

International Law and Wildlife Wellbeing – Moving from Theory to Action

George Washington University Law School
Moot Court Room
2000 H St., NW, Washington, DC
November 13-14, 2015

Agenda

Friday, November 13

Registration

9:00 - 9:30am

Opening Keynote Address

9:30 - 10:15am

David Favre, Professor of Law, Michigan State College of Law

Developing an Ethic of Conservation and Individual Wildlife Wellbeing

Animal welfare and environmental issues historically have been on separate tracks. In particular wildlife issues are viewed most often in an environmental context with great concern about population levels but little concern for the wellbeing of individual animals. Why is this the case? Is it possible to bring these different concerns together? Could individual wild animals have legal rights? There is the need for an overarching ethics which will bring the issues together implemented by a new international treaty. Some of the issues to be addressed include: when is it appropriate if at all, to "take" wildlife, and for what purpose, what methods are acceptable for taking and transporting wildlife, and what conditions are required for the keeping of wildlife.

Environmental Conventions & International Organizations

10:30-12:15pm

Moderator:

Robert Glicksman, J.B. & Maurice C. Shapiro Professor of Environmental Law, George Washington University Law School

Cathy Liss, President, Animal Welfare Institute

Tara Zuardo, Wildlife Attorney, Animal Welfare Institute

Trapping, trapping standards, and wildlife well-being

This presentation will explore the fur industry's attempt to develop national and international trapping standards, the passage and then the derailment of EU Regulation 3254/91, and the current status of the trapping issue. We will provide background and an update on the Agreement on International Humane Trapping Standards reached between the EU, Canada and Russia and

the separate agreement between the EU and the US. Learn about why trap standards are a sham and what should be done to eliminate cruel traps.

Akisha Townsend Eaton, Senior Policy and Legal Resource Advisor to the United Nations Economic and Social Council (ECOSOC) for World Animal Net

CBD and Post 2015 Sustainable Development Agenda

This presentation will give an overview of recent developments in the Convention on Biodiversity in the context of sustainable development, with a special emphasis on the Post-2015 Development Agenda. Adopted by UN Member Countries, and launched this fall, the new Sustainable Development Goals are set to build upon the Millennium Development Goals. This presentation will explore current goals, targets, and indicators that pertain to biodiversity as well as various challenges and opportunities for global improvements in animal welfare through existing legal instruments as the agenda is implemented in the years to come.

Sue Fisher, Consultant on Marine Affairs, Animal Welfare Institute

World Heritage Convention and Wildlife Wellbeing

This presentation will explore efforts to use the World Heritage Convention to help protect endangered species, such as the gorilla, by designating them World Heritage Species and to seek heritage "in danger" designations for World Heritage Sites in which key species are threatened (vaquita porpoise and totoaba).

Lunch

12:15-1:30pm

Environmental Conventions & International Organizations 2

1:30-3:15pm

Moderator:

Rachelle Adam, Law Faculty, Hebrew University

Randall S. Abate, Professor of Law, Florida A&M University College of Law

The Need to Integrate Animal Welfare Protections into Existing Environmental Conservation Mechanisms to Support a Global Ban on Shark Finning

Sharks are the oceans' top predator and are essential in maintaining balanced and healthy marine ecosystems. Yet shark populations are experiencing a precipitous decline worldwide, largely due to the unsustainable, wasteful, and inhumane practice of shark finning. Humans kill approximately 100 million sharks per year. After the sharks' fins are hacked off at sea for delicacies such as shark fin soup, which can command as much as \$100 per bowl, the sharks are discarded back into the ocean where they experience cruel and inhumane deaths from drowning or by succumbing defenseless to other marine predators. The environmental conservation-focused protections for sharks under international law—such as CITES and CMS—and under domestic law in the U.S. and EU, have made some progress in responding to this global crisis. Nevertheless, in the case of shark finning, animal welfare-focused prohibitions based on moral grounds are also necessary at the international and domestic levels to avoid species collapse. The EU has been a leader on this and related animal welfare issues such as the EU seals

ban. This presentation draws on related contexts where bans on environmentally destructive, wasteful, and immoral practices have been upheld despite a lucrative market for the harmful practice. It advocates for a combination of international, national, and sub-national measures to integrate animal welfare protection based on public morals into existing environmental protections to move toward a global treaty to ban shark finning.

