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SPECIAL ISSUE on the International Whaling Commission (IWC) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

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EDITORIAL

A post-pandemic fall? The meetings of the IWC and CITES

With international travelling being possible again, also the international community has picked up its work again. To this end, the fall and winter of 2022 saw five meetings of some of the most prolific multilateral environmental agreements:

- The 68th meeting of the International Whaling Commission (IWC), 17—21 October in Portorož, Slovenia
- The 14th Conference of the Parties to the Ramsar Convention on Wetlands, 5—13 November in Geneva, Switzerland (in-person) and Wuhan, China (online)
- The 27th Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC), 6—20 November in Sharm-el-Sheikh, Egypt
- The 19th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 14—25 November in Panama City, Panama
- The 15th Conference of the Parties to the Convention on Biological Diversity (CBD), 7—19 December in Montréal, Canada

It was especially the CoP27 of the UNFCCC and CoP15 of the CBD which triggered significant media attention. The former, because it is probably the largest environmental gathering in the world, making decisions of truly global significance (despite its weak implementation). Some of the major outcomes of the meeting were therefore to establish a 'loss and damage' fund for developing countries hit hard by floods, droughts and other climate disasters, to hold businesses accountable and to keep the 1,5°C goal within reach.

The meeting of the CBD, on the other hand, managed to adopt the post-2020 Kunming-Montreal Global Biodiversity Framework (GBF), which aims to halt the loss of biodiversity. Particularly Target 2 and 3 of the GBF reached prominence as they strive to place 30% of all land and sea areas under effective restoration (Target 2) and effective protection (Target 3) by 2030 (the so-called '30x30 target'). While widely hailed as a milestone agreement, indigenous peoples and local communities (IPLCs) have considered this as yet another tool for forceful, 'fortress' conservation efforts.

The 14th CoP of the Ramsar Convention hardly made headlines, if any at all. This Convention, however, is crucial for the protection of biodiversity, i.e. wetlands with special importance as waterfowl habitat, and is therefore elementary in transboundary biodiversity conservation. As a result of CoP14, Ramsar has further substantiated its support for indigenous peoples and local communities (IPLCs), for instance by putting in place an award on indigenous peoples' conservation and wise use.

The meetings of the IWC and CITES constitute the core of this Special Issue, given that *Sellheim Environmental* was present at the meetings as part of the delegation of *IWMC—World Conservation Trust.* To us, it was concerning to see that both the IWC and CITES are a far way from properly taking into account the interests of indigenous peoples and local communities as well as developing

states. Issues such as food security and livelihoods that may also make lethal use of species are not considered, but have to subdue to interests of far greater prominence and political value — particularly in the developed world. It is therefore not entirely surprising that steps were taken in the IWC that are rather unorthodox, as the article on the South Atlantic Whale Sanctuary (SAWS) will show.

At the same time it is interesting, for lack of a better word, to see how opportunistically the idea of 'livelihoods' is being applied by developed states to reach a certain end, as the article on pernambuco demonstrates.

Generally, and as per our focus, in this issue we have selected certain elements of the meetings which we consider relevant for a better understanding of the respective organisations and the difficulties they face: brief insights into what the IWC and CITES are; the question on the decision-making capabilities, the quorum, of the IWC and associated troubles in the adoption of the SAWS; food security; livelihoods of musicians; and indigenous participation. In addition, we have included two diverging viewpoints on these meetings by long-time experts on the IWC and CITES.

There seems to be no common ground amongst the Parties of both bodies and it is our hope that this Special Issue will trigger more discussions that in the end will lead to a reconciliation of views on conservation and sustainable use.

— Dr Nikolas Sellheim

January, 2023

VIEW

Whales, sharks, trees & livelihoods: time to end the invisibility of non-extractive users of nature

By *José Truda Palazzo, Jr.*, Former Alternate Commissioner and Head of Scientific Delegation for Brazil at the International Whaling Commission. Institutional Development Coordinator, Brazilian Humpback Whale Institute, Member of the IUCN Tourism and Protected Areas Specialist Group

It was 1984 when I first attended a Plenary meeting of the International Whaling Commission (IWC), and 1985 when I first attended a Conference of the Parties of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), marking indelibly my dubious honour of being one of the longest-serving members of both assemblies, in different capacities as government delegate, advisor and accredited observer. At that time, when humankind was already well aware of the disgraceful depletion of biodiversity we were causing in land and at sea, there was hardly a mention to *non-extractive uses* of Nature in those fora. Whale watching was in its infancy outside of the well-established operations in the United States and Mexico, and Ecotourism was already important for many countries as an economic force but not treated as a major issue at international treaty meetings. In both of those treaties, however, a magic word was already brandished by several interest groups and delegations when trying to oppose the adoption of further restrictions on

whaling (at the IWC) or on the international trade in endangered wild species (at CITES): *Livelihoods*.

It is 2023 now, and despite the fact that non-extractive uses of Nature have taken a major role in many developing country economies, contributing extensively to socioeconomic well-being there and also in developed nations, the whaling, fisheries, hunting and wildlife trade lobbies have apparently succeeded in hijacking the term and the issue of *livelihoods* – in its politically charged meaning, i.e., vital needs for the survival of local communities – to equal the killing, extraction, and (international?) trade in wild animals and plants. It takes no longer than a Committee session at a CITES CoP to realize that all discussions about Livelihoods center on the alleged need to continue extracting species from the natural environments to sustain local communities, their economy and culture.

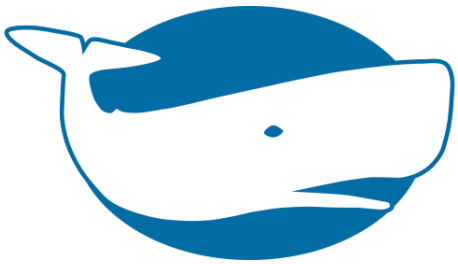
Some would argue, perhaps not entirely mistaken, that the issue of Ecotourism has been dealt with in these two international agreements and, further, at other relevant fora such as the Convention on the Conservation of Migratory Species (CMS) and the Convention on Biological Diversity (CBD). Indeed, it has. "Best practice" guides for whale watching and migratory wildlife watching have been discussed and issued by the IWC and CMS, and at CBD, pompous side events have hosted lecturers from grand Ecotourism firms and officers from an array of "sustainable certification" groups. The only missing stakeholders? The communities of practice of non-extractive uses of biodiversity: local community leaders, local guides, hostel owners, family businesses, or even the national associations which represent them in developing countries. Without any support from their own governments, or the large international groups touting their "sustainable" certification schemes or even from the secretariats of international agreements, the people who are most interested in discussing the livelihoods of non-extractive users, which are seriously affected by unsustainable extractive uses – whaling, deforestation, shark overfishing to name a few – are entirely left out of the discussions which will directly affect *their livelihoods*.

Be it the decisions at CITES about restricting or allowing international trade in shark species of immense value for recreational diving businesses spanning from Micronesia to Colombia and South Africa, or about adopting convolute and sometimes draconian "guidelines" for whale watching at the IWC (knowing full well that lazy and ignorant bureaucrats in some governments may enshrine it as mandatory rules), there is next to zero consultation to the local communities making a living out of the non-extractive uses of the species involved. The decision-making process and the evolution of policies at the international level, which will end up filtering down to national and local policymaking, thus becomes a clash between the powerful extractive use lobbies and their allied governments, and the "conservation" NGOs which are wealthy enough to maintain a regular presence at these meetings. And while the conservation community might have its own merits in the debate, it also has its own agenda, which not always reflect the priorities and needs of the non-extractive use stakeholders back in the plains.

We have seen recent – and welcome – moves – to incorporate more indigenous communities and knowledge at biodiversity policy decisions. However meritorious in itself, these attempts do not address the gap and the virtual absence

of non-extractive users of Nature at the negotiating table. There has to be a way in which all these international agreements start to formally recognize the existence and importance of non-extractive users, and their right to have *their* livelihoods considered and protected in decision-making. IWC, CITES, CMS and CBD, for instance, can all adopt Decisions or Resolutions determining that when considering "livelihoods" in their processes and debates, the non-extractive user communities must be a part of the consideration and invited into the discussion and decision-making. Further, government delegations, which already usually incorporate trade groups, NGOs and other institutions, should also start to incorporate legitimate representatives of non-extractive user communities.

There would be much more to say about the need to recognize and protect non-extractive *uses* of wild species at international treaties, which range from cultural values to carbon balance in ecosystems. But I tried to briefly focus here on the matter of non-extractive *users* and the neglect with which their rights and aspirations have so far been treated. It's time to stop pretending that the proxies to speak on their behalf have any legitimacy, and to allow these communities a voice and a seat at the table to defend their livelihoods. Only then will we be able to broadly and comprehensively discuss the important issue of Livelihoods, in full context and with fairness.



INTERNATIONAL
WHALING COMMISSION

INSIGHT

A brief glimpse into the International Whaling Commission

Introduction

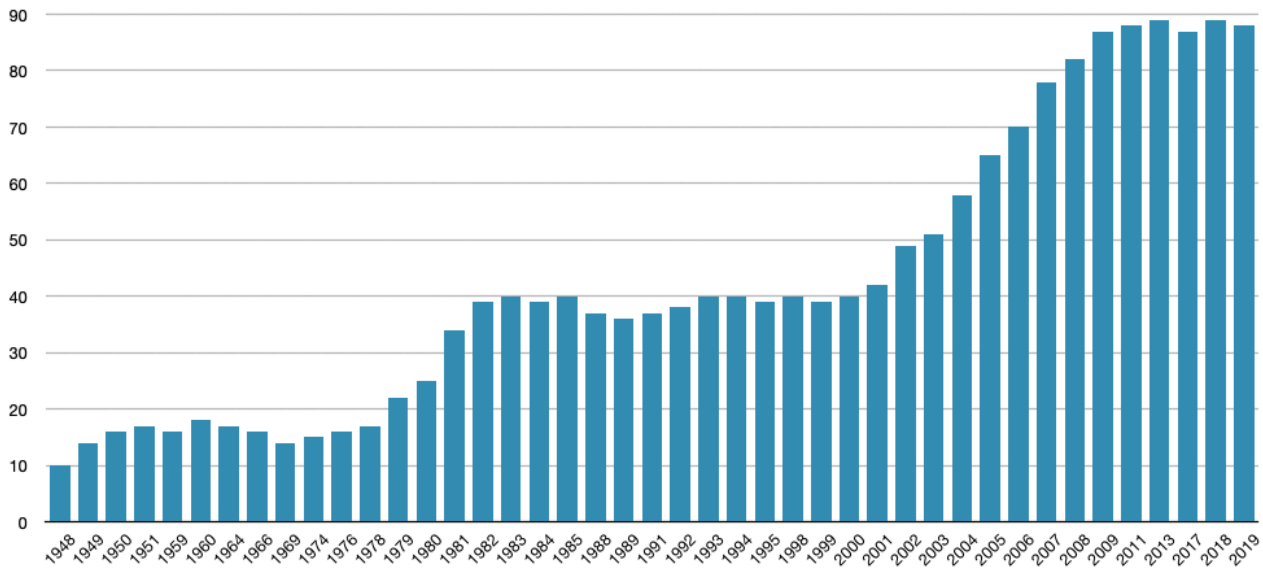
The International Whaling Commission (IWC) is probably one of the most renowned, if not infamous, international organisations in the world. It was established in 1948 in order to implement the International Convention for the Regulation of Whaling (ICRW), which was signed and adopted by 15 countries, Argentina, Australia, Brazil, Canada, Chile, Denmark, France, the Netherlands, New Zealand, Norway, Peru, South Africa, the Soviet Union, the UK and the United States.

While the IWC started off as a 'whalers club', i.e. as a tool to regulate commercial whaling in so far as it does not endanger abundant whale stocks, over time it has developed into an organisation which is commonly seen to prohibit any type of whaling. While this is in a sense true, reality is far more complex. But let's take one step at a time.

The IWC was the first organisation that dealt with the utilisation of whales (cetaceans). Although 'cetaceans' encompass somewhere around 70 different species, the IWC does not regulate the hunt for all of these. Instead, the Commission merely deals with so-called 'great whales', which are all baleen whales and merely one toothed whale, the sperm whale (*Physeter macrocephalus*). This means that hunts for all other cetacean species, meaning small cetaceans such as dolphins or orcas, are not affected by the decisions of the IWC. If, therefore, an IWC member chooses to hunt dolphins, any prohibition voiced by the IWC does not apply.

Currently, the IWC has a membership of 88 states. Contrary to other organisations, such as CITES, the membership of the IWC has not seen a steady increase, but it has been marked by withdrawals, rejoinings, and new members.

Until 1972, the so-called 'blue whale unit' (BWU) served as the main tool to ensure the sustainability of whales. The BWU followed the ratio of 'one blue whale, two fin whales, two and a half humpback whale, or six sei whales and was originally applied by



cartels of whaling companies. Since no better mode was available at the time, also the IWC used the same logic after it was founded.

Unfortunately, the BWU did not have the effect that it was intended for. To the contrary: in light of this ratio, the so-called 'whaling Olympics' took off during the 1960s, which describes the extermination of particularly larger whales (blue whales, fin whales and humpback whales) since they required whalers lesser efforts in order to generate the same profit as for hunting, say, six sei whales.

The BWU was therefore crucial for the constant decline of the great whales during that time, prompting the IWC to abandon the system in 1972 and to apply species- and population-based models to set quotas. At that time, however, rifts started to appear in the Commission. Some states, such as the United States, called for a 10-year moratorium on commercial whaling in order for whale stocks to recover. This was also underlined by the 1972 United Nations Conferences on the Human Environment in Stockholm, which echoed this call.

In order for a moratorium to take hold, the Schedule to the Whaling Convention, the operative and implementing part, needs to be amended. In order to do so, a 3/4 majority is required. This majority was finally gained in 1982 after several countries, such as Sweden or Finland, have joined the Commission with the sole goal to put in place a moratorium whilst not having a whaling history of their own.

