

**World Heritage Species:
A New Legal Approach to Conservation**



Zeus, a Bwindi silverback

Photo: Martha Robbins

**The International Environmental Law Project
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I. Overview

With habitat loss, hunting and other threats bringing many species and populations of great apes—gorillas, orangutans, chimpanzees, and bonobos—close to extinction, scientists and conservationists began investigating the scientific case for stronger international legal strategies to protect the great apes. Participants in those early discussions in 2001, working with representatives of the United Nations Economic, Social, and Cultural Organization (UNESCO), began promoting great apes as “World Heritage Species.”¹ Initially, proponents of World Heritage Species contemplated a protocol—a free-standing treaty that would require ratification by governments wishing to join—appended to the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention).² A protocol to the World Heritage Convention had appeal: the World Heritage Convention protects cultural and natural sites of outstanding universal value to humankind and irreplaceable sources of life and inspiration, and the World Heritage Species Protocol would protect species of outstanding universal value to humankind. Great apes, with their close evolutionary link to humans, clearly have outstanding universal value; their loss would be a devastating and irreplaceable loss to humankind. With many great ape populations critically endangered, they represent the unfortunate “perfect” choice to test this new legal concept.

Despite a discussion paper that showed the need for a new treaty to address conservation of species affected by various threats,³ further discussions with lawyers, scientists, and representatives of the United Nations Environmental Programme (UNEP) and UNESCO⁴ in May 2004 revealed little enthusiasm for negotiating a new World Heritage Species Protocol. Most participants believed that, while such a protocol would have clear conservation benefits and would fill a gap in the international treaty regime, insufficient energy and political will existed among governments to negotiate, adopt, and ratify a new biodiversity-related treaty when dozens already existed.⁵

Nonetheless, a compelling new idea emerged from these discussions: the complementary use of one or more existing international treaties to implement the World Heritage Species concept. With respect to mountain gorillas, for example, the range States of the Democratic Republic of Congo, Rwanda, and Uganda could perhaps combine the provisions of the Convention on Migratory Species (CMS), which requires habitat restoration and a prohibition on domestic and international trade in endangered species included its Appendix I, with the enlargement of existing national parks and World Heritage sites under the World Heritage Convention. In so doing, the range States could address the major threats to mountain gorillas—

¹ Great Ape World Heritage Species Project, at <http://www.4greatapes.com/index.html>.

² Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37, TIAS No. 8226 (entered into force Dec. 17, 1975), *available at*: <http://whc.unesco.org/pg.cfm?cid=182> [hereinafter World Heritage Convention].

³ Chris Wold, *A Gap Analysis of International Legal Protection for Great Apes* (Draft Discussion Paper: May 14, 2004).

⁴ UNEP and UNESCO were involved because they are the co-administrators of the Great Ape Survival Project (GRASP). UNESCO is also the Secretariat of the World Heritage Convention.

⁵ *See, e.g.*, the Biodiversity Convention (CDB), the Convention on Migratory Species (CMS), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the World Heritage Convention, among many others.

primarily habitat loss and the bushmeat trade. A “Mountain Gorilla World Heritage Site” could provide motivation for the range States to collaborate for the enforcement of conservation and management measures and attract funding to support those efforts.

To encourage further discussion of the World Heritage Species concept, the International Environmental Law Project (IELP) of Lewis & Clark Law School has developed draft criteria for designating World Heritage Species.⁶ In addition, IELP suggests that the criteria for World Heritage Species, or an entire World Heritage Species program, could be adopted by UNESCO in much the same way that UNESCO developed and adopted the Programme on Man and Biosphere (MAB). Lastly, IELP has developed three case studies to illustrate how existing international treaties could be used to enhance conservation efforts for Cross River gorillas, the Virunga population of mountain gorillas, and the Bwindi population of mountain gorillas.

IELP emphasizes that the draft criteria, proposed mechanism for adopting the concept, and the case studies are all intended to generate discussion of these ideas. While we have made every effort to communicate with scientists, conservationists, and government officials directly involved with the species chosen for the case studies, we were not able to reach everyone. In addition, neither the draft criteria nor the case studies have undergone peer review. In that sense, these materials provide the basis for a larger group of people to respond not only to the criteria but also to IELP’s interpretation of the scientific literature and conclusions as to which treaty or treaties may best serve the conservation interests of a population.