Monika Thiele, Programme Officer, United Nations Environment Programme (UNEP), Regional Office for North America

The Role of UNEP and Environmental Conventions in Advancing Wildlife Wellbeing

This presentation will address the role of UNEP & Multilateral Environmental Agreements in advancing the issue of illegal wildlife trade (IWT), through strengthening rule of law, building the evidence base for impacts of IWT, and reducing consumer demand through public awareness strategies. This topic is particularly timely since a Resolution on Tackling Wildlife and Forest Crime was just adopted by the UN General Assembly on July 31, 2015. This discussion will look at the role of UN mandates and resolutions currently in place and at joint UN activities underway to scale up global support for tackling the illegal trade in wildlife.

Tim Scott, Policy Advisor on Environment with the Sustainable Development Cluster of the Bureau for Policy and Programme Support of the United Nations Development Programme (UNDP), New York

The Role of UNDP and Environmental Conventions in Advancing Wildlife Wellbeing

UNDP supports efforts to combat the illegal trade in wildlife, both fauna and flora, drawing on an integrated approach. We leverage our expertise, partnerships, and global networks to support countries eradicate poverty, protect the environment, empower women, and build strong institutions, all of which support the rule of law. UNDP work focuses on diversifying rural livelihoods, managing human-wildlife conflict, and sharing the benefits from sustainable wildlife management. These efforts draw on the UNDP-GEF biodiversity and ecosystems portfolio which is the largest in the UN system, covering over 130 countries and 500 projects with USD 1.5 billion in funding and USD 3.5 billion of co-financing. We have helped establish over 2,000 protected areas in 85 countries around the world, covering 272 million hectares of land. Building on this portfolio of work, we are exploring new and innovative partnerships with governments, UN agencies including CITES, UNEP, and UNODC, the World Bank, wildlife conservation organisations and civil society groups.

Moderator:

Joan Schaffner, Associate Professor of Law, George Washington University Law School

Georgia Hancock, General Counsel, Animal Welfare Institute

The Wild Cetacean Trade and How CITES May Promote Cetacean Wellbeing

Over the past few decades, beluga whales have become a popular choice for public display in aquariums worldwide, despite the fact that they do not thrive in captivity. A market has developed for the global trade in this species, fueled by supply – the companies that engage in capturing wild belugas in Russia and selling and shipping them to facilities around the world – and demand, the public display industry and members of the public willing to pay entrance fees. For approximately two decades, public display facilities in the United States have not sought to import wild-caught cetaceans, an unspoken moratorium that is in the midst of being challenged by the industry itself. This presentation will explore how US authorities have addressed the live cetacean trade under the MMPA and will consider the extent to which CITES can be used to achieve animal wellbeing protections internationally.

DJ Schubert, Wildlife Biologist, Animal Welfare Institute

The Solomon Islands Dolphins and How CITES may Promote Cetacean Wellbeing

This presentation will use the Solomon Island dolphin as a case study to demonstrate how CITES was used to stop the international trade in wild caught dolphins, how CITES can be improved to advance the well-being of live animals in trade, and why dolphins in the Solomon Islands remain under threat from tradition, drive hunting, and domestic trade; a threat CITES is powerless to stop.

Reptile and amphibian trade under CITES, wildlife disease, and well-being

This presentation will explore the massive legal and illegal trade in reptiles and amphibians under CITES, why such trade provides a super-highway for the transmission of deadly pathogens (including some zoonotic diseases) around the globe, how such diseases are devastating reptile and amphibian populations, why transport standards can worsen disease transmission concerns, why US authorities have little power to intercept diseased animals, and how CITES and US law must change to remedy the threats posed by such trade to worldwide amphibian and reptile populations and the global transmission of disease.