At the 1982 meeting in Brighton, England, 2 states voted in favour of a moratorium, 8 against and 5 abstained. With the adoption, which was to become effective during the Antarctic whaling season 1985/86 and which was to be reviewed in 1992, a new era dawned on the IWC: first, whaling states were now required to adhere to the moratorium even though they might have opposed the decision; second, a new way for indigenous whalers needed to be found, who did not contribute to the decline of whale stocks, but who still continued to whale; third, the IWC's functionality has consistently been put to the test.

As in other international organisations, the primary goal is to make decisions by consensus. If no consensus can be found, the issue at hand usually goes to a vote. In the case of the IWC, the vote to put in place a moratorium, which means a zero-catch-quota on all commercial whaling in all areas, was taken with the view of a review of the decision ten years later. Even though some parties opposed the decision while others even filed an objection (Norway, for instance, has filed and objection and has never withdrawn it, whereas Japan did the same but was forced to withdraw it over political pressure from the United States), they still were hopeful that in 1992, the moratorium could be lifted in case of a recovery of the whale stocks. While a review did take place and it became clear that many whale stocks indeed had recovered, the change to the respective article in the Schedule (Art. 10(e)) never occurred since those states aiming to re-establish a quota for certain stocks never garnered the required 3/4 majority. This situation has not changed since then and despite the recovery of many different species of great whales, the moratorium remains in place.

This has led to controversy within the Commission. Especially actively whaling countries such as Japan and Iceland — and to a lesser degree Norway, which, however is not bound to the moratorium because of its formal objection — have time and again

lobbied for a lifting of the moratorium, supported by several developing states such as Antigua & Barbuda or St. Lucia. This group of states, however, has never gone beyond 1/4 of the required votes, which means that they have thus far failed to lift the moratorium.

The spearhead of this movement was Japan, which, despite the moratorium, has continued to whale in Antarctic waters, albeit for scientific purposes. While this is, technically speaking, legal, it has time and again been labelled 'commercial whaling in disguise' and been seen as a breach of the moratorium. In 2014, this has led to a case before the International Court of Justice (ICJ), brought before it by Australia. It claimed that the Japanese whaling programme constituted a breach of the moratorium. While the court, in principle, concurred, this did not stop Japan from whaling. After all, the court did not rule that whaling was illegal, but rather that Japan's whaling programme, JARPA II, did not occur for scientific purposes. With this in mind, Japan further substantiated the scientific angle and resumed whaling a year later via its new whaling programme NEWREP-A in 2015.

Japan, however, has continuously called for a small whaling quota for its coastal communities. In order to reach this goal, it has time and again aimed to establish a new whaling category, 'small-type coastal whaling' (STCW). These attempts have consistently failed since the majority of IWC members considers this new category as a resumption of commercial whaling, going against the spirit of the IWC.

STCW would have constituted a fourth category of whaling, apart from the banned commercial whaling, scientific whaling, and Aboriginal Subsistence Whaling (ASW). In light of this consistent failure, in December 2018 Japan announced its withdrawal from the Whaling Convention and thereby from the IWC, which became effective on 30 June 2019. From 1 July 2019, therefore, Japan has resumed commercial whaling since it is now no longer bound to the regulations of the IWC.

For indigenous (aboriginal) peoples, the moratorium brought about its very own challenges. While they have been exempt from any ban on commercial whaling, they are nevertheless subject to their own regulation. Currently, ASW is carried out in four countries/regions: in Greenland, Alaska (and potentially Makah whaling in Washington State), Chukotka (Russia) and Bequia (St. Vincent & the Grenadines). This does not mean, however, that there are not other indigenous peoples who wish to resume whaling. Yet, in order to do so, the contracting party that represents these peoples, needs to issue a 'Needs Statement', which clearly outlines the socio-cultural role of whaling. Up until 2018, the Commission ascribed a quota every six years, which meant that indigenous whalers had to fear a non-issuance after this period. At its 67th meeting in Brazil in 2018, a new system was put into place, which now allows for an automatic renewal of the quota every seven years, unless one IWC party objects. While the system is in place, the case of the Makah, who have struggled for years to gain a quota, shows how difficult it might turn out to obtain the right to hunt whales, even though under national legislation they might be able to do so.

While Japan was still an IWC member, also the indigenous Ainu, an indigenous people on the northern Japanese islands of Hokkaido, have time and again called on the Japanese government to present a Needs Statement.

Due to domestic quarrels, however, it has abstained from doing so, which means that despite a potentially important socio-cultural role of whaling for an indigenous people, if a government refuses to table a Needs Statement, it is not possible to obtain a quota.

While the legal environment for indigenous peoples within the IWC is rather clear, this, as the example of STCW has shown, rather unclear of what the IWC aims to achieve. While the majority argues that it is first and foremost an organisation for the conservation of whales, others argue that it is to conserve whales for the orderly development of the whaling industry — both sides making reference to the Preamble of the Convention. These diverging views have led many to argue that the IWC is in a state of dysfunctionality since it is impossible to find consensus on countless numbers of issues. The articles in this volume demonstrate the difficulties of decision-making within the IWC, based on the 68th meeting in Portorož, Slovenia, in October 2022. Especially the role of whales as a potential source of food for non-indigenous peoples demonstrates the normative differences between the different 'camps' within the Commission. Given these differences, also the discussions circling around the establishment of a third whale sanctuary in the South Atlantic, apart from the Southern Ocean Whale Sanctuary and the Indian Ocean Whale Sanctuary, could not be resolved.

Problematic is therefore which path the IWC continues to trod in the future: that of an organisation which has moved away from being a 'whalers club' to be a whale conservation institution (an evolutionary interpretation of the Convention), or to stick to the text and consider it still an organisation which protects whales for the benefit of humankind, including their lethal use (a textual interpretation of the Convention). In the end, it appears to boil down to a numbers game since neither of these interpretations is (in)correct. Japan has demonstrated that if an organisation is not longer capable of taking also the interests of the numerical minority into account, a state may simply leave. Whether this is in the spirit of international environmental governance or compromise remains doubtful.

Further reading:

Epstein, C. (2008). *The Power of Words in International Relations. Birth of an anti-Whaling Discourse.* Cambridge: MIT Press.

Sellheim, N. (2020). *International Marine Mammal Law.* Cham: Springer.

Stoett, P. (1997). *The International Politics of Whaling.* Vancouver: UBC Press.

ARTICLE

The blurry question of the quorum

Introduction

The 68th meeting of the International Whaling Commission (IWC) met from 17—21 October in Portoroz, Slovenia. The meeting was the first in-person meeting since the COVID-19 pandemic made international almost impossible and the first meeting without the most prominent pro-whaling country, Japan, after it has withdrawn from the International Convention for the Regulation of Whaling (ICRW) in 2019. Contrary to previous meetings, IWC68 was, until Thursday, 20 October, marked by cooperation and constructive deliberations.

The atmosphere changed when agenda item 7.1 was discussed. The agenda item concerned the establishment of a South Atlantic Whale Sanctuary (SAWS), the proposal for which was tabled by Argentina, Brazil and Uruguay. In order to make the ICRW operational, an integral part of the Convention is the Schedule in which all quotas, hunting periods and hunting regions are specifically defined. In order to make amendments to the Schedule, a 3/4 majority is required.

Since the proposal for a SAWS has been tabled for the first time in 1998 by Brazil, the required Schedule amendment, which would establish a zero-catch-quota for the clearly defined South Atlantic region, has not been achieved. It has, thus far, been mostly Japan and other pro-whaling countries — Iceland and Norway, along with several developing states — which have prevented the adoption of the proposed Schedule amendments.

At IWC68, however, the proposal was not even opened for a vote. The reason was the lack of a quorum, which means that the Commission was not able to move the issue to a vote because of too few countries present in the room. In other words, the Commission did not have decision-making power.

Voting at the IWC

The basis for the voting procedure at the Commission constitute the Rules of Procedure (RoP). According to the RoP, each country a the meetings has one vote (Rule E.1). A prerequisite to cast a vote are correct credentials, which means that a Commissioner, and potentially an alternate, have been determined and properly accredited through a respective or responsible government agency prior to the meeting. Observers, i.e. non-party governments, intergovernmental organisations and non-governmental organisations, do not have a right to vote.

Another prerequisite for a vote to take place is the quorum. Under common legal understanding, a quorum "is the minimum number of members of a deliberative body, such as a legislature, necessary to conduct the business of that group" (Garner, 2005, p. 1042). The IWC's RoP merely note in this regard that "Attendance by a majority of the members of the Commission shall constitute a quorum" (IWC, 2018, Rule B.). In the case of

the current 88-membership of the IWC, a meeting is considered operational when 45 Members of the Commission attend.

The controversial interpretation of the Rules of Procedure

Controversy at IWC68 arose shortly before lunch when 17 countries — Iceland, Antigua and Barbuda, St Lucia and other mostly developing states — were not present in the room upon the beginning of the potential vote on the SAWS. Since this absence resulted in merely 41 Members being present in the room, the chair considered the quorum, the required 45 Members present, not having been reached. The decision of the chair did consequently not go unchallenged. Especially the proponents of the SAWS argued that the quorum did not concern the actual presence in the room for a vote, but rather, in reference to Rule B. of the RoP to the 'attendance' at the meeting. In their view, 'attendance' and 'participation' should have been considered in the same manner. This means, this interpretation considers attendance and participation in relation to the meeting, not in relation to the different agenda items. Put differently, in their view, a quorum is reached once the minimum number of 45 countries is present at the meeting, but not necessarily at every individual vote. This would, in turn, mean that votes could be taken by a minority of countries present in the room. The argumentative basis for this interpretation rests in the view that the absent countries were accused of a 'filibuster', the deliberate prevention of the plenary to make a decision.

Other countries, especially those absent from the room, but in addition also the United States and Members that are party to the European Union, argued that a quorum relates to the attendance of a minimum number of Parties at a certain agenda item when a decision is taken. If, therefore, a decision is to be taken and a number of Members decide to leave the room prior before the issue is moved to a vote, leaving a number smaller than 50% to remain in the room, the quorum is no longer reached. Quite obviously, this interpretation stands in stark contrast to the one favoured by the proponents of the Sanctuary.

The chair's decision to follow the second way of interpretation was not developed during the meeting as an ad hoc way to interpret the RoP. Instead, this interpretation was applied during a similar discussion on the SAWS at IWC63 in 2011 where it was decided to establish an Intersessional Group on Quorum (IGQ). At IWC64, different views on the matter were recorded. However, "the Chair [of IWC64] remarked on the growing consensus around the first proposed change to Rule (B.1), but noted some Contracting governments showing preference for other options" (IWC, 2012, p. 123). The "first proposed change to Rule (B.1)" was tabled by the IGQ and referred to draft changes to the RoP. This proposed change reads:

"The presence in the room of attendance by a majority of the members of the Commission shall constitute a quorum which shall apply to all types of Commission business including the opening and adjournment of all sessions of a meeting, proceeding with the debate and decision making, whether by vote or by consensus" (IWC, 2012, p. 122).

Since, however, the meeting was not able to find consensus on the matter and the prevailing differences in interpretation persisted, the issue could not be resolved. As a

result, a private Commissioners' meeting was held to find a way forward. The results of this meeting, however, are not publicly available and it is unclear what kind of solution, if any, was found. The controversy at this year's meeting shows, however, that even if the private Commissioners' meeting produced some kind of fix for this problem, it was (or is) not of a long-term nature and not actively used within the Commission.

Quorum rules in international and domestic decision-making bodies

Since the IWC was not able to present a solution that was acceptable for all, reference to other organisations was made. For instance, during the discussions, the Commissioner from India suggested to make reference to the interpretation of a quorum at the United Nations General Assembly (UNGA) in order to shed light on how a quorum is to be interpreted within the IWC. According to Rule 67 of the RoP of the UNGA, "[t]he President may declare a meeting open and permit the debate to proceed when at least one third of the members of the General Assembly are present. The presence of a majority of the members shall be required for any decision to be taken" (United Nations, 2022, Rule 67). A further explanatory paragraph authorises "the presiding officer to declare a meeting open and permit the debate to proceed when at least one third of the members of the Assembly or one quarter of the members of a committee are present" (Ibid., para. 34(c)).

While the UNGA RoP do refer to the majority to be present, they do not directly refer to presence in the room. While that may be so, Wang (2010, p. 725) notes that "the quorum for each meeting during the session is normally calculated on the base of the entire membership to the organization, regardless of the absence of some members to the session." Indeed, this corresponds also to the way the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) handles the quorum at its Conferences of the Parties. CITES' RoP stipulate that "[a] quorum for a plenary session of the meeting or for a session of Committee I or II shall consist of one-half of the Parties having delegations at the meeting. No plenary session or session of Committee I or II shall take place in the absence of a quorum" (CITES, 2013, Rule 7). In practice, however, chairs of the different committees apply this rule as meaning presence in the room, as observed at CoP19 in Panama City.

This rule is almost verbatim taken over by the Convention on the Conservation of Migratory Species of Wild Animals (CMS) (CMS, 2014, Rule 9). If applied based on the text, this would correspond to the interpretation of Brazil and others in the IWC.

At the same time, other UN organisations, such as the World Health Organization (WHO), have different rules in place. The RoP of its main decision-making bodies, the World Health Assembly, stipulate that "[a] majority of the Members represented at the session shall constitute a quorum for the conduct of business at plenary meetings of the Health Assembly" (own emphasis; WHO, 2020, Rule 52). Also the RoP of Assembly of States Parties to the Rome Statute of the International Criminal Court note that "[t]he President may declare a meeting open and permit the debate to proceed when at least one third of the States Parties participating in the session are present" (ICJ, 2002, Rule 44). This corresponds to the interpretation of the

absent developing states, the US and the EU at IWC68.

A mixture of both approaches can be found in the RoP of the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Here, a quorum is reached when at least one third of the Contracting Parties are present. This, however, merely refers to debates. Once decisions are to be taken, at least two thirds of the Contracting Parties must be present and voting (Ramsar, 2015, Rule 29). This means that the quorum for discussions and debates differs from the quorum for decision-making. This approach is also applied by the Convention on Biological Diversity (CBD). In Rule 30, the RoP of the Conferences of the Parties stipulate: "The President may declare a session of the meeting open and permit the debate to proceed if at least one third of the Parties to the Convention are present and have any decisions taken when representatives of at least two thirds of the Parties are present." (CBD, 2008). Also the UN Framework Convention on Climate Change (UNFCCC) applies this logic (UNFCCC, 1996, Rule 31).

