

Animals, Ethics and International Law

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Introduction

The purpose of this chapter is to give the reader an overview of where some of the ethical debates around animals and international law are found. In part, the chapter builds upon my earlier work in this area.¹ At the time of writing this text, I approached the issue of ethics and international environmental law, as most doctoral students do, in a very theoretical manner. Accordingly, when I came to the topic of 'animal rights' I spent considerable time examining the work of the great thinkers in this area, such as Peter Singer and Tom Regan.

Over the subsequent 10 years, I have had no reason to change my mind with regard to the philosophical considerations in this area, and they continue to play a strong role in my personal life. However, during this period I have been actively involved in the practice of international environmental diplomacy both for national governments and international organisations. Accordingly, my professional work has often been driven towards very practical, somewhat traditional solutions to immediate problems, and the luxuries of philosophical purities have often seemed remote. At this point in history, I believe that necessity rather than pragmatism should govern efforts pertaining to the protection of animals in international law. In subsequent generations, I hope this will be different.

Nevertheless, it would be wrong to suggest that theory and practice never overlap. In some areas, ethical questions are at the forefront of international discussions, even though these questions tend to quickly become wrapped in nuanced language. Although this is often necessary to blunt otherwise embarrassing political differences, the nuances can also have the effect of disguising the rich philosophical areas where the debates have originated.

1 Gillespie, A (1997) *International Environmental Law, Policy and Ethics*, Oxford University Press, Oxford.

In this chapter, due to limitations of space, I shall not be looking at the original debates surrounding animal rights and/or animal interests. Nor shall I be examining the great plethora of ethical justifications that have arisen for why animals should be protected. If the reader is interested in these discussions, I suggest you refer to my 1997 text. Although arguments premised on the economic, cultural or aesthetic value of animals are all useful, and should be utilised whenever there are gaps in the reasons for why species should be protected, it is very important to realise that they are all anthropocentric. That is, the justifications to protect the animals are because of why they are important to humans, and are not based upon the values of the animals being inherently valuable in themselves. Anthropocentric justifications for the protection of animals are not the focus of this chapter. Rather, I propose to examine the attempts that have been made to enhance the non-anthropocentric values of animals in international law.

Animals in International Law

There is no all-encompassing convention for the protection of animals in international law. The one time that this was suggested, by Israel in 1985 at the fifth Conference on the Parties to the Convention on International Trade in Endangered Species of Flora and Fauna, it resulted in discussion of the topic being ruled *ultra-vires* in terms of the work at hand.² Since this failure, attempts to give protection to species of animals in international law have tended to be ad-hoc and focused upon individual species. Even at this level however, success has been elusive, a fact illustrated by our treatment of two of the most 'charismatic' of all animal species, namely the Great Apes and cetaceans (whales). This failure is all the more surprising for if it cannot be accepted that humanity has a 'special relationship' with such remarkable species, it is unlikely that the ethical map will be extended to species which have 'lesser' relationships with humanity.

The Great Apes

The seven living species of great ape are classified in four genera: the sub-families of Ponginae (Orangutans), Hominae (Gorillas), Hominini (Chimpanzees and Bonobo), and Homo, which includes the human species of homo sapiens. There exist many similarities between humans and the other Great Apes, and one most commonly cited is that of intelligence, although fundamentally, animal minds are a source of deep uncertainty for scientists.³ This uncertainty also applies with the Great Apes.⁴ although in some

2 See Barzdo, J (1985) 'CITES Conference In Argentina' VII(2) *Traffic Bulletin* 25.

3 See, for example, Hauser, M (2000) *Mind Games: What Animals Really Think*, Penguin, London; Phillips, H (2006) 'Known Unknowns' *New Scientist* 28 (16 December).

4 Anon (2004) 'Primate Brains are just as Special As Ours' *New Scientist* 17 (13 March).

instances, the intellectual complexity of some Great Apes appears to be very advanced.⁵ The similarities to humans are also notable with some emotional, and social (ranging from nurturing to spying, stealing and other forms of deception)⁶ characteristics.⁷ The Great Apes (along with other species)⁸ often use tools,⁹ and most notably, some of them appear to possess the ability to communicate with humans (to a degree apart from that represented by other species)¹⁰ using forms of sign language or tokens. The question of whether these represent real linguistic abilities, or even language, remains open to scientific debate.¹¹

These similarities between Great Apes and humans are often put down to the fact that the complete genome sequence for the Chimpanzee, humanity's closest 'cousin', reveals that sections of our genomes are near identical at 99% of DNA bases and more than a quarter of the genes are identical in the two species.¹² Although this certainly sounds impressive, scientific refinements have calculated that the overall similarity between humans and some Great Ape species is closer to 96%.¹³ Moreover, it is important to remember that the differences between humans and the other Great Apes cannot be explained by similarities in DNA alone.¹⁴ Nevertheless, it is impossible to deny that such similarities are striking, and may help provide a justification for treating the Great Apes with more ethical respect than in the past.¹⁵

5 See, for example, Hooper, R (2007) 'Chimps Beat People At Memory Game' *New Scientist* 10 (8 December); Anon (2007) 'Who is the Most Refined Ape?' *New Scientist* 17 (21 April).

6 Dally, J (2007) 'Don't Call Me Birdbrained' *New Scientist* 35 (23 June); Spinney, L (1998) 'Liar, Liar' *New Scientist* 23 (14 February).

7 Bekoff, J (2007) 'Empathy' *New Scientist* 43 (26 May); Mason, B (2005) 'More Animals Join the Learning Circle' *New Scientist* 8 (27 August).

8 Anon (2002) 'Nelly And Her Tools' *New Scientist* 4 (5 January 2002).

9 Anon (2007) 'Handy With A Hammer' *New Scientist* 15 (17 February); Anon (2005) 'Gorilla Uses Tool' *New Scientist* 20 (8 October); Lewin, R (1995) 'Birth Of A Tool Maker' *New Scientist* 38 (11 March).

10 Pepperberg, L (2000) 'Listening To Alex' *New Scientist* 40 (15 January).

11 Anon (2007) 'One Word' *New Scientist* 16 (4 August); Ananthawamy, A (2003) 'Has This Chimp Taught Himself to Talk?' *New Scientist* 12 (4 January); Gardner, RA, Gardner, BT and Van Cantfort, TE (1989) *Teaching Sign Language to Chimpanzees*, SUNY Press, Albany.