II. The Criteria for Designating Species

The purpose of the World Heritage Species concept is to provide the means to use and implement existing international environmental law more effectively to conserve species that are in need of more concentrated and specific conservation efforts. The World Heritage Species concept recognizes that certain species play an especially significant role in our cultural and natural heritage and that these species warrant a newly defined global conservation effort. Thus, the World Heritage Species concept is founded on three interrelated ideas. First, certain species may be considered “World Heritage Species” because they embody “outstanding universal value” and reflect valuable aspects of our cultural and natural heritage. Second, in many instances, international law does not adequately protect these species. For example, most of the great apes currently sit on the precipice of extinction; yet, many of them have been listed under both the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Migratory Species (CMS). Third, this failure frequently results from inadequate funding and political will as well as inadequate implementation and insufficient knowledge of the various frameworks and requirements of international law that may be used for the conservation of species.

In the context of these three underlying principles, two separate components emerge for designating a World Heritage Species. First, a proponent must show that the species, subspecies, or geographically separate population (hereinafter “species”) embodies “outstanding universal

⁶ Criteria for Designating World Heritage Species, available at: <http://www.lclark.edu/org/ielp/heritage.html>. For additional information on the International Environmental Law Project (IELP), see <http://www.lclark.edu/org/ielp/>.

value” based on one or more of several draft criteria. Second, a proponent must also describe how existing international agreements will enhance conservation efforts.

A. Outstanding Universal Value to Humankind

The possible species that might be named as “World Heritage Species” are broadly defined as those species with “outstanding universal value.” This language mirrors that of the World Heritage Convention intentionally. The World Heritage Convention recognizes that although places may be wholly contained within specific areas of the world, whether that area is confined within a national boundary and/or whether that area specifically represents the cultural and/or natural heritage of that specific nation, the place nonetheless is also seen as embodying world heritage because it belongs to all peoples of the world. This notion embraces a global common history and recognizes that loss of this heritage is irreplaceable. In much the same way, species are also a facet of our global common history. The species facing dire threats and extinction today, as well as those that represent some connection or link to humans or biodiversity are, variously, irreplaceable testaments to human evolution, irreplaceable mainstays to many indigenous populations, and irreplaceable legacies for future generations. These characteristics give certain species “outstanding universal value.”

The draft criteria further define “outstanding universal value,” much like the classifications in the World Heritage Convention. To be defined as having “outstanding universal value,” a species must either have some cultural or natural link to humans. The terms “cultural” and “natural” are subject to many interpretations and are thus ambiguous terms. The proposed criteria intend to encapsulate these concepts broadly, thus incorporating many possible interpretations. First, species having “cultural” value include those that have a significant connection or relationship to humans. Such cultural value may derive from the species’ importance to humans for religious, medicinal, social, evolutionary, traditional, or survival purposes. The draft criteria adopt a broad meaning of “cultural” links to avoid debate on the meaning of “culture.” Thus, the categorization assumes that each of the enumerated values establishes a sufficient cultural link to humans to qualify the species as one of “outstanding universal value.” Second, species having “natural” value include those that have significance to global biodiversity.

In addition, the broad list of possible cultural connections between a species and humans recognizes that humans form many types of relationships to species and often the values of these relationships either overlap or manifest themselves differently among different humans. For example, the criteria contemplate that salmon species might be listed because of their cultural, traditional, or survival value to certain Pacific Northwest Native American tribes. These tribes value salmon as an irreplaceable part of their culture that they wish to pass on to future generations.⁷ Other species may have powerful symbolic importance. To certain Native American tribes, the bald eagle has important social and cultural value and is represented in

⁷ Certain trees may also have survival value for traditional or indigenous peoples. For example, the *Seringueros* of the Brazilian Amazon depend on rubber trees, brazil nuts, and other forest products for their subsistence. In fact, the Portuguese word *seringueros* translates as “rubber tappers.” Similarly, *Chicleros* in Guatemala rely on the extraction and trade in chicle, a natural resin base for chewing gum found in chicle trees, for their livelihoods.

many stories and legends. The bald eagle is also the symbol of the United States, representing that country's freedoms and spirit. Species may also have evolutionary or genetic importance to humans. Chimpanzees, for example, are closely linked humans' evolutionary history, sharing 98.6 percent of their genetic code with humans. This evolutionary link is of obvious and immense importance and its loss would indeed be irreplaceable.