In the European Council, the forum for agenda-setting within the European Union comprising the heads of government of the Union, "the presence of two-thirds of the members of the European Council is required to enable the European Council to vote" (European Council, 2009, art. 6.3). An important addition, in line with the practice applied in the IWC, is that "[w]hen the vote is taken, the President shall check that there is a quorum" (Ibid.). But again, while there appears to be some kind of normative understanding of what constitutes a quorum, it is not defined in more clarity anywhere.

The above demonstrates that quorum rules in international bodies may differ quite substantially and that the decision-making capabilities of a body are not perceived to be a precondition. In national legislature, a major difference is that a quorum is usually presumed. The German Parliament is such an example. According to §45 of its Rules of Procedure (Deutscher Bundestag, 1980), the general, standard point of departure is that the Parliament always has decision-making capabilities, meaning that there is always a quorum. Numerically, a quorum is reached when more than half of its members are present in the room and the chair decides that decision-making capabilities have been reached. In practice this means that even a small group of parliamentarians, for instance in a special commission dealing with particular items, such as health care, can make decisions even though the number of members present does not correspond to 1/5th of parliamentarians. This notwithstanding, if the board of the meeting decides that a quorum is reached, this is taken as the main criterion for the Parliament's decision-making capabilities.

There are three ways by which the quorum can be challenged: first, by a parliamentary group; second by at least 1/5 of the members present; or third, by the chair in accordance with the parliamentary groups. If this is the case, the decision-making capabilities of the Parliament are tested by a so-called 'mutton leap' ('Hammelsprung') by which each MP is required to leave her seat, leave the plenary room and walk back into the room one-by-one through one door, being counted by two officers of the Parliament. If the board decides that a quorum is not reached, the meeting is suspended. If the board decides that a quorum is reached, the meeting continues.

While this mechanism is rather clear, it has not come without challenges. In June 2019, for instance, the chair refused a 'mutton leap' requested by the right-winged Alternative for Germany (AfD), because of a suspected lack of a quorum. This could have potentially ended the meeting. The chair, determined, however, that a quorum was reached and the meeting continued. As a consequence, the AfD took this matter to the German Supreme Court. In September 2019, the court ruled that the chair acted in accordance with the law (Zeit, 2019).

The same mechanism is used in the United States. The US Constitution sets forth that the Senate and the House of Representatives can conduct business once a majority is reached. Yet, since day-to-day business also leads to a smaller number being present, each house, i.e. the Senate and the House of Representatives, may decide, based on its own rules, to continue with their business (USA, 1787, Art. I, Sect. 5). Despite this provision, the normative presumption is that both Houses can conduct business, unless a roll call vote or a quorum call has been uttered (e.g. US Senate, 2013, Rule VI).

The future of the quorum in the IWC

Against this backdrop it is difficult to determine which path will be chosen by the IWC in the future. Further work on the matter was decided on by IWC68 for the intersessional period, which will be the first agenda item for IWC69 in 2024. A similar situation might arise as in the post-2011 period: Although the Intersessional Group on Quorum presented its findings and evaluations, the Commission was not able to develop clear rules in this regard. At IWC69, therefore, solutions and evaluations may be presented, which may not find approval my the Commission.

By referring to the existing RoP of the Commission, it can be assumed that the discussion boils down to whether 'presence' refers to presence at the meeting or in the room during decision-making. In relation to a person, the Oxford Learner's Dictionary defines 'presence' as "the fact of being in a particular place" (Oxford Learner's Dictionary, Undated). While, of course, a place could also refer to the wider conference arena, for the sake of decision-making a vote must be cast on-site, meaning that the voter needs to be physically present (unless distant or proxy voting is possible). If suggested that the presence of a minimum number of parties at the meeting is sufficient, Wang argues that it "seems illogical that, while the opening of a meeting requires the presence of a quorum, decision-making does not, and then decisions could be made among parties less than a quorum" (Wang, 2010, p. 730).

This said, since different organisations have different rules in place, it remains unclear which procedure might prove 'right' (or 'wrong') for the IWC. Given the divided nature of the Commission, a way forward will, in any case, be difficult to define. It is therefore that yet another battleground has emerged, which challenges the Commission at a level beyond that of whale utilisation and whale protection.

References

CBD. (2008). Rules of Procedure for the Meetings of the Conference of the Parties to the Convention on Biological Diversity. https://www.cbd.int/doc/legal/cbd-rules-

procedure.pdf

CITES. (2013). Rules of Procedure of the Conference of the Parties. https://cites.org/sites/default/files/eng/cop/E16-Rules.pdf

CMS. (2014). Rules of Procedure. UNEP/CMS/COP11/Doc.4. https://www.cms.int/sites/default/files/document/COP11_Doc_04_Rules_of_Procedure_E.pdf

Deutscher Bundestag. (1980). Geschäftsordnung des Deutschen Bundestages, last amended 15 August 2022. https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/go_btg/go_btg-197104

European Council. (2009). European Council Decision of 1 December 2009 adopting its Rules of Procedure (2009/882/EU), in Official Journal of the European Union (OJEU). 02.12.2009, n° L 315, p. 51.

Garner, BA. (Ed.) (2005). *Black's Law Dictionary*. Toronto: Thomson Reuters.

ICJ. (2002). Rules of Procedure of the Assembly of States Parties. https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/RulesOfProcedureASP-ENG.pdf

IWC. (2012). *Chair's Report of the 64th Annual Meeting*. Cambridge: IWC Secretariat.

IWC. (2018). Rules of Procedure and Financial Regulations.

Oxford Learner's Dictionary. (Undated). 'Presence'. https://www.oxfordlearnersdictionaries.com/definition/american_english/presence

Ramsar. (2015). Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat. https://ramsar.org/sites/default/files/documents/library/ramsar_rules_of_procedure_e.pdf

UNFCCC. (1996). Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies. https://unfccc.int/sites/default/files/resource/02_0.pdf

United Nations. (2022). Rules of Procedure of the General Assembly. A/520/Rev.20.

USA. (1787). The Constitution of the United States: A Transcription. https://www.archives.gov/founding-docs/constitution-transcript

US Senate. (2013). Standing Rules of the Senate. Document 113-18. https://www.rules.senate.gov/imo/media/doc/CDOC-113sdoc18.pdf

Wang, C. (2010). Issues on Consensus and Quorum at International Conferences. *Chinese Journal of International Law* 9, pp. 717—739.

WHO. (2020). Basic documents. Forty-ninth edition. https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=179

Zeit. (2019). AfD scheitert vor Gericht im Streit um Hammelsprung, 24 September 2019. https://www.zeit.de/politik/deutschland/2019-09/bundesverfassungsgericht-afd-hammelsprung-bundestag-antrag-abgelehnt?utm_referrer=https://www.google.com/

ARTICLE

The South Atlantic Whale Sanctuary — A clash of principles

Introduction

Whale sanctuaries constitute an important element for the protection of whales from commercial whaling. In order to establish large marine areas in which all commercial whaling is banned, the IWC has amended the Schedule to the Whaling Convention — the directly applicable part of the Convention — accordingly on two occasions. First, in 1979, the Indian Ocean Whale Sanctuary (put in place indefinitely in 1992) was established. This sanctuary encompasses a marine area of approximately 65 million square kilometres. It is noteworthy that during that time, commercial whaling was still permitted. Only in 1983 the IWC adopted a zero-catch-quota for commercial whaling by amending article 10(e) of the Schedule, which became operative in the Antarctic whaling season 1985/86.

Since this so-called 'moratorium' was to be reviewed within 10 years, it is not surprising that in 1994 another Schedule amendment was concluded: the establishment of the Southern Ocean Whale Sanctuary (SOWS), stretching over an area of approximately 50 million square kilometres in the Southern Ocean. This means that in an area of around 115 million square kilometres, all commercial whaling had been banned, irrespective of the moratorium. While this has proved to be rather uncontroversial in the Indian Ocean, the Southern Ocean Whale Sanctuary saw scientific whaling by Japanese whalers since its establishment and until Japan left the IWC in 2019. These scientific whale hunts triggered a case before the International Court of Justice (ICJ) initiated by Australia (and New Zealand) (see Fitzmaurice & Tamada, 2016).

Despite the fact that the moratorium is still in place, the South Atlantic Whale Sanctuary (SAWS) was once again an agenda item for the International Whaling Commission (IWC) during its 68th meeting in Portorož, Slovenia. While in the past it was primarily Brazil that pushed for the respective Schedule amendments, this time, it was the governments of Argentina, Brazil and Uruguay aiming to put the SAWS in place.

The establishment of a SAWS, encompassing an area of approximately 21 million square kilometres, was first proposed in 1998 by the government of Brazil, but was rejected by the Commission. Even though the proposal, which since then has been supported by Argentina, Uruguay, South Africa and Gabon has been tabled again on numerous occasions, the necessary 3/4 majority to amend the Schedule accordingly has never been reached. Especially countries favouring the principle of 'sustainable use,' i.e. the (potential) lethal use of whales, have opposed the proposal (see also this issue on matters concerning food security).

Irrespective of the failures to establish the SAWS in the past, on Thursday, 20 October 2022, the proponents took the matter to a vote in the plenary. A precondition for a vote is the quorum (on the quorum, see this issue), the minimum number of members of the Commission, corresponding to 50%+1, enabling the Commission to be able to make decisions. The IWC comprises 88 Member countries, meaning that a quorum would

correspond to 45 Members. All in all, 58 Members were present (i.e. registered and on site) during the meeting, of which 17 opposed the proposal. In order for this issue not to go to a vote, the opposing states, except Norway, did not get back into the room after the lunch break. This left 41 Member countries in the plenary room, forcing the chair to declare that the Commission did not have a quorum. After all, the 41 Members in the room constituted less than 50%+1 of the Members of the Commission.

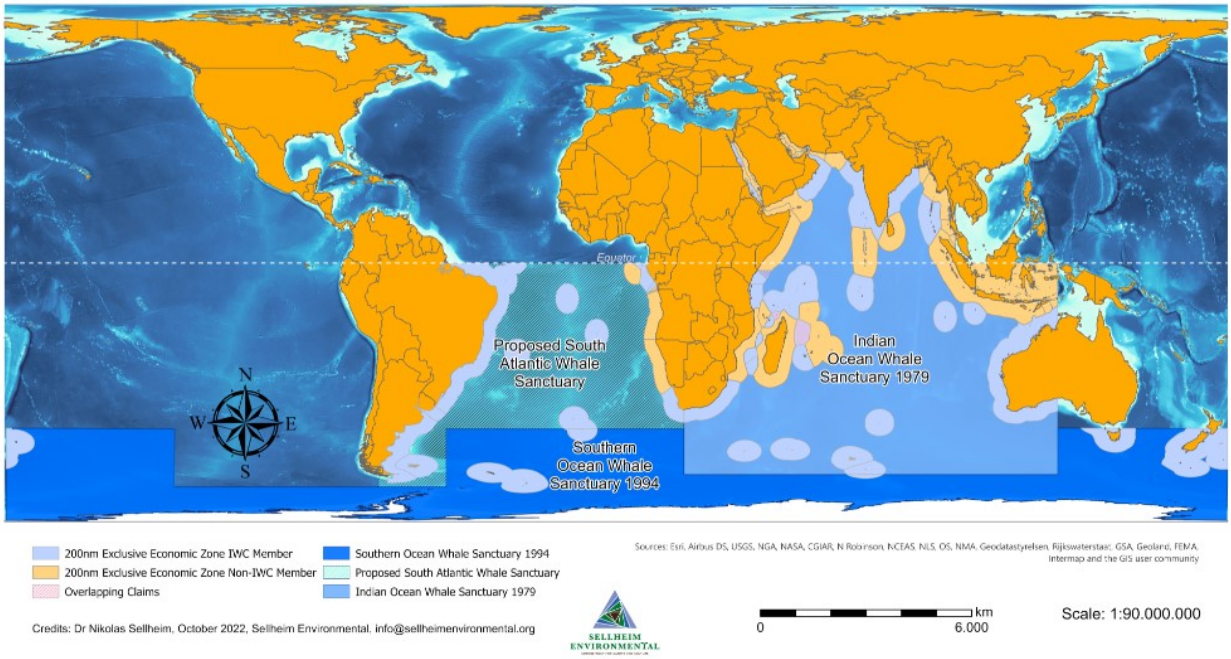
The discussions that followed challenged the decision of the chair. Two views on what constitutes a quorum prevailed: first, a quorum means being present at the meeting. This view was put forward and defended by the proponents and other particularly Latin American countries. Second, a quorum means being present in the room for a particular vote. This view was applied by the chair and considered correct by EU countries, the US and Australia. It furthermore corresponds to IWC practice from earlier situations of this kind. Yet, since no agreement on the question of the quorum could be found, it was decided to work inter sessionally on this matter and to make this the very first agenda item for the next IWC meeting in 2024.

Extent, objectives and legal elements of the SAWS

The proposed establishment of a SAWS is not unique in an IWC context. Already in 1979 the Indian Ocean Whale Sanctuary (put in place indefinitely in 1992) was established. In 1994 it was followed by the Southern Ocean Whale Sanctuary (reviewed and renewed every ten years). In these sanctuaries, together making up an area of approximately 115 million square kilometres, all commercial whaling is banned.

The proposed SAWS borders the Southern Ocean Whale Sanctuary in the South and the Indian Ocean Sanctuary in the East. Its northernmost border constitutes the Equator. In the West it follows the coastline of the South American continent while in the East it follows the western African coast up until the

Exclusive Economic Zones in the IWC Whale Sanctuaries



Equator.