12 Holmes, B (2005) 'Here's Looking At You Chimp' *New Scientist* 18 (24 December); Orwant, R (2005) 'Lessons From Our Closest Cousin' *New Scientist* 6 (3 September 2005); Coghlan, A (2002) 'Not Such Close Cousins After All' *New Scientist* 20 (28 September).

13 See United Nations Environment Programme (UNEP) (2003) *Towards A Global Great Apes Conservation Strategy*, UNEP/UNESCO/GRASP/PrepCom.1/2. Se 4.

14 Stanford, C (2002) *Significant Others: The Ape-Human Continuum*, Perseus, Stanford; Marks, J (2002) *What It Means to be 98% Chimpanzee: Apes, People and Their Genes*, University of California Press, California. For example, the rhesus macaque – an animal regarded as being much further away from humans on the 'evolutionary scale', shares 93.5% of identical DNA base pairs to humans: Holmes, B (2007) 'Monkey Genome Surprise' *New Scientist* 15 (21 April).

15 See Gillespie, above n 1, Chs 12-13.

The best example of an attempt to gather such respect was the Great Ape Project, which was launched in 1994.¹⁶ This project, which had high level support from a number of prominent scientists and philosophers, aims for the United Nations to endorse a Declaration on Great Apes. This project aims to fundamentally extend the recommendation of the International Union for the Conservation of Nature (IUCN) in 1972 that non-human primates, including all apes, should not be used for bio-medical, teaching or commercial purposes except in crucial human health research.¹⁷ The Declaration would go much further, extending to Great Apes the protection of three fundamental human liberties, namely: the right to life, the protection of individual liberty, and the prohibition of torture. Despite these laudable goals, the Declaration has failed to attract the support of the UN or eventuate into any legal document. Moreover, the international instruments which have evolved on the Great Apes have consistently down-played any of the ethical concerns underpinning the Declaration, and have instead focused primarily on conservation. For example, although two international documents of note, namely the 2005 Global Strategy for the Survival of the Great Apes and Their Habitat, and the Kinshasa Declaration, acknowledge both the DNA similarities,¹⁸ and the intrinsic value of Great Apes,¹⁹ the hard law in this area, namely the Gorilla Agreement, omits such considerations. With this Agreement, the central goal of preventing the extinction of the Gorilla, and moral concerns, such as the exceptional significance of Great Apes for the natural and cultural heritage of humankind²⁰ go no further than notation in the preamble.

Although the Great Ape Project has failed to be endorsed at any significant international level, and the progress of international agreement on this topic reflects a clear omission of ethical thinking beyond the imperative of the prevention of extinction, the humane treatment of the Great Apes has arguably been improved in a number of countries.²¹ This progress is most evident in places that have placed strong restrictions on the types of scientific research, if any, can be done upon the Great Apes.²² For example, New Zealand considered the possibility of extending human rights to Great Apes

16. Great Ape Project (2008) <www.greatapeproject.org/>.

17. IUCN (1972) *Use of Non-Human Primates in Research* (11th General Assembly, Alberta).

18. Global Strategy for the Survival of Great Apes and their Habitat. Annex Paragraphs 10-12.

19. The 2005 Kinshasa Declaration on Great Apes. Preamble.

20. The 2007 *Agreement on the Conservation of Gorillas and Their Habitats*. Preamble.

21. Beck, B (2002) *Great Apes and Humans*, Smithsonian, Washington, DC.

22. Somewhat perversely, it is because of the striking similarities between homo-sapiens and other primates, that provides justification for experimentation upon the latter. As such, research into epilepsy, vaccines, vision, Parkinson's, Alzheimers, in-vitro fertilisation, memory disorder and basic neuroscience are said to 'need' to utilise primates. See Anon (2006) 'Cures Versus Cruelty' *New Scientist* 6 (10 June).

in 1999 as part of its new animal welfare bill. Although this section of the bill was not successful, Great Apes were nevertheless granted a special status in the *Animal Welfare Act 1999*. Testing or teaching involving Great Apes now requires government approval and must demonstrate that any likely benefits are not outweighed by harm to the individual animal.²³ The United States took a more limited step of this type with its *Chimpanzee Health Improvement, Maintenance and Protection Act* of 2000, which prohibits the routine euthanasia of chimpanzees that are no longer needed for medical research and commits the Federal Government to funding their lifetime care in sanctuaries. In Europe, the British government banned the use of Great Apes in biomedical research in 1997, and Sweden, Austria and the Netherlands have all followed suit.²⁴ In 2007, the European Parliament declared that that all experimentation on non-human primates in Europe should stop.²⁵

Cetaceans

The other international setting where debates about 'heightened' ethical standards for humanity and certain animal species has been evident is at the International Whaling Commission (IWC). The background to this ethical argument is that there is something 'special' about cetaceans, a claim that can be traced back thousands of years to Aristotle, who made some of the earliest recorded notations on the topic of whales and dolphins.²⁶ These creatures were a bit of an enigma to Aristotle, with the problem being that they seemed to exist in two different ecologies. That is, they lived in the water, but they breathed like land animals.²⁷ They had a unique vocal ability, and displayed mating and social patterns that were remarkably similar to humans.²⁸

23 *Animal Welfare Act 1999* (NZ) s 85(5)(b).

24 Douglas, K (2007) 'Just Like Us' *New Scientist* 46 (2 June); Nowak, R (1999) 'Almost Human' *New Scientist* 20 (13 February).

25 Anon (2007) 'Spare the Apes' *New Scientist* 4 (15 September).

26 However, despite recognising large whales and porpoises, his focus was strongest upon dolphins. Aristotle, Balme, DM and Peck, AL (trans) (1965) *Historia Animalium* (HA), Loeb Classical Library, Harvard, HA. 566. b. 10-15.

27 '[T]he oddest condition of all animals is that of the dolphin and any other of those that are similar among both the water animals and the other creatures that have this character, such as the whale and all others with a blow-hole. For it is not easy to class each of these either as solely water animal or land animal, if one is to class those that take in air as land animals and those that take in water as water animals by nature. For they have a share in both: for they take in sea water, and discharge it by the blow-hole, and they take in air by their lungs. For they possess this part and breathe. That is why when caught in the nets, the dolphin quickly suffocates for lack of breathing'. HA. 589. b. 5-15.

28 Dolphins, 'spend their time with each other in pairs, males with females'. HA. 631. b. 2-3. 'And it was around Caria ... that a large crowd of dolphins is said to have come into the harbor after a dolphin had been captured and wounded, until the fisherman let it go, and then they all went away again together. And the small dolphins are always accompanied by one of the bigger ones for protection'. HA. 504. b. 17-26; 521. b. 20-27; 540. b. 20-24; 566. b. 10, 15-24; 631. a. 15, 17-20.