The criteria are also meant to include those species that live interdependently with humans, such as the relationship between reindeer and the Sami (formerly known as the Laplanders) of northern Scandinavia. This relationship probably involves many of the values enumerated in the draft criteria, including social, survival, and traditional values. Of significance to the World Heritage Species concept, this relationship is not "domestic." The draft criteria do not contemplate the designation of most domesticated species, such as dogs, cats, or farm animals. While many people have species emotional attachments to these animals, most domesticated species are not the type warranting international legal protection. Nonetheless, certain domesticated and semi-domesticated species, may warrant such protection. The reindeer herded by the Sami, because of the unique cultural and other values attached to the reindeer in the Sami's particular way of life, would be covered by the draft criteria.

The second category recognizes that a species may have "outstanding universal value" because of its important ecological, biological, or genetic characteristics the loss of which would be an impoverishment the world's biological heritage. These broad criteria are designed to cover species that have some "natural" value that is irreplaceable to an ecosystem or, more generally, to our biological heritage. Umbrella species,⁸ such as wolves, and keystone species,⁹ such as elephants, would meet these criteria because their survival helps ensure the survival of entire ecosystems and the species within those ecosystems. Species like the chimpanzee, which has important genetic significance to global biodiversity, as well as other rare species with important genetic characteristics could also be included. Finally, the criteria of the second category also contemplate coverage of species that "warrant international protection." This criterion was added to ensure that any species particularly endangered by extinction is given the benefits of international protection and conservation. Inclusion of an endangered species that would benefit from international protection beckons the world's collective responsibility for preservation of biodiversity and for the survival of species compromised due to human growth and development.

B. Enhancement of Conservation through International Treaties

Because an underlying premise of the World Heritage Species concept is that conservation efforts can be improved through more effective implementation of international agreements, a proponent must also demonstrate how it plans to more effectively use existing international agreements. In doing so, the criteria seek to prevent the creation of a prestigious

⁸ An umbrella species is a species whose range and habitat requirements are large enough that, if the species is given a sufficiently large area for its protection, other species will also be protected.

⁹ A keystone species is a species on which the persistence of a large number of other species in the ecosystem depends. In other words, keystone species help to support the ecosystem in which they live. Their presence contributes to a diversity of life and their extirpation or extinction would have significant consequences, including extinction, for other species within the ecosystem.

title with little conservation value, avoiding a situation analogous to “paper parks”—the designation of protected areas that are not protected in fact.

For this reason, IELP proposes that, in addition to identifying a cultural or natural value, proponent governments also develop a plan that describes the specific steps to be taken to conserve the proposed species.¹⁰ This plan could include management or regulatory efforts to address threats to the species; ratification or better implementation of relevant international agreements or programs; engagement of international bodies or networks for capacity-building, training, financial assistance, or any other aid; coordination with local communities; and timeframes for implementation of the plan.¹¹ In addition, the proponent States(s) must submit annual reports on implementation of the plan and the status of the species.¹²

The proposed criteria do not demand implementation of specific obligations because exactly what is required will depend on the species, the threats it faces, and other factors. In some cases, the reporting obligations of an international agreement may provide sufficient incentive for a State to enforce conservation laws more rigorously for fear of international embarrassment. In other cases, the designation of the habitat of a candidate species as a “World Heritage Species,” with its globally recognized status, may bring international legitimacy, attention, and support to conservation efforts in the area. This designation can increase the importance of the site to the national government and result in additional conservation efforts.¹³ It can also be used as “leverage to influence development decisions and legislation affecting protected areas.”¹⁴ One site manager noted that the inclusion of a site in the World Heritage list was used “to stop bad ideas even before they became projects” and added that “promoting and announcing that the site is ‘under the watch’ of the global community reduces the risk of making decisions without technical analysis and previous consultation.”¹⁵ In addition to affecting development decisions, a World Heritage designation can lead to increased funding from international funding sources. Another site manager stated that he noticed a “demonstrable step change in the attitude of funding bodies in the wake of World Heritage designation.”¹⁶ In addition to direct funds, a World Heritage designation can lead to the creation of other sustainable development projects funded by UNESCO or other international agencies.¹⁷ A World Heritage designation also provides site managers and national governments with access to the World Heritage network and management workshops, trainings, and other exchanges of information.¹⁸

¹⁰ Criteria for Designating World Heritage Species, *supra* note 6, at § (C).