Based on the proposal tabled at IWC67 in 2018, the SAWS' primary aim is the promotion of biodiversity, conservation and non-lethal use of whales in the South Atlantic. In order to achieve this aim, the SAWS has the following objectives:

- To maintain or increase current whale stocks levels by mitigating identified threats to whale stocks, as well as to identify and quantify other potential threats;
- In conjunction with the Southern Ocean Sanctuary, promote the long-term conservation of large whales south of the Equator, embracing the entire range of numerous stocks (i.e. ecologically meaningful boundaries), including breeding and feeding grounds, and migratory routes;
- To stimulate coordinated non-lethal and non-extractive research in the region, especially by developing countries, and through international cooperation with the active participation of the IWC.
- To develop the sustainable, non-extractive and non-lethal economic use of whales for the benefit of coastal communities in the region (e.g. whale watching and educational activities).
- To integrate national research, management efforts and conservation strategies in a cooperative framework, maximising the effectiveness of management actions, taking into full account the rights and responsibilities of coastal States under the UN Convention of the Law of the Sea (UNCLOS).
- To provide an overall framework for the development of localised measures, in order to maximise the conservation benefits at an ocean basin level.

Legally, the establishment of the SAWS follows Article V.1 (c) of the Convention, which allows the Commission to adopt regulations with respect to the conservation and utilisation of whales by establishing "open and closed waters, including the designation of sanctuary areas" by amending the Schedule accordingly. Article V.2, however, establishes that these Schedule amendments should be of such nature as to, first, carry out the objectives and purposes of the Convention; second, be based on scientific findings; third, should not include restrictions on the number of nationality of factory ships or land stations (which has become obsolete since the adoption of the moratorium); and, fourth, should take into account the interests of the whaling industry and of consumers of whale products. Also this latter part has become obsolete after the adoption of the moratorium.

Especially in the past, the first and second requirements have triggered heated discussions amongst IWC Members. Criticism involved the fact that it is not scientifically proven that the establishment of the SAWS would factually benefit the conservation status of whales, given the multifaceted threats (see below) whales face. Second, in light of the fundamental disagreements over the objective and purposes of the Convention, there can be no agreement on a sanctuary being in line these. Crucial in this regard is the last preambular paragraph of the Convention, which identifies the Convention to "provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry."

One the one hand, the interpretation of this paragraph therefore considers the Convention to protect whales only for the purposes of

ensuring a sustainable whaling industry. This view is defended by countries favouring the (potential) lethal use of whales. On the other hand, a different interpretation of this paragraph considers conservation to stand at the centre of the purposes of the Convention, going in line with the ever-expanding mandate of the Commission. This view is shared by the majority of IWC Members, opposing the lethal use of whales. Given the divergences in interpretation of the raison d'être of the Convention, no consensus of whether the lethal use of whales is justified can be found (see Fitzmaurice, 2016). As a consequence, up until now, the 3/4 majority to establish the SAWS could be found since the number of countries in favour of the sustainable use of whales has increased sufficiently since the establishment of the other sanctuaries to effectively block any proposed Schedule amendments.

Threats to whales in the proposed SAWS area

The SAWS area is home to approximately 51 cetacean species, not all of which are under the ambit of the IWC. Most of the species that can be found are small cetaceans, such as orcas (Orcinus orca), false killer whales (Pseudorca crassidens) or long- finned pilot whales (Globicephala melas), the hunt of which is not managed by the IWC. Of the 'great whales' the IWC is concerned with, i.e. baleen whales and one toothed whale (sperm whale, Physeter macrocephalus), the majority can, at least sporadically, be found in the SAWS area.

One of the biggest threats to whales in the proposed sanctuary area relate to ongoing fisheries operations. Both small cetaceans and baleen whales, especially the southern right whale (Eubalaena australis) get entangled in gillnets, causing injury and not rarely death. Since bycatch is a problem for whales worldwide, the IWC has recognised this problem. The WWF considers bycatch the primary threat for whales in the world, causing the death of more than 300,000 whales per year (WWF, Undated). In 2016, at its 66th meeting, it finally established a Bycatch Mitigation Initiative, in collaboration with other organisations, in order to actively tackle this issue.

Ship strikes have been identified as constituting a second major threats in the proposed SAWS area. Also in this regard, it is another example for the danger of maritime traffic on the wellbeing of whales. In order to reduce the number of ship strikes, the proponents of the SAWS consider it necessary to better coordinate anti-ship strike initiatives in the sanctuary area. This constitutes a more regionalised initiative of actions taken by the IWC: In 2007, the IWC, established the Global Ship Strikes Database where information on the location and the type of collisions can be entered. In order to further deal with the problem, the IWC convened a workshop in 2017 along with the IUCN and the Agreement for the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) in order to identify important marine mammal areas (IMMA) and to potentially adjust maritime traffic in these.

A third threat can be related to pollution from land-based sources. On the one hand, contamination occurs through run-off and sewage from human settlements. Given that large swaths of populations live along the coast of both Southern Africa and South America, the level of pollution affects whale propagation, feeding and migration in

significant ways. Furthermore, marine mineral exploitation can introduce and release pollutants into the marine environment, affecting the conservation status of whales. Apart from these sources of pollution, also noise pollution from international shipping, localised seismic exploration activities and military operations affect whales.

Finally, the effects of climate change affect whales in a substantial manner, albeit, of course, not only in the proposed SAWS area. Habitat loss, prey availability and associated increased competition (may) cause changes in abundance, distribution, timing and range of migration, prey abundance and distribution, and reproductive success.

In light of these threats, the SAWS aims to strengthen collaboration between the range states, yet without superseding other national and international initiatives to tackle these threats. Even though whales are already protected in most national legislations in the South Atlantic, the proposed SAWS aims to better coordinated research and management of whales in the SAWS area, also with regard to regulation pertaining to whale watching. This is to say that whaling does not constitute a threat to whales in the SAWS area.

The discussion on the proposed SAWS

Supporting views of the proposal

Brazil's Commissioner noted during the presentation of the proposal that the SAWS concerns merely "whaling and whaling alone with no impacts on fisheries activities." This approach to the proposal was seconded by Argentina and Uruguay. The former stressed the importance of the non-lethal use whales for coastal communities and their important role as "fertilisers" for ocean ecosystems in order to maintain fisheries. They consequently urged the Commission Members to vote for the proposal.

Especially the Members who are also Members of the European Union (20 states), represented by Czech Republic, welcomed the proposal as being comprehensive and providing for a management plan to tackle all threats to whales in the region. In the EU's view, the SAWS will also develop sustainable, non-extractive use of whales for the benefit of coastal communities. It will furthermore be supplemental to other international commitments relating to climate change and sustainable development.

Also Latin American states strongly supported the proposal as being in line with the precautionary approach, of being beneficial for coastal communities, for being beneficial for collaborative research, and for being beneficial for other biodiversity and climate change related commitments. This view was furthermore echoed by New Zealand, Australia, India and South Korea. All in all, 35 Members expressed their support for the proposal, including furthermore the UK and the United States.

Opposing views of the proposal

Seven states voiced their opposition towards the proposal: Antigua & Barbuda, Norway, St Lucia, Iceland, Benin, Guinea and Liberia. The main points referred to the existence of the moratorium which already prevents all commercial whaling for all Contracting Parties. A sanctuary which bans commercial whaling in light of the already existing moratorium constitutes a redundancy. It therefore would not provide any benefits for the conservation of whales.

A second crucial point, raised by St Lucia and

mirrored by Benin, Guinea and Liberia, referred to the absence of many Parties due to lack of financial means and because of problems in the obtainment of visas. St Lucia therefore proposed to postpone the decision over the proposal to a later meeting when the other countries are present.

Opposing countries highlighted the importance of food security. This is especially relevant in light of a tabled draft resolution on food security by Ghana, Guinea, Gambia and Antigua & Barbuda and a proposal for the lifting of the moratorium by Antigua & Barbuda. Again it was St Lucia that opened the discussion in this regard since in their view the establishment of the sanctuary "makes poorer people poorer and less healthy." Guinea added that the sanctuary that the proposal leads to "non-nutrition".

Finally, Iceland noted that the proposed Schedule amendment does not meet the legal requirements of the Convention.

The way forward

Given that there was no vote on the proposal due to the lack of a quorum, the matter could not be resolved at IWC68. However, it appears very likely that another proposal to amend the Schedule to establish the SAWS will be tabled again in 2024. Whether the issue of the quorum will be resolved by then remains to be seen. The strong views by the Latin American countries on the issue of the quorum indicate that the IWC faces principal challenges that cause significant dissatisfaction amongst is Members. The lack of quorum and the boycott of the vote shows how seriously especially developing countries consider the matter.

In light of budgetary difficulties, the IWC's way forward is facing heavy winds. Whether it will ever be able to navigate itself into still waters remains to be seen.

References

Fitzmaurice, M. (2016). The Whaling Convention and Thorny Issues of Interpretation. In: Fitzmaurice, M. & D. Tamada (Eds.). *Whaling in the Antarctic. The Significance and the Implications of the ICJ Judgment*, pp. 53-138. Leiden: Brill Nijhoff.

Fitzmaurice, M. & D. Tamada (Eds.) (2016). Whaling in the Antarctic. *The Significance and the Implications of the ICJ Judgment.* Leiden: Brill Nijhoff.

WWF. (Undated). Catching fish, not flukes and flippers: A global effort to reduce whale and dolphin bycatch. https://wwf.panda.org/discover/knowledge_hub/endangered_species/cetaceans/threats/bycatch/

ARTICLE

The tabled resolution on food security

Introduction

Food security constitutes one of the most controversial elements in international environmental governance. While, on the one hand, the protection of ecological components stands at the fore, this protection is potentially running contrarily to the needs of local people. The forced removal of indigenous communities from conservation areas, for instance in the Virunga area between Uganda, the DR Congo and Rwanda stands exemplary for this conflict (see here).

Also the IWC is facing this issue. While it has to some degree responded to these concerns by establishing Aboriginal Subsistence Whaling (ASW) in order to enable indigenous peoples to hunt whiles, it has not addressed food security in the context of non-indigenous whalers. Japanese attempts to establish 'small-type coastal whaling' (STCW) as a new category that takes into account non-indigenous, small-scale whaling, have consistently failed over concerns that this might mean a resumption of commercial whaling.

The issue has surfaced within IWC contexts already a few years after the entering into force of the moratorium in the Antarctic whaling season 1985/86. Japan then organised a workshop on food security and fisheries in Kyoto, which the IWC recognised in a resolution at IWC45 in 1993. In this resolution, the IWC recognised "the socio-economic and cultural needs of the four small coastal whaling communities in Japan and the distress to these communities which has resulted from the cessation of minke whaling" and resolved that it would "work expeditiously to alleviate the distress to these communities" (IWC, 1993).

This work, however, does not seem to have come to proper fruition since the situation for Japanese whaling communities has not changed until Japan's withdrawal from the Convention in 2019. But also other countries have aimed to address food security in the context of whales and whaling. In 2006, for example, Mail noted that decisions taken by the IWC have "repercussions for developing countries faced with food security issues" and that the IWC "could contribute significantly to the reduction of poverty, hunger and malnutrition in the world" (IWC, 2007, p. 5).

In the so-called St. Kitts and Nevis Declaration in 2006, the IWC thus recognised that "the use of cetaceans in many parts of the world including the Caribbean, contributes to sustainable coastal communities, sustainable livelihoods, food security and poverty reduction" (IWC, 2007, p. 68). Given the non-legally binding nature of IWC resolutions, however, this recognition has not had any tangible effects. Consequently, at IWC66 in 2016, Ghana, Côte d'Ivoire and Guinea tabled a draft resolution on food security, which aimed to call on the Commission to recognise the fundamental right to an adequate standard of living; to take into account effects of decision-making on food security and livelihoods; and to recognise the nutritional needs of coastal communities when making decisions (IWC, 2016). The resolution was not adopted by the Commission.

Despite this, the matter of food security

surfaced again — and is likely to surface also in future meetings. This time, it was Gambia, Guinea, Cambodia, and Antigua & Barbuda who tabled a resolution on food security. While the four proponents are all non-whaling countries, they nevertheless all are developing countries, who might face food security issues in the future. The proposed resolution is consequently another attempt to establish whales as a food source also for non-indigenous whalers in the future.

The original draft resolution

The Preamble

The tabled draft resolution comprises 20 preambular paragraphs (recitals) and five operative paragraphs. The Preamble is a stark reminder of the importance of marine species for the nutritional needs of the people(s) of the world. On a United Nations level, it is the Food and Agricultural Organization (FAO), which has underlined this importance on numerous occasions. It is therefore not surprising that the draft resolution makes consistent reference to the FAO and its strategic objectives. As the draft stipulates, "responsible and sustainable use of fisheries and aquaculture resources" (Recital 4) and "improved conservation and utilization of aquaculture resources" (Recital 5) are key elements of the FAO's mission. The use of whales would thus fall under these objectives.

In Recital 6, the draft refers to the 4th recital of the ICRW in which reference is made to the use of whale stocks without nutritional distress (Recital 6). This reference is future-oriented: while there may not be any nutritional distress at the moment, there may certainly be nutritional distress in the future. The draft resolution therefore does not describe a status quo, but aims to establish whales as a future food source. This goes hand in hand with reference to the Universal Declaration on Human Rights (UDHR) and the right to an adequate standards of living (Recital 7).

Recitals 8—11 provide a normative basis for the draft resolution. They present arguments from documents, meetings and bodies - the UN Conference on Sustainable Development, the United Nations Millennium Development Goals, UN Sustainable Development Goal 14, and the United Nations Department of Economic and Social Affairs (UNDESA). The mentioned documents do not have any legally-binding status, but which provide for soft-law foundations for the draft resolution. The recitals underline the anthropocentric gist of the draft resolution: While reference is made to the sustainable use of ocean resources, the recitals can be interpreted as making use of whales beyond subsistence use, i.e. a call for a re-opening of commercial whaling. Especially reference to UNDESA underlines that human well-being (and not the conservation of whales) stands at the centre of attention of this draft resolution.

In Recital 12, the draft resolution underlines the (potential) importance of whales for developing countries, yet not by mentioning whales, but rather by mentioning the fisheries sector. Even though the proponents are non-whaling countries, the International Covenant for Economic, Social and Cultural Rights (ICESCR) to which most of IWC Members are Parties, recognises in article 11 "the right of everyone to an adequate standard of living for himself and his family, including adequate food […]" and "the fundamental right of everyone to be free from hunger […]." In combination with 'Common Article I' (especially Article I.2) of both the ICESCR

and the International Covenant for Civil and Political Rights (ICCPR), which reads that "[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation […]", the draft resolution could be considered an IWC-geared version of these articles.