The relationship between mother and her offspring demonstrated to Aristotle 'evidence of mildness and gentleness'²⁹ that was also displayed to humanity.³⁰ With such considerations in mind, other Greeks, such as the second century AD poet Opan of Cicilia suggested that, 'the hunting of dolphins is immoral ... for equally with human slaughter the gods abhor the death doom of the monarchs of the deep'.³¹

By the end of the 20th century, this idea had become common currency in a number of countries as concern surrounding environmental issues mushroomed, and whales often became a symbol of human mismanagement of nature. Today, whales are placed by many into a category apart from both humans and other animals that are harvested. As Victor Scheffer, the former chairperson of the US Marine Mammal Commission wrote rather pithily, 'Whales are different'.³² That is, whales are regarded as something special, and this notion – whether supported by logic or not – has appeared in a number of documents. For example, in 1993, a Resolution from the European Parliament, expressing opposition to *all* commercial utilisation of marine mammals stated, 'Whales are sentient mammals with a high level of intelligence and complex social and cultural activities'.³³ At times, such characteristics are seen generically, and as such are believed to encompass *all* types of whales. Thus, some commentators assert that the unique qualities of each type of whale have been grouped together to create a mythical 'super-whale'³⁴ by which it and all others are majestic, gentle, warm-blooded mammals that mate for life, travel in family groups, feel pain, and are incredibly intelligent.

This question of intelligence, or awareness and consciousness,³⁵ has become a real consideration, and has even been argued at the IWC. Thus, in contending for a moratorium on all commercial sperm whaling in 1979, Panama suggested that the 'high intelligence potential in the sperm whale' should be an additional consideration for deliberation on the [then] proposed sanctuary.³⁶ The suggestion was effectively rejected, and remains

29 HA. 521. b. 20-27.

30 HA. 631. a. 16-17.

31 Noted in Scarff, J (1977) 'The International Management of Whales, Dolphins & Porpoises: An Interdisciplinary Assessment' 6 *Ecology Law Quarterly* 343.

32 Scheffer, V (1980) 'The Status of Whales' 29 *Pacific Discovery* 2 at 8.

33 Paragraph B. Joint Motion for A Resolution. 1993 May 26. DOC.EN/RE/228/228125. This echoes an earlier proposal for a Motion on Resolution on Whaling before the Council of Europe in 1991 which suggested, 'the great whales are intelligent, warm blooded social creatures' 1991. 25 April. ADOC6428. 1403-25/4/91-4-E.

34 See Kallard, A (1994) 'Super Whale: The Use Of Myths And Symbols In Environmentalism' *High North Alliance; 11 Essays on Whale and Man*, High North Alliance, Norway, pp 5, 7.

35 McIntyre, J (1974) 'On Awareness' in McIntyre, J (ed) *Mind in the Water*, Scribner, New York, pp 69-70.

36 IWC. 30th Report. (1980). 27.

contentious, as there remain 'widely differing views'³⁷ on the subject. These tend to break down into two camps, those who think that whales are intelligent, mainly because of their communication abilities and social networks,³⁸ and those who dismiss these claims – especially at the generic level.³⁹ The extremes of these dismissing views have come from the members of the governments who wish to continue hunting whales. In 1993, the Norwegian commissioner called minke whales 'rats of the sea'.⁴⁰ Seven years later, a senior Japanese whaling official suggested that the minke whales were the 'cockroaches of the ocean'.⁴¹

Unsurprisingly, with such polemic there remains *no international conclusion* with regard to the argument that whales are somehow special, and therefore it is not possible to categorically assert whether whales can be differentiated from other species *on biological grounds*. The failure to reach a conclusion on the overall ethical value of cetaceans is problematic, as if whales were biologically special, then some would suggest we could draw a distinguishing argument for why they, like humans, should not be harvested. Searching for this touchstone has become important for some commentators as a way of trying to counter Japanese claims that many of the anti-whaling nations are acting inconsistently, as they routinely harvest similar species in their sovereign jurisdictions. Thus:

The west is suffering from double standards. Wildlife is for them to see and admire, and you should only eat animals such as cows and pigs that are reared. But Australia kills three to four million kangaroos a year, and in the US they catch 5.6 million wild deer. How would Britons react if Hindus tried to ban the eating of cows they consider holy? The west are trying to force their values on us. It is cultural imperialism.⁴²

37 IWC. 31st Report. (1981). 24.

38 There is no shortage of scientific evidence on these questions. For a sampling, see Young, E (2007) 'Dolphins Have A Word For It' *New Scientist* 10 (29 December); Hecht, J (2000) 'Blind To The Big Blue' *European Journal of Neuroscience* 13; Sample, L (2000) 'Why Humpbacks Sing High In Winter' *New Scientist* 48 (16 September).

39 See, for example, Skåre, M (2002) 'Whaling: A Sustainable Use of Natural Resources or a Violation of Animal Rights' 36 *Environment* 31; Morton, A (2002) 'Call of the Wild' *New Scientist* 46 (21 September); Anderson, I (1997) 'Games Whales Play' *New Scientist* 5 (16 August); Anon (2007) 'They Sing When They're Swimming' *New Scientist* 22 (26 May); Anon (2007) 'Voiceprints For Dolphins' *New Scientist* 25 (21 July).

40 MacKenzie, D (1993) 'Norway Declares War On The Minke Whale' *New Scientist* 9 (13 February).

41 This was originally reported in a radio interview of 18 July 2001. It was reported the following day in the *Independent*. See also, Browne, A (2001) 'Global Ban On Whaling Faces Its Severest Test' *Guardian Weekly* (Orlando) (26 July), and Editorial, 'Bloody Whaling' in the same edition.

42 Browne, A (2001) 'Japan Harpoons West's Double Standards' *New Zealand Herald/Observer* (Auckland), 30 July.

Such 'imperialism' is allegedly contra to the 'widely accepted international principles of sustainable use and the need to respect cultural diversity'.⁴³

The Value of Existence in International Law

Although there are no special relationships in international law that obligate all countries to protect, conserve, and enhance the status and welfare of any animal, irrespective of its population status, there is, nevertheless, one clear ethical value that has received consensus in this area. This obligation is the one that directs nations to protect animal species because they are alive, yet may be subject to extinction.