(10 minute break)

Bill Snape, Senior Counsel, Center for Biological Diversity

Polar Bears, Conservation, and Wellbeing

Perhaps no species symbolizes the link between animal law and environmental law more than the polar bear. Aside from being charismatic to humans, as well as a ferocious carnivore of seals, its habitat is ground zero for the battle over global warming caused by human greenhouse pollution. The polar bear also suffers from toxic ocean pollution, overhunting and international trade in its parts. Thus, saving the polar bear from extinction, and eventually advancing its recovery, is both

a scientific and ethical exercise of significant proportions. Our success or failure with polar bear protection and conservation will say a lot about the future of our own species. In sum, what does the world look like from the eyes of polar bear today?

Carroll Muffett, President and CEO, Center for International Environmental Law

CITES—How to achieve an Effective MEA

While CITES has many flaws and mixed results, it has played a role in the survival of many species that would otherwise have gone extinct. Until, perhaps, the last decade, CITES was widely and I think rightly regarded as one of the most effective of all MEAs. The conspicuous exceptions (both recent and longstanding) actually provide some insight into what it takes for CITES to succeed.

BREACH: The Documentary

6:30-8:30pm

Documentary and Q&A with Filmmaker Jonny Zwick

Iceland, Japan, and Norway are the only countries in the world that still practice commercial whaling in defiance of the International Whaling Commission (IWC) ban. Of these three, Iceland is the only country to hunt endangered fin whales, the second largest creature on earth.

BREACH is the first feature-length documentary film to examine Iceland's whaling industry, exposing the nation's defiant participation in commercial whale hunting against a backdrop of worldwide protests and political intrigue. The Icelandic politicians, scientists, and businessmen who are encouraging continuation of the hunt, believe these migratory mammals are their resources to exploit. Their intent: to disregard international law and set their own killing quotas each hunting season. They have continued their slaughter in the face of low demand and failing profits.

Played out against Icelandic nationalism on one hand, and the recent explosion of Iceland's whale watching tourism on the other, *BREACH* reveals the contradictions and unethical decisions that have allowed Iceland to continue hunting the world's largest mammals.

Saturday, November 14

CITES and Elephants

8:30-10:00am

Moderator:

Rachelle Adam, Law Faculty, Hebrew University

Jose de Arteaga, Elephants DC

Audre Azuolas, Elephants DC

Holly K. Sheridan, Founding Partner, Sheridan Law; Elephants DC

Considering Distinctions between CITES Appendix I and II Classifications for Elephants: A Call for Tighter Controls to Protect Elephants

In an effort to end the international commercial trade of elephant ivory, Elephants DC will present steps to restore all African elephants to Appendix I standing in 2016 with CITES, as well as discuss legal options to protect elephants from extinction through the presentation of real-time solutions to counter habitat loss and human-elephant conflict. The presentation will address several points of vulnerability regarding CITES' certification process for the sale of live elephants, highlighting the certification process as insecure and thus undermining humane protections outlined for both Appendix I and Appendix II protected African elephants and rendering the CITES efforts ineffective.

Nickolaus Sackett, Legal Counsel, Social Compassion in Legislation

Zimbabwe Baby Elephants and How CITES Can Protect Their Wellbeing

This case study will discuss how CITES breaks down within a corrupt government, using the baby elephant ordeal in Zimbabwe as an example. CITES relies on the Party members to implement the treaty through designated Management and Scientific Authorities. When these Authorities are not transparent regarding their licensing methods and how they've arrived at their scientific conclusions regarding a species, and are protected by a corrupt government and court system, CITES acts as a rubber stamp legitimizing bad actors. In the case of the Zimbabwe baby elephants, there was anecdotal evidence that the elephants were not being treated according to standards set in Resolution Conf. 10.21 (Rev. CoP16), but the Zimbabwe government refused any press or public viewing of the elephants to confirm the condition of the elephants. In such instances, CITES would be serving the interests of the species and of the other Party Members to allow, if not require, outside parties to observe the claims by the acting Party Member.

