birds and Mammals*, Columbia University Studies in History, Economics and Public Law, 491 (1942) 37.

⁷² 172 *League of Nations Treaty Series* (1936) 241-272.

known as the 'London Convention'].⁷³ Under the London Convention, any imports of listed species needed export certificates from a competent authority in the territory of origin.⁷⁴ Colonial underpinnings of the objectives were same as that of the 1900 Convention because the concerns were still about the 'preservation of colonial big-game hunting grounds and revenues'.⁷⁵ However, two significant developments were made this time – one, the London Convention ended the concept of 'nuisance species'⁷⁶ and two, it extended its reach to include wildlife importing countries along with envisaging 'wildlife identification manuals for customs officers'.⁷⁷ The convention's main emphasis was on the establishment of 'national parks', 'strict natural reserves', and 'intermediate zones' to protect the wildlife for the purpose of fulfillment of its objectives mentioned above.⁷⁸ Like its predecessor, it prohibited hunting, killing and capture of the listed species and also regulated internal and international trade in their trophies, which were defined to include both- parts and products of the animals.⁷⁹

At this juncture there are two important things to note. Firstly, after entering into force in 1936, the London Convention became the first international treaty (having a bearing on various aspects of wildlife conservation including trade), to be applied on the African territory unlike the 1900 Convention which could survive only as a textual record. Secondly, it was a big influence for the

⁷³ Parties to the London Convention were again, like its predecessor, the colonial powers of the time. It was signed on behalf of South Africa, Belgium, Great Britain, Egypt, Spain, France, Italy, Portugal and the Anglo-Egyptian Sudan. India and Tanzania later acceded to the convention in 1939 and 1963 respectively. Lyster at 113.

⁷⁴ Article 9 provided for special identification marks in the case of ivory and rhino horn, but generally applied to all 'trophies', broadly defined as any animal, dead or alive, and anything part of or produced from any such animal. See Peter H. Sand, *Whither CITES? The Evolution of Treaty Regime in the Borderland of Trade and Environment*, 1 EJIL (1997) 32.

⁷⁵ *Id.*

⁷⁶ Lyster at 113.

⁷⁷ Peter H. Sand, *Whither CITES? The Evolution of Treaty Regime in the Borderland of Trade and Environment*, 1 EJIL (1997) 32.

⁷⁸ As for national parks and strict natural reserves, the London Convention stipulated that work should begin within two years of coming into force. See Article 3(1). However, where it was impracticable to do so, the convention declared that-'suitable areas should be selected as early as possible....and transformed into national parks or strict nature reserves as soon as...circumstances will permit.' See Article 3(2). Intermediate zones were supposed to be the buffer zones around the parks where farmers farmed at their own risk and where any animal going out of the park would not be immediately shot. See Lyster at 114.

⁷⁹ See Article 8(1), 9(2) and 9(8).

Western Hemisphere Convention (discussed above) as many of its substantial provisions and procedures were imported by the Western Hemisphere Convention seven years later in 1940.⁸⁰

Both the conventions of 1900 and 1933 did not have provisions related to decision making institutions and secretariat services which acted as a huge impediment in their implementation.⁸¹ For the London Convention proposals for implementation and adjustment were formulated during two technical follow-up meetings in London (1938) and Bukavu (1952) but to no avail.⁸² Entire corpus thereby, gradually succumbed to the political events of decolonization and it took twenty five more years for the process to revive in the form of African Convention on the Conservation of Nature and Natural Resources (African Convention)⁸³ signed on 15th September 1968 in Algiers on the recommendation of the Organization of African Unity (OAU) and with support from IUCN.⁸⁴ The 'Fundamental Principle' of the convention states that Parties '...shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people.'⁸⁵ It has a wide ranging mandate comprising– establishment of conservation areas,⁸⁶ trade,⁸⁷ encouraging and promoting research, education, development plans⁸⁸ etc. Launched on the plank of the London Convention, mainly to overcome the implementation issues, the convention still could not succeed for the reasons well-articulated by Lyster in following words:

⁸⁰ Lyster at 114.