Recitals 13 refers to whales as a resource for thousands of years, thereby aiming to legitimise whaling by relying on historic use. It aims to show that opposition to whaling is a very recent phenomenon which stands in contradiction to common human interaction with whales.

Recitals 14—16 return to the FAO, its strategic objectives, the importance of food security for the world's poorest and the need for responsible and sustainable management of ocean resources. Important in this regard is the point that the draft resolution refers to the FAO-membership of IWC Members. It appears to ask: What is the point of being member to an organisation if its strategic visions are simply ignored if they do not fit politically? It can be argued that the application of an organisation's strategic objectives (!) in cases where they politically fit can be considered cherry-picking and not a normative support for the organisation.

Reference to the world's cultural diversity in Recitals 17—19 provides another important backdrop against which the draft resolution should be read. However, it can be argued that there is no necessity to discuss cultural diversity in this context since ASW exists (as Recital 17 confirms). The affirmation of solidarity with whaling communities (their nutritional needs, cultural identities and livelihoods) in Recital 18 would mean a change in course of the IWC since it allows recourse in order to show that the IWC has indeed expressed support for whaling communities, irrespective of whether they are aboriginal or not. In a similar vein, the affirmation of food security, livelihoods and cultural identity (Recital 19) in order to reach the UN Sustainable Development Goals could be an important game-changer for the IWC.

By mentioning the visions of the FAO and the IWC, the importance of membership in both organisations and the resulting alignment of their visions is highlighted again (Recital 20). This recital essentially underlines the points of Recitals 14—17 and forces IWC Members to rethink the value of their FAO membership.

The operative paragraphs

The first operative paragraph provides another normative background by affirming article 25 of the UDHR. This article underlines the right of all persons to an adequate standard of living, including food. Given this background, the paragraph appears misplaced as it can be read in line with the other preambular paragraphs since it does not contain any operative elements.

The second operative paragraph is directed at the Parties by urging them to take into consideration nutritional needs, cultural identity and livelihoods when making decisions. This would mean an 'anthropogenisation' of IWC decision-making by placing increased focus on the interests of humankind. An adoption of the draft resolution with an operative paragraph such as this would mean a fundamental shift of the organisation since every decision, even in the Conservation Committee, should take into account the interests and concerns of human beings.

The same can be said about the third operative paragraph which stipulates the

anthropogenic nature of the draft resolution by placing emphasis on economic benefits stemming from ocean resources and ecosystems. A focus on blue economy and blue growth corresponds to developments under SDG14 and can be found in economies all over the world. This operative paragraph therefore re-emphasises the importance of blue growth and blue economy initiatives and their relevance for societies worldwide.

The establishment of an ad-hoc committee on the question of how to consider food security when making changes to the Schedule comprises the fourth operative paragraph of the tabled draft resolution. Such an ad-hoc committee would place greater emphasis on broader issues affecting humans. The establishment of such a committee would correspond to developments internationally (e.g. following the provisions of the UN Declaration on the Rights of Indigenous Peoples [UNDRIP] or the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas [UNDROP]). It would adjust the IWC to UN-approved criteria pertaining to participation of indigenous peoples and local communities.

The final operative paragraph underlines the importance of the FAO in this regard can calls for more interaction between the IWC and the FAO. It abstains from making concrete suggestions on how this cooperation is to occur.

The Commission's response

After Ghana presented the resolution to the plenary, the discussions mirrored the rift that has been going through the Commission since the adoption of the moratorium. On the one hand, countries such as Norway, the Solomon Islands, Liberia or Antigua & Barbuda argued that the resolution is long overdue and necessary to ensure food security also in IWC contexts. On the other hand stood Parties such as the European Union, Australia, Brazil or the UK, who noted that the issue of food security is not to be dealt with by the IWC, but that other bodies, such as the FAO, are more competent to address this issue. Moreover, these Parties considered that whales should not be mentioned in the same breath as food security.

Since the proponents of the draft wished for an adoption by consensus, but this consensus could not be found, a working group was established, which aimed to tackled all remaining questions and to present a revised draft that was acceptable for all. During the second last day of the meeting, however, when the new resolution was to be presented, Ghana noted that despite the intense work on the resolution, because of the drastic changes that were proposed, the resolution's entire nature was changed, which was no longer acceptable by the proponents. The result was that the resolution was withdrawn for the ongoing meeting, but that it would be tabled again at IWC69 in 2024.

Food security as the mirror of diverging views

The tabled resolution was yet another attempt to link whales and whaling with food security. Not surprisingly, the standing opposition of the majority of Parties to this link, i.e. the potential killing of whales for nutritional purposes, has prevented the adoption of the resolution. While not expressly mentioned, the underlying fear is that once the IWC establishes cetaceans as a food source, the path to reopen commercial whaling is set. The

responsibility to tackle issues such as food security is therefore channelled to other organisations, such as the FAO. Whether or not the IWC can duck away from this responsibility cannot be answered conclusively but depends on the vantage point concerning the organisation's objective: if it's purpose is for whale conservation (preservation), food security should indeed be moved to a different body. If, however, its purpose is for the sustainable management of whale stocks, which would therefore also include the lethal utilisation, food security concerns are well placed within the IWC's remit.

In light of the vast majority of IWC Members opposing the lethal utilisation of whales, it appears unlikely that also a future draft resolution on food security, which would potentially legitimise the killing of whales, will be adopted. Food security, it seems, is only acceptable to the organisation if it is clearly detached from any killing of any whale. Whether this corresponds to what the drafters have in mind, remains to be seen.

References

IWC. (1993). IWC Resolution 1993-3 Resolution on Japanese Community-Based Minke Whaling.

IWC. (2007). Annual Report of the International Whaling Commission 2006. Cambridge: IWC.

IWC. (2016). Draft Resolution on Food Security.

INSIGHT

A brief glimpse into CITES

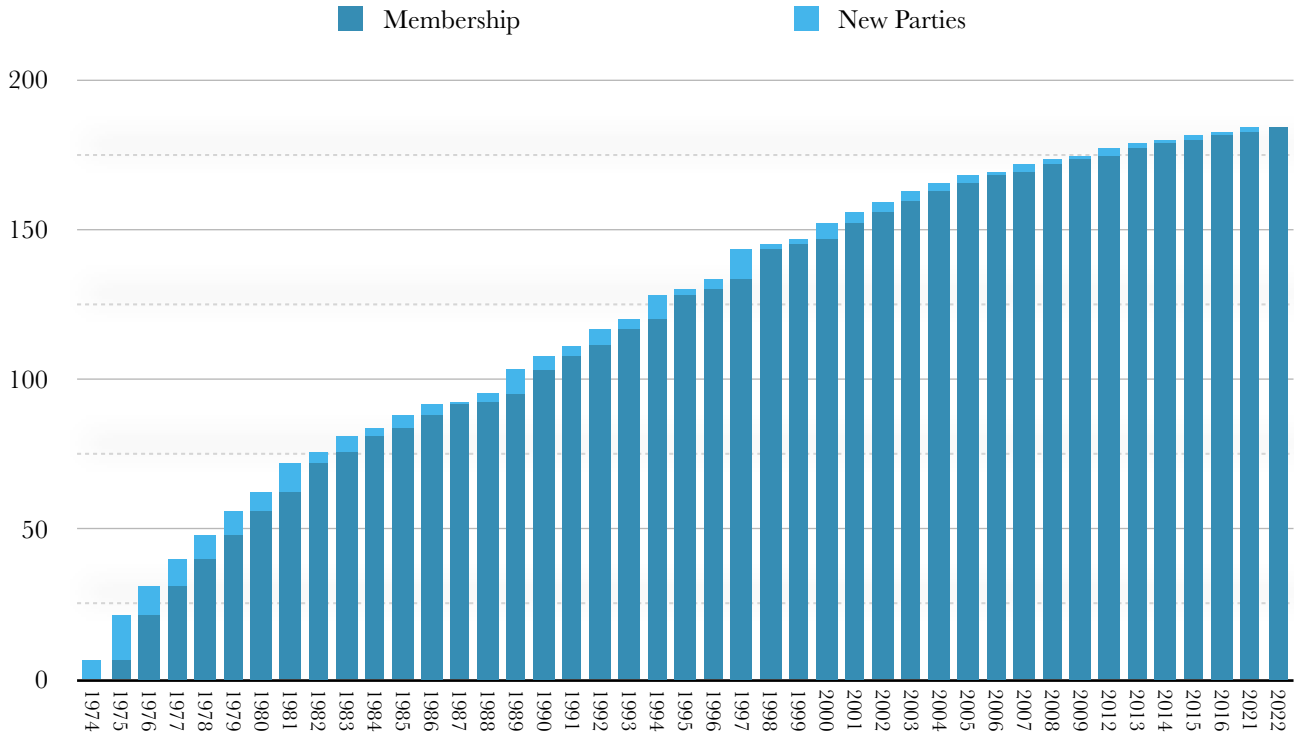
Introduction

The Contracting Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) met for the 19th time after the Convention's adoption in 1973. This time, the Conference of the Parties (CoP) convened in Panama City from 14—25 November 2022. Altogether, 52 Proposals were tabled that would have affected the trade in more than 600 animal and plant species, if adopted. It was therefore up to the now 184 Contracting Parties to the Convention, with Andorra acceding in 2021, to decide, which way the Convention would head.

CITES functions through the listing of species on one of the three Appendices. According to Article II of the Convention, "Appendix I shall include all species threatened with extinction which are or may be affected by trade; "Appendix II shall include: (a) all species which although not necessarily now threatened with extinction may become so unless trade […] is subject to strict regulation […]"; and "Appendix III shall include all species which any Party identifies […] as needing the co-operation of other Parties in the control of trade." While Appendix III is rather uncontroversial, it is especially species listed in Appendix I or II which often are subject to heated and passionate discussions.

Currently, more than 38,700 species are listed on the Appendices. These do not necessarily include merely endangered species, but also so-called 'lookalike' species, which are not endangered, but whose resemblance with the species in question might contribute to its decline if traded in.

While, in principle, biological and trade criteria are to be used to determine whether a species is eligible for the inclusion in these two Appendices, it is these criteria which are subject to different angles of interpretation since they are not legally binding.



Instead, they are included in a non-binding resolution — Resolution Conf. 9.24 (Rev. CoP17), also referred to as the 'Fort Lauderdale criteria' — which outlines the rules by which the Appendices can be amended. Based on this resolution, it is especially biological criteria, which allow a Party to propose a species for the inclusion in the Appendices or which allow a Party to downlist (i.e. from Appendix I to Appendix II or to completely remove a species from the two Appendices) a species. In order to do so, however, a 2/3 majority of the Conference of the Parties is required, based on Article XV (b) of the Convention.

Problematic in the amendments to the Appendices are several issues: first, any Party can table a proposal for any species, irrespective of whether or not the proposing Party is a range state to the species. The doctrine of 'one state, one vote' also prevails in CITES, clearly stipulated in Article 26 (a) of the Rules of Procedure of the CoP. Second, it does not play a role whether or not the species is already extinct. At CoP18 in 2019, for example, Israel tabled a proposal to list the Woolly mammoth (*Mammuthus primigenius*) in Appendix II even though the species is already extinct and Israel has never been a mammoth range state. Not surprisingly, the proposal was not adopted. Here, the third issue comes into play: the 'lookalike' provision, outlined in Article II.2 (b) of the Convention, which requires the inclusion of other species in Appendix II in order to safeguard species which may in fact become endangered through trade. In practice this means that similarly looking species can be placed on Appendix II even though that species may not face conservation concerns. Lastly, the precautionary principle is a guiding principle for the Convention. This principle aims to protect species before they become endangered. The burden of proof, however, rests on those Parties still wanting to trade in the species. In other words, it is those Parties who have to demonstrate that trade is not detrimental to the species whereas proposing states applying the precautionary principle do not need to proof that the species might become endangered.

The growing rift within CITES

While CITES is widely considered a success, especially in light of its expansive membership, its impact on conservation and people are highly contested. A telling example in this regard is the inclusion of African elephants (*Loxodonta africana*) in Appendix I at CoP7 in 1989 (the species was listed in Appendix II already at CoP1 in 1976). While the original idea was to reduce poaching and unregulated trade and thereby to protect the species, populations of African elephants vary amongst the range states. Over time, it was especially southern African country whose conservation strategies were rather successful. To this end, since 1992, Botswana, Namibia and Zimbabwe have tried to downlist their respective elephant populations to Appendix II, in order to enable controlled trade in the species. This attempt succeeded at CoP10 in 1997. From then on, the species has been listed in Appendix I with the exemption of the proponents' populations being listed in Appendix II.

This 'split-listing', however, stands representative for the growing rift and fundamental philosophical differences amongst Parties within CITES. One the one side are those Parties wishing for more protection of species. It is especially European

(also including the European Union), Latin American and northwestern African states, as well as Australia and New Zealand which fall under this category. On the other side are those Parties aiming for sustainable utilisation of species. East Asian (including Japan), Caribbean and southern African states can be included in this category. While the former often argue that CITES aims to prohibit trade in endangered species, the latter argue that it is to regulate trade in so far that it is still sustainable. In order to achieve sustainable trade, however, it is especially several countries from the South African Development Community (SADC), Zimbabwe, Mozambique, Zambia, Botswana, Tanzania, Malawi, Eswatini and South Africa, which aim to include socio-economic factors in the decision-making processes of the Convention.

Although in the last preambular paragraph the Fort Lauderdale criteria stipulate that socio-economic factors are to be taken into account when decisions on amendments to the Appendices are made, these factors are nowhere defined. To this end, several attempts have been made to include human concerns into the Convention, especially with a focus on indigenous peoples and local communities (IPLCs), for instance by forming an intersessional working group on CITES and Livelihoods, by establishing a Rural Communities Committee, or by amending the Fort Lauderdale criteria to include food security and livelihoods. None of these initiatives, however, has resulted in sustainable mechanisms to include IPLCs in the CITES decision-making processes.

Has CITES reached the 21st century?