¹¹ *Id.* at § (C)(1).

¹² *Id.* at § (C)(2).

¹³ See UNESCO, *World Heritage, Sian Ka'an – Mexico*, at <http://whc.unesco.org/pg.cfm?cid=284> (last accessed Apr. 23, 2005) (site manager discussing Sian Ka'an's importance in national conservation efforts after its World Heritage designation).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ UNESCO, *World Heritage, Dorset and East Devon Coast – United Kingdom*, at <http://whc.unesco.org/pg.cfm?cid=282> (last accessed Apr. 24, 2005).

¹⁷ UNESCO, *World Heritage, Sian Ka'an – Mexico*, *supra* note 13.

¹⁸ *Id.*

Other species may require more. As the case study involving the Virunga population of mountain gorillas suggests, collaboration between three range states is required to manage and conserve this population effectively.¹⁹ Where such collaboration is needed, proponents may need to demonstrate that such collaboration is underway or ensure that it will take place. In such circumstances, it may be necessary to demonstrate that the range States are willing to propose a species for inclusion in Appendix II of the Convention on Migratory Species (CMS).²⁰ Appendix II of CMS includes migratory species “which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international co-operation that could be achieved by an international agreement.”²¹ Virunga mountain gorillas, as well as Cross River gorillas,²² unquestionably meet these criteria. An Appendix II listing would provide the institutional framework to bring range States together to negotiate a site-specific and species- or population-specific “Article IV” agreement. Article IV agreements lead to action plans tailored to the specific needs of and threats to a species and include provisions for coordinating research and the review and exchange of information between range states.²³

The Bwindi mountain gorilla case study indicates that the participation of local people may be critical to the success of any conservation efforts, particularly where, as in this case, tens of thousands of people live in and around the habitat of these gorillas.²⁴ Under these circumstances, UNESCO’s Programme on Man and Biosphere (MAB)²⁵ may provide the best model for developing the local support necessary for effective conservation efforts. MAB supports the creation of “biosphere reserves” based on a zoning framework of core scientific-use-only areas surrounding by zones of increasing economic activity.²⁶ Because biosphere reserves must have a “conservation function”²⁷ and a “development function” that fosters economic and human development that is socio-culturally and ecologically sustainable,²⁸ they

¹⁹ Melissa Fung, IELP Law Clerk, *A World Heritage Species Case Study: The Virunga Mountain Gorillas* (May 6, 2005), available at: <http://www.lclark.edu/org/ielp/heritage.html>.

²⁰ Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, art. I, § 1(a), reprinted in 19 I.L.M. 15, available at http://www.cms.int/documents/convtxt/cms_convtxt.htm (last accessed Mar. 6, 2005)(hereinafter CMS).

²¹ CMS, *supra* note 20, at art. IV(1).

²² Since the Cross River gorilla range spans the border of Nigeria and Cameroon, they are good candidates for protection under CMS. Global Register of Migratory Species, *Mammalia: Terrestrial Mammals*, at http://www.groms.de/groms/Getting_Started/Results/Terrestrials.html (last accessed Mar. 6, 2005). See Tami Santelli, IELP Law Clerk, *A World Heritage Species Case Study: Cross River Gorillas* (July 20, 2005), available at: <http://www.lclark.edu/org/ielp/heritage.html>.

²³ CMS, *supra* note 20, at arts. V(4)-(5).

²⁴ James Murphy, IELP Law Clerk, *A World Heritage Species Case Study: The Bwindi Gorillas* (May 10, 2005), available at: <http://www.lclark.edu/org/ielp/heritage.html>.

²⁵ UNESCO, Programme on Man and the Biosphere (1970) [hereinafter MAB], at <http://www.unesco.org/mab/index.htm>.

²⁶ MAB, *Frequently asked questions on biosphere reserves*, at <http://www.unesco.org/mab/nutshell.htm>.

²⁷ An area’s “conservation function” should contribute to the conservation of landscapes, ecosystems, species, and genetic variation. MAB, *The Statutory Framework of the World Network of Biosphere Reserves*, art. 6, at <http://www.unesco.org/mab/docs/statframe.htm>. art. 3(i).