⁸¹ Peter H.Sand, Whither CITES? The Evolution of Treaty Regime in the Borderland of Trade and Environment, 1EJIL(1997) 32

⁸² *Id.*

⁸³ 1001 U.N.T.S. 3.

⁸⁴ Peter H. Sand, Whither CITES? The Evolution of Treaty Regime in the Borderland of Trade and Environment, 1 EJIL (1997) pp.32-33. *See also* Lyster at 114. <http://www.ielrc.org/content/a9701.pdf>. *See also* <http://www.ielrc.org/content/a9701.pdf>. In this gap of twenty five years there were two more conservation efforts through the convention mode-International Convention for the Regulation of Whaling, 1946 and Interim Convention on the Conservation of North Pacific Fur Seals, 1957. Since this work is focused on wildlife on land, I will be avoiding any elaborate discussion on fisheries or sea animals' conservation effort which affect international trade.

⁸⁵ Article II.

⁸⁶ Article X (1)(i), X(1)(ii).

⁸⁷ Article IX.

⁸⁸ Article XIII, XIV.

“Unfortunately, it made the same mistake as both the London and Western Hemisphere Conventions and did not establish an administrative structure to oversee its enforcement. As a result, little has been done to encourage Parties to implement its provisions. The African Convention should not be lightly dismissed because it has stimulated useful conservation measures in some countries and remains the framework on which a substantial body of national legislation is based, but its practical value for African wildlife might have been considerably greater if it had established a central body with responsibility for overseeing and promoting its enforcement.”⁸⁹

Bearing on international trade in wildlife

Article IX, the trade provision of the convention bears characteristics similar to Article IX of the Western Hemisphere Convention. Although it is also now largely superseded by CITES, but for the purpose of historical deference it merits a brief consideration.⁹⁰ Article IX(2)(b) of the African Convention prohibits the export of a ‘specimen’ or a ‘trophy’ (both of them undefined) of species listed in the Annex without permit. Article IX(2)(c) makes the import and transit subject to the same conditions with an addition of the clause - ‘with due provision for the confiscation of specimens and trophies exported illegally, without prejudice to the application of other penalties’. Article IX (1) hits particularly on illegal trade by requiring the parties to ‘regulate trade in and transport of specimens and trophies’ of species not listed in the Annex⁹¹ and to ‘control the application of these regulations in such a way as to prevent trade in specimens and trophies which have been illegally captured or killed or obtained’.

It gives no further details about the regulation of trade leaving the provisions without force. It is submitted that while other substantive provisions of the African Convention are still alive, trade provisions are by and large redundant and overtaken by CITES. Lack of implementation and political will were the major reasons that demanded a more robust mechanism of regulating international trade in wildlife so that a system of accountability

⁸⁹ Lyster at 115.

⁹⁰ Article XI of relatively recent African Convention on the Conservation of Nature and Natural Resources, 2003 also deals with trade in specimens and products. The Convention is *available at* http://www.au.int/en/sites/default/files/AFRICAN_CONVENTION_CONSERVATION_NATURE_NATURAL_RESOURCES.pdf.

⁹¹ This is similar to Stricter Domestic Measure clause of CITES which we shall be discussing in detail while dealing with CITES and Free Trade.

and monitoring is effectively institutionalized.⁹² Thus, started the movement towards the establishment of CITES mainly based on the spadework done by IUCN.

Before, moving to the next section, it is important to understand the chronology of the discussion that we had above. There were two processes taking place simultaneously. One was the process of institutionalization of conservation which culminated in the establishment of IUCN which would later take up the extensive work related to species conservation including trade. Second process was more political than institutional. From the colonial perception of trade in wildlife to the post World War II efforts there were significant developments in the polity of wildlife conservation, especially in the era of 1950s and 1960s when African countries were gaining independence. How these two factors joined to bring CITES into existence is the discussion that follows.