Extinction of life is a very real risk for a number of species. The 2007 Red List of Endangered Species listed 16,306 animal and plant species in danger of extinction, a number that includes 25% of mammals, 12% of birds, 33% of amphibians, and 70% of known plants.⁴⁴ Despite such large numbers at risk, the recognition of a need to protect all species has been slow to evolve in international environmental law. Indeed, the explicit recognition that species should not be allowed to become extinct was not to be found in any general international instrument until the dawn of the 21st century. Still, this objective had been at least implicitly recognised through the concern expressed for endangered species, and in this regard, two treaties are particularly important. The first is the 1973 *Convention on International Trade in Endangered Species of Flora and Fauna* (CITES), which was built upon the realisation that 'wild fauna and flora ... are an irreplaceable part of the natural systems of the Earth which must be protected ...'. Accordingly, the convention sought to limit trade in any species which may 'endanger their survival'.⁴⁵ The second convention which also tries to prevent species from becoming extinct through indirect protections is the *Convention on Migratory Species* (CMS).⁴⁶

Explicit recognition of this fact came somewhat later, with tentative steps including the launching of the 1980 World Conservation Strategy and the 1982 *World Charter for Nature*. This latter document emphasised that, 'the genetic viability on the Earth shall not be compromised; the population levels of all life forms ... must be at least sufficient for their survival'.⁴⁷ Although these two documents provided useful starting points for the value

43 Hayashi, Y and Morishita, J (2006) *The Ethics of Whaling*, IWC/58/WKM&AWI. For a full discussion of this, see Gillespie, A (2006) *Whaling Diplomacy*, Edgar Ellen, London, Ch 8.

44 Anon (2007) 'The 2007 IUCN Red List' 48 *SPECIES*, p 23.

45 *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. 27 UST. 1087. TIAS No 8226. Article II.

46 *Convention on the Conservation of Migratory Species of Wild Animals*. 19 International Legal Materials. (1980). 15. Article III. 4 (c).

47 *World Charter for Nature*. GA Res 7, 36 UN GAOR Supp (No 51) at 17, UN Doc A/ 51 (1982). Principle 2.

of existence approach, the idea was not solidified in international law until the *Convention on Biological Diversity* (CBD) was adopted in 1992. Moreover, it is from the CBD that the international community has attempted to deal, in an over-arching manner, with all questions of biodiversity, of which animals are but one part. Nevertheless, in the creation of its overall goals, a number of principles have developed which are of direct relevance to animals. The best example of this is with the '2010' target, by which the international community committed itself to stemming the extinction rates of all biodiversity, including animals.

'Targets' are currently in vogue within international and international environmental law and policy. The most notable international targets in this area are those developed by the United Nations, through their Millennium Development Goals. In particular, Millennium Goal 7 seeks to ensure environmental sustainability by 2015.⁴⁸ As a stepping stone towards this goal, it was proposed that the CBD develop an interim 2010 target.⁴⁹ Accordingly, in 2002, the Parties to the CBD adopted a Strategic Plan for the Convention. Significantly, the Parties committed themselves⁵⁰ to a more effective and coherent implementation of the three objectives of the Convention and:

To achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth.⁵¹

The Parties to the CBD have subsequently adopted a framework to facilitate the assessment of progress towards the 2010 target. The 2010 target includes seven focal areas and a series of complimentary 'indicators' for assessing progress at the global level. The first focal area is the protection of the components of biodiversity. The second focal area is the promotion of sustainable use (and consumption) and the third focal area is addressing threats to biodiversity.⁵² Although the CBD deals with these generically, the 2010 target has been picked up by other international environmental regimes such as the CMS⁵³ and CITES. Accordingly, the goal to prevent species from becoming extinct, has been entrenched in most of the primary instruments in international law.

48 Program of Work and the Millennium Development Goals. UNEP/CBD/COP/7/L9.

49 Recommendation IX/13. Integration of Outcome Orientated Targets Into the Programmes of Work of the Convention. UNEP/CBD/COP/7/4. pp 111.

50 CBD Parties are also invited to develop their own targets in both domestic and regional contexts.

51 Decision VI/26. The 2010 Target (2002, COP 6, the Netherlands)

52 Decision VII/30. Progressing the 2010 Target (2004, COP 7, Kuala Lumpur).

53 Resolution 8.7. Assessing the Contribution of the CMS in Achieving the 2010 Biodiversity Target (COP 8, 2005, Nairobi).

The Sustainable Use Debate

Aside from the overall acceptance of the ethical principle that nations should work together to prevent the extinction of species, there is no international consensus on how animals or other species should be treated beyond working for their continued existence as a species. This is somewhat surprising, as since the early 1990s, several attempts have been made to legitimise an ethic of the consumptive use (as part of the sustainable use framework) of species. However, despite clear recognition of this ethic, of late, sections of the international community have begun to back away from the possible full implications of the debate known as 'sustainable use'.

The idea that it may be permissible to utilise any species that is not threatened by extinction, has long standing in international law. For example, the 1940 *Western Hemisphere Treaty*, which made clear that the goal of preventing migratory species becoming extinct, had to be commensurate with:

Adequate measures ... in so far as the respective governments may see fit ... [for] a rational utilization of migratory birds for the purpose of sports as well as for food, commerce, and industry, and for scientific study and investigation.⁵⁴

Despite such long-standing recognition of sustainable consumptive utilisation of wildlife, it was only in the 1980s that the idea became popularised in what is known as the 'sustainable use' initiative, and at the 18th General Assembly of the International Union for the Conservation of Nature (IUCN) in 1990, the Congress affirmed that:

Ethical, wise and sustainable use of some wildlife can provide an alternative or supplementary means of productive land use, and can be consistent with and encourage conservation, where such use is in accordance with adequate safeguards, namely, sound scientifically based monitoring mechanisms to ensure that such use is maintained at levels which can be sustained by the wild populations without adequately affecting the species role in the ecosystem or the ecosystem itself; compliance with national and international legal obligations and policies; and provision for the protection of wild animals from avoidable cruelty and suffering.⁵⁵

These principles were reiterated and refined at several IUCN Congresses⁵⁶ until the IUCN finally adopted a policy statement on Sustainable Use of Wild Living Resources in 2000, which explained:

54 1940 *Western Hemisphere Convention*. Article VII.

55 IUCN. (1990). Resolution 24. Conservation of Wildlife Through Wise Use as a Natural Resource. (18th General Assembly, Perth).

56 IUCN. (1994). Resolution 54 Sustainability of Nonconsumptive and Consumptive Uses of Wild Species. (19th General Assembly, Buenos Aires). IUCN (1996). Resolution 1.39. Sustainable Use Initiative. (1st World Conservation Congress, Montreal).