Bill Clark, INTERPOL

Elephants and a Convention to Address Wildlife Wellbeing

The Hague Conventions prohibit armies, *inter alia*, from employing "arms, projectiles or materials calculated to cause unnecessary suffering." Thus, glass shrapnel, dum-dum bullets and similar weapons are prohibited even when armies are in deadly conflict with their most virulent enemies. Unfortunately, the Hague Conventions do not apply to elephants. The Geneva Conventions provide captured prisoners of war with protections against gratuitous cruelties and abuse. Unfortunately, there is no Geneva Convention for elephants either. Nor do international

legal protections exist for any other wild animals that are shot, stabbed, poisoned, snared or bludgeoned for profit or pleasure. Recent history has provided abundant evidence of outrage conducted against wild animals, including elephants. Poisons, dum-dum bullets, snares, traps and all manner of devices banned from the battle field are commonly used against innocent wildlife. And animals that survive the ordeal are carried off to lives of captivity where standards fall seriously short of those required by the Geneva Conventions. Existing international agreements intended to regulate wildlife exploitation are ill-suited and ill-disposed toward necessary reform. An example is CITES, which requires Parties to assure that animals being entered into trade "will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment." But when efforts to give meaningful substance to this passage were proposed, the Convention determined the proposals to be *ultra vires*, and not within scope of the treaty. Certainly, some benefits for animals can be achieved by pursuing incremental improvements within existing international animal law. But meaningful progress on this issue can only be made by creating a new international agreement, something tantamount to The Hague and Geneva Conventions for animals.

World Trade Organization

10:15 – 12:15pm

Moderator:

Joan Schaffner, Associate Professor of Law, George Washington University Law School

Steve Charnovitz Professor of Law, George Washington University Law School

The WTO and Public Morality

International trade rules have always contained a moral exception, but this policy space did not begin to be systematically explored in dispute settlement until the *U.S. - Gambling* case in the World Trade Organization in the early 2000s. Three WTO cases have considered the moral exception as a defense, and although none of those defenses fully succeeded, the adjudicators have been deferential toward government-defined morals. Future legal cases and policy discussions should consider how public morality should be judged by international panels and what should be needed to show that a carve-out is not arbitrary or unjustifiable discrimination.

Jeffrey Smith, Environmental Law Fellow at McGill University and a Visiting Professor of Law at Carleton University in Ottawa

Floating the ark a little higher? International Animal Welfare Law After the Seal Products Case

The 2014 decision of the World Trade Organization Appellate Body in the Seal Products Case marks an important turn in the development of international animal welfare law. The decision arguably allows states greater flexibility, if in a trade setting, to insist on minimum standards for the moral treatment of wild animals. The paper briefly canvasses the development of international animal welfare law and the circumstances resulting in the *Seal Products Case*. The application of the two part test in the case of evaluating states (and, here, the European Union) seeking to regulate imported products on the basis of public morals - the governmental application of the ethical response of civil society - to the origins and processing of animal products is particularly considered. The analysis moves to consider the scope of the Appellate Body's test for future cases. The paper next comparatively addresses the place of the decision in

international animal welfare law in a bid to illuminate shortcomings in the present customary-conventional regime. It contends finally with the secondary instrumental influence of the Appellate Body's decision, including the reinforcing of consensus toward ethical norms in the treatment of animals on an international plane.

Peter Fitzgerald, Professor of Law, Stetson University College of Law

The WTO and Animal Advocacy

With the recent decision in the Seals case, there has been renewed focus on the impact of the WTO Dispute Resolution Process on animal advocacy. However, the advocacy community is responding very differently to this WTO decision than it did to the Tuna Dolphin cases in the early 1990s. The comparison is instructive not only as to how WTO disputes are now regarded but also in how advocacy tactics have evolved over the past two decades and adapted to the WTO process. Relatedly, this presentation will discuss the relevance to the Gray2000k efforts to limit greyhound exports from Australia to Chinese dog tracks.

DJ Schubert, Wildlife Biologist, Animal Welfare Institute

The Pelly amendment, the WTO, and Wildlife Wellbeing

This presentation explores the Pelly Amendment and how it has been used historically and more recently to try to improve the well-being of sea turtles, tigers, rhinos, and cetaceans, when and why it has worked, how and why the WTO and trade agreements have compromised its strength using Icelandic whaling as a case study, and how the law or its implementation must be changed to strengthen its impact consistent with the original intent behind the law.