²⁸ *Id.* art. 3(ii). Biosphere reserves should also have a “logistic function”—that is, they should provide support for research, monitoring, education, and information exchange related to local, national, and global issues of conservation and development. *Id.* art. 3(iii).

may be less likely to alienate local people who depend on the area for subsistence than the establishment of a protected area that excludes local people from the entire area.

These examples indicate the variability of necessary conservation measures and thus demonstrate why the proposed criteria include an implementation plan but do not include specific conservation obligations. The general implementation plan and reporting criteria create a flexible and variable protection mechanism, ensuring against protection in name only but allowing for species-specific utilization and implementation of existing international agreements.

III. The Institutional Framework

In the absence of a treaty and its institutional framework for evaluating proposals for World Heritage Species, some other institutional framework is needed to pursue this new legal approach to conservation. Because of the close relationship between the underlying principles of the World Heritage Convention and the World Heritage Species concept, IELP explored whether the World Heritage Committee of the World Heritage Convention or UNESCO, as the Secretariat to the World Heritage Convention, would be able to adopt World Heritage Species criteria and designate World Heritage Species.

The following sections describe the relevant bodies of both UNESCO and the World Heritage Convention and the scope of their authority. It also summarizes the procedures required to consider and adopt World Heritage Species criteria and designate World Heritage Species. IELP concludes that the authority of the governing body of the WHC is limited to making decisions regarding the management of the World Heritage Site lists. It, therefore, does not have the authority to expand the World Heritage Convention to include a World Heritage Species program. On the other hand, the General Conference of UNESCO has the authority to adopt criteria and designate World Heritage Species through a non-binding declaration or recommendation, provided that the UNESCO Director-General, UNESCO Executive Board, or a UNESCO Member State proposes it be added to the agenda.

A. The World Heritage Convention

1. Organization

The World Heritage Convention consists of three main bodies: the General Assembly, the World Heritage Committee, and the World Heritage Centre. The General Assembly is similar to UNESCO's General Conference and other Conferences of the Parties. It is composed of delegates from all Member States and meets once every two years during UNESCO's General Conference session. The General Assembly's main functions are to establish States' contributions to the World Heritage Fund and to elect new members to the World Heritage Committee.²⁹

The World Heritage Committee is the body responsible for all decision making under the World Heritage Convention. It consists of representatives from 21 Member States and

²⁹ UNESCO, *World Heritage General Assembly*, at <http://whc.unesco.org/pg.cfm?cid=154> (last accessed Nov. 8, 2004).

establishes, maintains, and publishes the list of the World Heritage Sites and the list of World Heritage Sites in Danger. The Committee is responsible for developing criteria for inclusion on each of these lists, encouraging any research needed on any proposed site, and selecting new World Heritage Sites. The Committee also has the authority to add sites to the list of World Heritage Sites in Danger.³⁰ The Committee also considers requests for international assistance for World Heritage Sites, determines priorities, grants or denies funds, and publishes a list of sites receiving international assistance.³¹ The Committee meets once a year in June.

The World Heritage Centre was established in 1992 by the Director-General of UNESCO to act as the secretariat and oversee the day-to-day management of the World Heritage Convention. The Centre organizes General Assembly and Committee meetings, administers the World Heritage Fund, and advises parties to the convention.³²

2. Procedure

The World Heritage Committee is the body of the World Heritage Convention that could adopt criteria for or a list of World Heritage Species. However, its jurisdiction is limited to developing criteria, selecting sites, and granting international assistance relating to World Heritage sites. The World Heritage Convention does not indicate that the Committee has the authority to adopt a proposal that would expand the World Heritage concept to include species. As such, no further discussion of its procedures is warranted.

B. UNESCO

1. Mandate

UNESCO's purpose is to "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world."³³ To do this, UNESCO (1) collaborates to advance mutual knowledge; (2) recommends international agreements to promote exchange of information; (3) helps in the development of educational activities; and (4) encourages international cooperation in the fields of education, science and culture. The UNESCO Constitution also directs UNESCO to "[m]aintain, increase and diffuse knowledge" by "assuring the conservation and protection of the world's inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions."³⁴

This last function relating to the "conservation and protection of the world's inheritance of books, works of art and monuments of history and science" is understood more broadly as

³⁰ World Heritage Convention, *supra* note 2, at art. 11.

³¹ *Id.* at art. 13.