Both consumptive and non-consumptive use of biological diversity are fundamental to the economies, cultures and well-being of all nations and peoples [and] use of wild living resources, if sustainable, is an important conservation tool because the social and economic benefits derived from such use provide incentives for people to conserve them.⁵⁷

With support for appropriate consumptive forms of sustainable use endorsed by the IUCN, the organisation has gone on to attempt to directly influence other international bodies that deal with wildlife and other forms of biodiversity.⁵⁸ At the practical level, a good example of this was with CITES, where it was agreed in 1992 that:

[T]he sustainable use of wild fauna and flora, whether consumptive or non-consumptive, provides an economically competitive land-use option ... [Although] aesthetic, scientific, cultural, recreational and other largely non-consumptive uses of wild fauna and flora are also of enormous importance ... commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.⁵⁹

In terms of providing guidance, the IUCN influence has been most evident at the *Convention on Biological Diversity* (CBD), where 'sustainable use' has become one of the core goals of the institution. According to the CBD, sustainable use means the use of species in a way and at a rate that does not lead to the long-term decline⁶⁰ of biological diversity, thereby maintaining the potential of meeting the needs and aspirations of present and future generations.⁶¹ Notably, within the CBD, 'use' is understood to be both consumptive and non-consumptive, with no presumption over which, if any, is better. Rather, there is the recognition that both types of use, if badly regulated, may lead to unsustainable behaviour. To achieve the goal of sustainable use, Art 10 of the convention stipulates that each Contracting Party shall, as far as possible and as appropriate,

- (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

57 IUCN. (2000). Resolution 29. IUCN Policy Statement on Sustainable Use of Wild Living Resources. (2nd World Conservation Congress, Amman).

58 Hutton, J (2004) 'Sustainable Use' 42 *SPECIES* 114; Hutton, J (2005) 'Sustainable Use' 43 *SPECIES* 27; Almond, R (2008) 'Sustainable Use' 48 *SPECIES* 10.

59 8th COP. (1992, Kyoto). 8.3. Recognition of the Benefits of Trade in Wildlife.

60 'Long-term decline' refers to a time period linked to the life history of the biodiversity concerned. Given that future generations have to be considered, the guidelines suggested that for management purposes, long-term means up to five human generations or 100 years.

61 'Components' covers genetic material, populations, species, communities, ecosystems and habitats. 'Decline' in any of the components, refers to a measurable reduction of the component in question. CBD. Article 1. Definitions.

- (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;
- (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
- (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Despite the clarity of these objectives, it was not until 2002 that it was decided to make sustainable use both a priority and cross-cutting issue.⁶² This initiative at the CBD coincided with the World Summit on Sustainable Development (WSSD), which endorsed the objective of achieving 'sustainable use'.⁶³

To further the WSSD and CBD goals, it was agreed that practical principles, operational guidelines and associated instruments should be developed to assist Parties and Governments in seeking ways to achieve sustainable use of biological diversity. Accordingly, after much consultation a final set of principles and operational guidelines were synthesised in Addis Ababa (Ethiopia) in 2003,⁶⁴ forwarded to the CBD, and duly adopted in 2004. The Guidelines are wide ranging, flexible, and meant to be applicable to different management levels and distinct sectors, adaptable to different local realities and adjustable to specific ecosystems. The 14 principles, which cover all aspects of the management requirements for effective conservation, are particularly notable in this context, because although there is no preference expressed, it is clear that the consumptive use of species is quite acceptable if certain conditions are met.⁶⁵

62 Decision V/24. Sustainable Use as a Cross Cutting Issue. UNEP/CBD/COP/5/23. p 183. See also, Decision V/25.

63 WSSD. Plan of Implementation. Paragraph 44(f).

64 Recommendation VII/4. Progress Report in the Development of Practical Principles, Operational Guidance and Associated Instruments on Sustainable Use. UNEP/CBD/COP/6/4. pp. 32. Decision VI/13. Sustainable Use. UNEP/CBD/COP/6/20. pp. 176.

65 In summary, the 14 principles promote the need for (1) supportive policies, laws, and institutions in place at all levels of governance; (2) empowerment of local users allowing them to be accountable for use of the resources concerned; (3) the identification and removal of international and national policies or laws that contribute to habitat degradation or otherwise generate perverse incentives that lead to market distortions and undermine conservation and sustainable use of biodiversity; (4) adaptive management to achieve sustainability, based on science and traditional and local knowledge as well as feedback derived from monitoring the use and its impacts; (5) sustainable use practices to avoid or minimise adverse impacts on ecosystem services, structure and functions as well as other components of ecosystems, taking a precautionary approach; (6) further interdisciplinary research into all aspects of the sustainable (consumptive and non-consumptive) use and conservation

This same assumption is not equally clear within the conventions that deal directly with the management of wildlife in international law, however. For example, the CMS has a very ambiguous relationship with the term 'sustainable use'. That is, on the one hand the Parties to the CMS agree that any of their subsidiary Agreements should provide for the sustainable use of species where this is consistent with their conservation.⁶⁶ Accordingly, some CMS Agreements, such as the *African-Eurasian Waterbird Agreement* (AEWA), began with the principle:

[T]hat any taking of migratory waterbirds must be conducted on a sustainable basis, taking into account the conservation status of the species concerned over their entire range as well as their biological characteristics.⁶⁷

If the desire of the Parties is to pursue the sustainable take of a migratory species, the caveat is that the overall sustainability of the process to the species has to be the absolute bottom line.⁶⁸ Such goals are supported by the framework,⁶⁹ which deals with all issues relating to the goal of sustainable take.⁷⁰ Since this point, the AEWA has invited its Parties to make full use of international developments in this area, such as the Addis Ababa Principles.⁷¹

This approach to 'sustainable use' is somewhat unusual within the other CMS-covered species. This is especially so if they are Appendix I (highly

(cont)

of biological diversity; (7) the spatial and temporal scale of management to be compatible with the ecological, socio-economic and legal scales of the use and its impact; (8) arrangements for international co-operation where multinational decision-making and coordination are needed for biodiversity considerations of a transboundary nature; (9) an interdisciplinary, participatory approach, including indigenous and local communities and other relevant stakeholders, as well as the private sector; (10) international and national policies to take into account, current and potential values (total economic values, and, inter alia, full ecological values) derived from the use of biological diversity; (11) users of biodiversity components to minimise waste and adverse environmental impact and optimise benefits from uses; (12) the needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity to be reflected in the equitable distribution of the benefits (both monetary and non-monetary) from the use of those resources; (13) the costs of management and conservation of biological diversity to be internalised within the area of management and reflected in the distribution of the benefits from the use (14) education and public awareness programs on conservation and sustainable use to be implemented.