Lunch

12:15 – 1:15pm

Oceans: Whaling and Fishing

1:15– 3:00pm

Moderator:

Rachelle Adam, Law Faculty, Hebrew University

Patrick Ramage, Whale Programme Director, International Fund for Animal Welfare

Whaling Surfaces at the World's Highest Court

In 1982, the International Whaling Commission banned all commercial whaling as from 1986. In the 24 years between 1986 and 2010, Japan killed more than 14,000 whales, claiming to do so under a scientific research exemption. On March 30, 2014, as a result of a lawsuit brought by Australia against Japan, the International Court of Justice (ICJ) issued a historic decision, ruling that Japan's whaling in the Antarctic was not for the purpose of scientific research and ordering Japan to revoke all permits granted to that end. Japan initially indicated it would respect the ICJ ruling but has since raised concerns that it will instead contravene it announcing plans to resume whaling in the Antarctic, including the Southern Ocean Whale Sanctuary. This presentation will review developments in the wake of the World Court case and prospects for permanently ending Japan's Antarctic whaling.

Sue Fisher, Consultant on Marine Affairs, Animal Welfare Institute

IWC, ICRW and cetacean well-being

This presentation will explore efforts to address cetacean wellbeing within the IWC and under the terms of the ICRW. What efforts have been made, how have the efforts been received by IWC Contracting Governments, what have been the results (or lack thereof), and how can cetacean well-being be advanced within the IWC.

Kate O’Connell, Marine Wildlife Consultant, Animal Welfare Institute

Disentangling the whales: how bycatch regulations and sustainable seafood labeling impact the wellbeing of marine mammals

The MMPA and the AIDCP have been successful in reducing the numbers of dolphins dying due to interactions with fishing gear; however, they enshrine into law the concept that such takes are acceptable as long as they are below certain biological levels. International fishing agreements such as the IOTC and WCPFC, which have passed resolutions banning the deliberate setting of purse seine nets on dolphins, will be examined and there will be a discussion of how the well-being of bycaught species needs to be more fully considered in the development of fisheries regulations and by seafood labeling programs.

Elizabeth Hogan, Campaigns Manager for Oceans and Wildlife, World Animal Protection

Impacts of derelict fishing gear on marine wildlife - role of the UN and legal best practices

640,000 tons of fishing gear is lost in the ocean every year. Entanglement in this ‘ghost’ gear kills a minimum of 136,000 pinnipeds and cetaceans each year, in addition to countless birds, turtles, and fish. From a welfare perspective, this causes hundreds of marine species to drown or suffer constricting wounds leading to infection, amputation and prolonged suffering. The United Nations is working to establish international policy and technical guidelines to address the many effects of ghost gear, including gear marking protocols. The presentation will include remarks on the FAO expert consultation process, the Parties to the Nauru Agreement, and a few examples of successful national and state policy that can serve as models in a broader forum.

Convergence of Conservation and Wellbeing

3:15– 5:00pm

Moderator:

David Favre, Professor of Law, Michigan State College of Law

Paul Boudreaux, Professor of law, Stetson Law School; Editor, *Journal of International Wildlife Law & Policy*

What do we mean by *species* and how do decisions affect animal well-being?

The decision of what constitutes a distinct *species* is a complex question. The concept is largely human: there is no clear genetic or anatomical answer, for example, whether a Siberian tiger is a separate species from a Bengal tiger. But our taxonomic decisions have great implications for the law and policy. In particular, there may be political pressures to characterize different populations as within a single species. Such decisions, which can facilitate human-induced interbreeding, may harm the genetic and physiological well-being of the animals, as individuals

with “differences” mix together and interact as a single “species.” The talk will focus on the experiences, under IUCN and U.S. principles, of the Florida panther and the Asian tiger.