Towards CITES

After the IUCN came into existence, one of the first challenges it faced was the looming threat of trade in wildlife and trafficking. There was a widespread concern in Europe and North America during the 1950s and 1960s about the threat of extinctions in tropics, especially in parts of Africa.⁹³ In fact, Africa was the historical focus of CITES; more so, because after decolonization, the trade in species continued to flow from African possession to metropolitan Europe and wealthy countries elsewhere through the traditional South-North route.⁹⁴ A review of IUCN's resolutions throughout the 1950s and the early 1960's reveals the organization's focus on trade as a key factor in species extinction.⁹⁵ When call for national legislations (General Assembly resolutions in 1952 and 1960) to check the import of species banned for exports went unheeded, it prompted the African conservationists from newly independent territories to raise the voice against ineffective enforcement and demand a stronger

⁹² A Brief History of CITES, CITES World, 30th Anniversary Special Edition, available at <http://www.cites.org/sites/default/files/eng/news/world/30special.pdf> [hereinafter CITES World].

⁹³ See William Mark Adams and Martin Mulligan, *Decolonizing Nature*, Earthscan, U.K., 2003, p.33. Authors further state that- 'By the 1960s African countries were winning independence from colonial rule and the prospect of poachers turning gamekeepers caused disquiet in Europe and North America'.

⁹⁴ Rachelle Adam, *Elephant Treaties: The Colonial Legacy of the Biodiversity Crisis*, University Press of New England, U.S.A, 2014, p.75.

⁹⁵ *Id.*

system of international regulation.⁹⁶ Apart from enforcement issues, the existing regulations were far from uniform and governments did not have means to know the regulations of other countries, neither did they have legal provisions to support them even if they did have an access.⁹⁷

Simultaneous to this was a series of concerted efforts by IUCN to influence African political leadership of newly independent territories. These efforts were executed in three strategic phases. First was a tour by IUCN Secretary General to 16 African Countries in West and East Africa.⁹⁸ Second phase included The Pan African Symposium on the Conservation of Nature and Natural Resources in Modern African States of September, 1961 which was held at Arusha in Tanganyika [now Tanzania]. The conference was supported by IUCN, FAO, CCTA, FPS and UNESCO and it marked a formal declaration from African leadership regarding the importance of survival of wildlife. Final resolutions of the conference iterated–‘the earnest desire of modern African states to continue and actively expand the efforts already made in the field of wildlife management’ and that they ‘recognize their responsibilities and the rightful place of wildlife management in land use planning’.⁹⁹ Finally, the third phase involved establishment of a team in IUCN with the support of FAO to advise African governments on conservation policies and their integration into general conservation programmes.¹⁰⁰

All this culminated in the adoption of Resolution 5 on ‘Illegal Traffic in Wildlife Species’ by the 8th General Assembly of IUCN held in Nairobi in 1963. This resolution triggered the process of CITES establishment by calling for an international convention which could tackle illegal trade in endangered species. Unequivocally, it stated:

“[W]here as many rare and vanishing species of wildlife are threatened with early extinction through illegal export from their native land and whereas such illegal export would be much less frequent if import into other countries were prohibited [...] [the 8th General Assembly] recommends [...] that an international

⁹⁶ *Id.* See also Philippe Sands, *Principles of International Environmental Law*, Cambridge University Press, U.K., 2003, p. 506; Dilys Roe, *Making a Killing or Making a Living: Wildlife Trade, Trade Controls and Rural Livelihood*, IIED and TRAFFIC, London, 2002, p.24.

⁹⁷ CITES World.

⁹⁸ William M. Adams, *Against Extinction: The Story of Conservation*, Earthscan, London, 2013, p.53.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

convention [...] be drafted and submitted for the approval of governments.”¹⁰¹

Thus the resolution green flagged the process towards finalization of an international treaty which could cover all the deficiencies of preceding regulatory mechanisms. It became IUCN's constitutional authority to undertake 'the study of practical and political problems involved in controlling the traffic in wild animals, leading to the drafting and sponsorship of an International Convention'.¹⁰² A first draft for the same appeared in 1964 and subsequent formal drafts were sent by IUCN to all the members of United Nations in 1967, 1969 and 1971.¹⁰³ Also, a first list of species to be covered by the proposed convention appeared at the 10th IUCN General Assembly, held in New Delhi, India, in 1969 and by 1971 several revisions to the draft text were completed with inputs from 39 governments and 18 NGOs.¹⁰⁴