³² UNESCO, *World Heritage Centre*, at <http://whc.unesco.org/pg.cfm?cid=134> (last accessed Nov. 4, 2004).

³³ UNESCO CONST. Nov. 16, 1945, art. I(1), TIAS No. 1580, 4 UNTS 275, 276, *available at*: http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html.

³⁴ *Id.* at art. I(2)(c).

“world heritage” and has not necessarily been restricted to books, art, and monuments. It forms the basis for the World Heritage Convention. The preamble to the World Heritage Convention slightly modifies the general goal by calling on UNESCO to “maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world’s heritage.”³⁵ The preamble to the World Heritage Convention establishes the reason for maintaining the world’s heritage: “parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.”³⁶

These constitutional and preambular provisions connote a broad meaning of UNESCO’s objectives, which include protection of the world’s heritage. Although the World Heritage Convention limits its scope to sites, the scope of UNESCO’s authority is broader and not limited to sites or non-living things, such as books. These provisions would appear to grant UNESCO the authority to adopt both the criteria for and a list of World Heritage Species.

2. Organization

UNESCO’s General Conference, together with the Executive Board and the Secretariat, form UNESCO’s three main bodies. The General Conference is the most likely body to adopt criteria and a list of World Heritage Species. UNESCO’s General Conference is similar to a treaty’s Conference of the Parties. It consists of up to five delegates from each Member State and meets every two years or by extraordinary session. Among its duties, the General Conference determines the policies and work of UNESCO, organizes conferences regarding matters of interest to Member States, and adopts proposals for submission to the Member States.³⁷ The authority to organize conferences and adopt proposals, together with the overall substantive mandate of UNESCO relating to “world heritage,” appears to grant the General Conference with the authority to adopt the World Heritage Species program.

The General Conference could consider a World Heritage Species proposal from a Member State that places the subject on the agenda, which is prepared by the Executive Board. The Executive Board of UNESCO comprises 58 Member States, with one representative from each of these 58 states. The Board meets twice a year and acts as a working committee between the General Conference sessions.³⁸ The Executive Board (1) prepares the agenda for the General Conference, (2) oversees the program and budget, (3) executes the program adopted by the General Conference, (4) acts as an advisor to the UN, and (5) performs tasks assigned to it by the General Conference.³⁹

The Secretariat would perform logistical steps in the proposal process such as copying the proposal, sending drafts to the parties before the session, and translating it into the working languages. The Secretariat has a purely international function and is the body that executes

³⁵ World Heritage Convention, *supra* note 2, preamble.

³⁶ *Id.*

³⁷ UNESCO CONST., *supra* note 29, at art. IV, part B. The General Conference may summons international conferences of States on education, science, or humanities; summons non-governmental conferences on education, science, or humanities; advise the UN on educational, scientific, or cultural matters; receive and consider reports from the Member States; and elect the Executive Board and appoints the Director-General of UNESCO. *Id.*

³⁸ *Id.* at art. V, part A.

³⁹ *Id.* at art. V, part B.

UNESCO's program on a day-to-day basis. The Secretariat is headed by the Director-General and is divided into five sectors: education, natural sciences, social and human sciences, culture, and communication and information.⁴⁰ The Director-General serves as a liaison between all bodies of UNESCO and participates in the General Conference sessions, the Executive Board meetings, and the UNESCO committees. The Director-General formulates proposals, submits a draft work program and budget to the Executive Board, and also prepares reports on UNESCO activities for the Executive Board and the Member States.⁴¹

3. Procedures

While UNESCO's General Conference may adopt proposals, those proposals may take three different forms with different legal implications: conventions, recommendations, and declarations. A *convention* must be ratified consistent with the domestic provisions in each country. It comes into force only after a certain number of Member States ratify it, and it would be binding only on those Member States that have done so. A *recommendation* does not require ratification by Member States, but it does not have the same binding force as a convention. Rather than obligating a Member State to take action, it invites Member States to take particular actions. A *declaration* also does not require ratification by Member States and is not legally binding. A declaration sets forth broad principles that UNESCO believes should be upheld by all states, not just by Member States.