The question of the mode of CITES' way forward cannot be answered easily. The ever-growing rift in the convention does not circle so much around concerns about a species, but rather around the degree to which human societies, i.e. indigenous peoples and local communities, are to be included in the decision-making processes and in how far any impacts of CITES listings on human wellbeing are to be considered. While CITES was adopted in 1973, international environmental decision-making has evolved since then from a species-based approach to a more comprehensive environment, which encompasses ecosystems and social dimensions. Especially the Convention on Biological Diversity (CBD), adopted at the UN Conference on Environment and Development in 1992, has incorporated the knowledge of indigenous peoples and local communities in its article 8 (j). Based on this article, on-site conservation should occur by taking local knowledge and traditions into account.

Furthermore, human rights pertaining to indigenous peoples has evolved dramatically since then. For instance, in 1989 the International Labour Organization (ILO) adopted the legally binding Indigenous and Tribal Peoples Convention (ILO Convention 169), which now has a membership of 24 parties. In 2009, the UN General Assembly (UNGA) adopted the non-binding UN Declaration on the Rights of Indigenous Peoples (UNDRIP). While some states opposed this declaration, this opposition has ever since vanished. Lastly, in 2018, the UNGA adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). While this declaration does not enjoy universal support (121 voted in favour, 8 against, while 54 abstained), it nevertheless demonstrates the

growing concern for rural peoples, irrespective of their ethnicity.

CITES cannot ignore these developments. To argue, as many Parties do, that human concerns are not within the scope of CITES is arguably testament for the outdated set-up of the Convention. By vehemently sticking to the narrative of CITES listings merely concerning the species does not enable dialogue and exchange between Parties with different views. It is therefore no surprise that Parties such as Botswana, Zimbabwe or Malawi have indicated that they might withdraw from the Convention if their concerns are continuously overruled or ignored.

ARTICLE

Brazil's proposed transfer of pernambuco from Appendix II to Appendix I

Introduction

For CoP19, altogether 52 proposals were tabled that concern the listing of around 600 additional species in the Convention's Appendices. A contentious proposal was tabled by Brazil, aiming to move Brazil wood (*Paubrasilia echinata*), commonly known as pernambuco, from Appendix II to Appendix I, thereby aiming to suspend all international trade in this species. While in the end an uplisting was averted, the proposal stands exemplary for emotional debates between proponents and opponents and those affected by an Appendix I-listing.

The proposal to uplist pernambuco

Proposal 49, tabled by Brazil (CITES, 2022a), concerned the uplisting of Brazil wood (*Paubrasilia echinata*), commonly known as pernambuco, from Appendix II to Appendix I. The proposal aimed to suspend all international trade (in Article I of the Convention defined as export, re-export, import and introduction from the sea) in pernambuco. The proposed uplisting furthermore included the following annotation:

"All parts, derivatives and finished products, including bows of musical instruments, except musical instruments and their parts, composing travelling

orchestras, and solo musicians carrying musical passports in accordance with Res. 16.8."

If it had been accepted by the CoP, the inclusion in Appendix I would have meant that bows used for string instruments can no longer be moved across borders, unless an export permit, an import permit and a re-export permit have been acquired by the musician prior to cross-border movement. The permits need to be issued by the Scientific and Management Authorities that each state is required to have set up before ratifying the Convention. However, the Convention does not set out how these authorities relate to each other, how they should be structured and which government agencies are to be designated as these authorities. As a consequence, expertise and procedures differ between Parties. Some even have not set up these authorities at all (see Wyatt, 2021, p. 53-54). In practical terms, the issuance of permits for travelling musicians might have consequently caused tremendous difficulties since documentation for pre-Convention musical instrument accessories is patchy, at best.

The proposal essentially revolved around two critical claims: First, it highlighted the importance of pernambuco for bows for musical instruments, because of its physical-mechanical characteristics. As a result, especially over the last 200–250 years, intensive deforestation of this species and use in the bow-making industry have led to marked declines in the species. As a consequence, at CoP14 in 2007, *P. echinata* was included in Appendix II. According to the new proposal, since the habitat of the species is fragmented and the species has further declined since CoP14, the biological criteria have been met, justifying an inclusion in Appendix I.

Second, given the species' importance for the bow-making industry, it is a much sought-after wood internationally, especially for blanks for the creation of violin, viola, cello and double-bass bows. To this end, annotation #10 of the Appendix II-listing noted that also "unfinished wood articles used for the fabrication of bows for stringed musical instruments" are included in the listing. It consequently excluded finished bows. The main importers of the species have been identified to be USA, Belgium, Japan, Germany, Netherlands, Italy, Portugal, France, Taiwan Province of China, China, Canada, Singapore, Slovenia, South Korea, Poland, Spain, Switzerland, Australia, Hong Kong SAR, Chile, Colombia, Argentina, Austria, and the UK and Northern Ireland. Accordingly, more than 92% of pernambuco are exported for the bow-making industry abroad (CITES, 2022a, p. 6) .

In light of the seemingly crucial impact of the bow-making industry on pernambuco populations, an Appendix I listing would have appeared justified as fulfilling the biological and trade criteria. The proposal furthermore stressed the impact of illegal harvesting and trade in this species for the bow-making industry. However, it was rather silent about the conservation benefits of an Appendix I listing, but merely stated that a "transfer of the species from Appendix II to Appendix I will bring the trade of finished bows under control as well" (CITES, 2022a, p. 8). Nationally, the proposal remarked that an uplisting "will not bring great changes since the Brazilian legislation does not allow the exploitation of the species in nature" (Ibid.).

Analyses of the proposal by both the CITES Secretariat (CITES, 2022b) as well as the International Union for the Conservation of Nature (IUCN) and the non-governmental organisation TRAFFIC (IUCN/TRAFFIC,

2022) showed, however, that the proposal left out crucial information. For instance, the proposal noted the dwindling habitat of the species. One of the largest habitats of the species is the Atlantic Forest biome. For this biome, however, no data sets are available (CITES, 2022b, p. 126).

The proposal furthermore seemed to imply that because of the bow-making industry, habitat loss of this species has occurred. While there is certainly an impact of trade on the species, more than 90% of the habitat have been lost because of deforestation, agriculture, tourist development and urban development. Moreover, much of the timber stemming from pernambuco is discarded as waste by wood manufacturers (IUCN/TRAFFIC, 2022, p. 374; see also Lichtenberg et al., 2022).

Given that the species is protected under Brazilian law in so far as a take from the natural environment is prohibited, the benefits of an Appendix I listing could not be identified. If the proposal had aimed to include also finished bows, an amendment to Annotation #10, clarifying the designation of finished bows, would have appeared more reasonable than an inclusion of the species in Appendix I. While international movements would still be possible, the Appendix I listing would generate severe problems 'on the ground' for internationally performing musicians.

Impacts of a potential uplisting on international classical live music

Although musicians enjoy a certain degree of recognition under the CITES regime, the relationship has been strained for many years. This is due to musical instruments oftentimes containing parts of CITES-listed species, such as Brazilian rosewood, ivory or turtle shells (Thomas, 2011, pp. 85-86), which have been part of the respective instrument for decades, if not centuries, long before the Convention was concluded. In order to still make cross-border movement of these species possible, CITES Parties are to issue permits that prove that the instrument or bow was built before the species was included in the Appendices and/or that cross-border movement occurs for non-commercial purposes, such as for "personal use, paid or unpaid performance, display or competition" (CITES, 2016b, p. 2).

In practice this means that individual musicians or orchestras are required to obtain these permits before the travelling takes place. While this 'musical passport' appears sensible, it confronts travelling musicians with potentially unforeseeable difficulties. The reason can be found in Article XIV of the Convention which grants CITES Parties the right to impose "stricter domestic measures regarding the conditions for trade, taking, possession or transport" of CITES-listed species. This leads to differing legislation concerning this matter from country to country. Especially in the United States, the EU, Australia and Japan, strict legal instruments are in place, which has oftentimes lead to the confiscation of instruments in the past despite documentation which appears to be legitimate (Thomas, 2011, p. 85).

An Appendix I listing of pernambuco would have added yet another layer of administrative difficulties to internationally performing musicians. In Germany alone, approximately 3 million individuals are organised in instrumental groups, choirs or in one of the 121 orchestras (Neue Musikzeitung, 2017; Statista, 2020). An additional requirement to obtain permits and certificates would be perceived as insult to injury and would

significantly impede on the capabilities of musicians to travel and perform abroad. At the same time, agencies all over the world would be faced with additional burdens, slowing down other processes. Lastly, if CITES Parties, in accordance with Article XIV, decide to put even stricter measures in place, the number of seizures and confiscations would increase dramatically.

Brazil's proposal and CITES' response

Brazil showed rather strong vehemence when it came to presenting and ultimately defending its proposal. While the criticism of other CITES Parties was well-founded and well-argued, Brazil did not agree to either withdraw or alter its proposal. This said, while the proponents considered the proposal to justify an Appendix I listing of pernambuco, it became clear rather quickly that the necessary 2/3 majority could not be garnered. If it had come to a vote on the original proposal, Brazil would not have gained anything.

In order to find compromise in this issue, a working group was struck, which included Parties such as the EU, USA, Australia, Japan and, of course, Brazil. Along with these Parties, several representatives from the private sector, e.g. the International Association of Violin and Bow Makers, as well as NGOs such as the League of American Orchestras participated as well.

The working group was presented with two different proposals for annotations, both of which followed the argument that an annotation of the species in Appendix I would not serve the spirit of the Convention. Instead, the EU and the USA proposed to leave pernambuco in Appendix II, but with a respective annotation. The EU proposed to add: "all parts, derivatives and finished products. Re-export of finished musical instruments and finished musical instrument accessories are exempt from the listing." The USA proposed instead: "all parts and derivatives, except finished bows for stringed musical instruments when transported only for purposes of personal use, performance, display or competition."

Over the course of two sessions, it was these proposed annotations that were discussed. While at first it seemed that there would be progress made, it quickly became clear that Brazil's concerns that uncontrolled trade would not sufficiently be tackled were not met in a satisfactory manner. Therefore, at the end of the first session of the working group, all discussions had reached square one.

Only throughout the second session consensus could be found. Interventions from the League of American Orchestras as well as the EU presented the implications on the lives of musicians if pernambuco was to be included in Appendix I. Especially the EU's strong interventions underlined the livelihood implications of a potential inclusion. Indeed, orchestras While from our perspective the EU's view could be fully supported, it is still rather inconsistent: on the one hand, livelihoods apparently play a major role when it concerns the politically important group of culture-bearers and -creators. From a political perspective it does therefore not come as a surprise that the EU took these strong positions.

On the other hand, however, the EU has consistently argued that livelihoods go beyond the scope of CITES. This argument has always been made when it did not directly concern the European Union, however. In our

view it should be important for CITES Parties to take a clear and consistent stance on important issues such as livelihoods or culture. For from Brazil's perspective, any more stringent trade regulation of pernambuco could only have beneficial effects, irrespective of the human dimension of these regulations.

Be that as it may, in the end, Brazil agreed to amend its proposal to maintain pernambuco on Appendix II. The working group agreed on the following annotation: "All parts, derivatives and finished products, except re-export of finished musical instruments, finished musical instrument accessories and finished musical instrument parts." This consequently means that all trade in pernambuco is subject to trade regulations, as before. This also includes raw material for the production of bows and other parts for musical instruments — the major difference to the previous annotation. Brazil's concerns regarding overharvesting of the species and associated illegal trade have been met. At the same time, also the concerns of the EU and others are reflected in the annotation as it allows for cross-border transfer of finished products without CITES certification.

Conclusion

Not surprisingly, a breath of relief went through the musical world since many were utterly concerned about the potential of the proposal to make international travels and international cultural exchange significantly more difficult. The fear was that another layer of obstacles for the entire musical industry could be put into place, similar to the placing of rosewood (*Dalbergia* spp.) on Appendix II at CoP17 in 2017 with an annotation that did not explicitly refer to finished products. Taylor Guitars quite fittingly write that "this well-intended Annotation caused significant unintended consequences and severely impacted an unintended sector: musical instruments" (Taylor Guitars, Undated). Only with a revision of this annotation, which now excludes finished musical instruments at CoP19, this issue could be resolved.

The controversy surrounding pernambuco shows that when CITES Parties work closely together and the proponent is willing to enter into compromise, disagreements can be resolved. It serves as an example for how good governance can happen without sidelining the interests of resource users. For in the end, the revised proposal was adopted by consensus by the Plenary.

References

CITES. (2016a). Resolution Conf. 9.24 (Rev. CoP17). Criteria for amendment of Appendices I and II. https://cites.org/sites/default/files/document/E-Res-09-24-R17.pdf

CITES. (2016b). Resolution Conf. 16.8 (Rev.CoP17). Frequent cross-border non-commercial movements of musical instruments. https://cites.org/sites/default/files/document/E-Res-16-08-R17_0.pdf

CITES. (2022a). Consideration of Proposals for Amendment of Appendices I and II, CoP19 Prop. 49. https://cites.org/sites/default/files/documents/E-CoP19-Prop-49.pdf

CITES. (2022b). Secretariat's assessment of the proposals to amend Appendices I and II. https://cites.org/sites/default/files/eng/cop/19/doc/E-CoP19-89-01.pdf

CITES. (Undated). The CITES species. https://cites.org/eng/disc/species.php

IUCN/TRAFFIC. (2022). IUCN and TRAFFIC Analyses of the proposals to amend the CITES Appendices at the 19th Meeting of the Conference of the Parties. https://www.traffic.org/site/assets/files/19065/iucn-traffic-cop19-full-analyses-1.pdf

Lichtenberg, S., E. Huber-Sannwald, J.A. Reyes-Agüero, D. Anhuf & U. Nehren. (2022). Pau-brasil and string instrument bows telecouple nature, art, and heritage. Ecology and Society 27(1):32. https://doi.org/10.5751/ES-13047-270132

Neue Musikzeitung. (2017). Mehr als drei Millionen organisierte Musiker in Deutschland. Neue Musikzeitung, 14 February 2017. https://www.nmz.de/kiz/nachrichten/mehr-als-drei-millionen-organisierte-musiker-in-deutschland

Statista. (2020). Anzahl von Orchestern in Deutschland in den Spielzeiten von 2009/10 bis 2019/20. https://de.statista.com/statistik/daten/studie/2828/umfrage/anzahl-der-orchester-in-deutschland/

Taylor Guitars. (Undated). What is CITES? https://www.taylorguitars.com/cites

Thomas, J. (2011). The impact of the Convention on International Trade in Endangered Species of Wild Fauna and Flora on international cultural musical exchange. In: D.A. Frenkel (Ed.). International Law, Conventions and Justice (pp. 81-92). Athens: Athens Institute for Education and Research.