Carney Anne Nasser, Legislative Counsel, Animal Legal Defense Fund

Welcome to the Jungle: How CITES and Existing Federal Laws Designed to Protect Tigers, Lions and other Endangered Big Cats are Actually Enabling their Exploitation

Scientists have delivered the sobering news that we are standing on the precipice of a Sixth Mass Extinction, and anticipate that 75% of the remaining animal species will be exterminated within the next three generations. Researchers attribute this rapid and widespread decimation of species to numerous factors, including commercial exploitation. Commercial exploitation of big cats takes shape in a variety of forms: tiger and lion cub petting opportunities in roadside zoos require a steady supply of cubs and contribute to the surplus of endangered and exotic cats with no place to go once they are no longer profitable, species like lions who are not yet protected by the Endangered Species Act (despite the fact that wild lion populations in rapid decline) may be bred in captivity in the U.S. for canned hunts or to be harvested for exotic meat sold to restaurants or via individual internet sales, and even animals who are supposedly protected by the Endangered Species Act may be hunted for sport or forced to perform in circuses so long as exploiters “pay-to-play.” Loopholes in the text and application of the federal Endangered Species Act and Animal Welfare Act have created an untenable situation for imperiled species like lions and tigers. This segment will explore these loopholes, the legal and regulatory changes that are necessary to curtail exploitation of wild and captive populations of big cats, what the future is like for tigers (who are listed as endangered but whose protection has gaping loopholes) and lions (who may not be listed as threatened until 2016), the link between captive exploitation for entertainment and the illegal trade in exotic animal parts, and why captive breeding will not save us from the Sixth Mass Extinction.

Kathy Hessler, Clinical Professor of Law, Lewis & Clark Law School

Environmental Law and Animal Law - Comparing Goals and Approaches

This presentation will explore the differences and similarities in the legal frameworks of environmental and animal law. It will consider the historical development, similarities and differences, and current application of these legal frameworks to difficult and evolving legal questions in order to better understand the distinctions between them and consider which approaches are more efficacious to achieve legal and social goals. It will also address the conflict between these approaches, which is an important step in order to determine when and to what degree harmonization between them is possible.

Sabine Breils, Director, Global Animal Law Project

A Global Approach to Animal Protection

Animal Protection is a global concern. As such it should be addressed by international law and policy. This presentation will make the case for a new UN animal policy including the adoption of a convention framework and the creation of a new agency, addressing animal issues globally and comprehensively. The presentation will also address the Global Animal Law Project (GAL)

through its on-line platform. This innovative project is of great interest through its extensive proposals and expertise, aiming at improving the wellbeing of wildlife and all animals generally.

Closing Keynote Address

5:00-5:30pm

Dinah Shelton, Manatt/Ahn Professor Emeritus of International Law, George Washington University Law School

Wildlife as the Common Heritage of Humanity

International law has yet to make the leap for wildlife that it made in the 1940s for humans. Prior to that period, how governments treated individuals and groups of individuals within their jurisdiction was considered solely a matter of domestic jurisdiction. The paradigm shifted after the tragic human events of the first-half of the twentieth century to make international human rights law fully part of the international agenda leading to a host of conventions, procedures, institutions and litigation. Today, no state can credibly claim that it may treat those within its jurisdiction as it wishes. In many ways, wildlife law at the international level is similar to the pre-1945 human rights situation: piecemeal regulation covering only some aspects of the problem (mostly concerning trade) with the default setting that all biodiversity is part of the internal sovereign rights of states. The defects of current conventions and the fragmented approach of international law generally to species, habitats, conservation, and trade make the current law highly ineffective as well as filled with gaping holes. Unless the international community makes the shift to seeing biodiversity and especially wildlife as the “common heritage” of humanity and not simply the “common concern,” it will be difficult to make progress with improving animal well-being.

Summary of Workshop: Themes & Future Work

5:30– 6:00pm

Rachelle Adam & Joan Schaffner

This final panel will trace the themes of the workshop and conclusions to be drawn from the successful as well as less successful case studies. The panel will explore what common factors can be identified as critical for success and how we can utilize these findings to create effective and practical proposals addressing wildlife wellbeing. Such proposals may include a declaration calling for a ban on private ownership in wildlife; greater restrictions on takes of wildlife; establishment of “Wildlife Watch” to track and address cases of cruelty to wildlife; and promoting a new global convention for animal wellbeing.