Adoption of Recommendations and International Conventions. To be considered, a proposed recommendation or convention must be placed on the General Conference's provisional agenda. The Rules of Procedure for the General Conference allow the General Conference, the UN, a Member State, the Director-General, or the Executive Board to include items on the provisional agenda.⁴² The proposed recommendation or convention must also be accompanied by a preliminary study of the technical and legal aspects of the problem, and it must have been examined by the Executive Board at least 90 days before the General Conference session.⁴³ The Executive Board can submit comments on the proposal to the General Conference and can also instruct the Secretariat to conduct a study and prepare a report in preparation for the General Conference session.⁴⁴

If the proposal is added to the agenda, the General Conference determines whether it will address the issue and whether a convention or recommendation is the more appropriate format for considering the issue.⁴⁵ The General Conference may decide to defer these decisions to a

⁴⁰ See UNESCO, http://oberon.unesco.org/orgchart/en/ORG_vis_files/ORG_vis_frames.htm (last accessed Nov. 10, 2004).

⁴¹ UNESCO CONST., art. VI, § 3.

⁴² UNESCO, RULES OF PROCEDURE OF THE GENERAL CONFERENCE, R. 18, *available at* <http://unesdoc.unesco.org/images/0013/001337/133729e.pdf#page=7> (last accessed Nov. 10, 2004).

⁴³ UNESCO, RULES OF PROCEDURE CONCERNING RECOMMENDATIONS TO MEMBER STATES AND INTERNATIONAL CONVENTIONS COVERED BY THE TERMS OF ARTICLE IV, PARAGRAPH 4, OF THE CONSTITUTION, arts. 2-3, *available at* <http://unesdoc.unesco.org/images/0013/001337/133729e.pdf#page=7> (last accessed Nov. 10, 2004).

⁴⁴ *Id.* at art. 4.

⁴⁵ *Id.* at art. 6.

future session and instruct the Director-General to submit a report on these questions.⁴⁶ All of these procedural decisions are adopted by a simple majority vote.⁴⁷

If the General Conference decides to address the issue, the Director-General prepares a preliminary report on the problem and the scope of the proposed action. This report can also be accompanied by the first draft of a recommendation or convention, and Member States are asked to comment. This report must reach the Member States at least 14 months before the next session. On the basis of the comments from the Member States, the Director-General prepares a final report that is submitted either to the General Conference or a special committee.⁴⁸

At the next session, the General Conference will consider the draft text and report. A two-thirds majority is required for the adoption of a convention; a simple majority is required for the adoption of a recommendation.⁴⁹

All told, the process for adopting recommendations or conventions takes at least two years. At the first session, the General Conference only decides if and how it will address the issue. If the General Conference votes to work on the problem, the Director-General creates a report and a draft and receives comments. The draft language is voted on in the next session of the General Conference, two years later.

At its 2003 session, the General Conference adopted the International Convention of the Preservation of the Intangible Cultural Heritage,⁵⁰ an extension of, or complement to, the World Heritage Convention. Thus, it is not inconceivable that UNESCO would entertain the adoption of World Heritage Species program, consisting of criteria and a list of World Heritage Species.

Organizing an International Conference. The UNESCO General Conference has the authority to convene international conferences of States, which can result in the adoption of international agreements.⁵¹ The General Conference decides which states to invite to the international conference (or can delegate this responsibility to the Executive Board), and each invited State selects representatives to attend.⁵² If the conference is intended to result in the adoption of an international agreement, these representatives must have full credentials.⁵³ International conferences seem to function as a means to gather a subset of UNESCO Member

⁴⁶ *Id.* at art. 7.

⁴⁷ *Id.* at art. 8.

⁴⁸ *Id.* at art. 10.

⁴⁹ *Id.* at art. 12.

⁵⁰ This convention addresses oral traditions, performing arts, social practices, rituals, knowledge regarding nature and the universe, and traditional craftsmanship. This convention has a structure similar to that of the World Heritage Convention—it designates cultural heritage to be protected, creates a list of heritage in urgent need of protection, and creates a fund to finance state protection efforts. This convention requires 30 ratifications before it will enter into force. See http://portal.unesco.org/culture/en/ev.php-URL_ID=2225&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁵¹ UNESCO, REGULATIONS FOR THE GENERAL CLASSIFICATION OF THE VARIOUS CATEGORIES OF MEETINGS CONVENED BY UNESCO, art. 8, available at <http://unesdoc.unesco.org/images/0013/001337/133729e.pdf#page=7> (last accessed Nov. 10, 2004).

⁵² *Id.* at art. 11.

⁵³ *Id.* at art. 12.