Wyatt, T. (2021). Is CITES protecting wildlife? Assessing implementation and compliance. Abingdon: Routledge.

ARTICLE

Insufficient concerns for indigenous peoples and local communities

Introduction

Several agenda items tackled issues of relevance for indigenous peoples and local communities (IPs and LCs). Particularly in Committee II, three agenda items dealt with engagement of indigenous peoples and local communities (no. 13), livelihoods (no. 14), and participatory mechanisms for rural communities in CITES (no. 15). These agenda items essentially constituted a follow-up to a development that has been noticeable within CITES for quite a number of years, yet without a track record of success. This development shows that a growing concern for livelihood implications and concerns for the participation of IPs and LCs has led to a diversifying discourse on conservation *vis-à-vis* sustainable utilisation.

This changing discourse, however, is currently not reflected in any CITES document that affects its functioning. This is to say that there is currently no mechanism in place that enables IPs and LCs to affect the decision-making regarding the amendments to the Appendices. In order to change this, four countries of the South African Development Community (SADC) along with Cambodia tabled document 87.1, which aimed to change the CITES listing criteria. This document, however, was rejected by a vast majority of CITES Parties.

Changing the listing criteria: Document 87.1

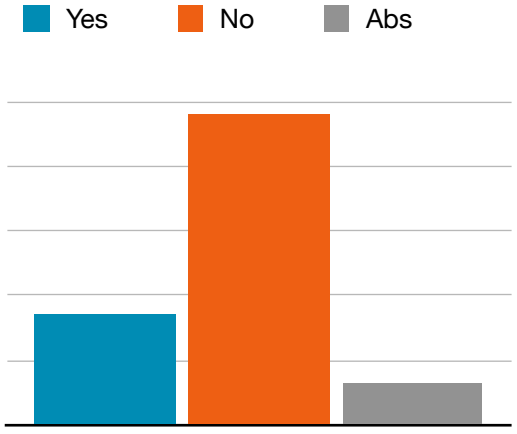
Document 87.1 aimed to change the criteria for recording in the Appendices. So far, the criteria are set out in Resolution 9.24 (Rev. CoP17). This resolution particularly emphasises the biological criteria that a species must meet to be included in the Appendices. However, the precautionary principle is also of fundamental importance here, which also makes it possible to list non-endangered species. The motion introduced by the proposers provided that the criteria be modified to the extent that they include possible impacts of an Appendix listing on resource users. That is, the motion provided that when making a request for changes to the Appendices, impacts on livelihoods, cultures, and food security must be considered through socioeconomic studies conducted in advance. Further, the motion provided that proposals for listing in Appendix I may only be introduced if international trade is a major driver of a species' decline.

As was to be expected, the document triggered intensive discussions on principles and it became apparent which emphases different Contracting Parties ascribe to the Convention. The proponents as well as Japan argued that effective attention to livelihoods cultures and food security can only be ensured if the listing criteria are modified accordingly. Other states, such as Senegal and Liberia, argued that the request, while important, was not within the mandate of CITES, which focuses on the protection of endangered species, and that it should be left to each sovereign Party to protect issues such as food security or livelihoods based on national criteria. It seems therefore that food security was considered to be a domestic rather than an international issue. Why particularly a country such as Liberia as belonging to the ten poorest countries in the world would argue along these lines, remains unclear. What is clear, however, is that food security and the eradication of hunger is not a domestic issue, but has been part and parcel of the work of the United Nations for decades. In fact, 'Zero hunger' is Sustainable Development Goal #2, which stipulates in Target 2.a the need for international cooperation to trigger investments in rural infrastructure and development, especially in the world's least developed countries. To exclude CITES from this discourse does neither appear logical nor justified.

What became abundantly clear was that while some Parties, such as the United States, were not principally opposed to the consideration of the concerns the document proposed, they were hesitant, if not opposed to fully including them in the CITES decision-making processes. Particularly the US argued that the current criteria are enough to ensure the proper functioning of the Convention and that any change to the criteria would bring about new difficulties.

Several Observers, in favour and in opposition of the document, had also prepared their interventions, when the delegate from Israel raised a point of order under Rule 20.2(d) of the Rules of Procedure of the CoP. Under this rule, a Party has the right to "closure of the debate on the particular subject or question under discussion." If this rule is invoked, the chair is required to move the motion to a simple majority vote. Following this, 58 Parties seconded Israel's motion, 57 objected to it while 12 abstained. The discussion was therefore suspended. All Observers did therefore not get the chance to present their views.

Following the suspension of the debate, the chair of Committee I where the document was discussed moved it to a vote. Since the issue at hand, i.e. the changing of the CITES listing criteria, was of a substantive nature, a simple majority was not enough, but a 2/3 majority of the CITES Parties was needed. Document 87.1, however, did not find this support and was rather crushingly rejected by the CoP: of the 128 Parties eligible and present to vote, 31 voted for the document (26,5%), 86 voted against it (73,5%) while 11 abstained.



Engaging indigenous peoples and local communities (Agenda item 13)

Another document was tabled by the Standing Committee. While rather technical in nature, it aimed to renew previously adopted Decisions that concerned the sharing of experiences of engaging indigenous peoples and local communities in the CITES decision-making and implementation processes. While, in principle, Committee II accepted the proposed and slightly amended decisions, the agenda item triggered rather severe and principal discussions as to the degree of the engagement.

In the centre of this disagreement stood the suggestion by the Secretariat to include 'and international' into a decision directed at the Parties. The addition concerned text that was taken from a different document that addressed livelihoods — chosen by the Secretariat to do away with overlaps in mandates — and mirrored the original decision from CoP18 in 2019, which reads:

Parties are invited to:

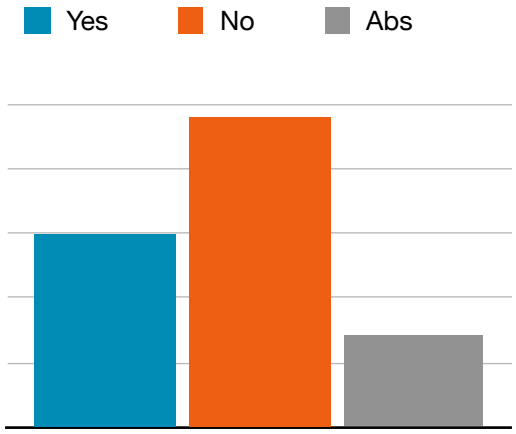
[...]

b) engage indigenous peoples and local communities in CITES decision-making and implementation processes at the national level to better achieve the objectives of the Convention; and

[...]

The suggestion by the Secretariat therefore aimed to amend the decision as to engage indigenous peoples and local communities "at national and international levels." During the discussions, especially China, the UK and New Zealand highlighted the need to increase the level of participation of indigenous peoples and local communities and consequently supported the suggestions by the Secretariat. A different view was voiced by Togo, the US, Kenya and Gabon who considered indigenous issues to be dealt with at the national level and that the inclusion of indigenous and local delegates into the national delegations was sufficient.

In order to move forward, China moved the issue to a vote. The chair therefore framed the motion as to include the term 'and international' into the decision. She noted that since the issue is of a substantive nature, the addition would require a 2/3 majority. The vote yielded 30 Parties in favour (38.46%), 48 opposing (61.54%) and 14 abstaining.



Again, the strategic and structural inclusion of indigenous peoples and local communities did not find support by the CoP.

Participatory mechanisms for rural communities (Agenda item 15)

Under this agenda item, Eswatini, Namibia and Zimbabwe tabled a document that aimed to establish a Rural Communities Advisory Sub-Committee. The motion follows the rejection of a Rural Communities Committee, the establishment of which was proposed at CoP18 in 2019 over concerns of its legal status within the CITES structure *vis-à-vis* the other Committees. Furthermore, concern existed over the possible elevation of one group of stakeholders (i.e. rural communities) over others.

This time, the proponents essentially aimed to achieve the same, albeit in a slightly different format: the rural communities committee was not to be a committee on the same level as the Plants and Animals Committees, but it should rather serve as a strategic advisory tool for both of these committees. The idea was to increase the level of participation of indigenous peoples and local communities, to increase trade benefits, and to explore sustainable livelihood opportunities. As its predecessor during CoP18, the proposal made strong reference to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), which was adopted by the UN General Assembly in December 2018.

Not surprisingly, the tabled proposal once again triggered fundamental discussions and showed the rift between supporters and opponents of the idea of more inclusion. Burkina Faso, for our purposes summarising the points for rejection of the proposal, provided three reasons for this proposal not being in line with CITES: 1) The proposal would give disproportionate power to one stakeholder, causing a lack of balance in the CITES system; 2) If the committee were to be set up, the socioeconomic component would disrupt the CITES decision-making structure as being based on science and the precautionary principle. If set up, the committee would have the potential to make socioeconomic factors decisive for the protection of wildlife; 3) This strong focus on socioeconomic factors would lead to overexploitation which would run counter to the intentions of the Convention.

Again, Parties such as Senegal, Togo, Niger or Mali, along with the United States, the EU, the UK supported the points raised by Burkina Faso and opposed the document. On the other side of the aisle stood Parties such as Namibia, South Africa, Japan, Indonesia, China, who voiced their support for the document and underlined the need to structurally engage indigenous peoples and local communities in the CITES structure.

Given the diverging views regarding the matter, the chair of Committee II did not move the document, which contained a number of decisions to move forward with the establishment of the advisory committee, to a

vote. Instead, and in line with a suggestion made by Canada, the Committee recommended to the Plenary, which later approved the recommendation, to let the Standing Committee further work on this issue.

Conclusion

The above demonstrates that CITES Parties are severely divided over the way indigenous peoples and local communities are to be included in the decision-making processes of CITES. While none of the Parties actively opposes this inclusion, disagreement over the way this is to occur prevails. Unfortunately, CITES has not reached the point that it would structurally include IPLCs. This is particularly surprising for some East African states, which belong to some of the poorest in the world. In our view, structural inclusion of IPLCs would further enable them to foster their sustainable development.

That said, during the final intervention in the Plenary, the representative of Mali made the following statement (interpreted from French to English):

"I'd like to take the opportunity to thank the Fondation Franz Weber and their president, and Born Free, Mr Bill Travers, and I'd like to thank [inaudible] from IFAW as well. They are our major assistants and partners and I'd like to thank our great brother from Israel. Thanks to them I'm here and I have not missed one since 1994."

Of course, this statement is not proof of vote-buying of certain states, but it nevertheless allows for doubts as to the representatives making decisions in the interests of their people versus making decisions in the interests of organisations that primarily focus on the protection of species.

However, arguing that CITES is not concerned with the wellbeing of people is a very narrow interpretation of the Convention. After all, 'trade' is an entirely human concept. Without people, there is no trade. Consequently, it can be argued that by definition the Convention must take into account the socioeconomic benefits of trade and not merely the potentially negative impacts on wildlife. Also, for example the right to food security and participation are human rights. Human rights are indeed universal and it is imperative that any implications environmental decisions might have on the human rights of resource users are to be considered by environmental decision-making bodies. By not doing so, CITES ignores the elephant in the room.

VIEW

The birds and the bees missing at CITES CoP19 in Panama

(Reprinted with permission. The original publication can be found here)

By *Stephen Palos*, CEO, The Confederation of Hunting Associations of South Africa (CHASA)

As the all-pervasive influence of BINGOs (Big International NGOs) continues to infiltrate the CITES structures and individual member states (Parties) so the continuum away from science-based decision making persists. The hypocrisy that flows from this dynamic brings no shame to those party representatives speaking against range states who desperately need the access to markets for the species they successfully protect, produce and harvest and in many instances where the criteria for a CITES Appendix listing is clearly not met, either for the population entirely or for large portions of the population within able and well run range states. The BINGO effect has turned CITES into a "winner takes all" game, where the interests of conservation give way to the vagaries of emotion driven rhetoric such as "commercialisation is evil" and "profit is bad".

The irony is apparent particularly when one looks at a block of West African states, supported by Kenya from that continent's east, who steadfastly peddle a harsh anti-utilisation agenda on every type of fauna, including (perhaps especially) those of so-called "charismatic" status which they themselves have done such shocking work of preserving them. And yet, while they will insist that the legal trade of these fauna from the proven successful states from the southern African range states would enable a parallel illegal trade which they argue is the constraint that causes their own failures, they argue exactly opposite is the case with the stockpiles of their "charismatic" timber, mostly of the threatened Rosewood species! Generally, Africans are well versed in the workings of nature. They live close to or within it and rely heavily on it for sustenance and also pay the highest prices of conflicts with it. Why would this block be so well versed and resolute then, on these issues?

Another piece of the puzzle, which may help explain this dynamic, is that same block standing as a resolute unified voice, again against the southern African states and many others from around the developing world, against the much stronger inclusion of local community groups and consideration of livelihood issues into the CITES structures. Is it coincidence that within biodiversity rich nations the poverty statistics per-capita tend to be higher amongst countries following strict anti-utilisation regimes when compared to poverty stats of more pro-utilisation ones? Perhaps there exists a preferred elite within these countries who continue to benefit from these resources as a small cabal and protect this enterprise by ensuring trade is essentially illegal and the preserve of the criminal few?

Of course, this works perfectly well for the other major, lucrative confidence trick, being plied by the BINGOs. Their puppet states read out interventions without shame in the meetings which would have you believe that animals simply do not mate, breed and when positively managed and adequately secured, actually proliferate. But, big donation buttons on BINGO websites need click-bait in the form of doe-eyed animals, often caricatured into Disney-like quaintness with human-like

characters, and a place somewhere far off out of the gullible donating public's eye that can be proffered as the scene of impending crisis and doom. This is what keeps the literally Billions of US$ flowing into the coffers of these nefarious operators. They throw a good percentage back into perpetuating the myth and fighting their "cause" of course, but absolutely nothing into actually securing the vast landscapes that are necessary to provide for both the fauna as well as the people, that actually coexist in the third world countries they focus on. Is this perhaps the greatest global fraud of all?