66 Resolution 4.4. *Strategy for the Future Development of the Convention*. Annex. Point 16. (COP 4, 1994, Nairobi).

67 AEWA Preamble.

68 AEWA. Article III.2(g).

69 AEWA. Action Plan. Point 2 & point 2.1.3 (for exceptions).

70 Resolution 3.11. *International Implementation Priorities*. (2005, Senegal, AEWA).

71 Resolution 3.19. *Implementing the Addis Ababa Principles and Guidelines*. (MOP 3, 2005, AEWA).

endangered) species. However, even with regard to Appendix II (less endangered) species strong restrictions on the consumptive use of these species exist.⁷² This reluctance to allow sustainable use of even the less endangered species is also reflected at the CMS proper, as the Parties have deferred adopting the Addis Ababa Principles, preferring to refer them to their Scientific Council for examination.⁷³ In a very similar vein, the Addis Ababa Principles have been referred to both CITES internal committees for examination,⁷⁴ and have (despite strong debate about their value) called for their Parties to share their experiences with the Guidelines, and make use of them, where appropriate.⁷⁵ However, the debate about where they are 'appropriate' is far from settled.⁷⁶

Humane Considerations

Humane values are those that seek to reduce the pain inflicted upon animals. Although these considerations do not necessarily seek to abolish the killing of animals, they do seek to mitigate the cruelty with which such killing is accomplished. Within international environmental law the discussion of humane values may be divided into three areas. The first area relates to international regimes, which have a large coverage of species, such as CITES, and may include areas where humane considerations, such as with transportation, are not always the most obvious place to start. The second relates to the area of international law dealing with indiscriminate capture and the overlap of humane concerns, such as with a number of conventions dealing with oceanic concerns. Finally, there are a series of species specific examples, such as with seals, turtles of birdlife.

Humane considerations are clearly evident within the CITES, although not where they might first be expected. Although CITES is the premier international wildlife treaty, and oversees everything from the trophy hunting of highly endangered species (such as rhino), through to the sustainable use of carefully ranched species (such as crocodiles), it does not directly attach humane considerations to the cultivation of these species. However, with regard to the international transport of species with CITES significance, the Parties are obliged to, 'minimize the risk of injury, damage to health or cruel treatment'.⁷⁷

72 See Gillespie, A (nd) *Wildlife and Biodiversity in International Law* (forthcoming).

73 Resolution 8.1. Sustainable Use. Paragraphs 1 to 3.

74 Decision 13.6.

75 CITES. (2004). Conf. Res. 13.2. Sustainable Use of Biodiversity: Addis Ababa Principles and Guidelines. (13th COP, Bangkok).

76 With particular regard to what is known as Non-Detriment Findings. See Anon (2007) Summary of the 14th COP to the CITES. ENB. 21 (61). 8. See also Gray, J (2008) 'The 14th Conference of the Parties to CITES' 21(3) *Traffic Bulletin* 101.

77 Article III. (4)(b). See also, III.5.c, III.(2)(c), IV.2.c; IV.5.b; IV.6.b and VIII.3.

To achieve this goal, the first *Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants* which fell under the CITES auspice originated, surprisingly quickly, at their 2nd COP in 1983.⁷⁸ From the outset, the 'care and handling of live animals and plants' was a clear concern to the Parties.⁷⁹ These Guidelines, which have been continually scrutinised,⁸⁰ were supplemented by international reporting systems designed to help monitor 'undue stress' placed upon the animals in transit.⁸¹ Attempts to synchronise the (largely similar) CITES Guidelines with those of the International Air Transport Association (IATA) and its Live Animal Regulations have been ongoing since the mid 1980s. The dialogue between the two bodies has been so strong that attempts to create an Memorandum of Understanding with the IATA has been called for, so as to, inter alia, improve transport conditions of live animals.⁸² When dealing with the transport of animals by sea or land, the CITES has tried to build a relationship with the World Organisation for Animal Health (OIE) and participate, on a regular basis, in their ongoing reviews of their *Guidelines for the Transport of Animals by Sea, and/or Land*.⁸³

Over the following years, as concerns over the inhumane transport of species continued,⁸⁴ these joint standards were increasingly supplemented with detailed checklists, designated points of entry and exit, open availability for inspection (by each Party in its domestic context), and obligatory information gathering on mortality (and its causes) related to international transport by the Parties, and provided to each COP.⁸⁵ The importance of publicising the Guidelines has been repeatedly emphasised. It was even suggested that, whenever a 'significantly high mortality rate in transport' is reached, appropriate measures, including temporary suspension of trade, must be taken.⁸⁶ At various points, the Animals Committee of CITES was directed to examine the transport of certain species, and it has been recommended that each country incorporate the Guidelines into their domestic regulations (and also apply them domestically). Air-transport has now been

78 Inskipp, T (1983) 'CITES meeting at New Delhi, India' III(2) *Traffic Bulletin* 13.

79 3rd COP (1981) Conference Resolution 3.16. Implementation of the Guidelines on the Transportation of Live Specimens.

80 Decision 12.85. Transport of Live Animals.

81 3rd COP (1981) Conference Resolution 3.17. International Reporting System for Species Stressed During Transport. Inskipp, above n 78, p 14.

82 Decision 12.85. Transport of Live Animals. 4th COP (1983) Conference Resolution 4.20. Implementation of the Guidelines of the Live Transport of Animals.

83 Decision 14.59. Transport of Live Specimens.

84 Barzdo, above n 2.

85 See 5th COP (1985, Buenos Aires) Resolution 5.18. Air Transport of Wild Live Animals. 6th COP (1987, Ottawa) Resolution 6.24. Shipment of Live Animals.