After almost two decades of hard work, lobbying and convincing, IUCN's bid for the International Convention got the final push by the Recommendation 99.3 of the United Nations Stockholm Conference on the Human Environment, 1972 which proposed that 'a plenipotentiary conference be convened as soon as possible, under appropriate governmental or intergovernmental auspices, to prepare and adopt a convention on export, import and transit of certain species of wild animals and plants'.¹⁰⁵ In a swift response to this, 88 countries discussed a draft convention proposed by the U.S. at the Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife held at Washington, D.C. from 12th February to 2nd March, 1973.¹⁰⁶ After three weeks of debate, delegates zeroed in on the final text of the convention and its structure i.e., the Preamble, twenty five Articles and four Appendices.¹⁰⁷ Switzerland offered itself as the Depository Government for the new Convention and on 3rd March 1973, 21 countries signed it amidst

¹⁰¹ Rachelle Adam, *Elephant Treaties: The Colonial Legacy of the Biodiversity Crisis*, University Press of New England, U.S.A, 2014, p.76.

¹⁰² *Id.*

¹⁰³ CITES World.

¹⁰⁴ *Id.*

¹⁰⁵ See Rosalind Reeve, *Policing International Trade in Endangered Species: CITES Treaty and Compliance*, Earthscan, U.K., 2002, p.27. Stockholm Conference sowed the seeds for extremely important trends in environmental regulation. For our purpose one of the important recognitions made in this conference was that 'Man has a special responsibility to safeguard and wisely, manage the heritage of wildlife and its habitat.'

¹⁰⁶ The conference was also attended by six international organizations. See CITES World.

¹⁰⁷ *Id.*

general realization that something quite remarkable had happened.¹⁰⁸ Subsequently, Canada, Chile, Cyprus, Ecuador, Nigeria, Sweden, Switzerland, Tunisia, the U.S. and Uruguay became first countries to ratify the Convention, and after the tenth ratification by Canada the Convention entered into force on 1st July 1975.¹⁰⁹

For the sake of getting a sense of environment during Convention's formulation, it will be interesting to have a look at the account of one of the delegates who attended the conference at Washington, D.C.

"Never had I seen corridors long enough to travel with an electric cart from one meeting room to the other – which I thoroughly enjoyed – nor had I known that Department of State translators had to adhere to the rule that a text in one language must be translated into another with the same amount of words. Please laugh, if you wish. I did not- at least at the time. Neither did I laugh at the success of the U.K. delegation in calling for the deletion of the draft convention's provisions on transit- on the ground that transit is a non-existent event in the world of customs. But I grinned at the reintroduction of transit control by decision of the Conference of the Parties, sometime later. What really matters, however, is that CITES took off, and it became the cornerstone of the fight against a major threat to species conservation. Its role has evolved over time, and now CITES increasingly deals with species of great economic importance."¹¹⁰

Conclusion

Institutionalization of human conscience with regards to wildlife preservation has been a long process. Movements, theological and otherwise, time and again laid emphasis on the deference to Mother Nature that it rightfully deserves. Colonization of course came as a dark era, especially when we talk in terms of the unscrupulous exploitation of fauna and flora. Thankfully so, the process of institutionalized wildlife protection started soon after the process of decolonization took off. Significant credit goes to Paul Sarasin for his efforts in this direction and then to the

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* See also <http://www.cites.org/common/prog/economics/iucn-trademeasuresinCITES.pdf>.

¹¹⁰ Françoise Burhenne Guilmin, *Biodiversity and International Law: Historical Perspectives and Present Challenges: Where Do We come from? Where are we going?* in Michael Jeffery, Jeremy Firestone (et.al), *Biodiversity Conservation, Law and Livelihoods: Bridging the North-South Divide*, Cambridge University Press, New York, 2008, p.29.

institution of IUCN which took up the hectic task of convincing the leadership about the rationale of regulating trade in wildlife and developing a draft of the first treaty relating specifically to ITW, that later on we know, got adopted as CITES in 1973.