As Africans, surely these puppet states cannot possibly believe this nonsense. Their scripts are being written by others sometimes verbatim and they gush it out at opportune moments. The fact that even megafauna species, such as elephant, have the proven capacity when in secure landscapes, to double their populations every ten years seems to elude them. And yet the trees these same states want to commercialise take many more decades to grow to maturity. Every proper ecologist knows that the priority order for conserving biodiversity begins with the soil, enables the plants and this then sustains the animals upwards through the food-chain. We, humans, take our place here too, and with forward facing eyes and a gut suited to omnivorous diets, as predators. Breeding is what creates more fauna. Humans are particularly good at this. Animals too, actually. But somehow, the narrative often unchallenged by the anti-use parties and their BINGO allies would have everyone believe that the animals never were told about "the birds and the bees" and have no ability to procreate anymore. While Micky and Minnie Mouse, now well over 90 years old, have never had children, we can assure everyone that real animals are able to, and actually do, have them all the time. All they need is an enabling, secure and well managed environment, and to be harvested with responsibility in sustainable quantities for the benefit of animals, plants and humankind. No species of animal should be excluded from this principle on the basis of its so-called charismatic, iconic or emotionally evocative nature. Logic, science and good management must prevail.

BOOK REVIEW

Tanya Wyatt's 'Is CITES Protecting Wildlife? Assessing Implementation and Compliance.'

By Nikolas Sellheim, Sellheim Environmental

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which was adopted in 1973 and entered into force two years later, has been hailed as one of the most successful multilateral conservation treaties in the world. This is also because it now has a membership of 184, which is one of the most globally ratified environmental treaties worldwide.

While this may be so, in her study Is CITES Protecting Wildlife? Assessing Implementation and Compliance, Tanya Wyatt paints a significantly different picture. However, one might expect an answer to the rather provocative question, which already du Plessis has shown to be quite relevant, as he considered the international wildlife trade hardly the only reason for population decline (Second chapter, here). But let's take one step at a time.

In seven chapters, Wyatt outlines the biodiversity crisis (Chapter 1), how CITES works (Chapter 2), her applied methodology (Chapter 3), implementation issues (Chapter 4), compliance issues (Chapter 5), lessons learned from the case studies and best practices (Chapter 6), and her thoughts on the future (Chapter 7). For those familiar with the overall problems of biodiversity loss as well as international conservation law, chapters 1 and 2 do not necessarily provide much new information, but are, of course, useful to understand the raison d'être of the book. For me, the first really intriguing chapter was Chapter 3 on the applied methodology. Here it becomes clear how one research question (i.e. how are CITES provisions implemented and complied with in CITES member states) generates a wealth of data, but, at the same time, confronts the eager researcher with unforeseen difficulties.

A key component of Wyatt's work is the legislative content analysis of CITES parties' legislation and the submitted biennial reports on implementation of the convention. Her incredibly useful and, to my knowledge, unique index of CITES legislation is an extremely well-research overview of the differences in adapting CITES to national law. The rough data can be downloaded from Wyatt's website here and I can only applaud and thank the author (and her assistants) for, first, carrying out this arduous task and, second, for making it available for all those interested on her website. The analysis of this content is presented in Chapter 4.

But sticking to the methodology, Wyatt also makes use of the Delphi iterative survey in order to get the parties' view on implementation and compliance. This method appears to be quite useful to consider implementation and compliance beyond the parties' preferences. But while she initially sent out 664 emails to conduct the first round of the survey, she immediately received 113 error messages. In the end, merely 32 people completed the entire three rounds. Inevitably, this provides a thinner source of information that the expected 40. This notwithstanding,

the results of this survey are skilfully weaved into the narrative of the book and I found them a fascinating to the overall findings.

The third leg of the methodology are structured and semi-structured interviews with experts on three case studies - Canada, Indonesia and South Africa. These case studies emerged out of the findings of the survey and serve to represent the overall problem/successes concerning implementation and compliance. This means that interviews only start to play a more visible role in Chapter 6.

Chapter 4 thus delves into the legislative content analysis. Here it becomes abundantly clear that implementation and compliance differ significantly amongst CITES parties. For instance, while the convention requires its parties to designate a Scientific Authority as well as a Management Authority, it is not clear how these are to position themselves towards each other. In addition, while some states even have an Enforcement Authority, others don't have any authority at all (see p. 53, and especially Table 4.1). Also, while some parties consider 'wildlife' to include all species on the Appendices of CITES, others merely regard it as species concerning in its respective jurisdiction or at least passing through it. Similarly, penalisation differs from country to country: while some have very deterrent penalties in place (e.g. several years in prison), others are rather lax in that regard. And lastly, while repatriation of confiscated wildlife to their respective countries of origin is the recommended option, merely six parties have indicated that they have succeeded in doing so. These findings quite impressively show how differently the convention is implemented and complied to, begging ever more the question of whether or not it can in fact be considered a success story.

While CITES has been in force for now 46 years, there has been rather little research on its implementation. As Wyatt rightly points out, in previous research (here or here) it has most commonly been pointed out that a lack of human and financial resources leads to compliance problems. However, in Wyatt's view and based on her findings, there are difficulties - actions that are possible/doable, but difficult to complete - and there are constraints - outside forces, rendering the action pretty much impossible to complete. I am not entirely convinced that this distinction is really necessary, because in both instances (i.e. the greatest difficulty and the greatest constraint) are in fact lack of financial and human resources. Whether or not a proposed action might be doable or renders it impossible is, in my view, rather unnecessary to ask, because either way they are not implemented. Here it would have been good to ask why they are not implemented. Because obviously something else was more important (from a human and financial resource perspective) that providing resources for CITES implementation (leaving out corruption).

Another major part in Wyatt's book deals with compliance (Chapter 5) - as the title suggests. While compliance to a convention can be considered from multiple angles, Wyatt concentrates on the reporting requirements of the parties. For without reporting, the entire CITES system, particularly with regard to the conservation status of a species vis-à-vis the trade conducted in it, becomes rather obsolete. As per the provisions of the convention, parties are required to submit two different reports: first, the annual report on issued certificates, amounts of trade in CITES-listed species, the countries with which this trade was conducted and some other

issues. With this comes a review on significant trade in CITES species; second, the biennial report on implementation of the convention, meaning the legislative, administrative and regulatory responses in order to effectively implement CITES.

In this very revealing chapter, the author demonstrates that despite the importance of reporting — also in order to maintain the CITES trade database — CITES parties have shown either inertia or even a reluctance to comply with this requirement. This has led to a number of trade suspensions in Appendix II-listed species as a means to motivate reporting. Currently, Afghanistan, Djibouti and Grenada have trade in all Appendix II-species suspended because of their consistent failure to report (see p. 85). Due to their failure to report on the Review of Significant Trade - a crucial reporting mechanism - 19 parties (and Haiti as one non-party), meaning more than 10% of CITES members have trade suspensions in place. In light of the reputation of CITES as a manifestation of good environmental practice, this number appears rather high indeed, begging the question on the effectiveness of this regime.

The level is even worse in regard to biennial implementation reports. Here, Wyatt shows that merely 15 parties (i.e. 8%) have submitted all of the biennial reports whereas 37% have never submitted any since 2003. Again, this makes it difficult to see why and how CITES is considered to be so successful even though this reporting requirement is necessary to see how the convention is implemented globally. However, it is especially states with smaller human and financial resources at their disposal which, first, have legislation in place that does not correspond to CITES requirements and, second, which are therefore not necessarily willing to report on them (while having to report to dozens of other international treaties). In order to tackle this issue, states that have a good rate of implementation should hold non-compliant states accountable by not importing from them. Moreover, 'shaming' should take place to increase pressure on these states. This could, for instance, occur via a report on non-compliance by the Secretariat.

Another issue that raises concern is that of enforcement and the enforcement of the enforcement via the CITES Secretariat. While enforcement is not part of the convention itself, without it, its efficacy obviously becomes questionable. While the respondents to Wyatt's survey indicated that the enforcement of national legislation through the respective national bodies should range very high, this is rather difficult to achieve since more than 40 parties do not have any legislation in place that deals with enforcement of rules or their violation. Second, the CITES Secretariat does not have the resources available to monitor enforcement efforts while, as shown above, not many parties actually report on their implementation and compliance. Therefore, how should the Secretariat be able to monitor this?

To this end, it becomes even more important to focus on implementation and compliance concerning reporting while “sanctions can be reserved for the worst cases of non-compliance”(p. 96). The chapter closes with the recommendation that the Secretariat should assist parties in their reporting requirements through direct assistance or working groups while also parties should motivate each other to improve implementation and compliance in order to make the convention significantly more effective.

Chapter 6 finally deals with the best practices learnt from the case studies, i.e. Canada, South Africa and Indonesia, and draws from the expert interviews the author conducted. Here it becomes clear that the different authorities implementing CITES (the Scientific Authority, the Management Authority, and in some cases the Enforcement Authority) should closely cooperate, but maintain their independence in order not to be able to influence each other. In regard to prohibition, both the requirement for import and export permits for all CITES species might be a way forward while concerning penalisation, agreement existed that fines should in part be used to flow back into conservation projects or deal with issues regarding confiscation. Here, fines and assets could be used to repatriate animals back to their places of origin or to finance their housing in nurseries. A clear outcome, however, was that seized specimens cannot not be resold in order to take away motivation to earn money for corrupt enforcement personnel.

Another clear example of a best practice (or lack thereof) are the different interpretations of the term 'wildlife'. The way the term is applied by CITES Parties in their domestic legislation inevitably leads to implementation problems.

This alone reveals a fundamental problem concerning the implementation of CITES: national divergences, particularly since Wyatt also shows that the term 'wildlife' does not even necessarily include plants or fish - the latter of which comprises the greatest amount of wildlife trade in the world. In light of this, the national permit systems show significant differences. Therefore, a lesson learnt from the analysis is the urgent need to streamline the definition of wildlife across CITES-relevant national legislation. This would enable a better permit system, which itself should be primarily done electronically in order to ensure transparency.

Wyatt then moves on to the three case studies, Canada, South Africa and Indonesia. While these are geographically and politically different, they are nevertheless considered to have legislation in place to effectively implement CITES. However, while there are gaps, such as breeding in Indonesia or decentralised legislation in South Africa, a best practice that can be inferred from these countries is, for instance, the inclusive approach concerning local and indigenous communities.

The last section of the chapter comprises Wyatt's thoughts on improving CITES, based on the expert interviews and her survey. She remarks that the scientific approach should stand at the core of CITES decision-making. She therefore suggests that "science needs to be applied to all species and not just terrestrial vertebrates" (p. 115). In how far this would collide with the CITES approach to trade in whales is not further elaborated upon. After all, those whales that are protected under the moratorium of the International Whaling Commission (IWC) are listed on Appendix I and parties are not to issue import or export permits for these species (here).

Finally, Wyatt reiterates the importance to hold non-compliant parties publicly accountable. She also suggests to include more targeted professionals in the decision-making process at the Conferences of the Parties, such as enforcement officers or environmental lawyers. Lastly, she recommends a modernisation of CITES. This could occur through automatic listing once a certain threshold has been met (a "near-automated

pathway" was also suggested by Frank & Wilcove [here], but has thus far not been considered in earnest) or through mechanisms that hold individuals within companies/bodies accountable. She explicitly mentions The Gambia's approach in this regards, whose legislation aims at making individual managers responsible. In fact, this is common practice in Germany as well. The recent emissions-scandal concerning Volkswagen is a telling example in this regard.

While the author also deals with lessons learnt from other environmental treaties, she fails to explicitly establish the link between CITES and the IWC. On the one hand, CITES is starting to experience the same rifts concerning conservation vs. sustainable use that have paralysed the IWC. On the other hand, if science was to steer decision-making, the automatic listing of the IWC-species on the CITES Appendices due to the close link between these two bodies would be unjustified since the population status of some of these whale species would not necessitate an Appendix-listing.

In order to make CITES more timely, Wyatt also discusses the option of either drafting a new wildlife crime convention or adding a fourth protocol on wildlife crime to the UN Convention Against Transnational Crime (UNTOC). Both have their merits, especially since CITES is not an environmental law, but a trade treaty (as also Wyatt highlights again). Either way, linking biodiversity protection with international crime has also occurred in the context of making ecocide an international crime under the International Criminal Court (ICC) (here). Since there is no way for CITES to police its implementation, not only the link to INTERPOL, but also the link to other international crime-combatting bodies appears reasonable. I dare say that it might only be a matter of time until a stronger crime-based focus might appear in other bodies as well.

I was very happy to see also other matters being picked up by the author. First and foremost, her, albeit rather brief, discussions on the North/South dichotomy, the political tensions within CITES and the ethics of wildlife trading are issues that are fundamentally important when discussing the functioning of the convention. Of course, they are not necessarily linked to implementation and compliance, but they show how complex of a body CITES really is. For the purposes of this blog, particularly the discussion on the involvement of local communities - for instance via the down-voted proposal to establish a Rural Communities Committee at CoP18 - triggered my interest. Here, two interviewees were quoted that spoke for and against the consideration of local interests in the listings-process. However, when focusing primarily on science, this issue should not matter, because it is, after all, science and not the type of use which should steer decision-making. This should become very clear in both 'camps': when making use of scientific arguments, other arguments might be weakened.

In light of the above, does CITES protect wildlife? Unfortunately, Wyatt does not answer this question. She repeatedly mentions that CITES does have merit, but not whether it actually is protecting wildlife. A discussion of this question, given that this is the title of the book, would be beneficial. But this is probably the only more fundamental criticism I have. For in conclusion I can say that this book is an extremely valuable contribution to the CITES literature and is a must-have addition to studies on implementation and compliance. I think that scholars and practitioners alike can

draw information out of this book that advance their understanding of this complex regime.

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