86 8th COP (1991, Nairobi) Resolution. 8.12. Trade in Live Birds Experiencing High Mortalities in Transport.

recognised as the preferred manner of transport of CITES species.⁸⁷ With regard to transport of live animals by means other than air, Parties are recommended to consider the *Guidelines for the Transport of Animals by Sea and/or land* noted above.⁸⁸

Aside from the CITES example, which tends to view culling methods as within the purview of domestic laws, the necessity to find 'appropriate' culling methods for animals of international significance is now a common feature of international wildlife law. This became very clear in 2004, when the *Principles and Guidelines for the Sustainable Use of Biodiversity*, were adopted by the CBD. In addition to recognising that non-consumptive use was a legitimate option for countries, they specifically recognised that when optimising benefits from biodiversity, 'more efficient ethical and humane use of wild fauna and flora, within local and national contexts' should be promoted.⁸⁹ This decision followed on from the IUCN Sustainable Use principles, which specify that any sustainable use should, inter alia, provide for the protection of wild animals from avoidable cruelty and suffering.⁹⁰

With regard to treaties that deal with more specific issues (as opposed to the more generic principles that evolve from the CBD) the infusion of humane considerations into the ambit of 'appropriateness' can be seen with regard to the management of the species upon and around Antarctica. This process began with the 1964 *Agreed Measures for the Conservation of Antarctic Fauna and Flora*,⁹¹ and continued with the 1991 *Protocol on Environmental Protection to the Antarctic Treaty*.⁹² With regard to the issuing of permits, as well as strong considerations given to the status of the populations at hand, it is also necessary to utilize 'non-lethal techniques where appropriate'. Moreover,

[A]ll taking of native mammals and birds shall be done in the manner which involves the least degree of pain and suffering practicable.⁹³

A strong linkage between indiscriminate capture and humane considerations is also apparent with stipulations that every attempt should be made to keep wrongly captured individuals alive, and not harm them in the process of releasing them. As a practice, placing bycaught fish back into the

87 9th COP (1994, Fort Lauderdale) Resolution 9.23. Transport of Live Specimens. 10th COP (1997, Harare) Resolution 10.21. Transport of live animals. See also, Resolution 8.9. The Trade in Wild-Caught Animal Specimens.

88 Decision 14.58. Transport of Live Specimens.

89 Sustainable Use. UNEP/CBD/COP/7/L17.

90 IUCN. (1990) Resolution 24. Conservation of Wildlife Through Wise Use as a Natural Resource. (18th General Assembly, Perth).

91 *Agreed Measures for the Conservation of Antarctic Fauna and Flora*. Reprinted in Austen, M and Richards, T (2000) *Basic Legal Documents on International Animal Welfare and Wildlife Conservation*, Kluwer, Netherlands, pp 3-10.

92 1991 *Protocol on Environmental Protection to the Antarctic Treaty*. BH992.txt.

93 Article 3(5) and (6).

ocean (especially when still alive) is a well-established principle that may be traced in a number of agreements to the beginnings of the 20th century.⁹⁴ With regard to non-target species, such as turtles and small cetaceans, this area of international law has developed rapidly in the past 20 years. Accordingly, the obligation to carefully replace captured sea turtles can be found in the 1996 *Inter-American Convention for the Protection and Conservation of Sea Turtles*.⁹⁵ With regard to cetaceans, the 1998 *Agreement on the International Dolphin Conservation Program*⁹⁶ has the development of 'techniques for the rescue and safety of dolphins' that are taken as bycatch. Amongst the many requirements for this are the methods designed to avoid killing or 'injuring' dolphins in the course of releasing such trapped cetaceans.⁹⁷

With regard to large-scale terrestrial management regimes, similar principles relating to an overlap between the prevention of indiscriminate capture and humane considerations are clearly evident. This process began with the 1900 *Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa* which prohibited the utilisation of various snares and traps for the capture of land animals and the use of poison to capture fish.⁹⁸ Similar prohibitions were repeated (and expanded) for subsequent regional conservation agreements in Africa in and Asia over the following decades. Within the European region, the 1979 *Berne Convention on the Conservation of European Wildlife and Natural Habitats*⁹⁹ prohibited a number of means and methods of killing, capture and other types of exploitation. The complimentary EC Council Directive on the Conservation of Natural Habitats and of Wild Fauna also prohibits a number of indiscriminate and/or unduly cruel hunting methods.¹⁰⁰

The strongest example of the overlap between indiscriminate capture mechanisms and humane considerations is with leghold traps. Ethical concerns in this area date back to the second half of the 19th century, although it was not until the 20th century that some European countries sought to control this killing and capturing method. By the end of the 20th century these prohibitions were not only European wide, the EC was also seeking to prohibit the importation into the region of products made from

94 See Gillespie, above n 43, Chapter 4.

95 The 1996 *Inter-American Convention for the Protection of Sea Turtles*. In Austen and Richards, above n 91. 318-324. Article IV.2.h.

96 1998 *Agreement on the International Dolphin Conservation Program*, <www.oceanlaw.net/texts/aidcp.htm>.

97 Article 5(b). Annex VIII.3.d.

98 Simma, R '1900 Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa' in Simma, R (ed) *International Protection of the Environment* (volume 4), Doubleday, New York, p 1605.

99 *Convention on the Conservation of European Wildlife and Natural Habitats* (1979). BH756.txt; 1284 UNTS 209.

100 See Art 16 and Annex VI. See also Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora.

animals caught in such traps or by other means that do not meet 'internationally agreed humane trapping standards'.¹⁰¹ This law was to run parallel with standards being propagated by the International Standards Organisation which was, at that point, attempting to formulate an agreed upon standard. However, when the ISO attempts ran into difficulties, and following individual States seeking to ban the importation of furs from animals caught in leghold traps, the EC initiated agreements with individual nations regarding humane trapping methods. Two agreements, one between the EC, Canada and Russia, and the substantially equivalent (but slightly different) agreement between the EC and the United States¹⁰² emerged from these negotiations. The Agreements with Canada and the Russian Federation¹⁰³ is very specific in its prescriptions of actual trap standards for performance by which the parties must oblige. The Agreement begins by recalling 'their deep commitment to the development of international humane trapping standards'.

With regard to birds, the prohibition of both indiscriminate and inhumane killing of birds began in a bilateral sense with the 1875 *Declaration for the Protection of Birds Useful to Agriculture*, which outlawed the use of poison and narcotics to catch birds.¹⁰⁴ Additional hunting methods were restricted with the 1902 *Convention on Birds Useful to Agriculture*.¹⁰⁵ The 1950 *International Convention for the Protection of Birds* stipulated that certain methods were prohibited which would cause mass killing of birds 'or to cause them unnecessary suffering'. With such considerations in mind, it then proceeded to list a series of prohibited methods and added the particularly cruel use of 'blinded decoy birds'.¹⁰⁶ Similar principles and restrictions on hunting methods were followed in subsequent conventions.¹⁰⁷

A latter international document, which adds a new dimension to bird agreements and the necessity to avoid both indiscriminate, capture and

101 Preamble, EC Regulation No 35/97 of 10 January 1997. Laying Down Provisions on the Certification of Pelts and Goods Covered by Council Regulation No 3254/91.

