



“Biodiversity and animal rights: irreconcilable paradigms?”

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Introduction

International Whaling Convention (IWC)

Conference of the Parties COP 2018 (Brazil), Res. 2018-5 “Florianópolis Declaration on the role of the IWC in the Conservation and Management of Whales in the 21st Century”:
“recovery and the maintenance of whale species and populations

Contrast historical purpose of the IWC 1946, Preamble: over-fishing, proper regulation, whale stocks as natural resources, sustained exploitation.

Research question: Can and should the legal instruments for species protection and biodiversity accommodate concern for animal welfare or even animal rights?

I. Legal concepts

1. Species (mostly wildlife) protection/ conservation and biodiversity

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**), Washington, DC, 3 Mar. 1973, in force 1 July 1975.
 - Bonn Convention on the Conservation of Migratory Species of Wild Animals (**CMS**), Bonn, 23 June 1979, in force 1 Nov. 1983.
- Protection of “biological capital”. → Welfare gap in international conservation law.
- Convention on Biological Diversity (**CBD**), Rio de Janeiro, 5 June 1992, in force 29 Dec. 1993. Art. 8(h) CBD: “Prevent the introduction of, control or eradicate those alien species which threaten the eco-system, habitat or species.”
- “Eco-fascism”?

2. Animal welfare

- 1965 Brambell report: five freedoms for farmed animals.

- Three dimensions: the animal’s health and functioning, affective states, and its natural living.

Welfare ethics: No unnecessary suffering, but no rights.

WTO Panel Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R and WT/DS401/R (25 November 2013), para. 7.420: “animal welfare is a globally recognized issue.”

3. Animal rights

Courts in Argentina and Colombia: *habeas corpus* for apes and a bear.

- Procedural, legal, social, and symbolic benefits of legal rights.
- Fair balancing in which the proper value of fundamental animal interests (such as the interest in life) could be integrated.

Transnational supply chains with routine mass violence against animals. Outsourcing of industries and race to the bottom.

→ Need for international animal rights.

II. No inevitable conflict between species protection and animal welfare

1. Avoid disease-caused decrease of populations.

2. Success of re-introduction of species.

→ International rules for welfare of (wild) animals could serve a dual purpose: conservation and welfare.

- Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity of 11 July 2005; UNEP/CMS/Inf. 8.15: "Promote more efficient, ethical and humane use of components of biodiversity, within local and national contexts, and reduce collateral damage to biodiversity."
- United Nations, General Assembly, Towards a Global Pact for the Environment of 7 May 2018 (A/72/L.51).
- Renewal of the CBD's Aichi Biodiversity Targets in 2020.

Conclusion

Biodiversity and animal rights can at least sometimes be "two sides of the same coin".

References

Stuart Harrop, "From Cartel to Conservation and on to Compassion: Animal Welfare and the International Whaling Convention", *Journal of International Wildlife Law and Policy* 6 (2003), 79-104.

Paul C. Paquet and Chris T. Darimont, 'Wildlife Conservation and Animal Welfare: Two Sides of the Same Coin', *Animal Welfare* 19 (2010), 177-190.

Guillaume Futhazar, „Biodiversity, Species Protection, and Animal Welfare Under International Law“, *Max Planck Institute for Comparative Public Law & International Law Research Paper* No. 2018-22.

Anne Peters, "Rights of Human and Nonhuman Animals: Complementing the Universal Declaration of Human Rights", *American Journal of International Law Unbound* 112 (2018), 355-360.