102 The *EC-US Agreement, Agreed Minute and Side Letter Relating to Humane Trapping Standards*. 37 *International Legal Materials*. (1998) 534. This does not actually bind the parties to adhere to these standards and does not contain any provisions on dispute settlement. The crux of the EC-US agreement, or 'Agreed Minute' as it is titled, is the parties statement that they 'intend to encourage' research, development and promotion of 'humane methods of killing'.

103 *Agreement on Humane Trapping Standards*. 37 *International Legal Materials*. (1998) 532.

104 1875 *International Protection of the Environment Declaration for the Protection of Birds Useful to Agriculture*. Reprinted in Ruster, E (ed) *International Protection of the Environment*, Volume V, Oceana, New York, p 1561.

105 1902. *Convention on Birds Useful to Agriculture*. 102 *BFSP*. 63.

106 *International Convention for the Protection of Birds* 1950. Reprinted in Austen, above n 91. 118-121. See Art 5.

107 See, for example, 1970 *Benelux Convention Concerning Hunting and the Protection of Birds*, Art 4; 1995 *Agreement on the Conservation of African-Eurasian Migratory Waterbirds*. Reprinted in Austen and Richards, above n 91, pp 271-276. Annex 3. Action Plan. 2.1.1. Points 4.1.5 & 4.1.8.

humane treatment is the Food and Agricultural Organisation's *International Plan of Action for Reducing Incidental Catch of Seabirds in Long-line Fisheries*.¹⁰⁸ This Plan stipulated that:

If despite the precautions, seabirds are incidentally caught, every reasonable effort should be made to ensure that birds brought onboard alive are released alive and that when possible hooks should be removed without jeopardizing the life of the birds.

This type of approach was later reinforced in the *Agreement on the Conservation of Albatross and Petrels*. This Agreement stipulated that when dealing with these species which could not be rescued, 'Humane killing, by duly authorised persons, to end the suffering of seriously injured or moribund albatrosses or petrels shall not constitute deliberate taking or harmful interference'. Likewise, in the accompanying Action Plan, when dealing with non-native species, and the need to remove or eradicate them, it was suggested that such measures, 'should satisfy to the extent feasible, humane and environmental considerations'.¹⁰⁹

The final example of humane killing objectives in international environmental law is with the International Whaling Commission. In this forum, the objective to reduce both pain and time to death for hunted cetaceans, goes back to the 1958 Second United Nations Conference on the Law of the Sea which suggested that the killing of all marine life should be done with the intention of sparing them suffering 'to the greatest extent possible'.¹¹⁰ Since this point, most of the countries within the IWC have attempted to find ways to reduce the time to death for whales caught in either commercial or subsistence whaling. The foremost advance with improving the primary killing methods of commercial whaling began in the mid 1970s with the development of an alternative to the explosive [cold grenade] harpoon.¹¹¹ Its replacement, the penthrite grenade has also been consistently improved since the mid 1980s, and the percentage of instantaneous deaths has increased to 45% in all commercial hunts utilising this weaponry.¹¹² In a

108 *FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries*. (FAO, Rome), <www.oceanlaw.net/texts/faoseabird.htm>.

109 *Agreement on the Conservation of Albatrosses and Petrels*. (2006, Christchurch). Article III.5. Action Plan. 1.4.2.

110 See UN Doc. A/CONF.13/L. 56 (1958).

111 When commercial whaling was at its peak, the whalers used 90 mm cannons that fired an explosive harpoon. Although this may have been successful with the larger whales, when the hunts moved to the smaller whales, this method was far too powerful as harpoons often passed right through minke whales without exploding. The first response to this problem was the cold harpoon, which had a non-explosive head, whose main purpose was to secure the whale, so that it could be brought alongside the vessel before being dispatched via a secondary method. This commonly led to very protracted deaths. As such, the penthrite harpoon was developed which is essentially a new type of explosive harpoon fired from a 75 mm cannon.

112 Report of the Workshop on Whale Killing Methods and Associated Welfare Issues. IWC/55/Rep 5. 9.

supplementary manner, the secondary methods used for killing whales have also been improved. This is most notable with the progressive phasing out of the electric lance, which after over 100 years of use was shown to be increasing, not decreasing pain before death.¹¹³

Conclusion

This chapter has attempted to portray the dominant non-anthropocentric philosophical values, applicable to animals that are operating in international law. In doing so, it has been suggested that international law does not have any overall convention or regime which is designed to further the protection of animals. Even with regard to the most charismatic of animal species, such as the Great Apes and/or cetaceans, participants within international law has been unable to conclude any form of mechanism which recognises a 'special relationship' with humanity, whereby animal species should be protected because of the values they possess, outside of their endangerment status. Rather, international law only recognised the status of endangerment, as the guiding philosophical value in this area. That is, the goal in international law with regard to animals, is to conserve them to prevent them becoming extinct as a species, not to conserve them because each individual animal can experience pain and/or pleasure. The follow-on from this conclusion has been the development since the 1990s of the 'sustainable use' debate. The sustainable use debate works on the assumption, that if certain conditions are fulfilled, and the overall status of the species is not endangered, then it is permissible to utilise species in a consumptive manner.

Although the sustainable use debate has been accepted in some international forums, such as the CBD, in other places, such as with the CITES or the CMS, a number of countries are backing away from its implications. This reversal to endorse 'sustainable use' as a principle which is applicable in any and all situations, is consistent with developments in other areas of international law, such as with the development of standards, from the international transport of animals, through to the culling of those under an international auspice, of humane standards.

The development of humane standards, the refusal to accept sustainable use in all contexts, and the forthright drive to prevent species from becoming extinct are all examples that non-anthropocentric values are becoming particularly noticeable across a large range of topics in international law. Although these have to be weighted against other developments in this area, such as the refusal of special relationships with any non-human species, and the overall force of the 'sustainable use' debate, it is clear, that

113 The choice of either a large calibre rifle, a second harpoon or the electric lance depends on 'the situation'. See Government of Japan (2000) *Report on Whale Killing Methods in the 1999/2000 Japanese Whale Research Programme*, IWC/52/WKM&AWI 10.

in the space of 30 years, debates which were once the province of exclusive philosophy journals, have moved to the core of many of the most high profiles international regimes which are seeking to resolve some of the most pressing difficulties of the 21st century.