States that are particularly interested in an issue and can serve as a forum to create an international agreement outside of the General Conference of UNESCO.

Historically, recommendations from international conferences have also sometimes led to formal action by UNESCO as a whole. An example of this is the creation of Programme on Man and Biosphere (MAB). In September 1968, UNESCO convened the Intergovernmental Conference of Experts on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere (the Biosphere Conference) to discuss the relationship between man and the environment. Representatives from 63 Member States attended, along with members of the UN Food and Agriculture Organization, World Health Organization, the International Union for the Conservation of nature, and nongovernmental organizations. The Biosphere Conference adopted a recommendation asking UNESCO to develop a program on man and the biosphere.⁵⁴ At the October 1968 General Conference session, UNESCO considered the recommendations from the Biosphere Conference and, at the next session in 1970, launched the MAB programme.

An international conference can either serve as a vehicle for a smaller subset of UNESCO Member States to adopt an international agreement, or it can prompt UNESCO as a whole to take action on the issue. An international conference on the World Heritage Species concept could increase interest in the idea. However, international conferences do not adopt agreements on behalf of UNESCO as a whole. The Biosphere Conference indicates that, although recommendations from international conferences can evolve into action taken by UNESCO, they must go through the same adoption procedure as proposals initiated within UNESCO.

C. An Institutional Framework to Implement World Heritage Species

UNESCO's General Conference offers a practical option for adopting criteria for World Heritage Species and adopting a list of World Heritage Species. For a World Heritage Species proposal to be considered by the UNESCO General Conference, it must be proposed for inclusion on the provisional agenda by a Member State, an Associate Member, the Director-General of UNESCO, or a member of the Executive Board.⁵⁵ Then, the proposal must be submitted along with a preliminary study, to the Executive Board at least 100 days before the start of the session. This is when the Executive Board prepares the provisional agenda and communicates the agenda to the Member States.⁵⁶ As stated, the minimum length of time to move from proposal to adoption of a recommendation, declaration, or convention is two years.

Another possibility would be for the General Council to adopt the general concept of World Heritage Species and then designate a "Bureau" or "Council" to adopt criteria and designate World Heritage species. This is essentially the process used to start the Man and Biosphere Programme. In the case of MAB, the General Conference established the International Coordinating Council of the Programme on Man and the Biosphere at its 16th session.⁵⁷ This

⁵⁴ *Biosphere Reserves in Canada*, at <http://www.biosphere-canada.ca/publications/newsletters-bulletins/4/art23.html> (last accessed Nov. 8, 2004).

⁵⁵ UNESCO, RULES OF PROCEDURE OF THE GENERAL CONFERENCE, Rule 10, available at <http://unesdoc.unesco.org/images/0013/001337/133729e.pdf#page=7> (last accessed Nov. 10, 2004).

⁵⁶ *Id.* at Rule 9.

⁵⁷ 16 C/Resolution 2.313.

Council is composed of 34 Member States of UNESCO elected by the General Conference. The Members of the Council are elected taking into account the equitable geographical distribution and appropriate rotation of the representatives of these States “from the ecological viewpoint in the various continents and of the importance of their scientific contribution to the international programme.”⁵⁸

The Council elects the MAB Bureau, comprising a chairman and five vice-chairmen, one of which serves as a rapporteur.⁵⁹ The MAB Bureau, which meets between Council sessions, has the following responsibilities:

- receiving, reviewing and approving reports from expert working groups and ad hoc committees established by the Council;
- deciding upon nominations for designations of biosphere reserves;
- preparing the next Council session in consultation with the Secretariat;
- in consultation with the Secretariat, reviewing the progress made in the implementation of the MAB Programme, its planning within UNESCO, and reviewing any adjustments deemed appropriate;
- carrying out any other task the Council wishes to assign to the Bureau to facilitate its work.⁶⁰

It is not difficult to imagine a World Heritage Species Coordinating Council with similar representation and a World Heritage Species Bureau with functions similar to that of the MAB Bureau but obviously tailored to the World Heritage Species concept.

IV. An Introduction to the Case Studies

IELP developed three case studies to examine how the World Heritage Species concept could work in practice.⁶¹ The three case studies review the scientific literature to ascertain the biological status of the species, subspecies, or population at issue and the threats they face. Once those threats are assessed, then relevant international agreements can be analyzed to see which agreements may best improve conservation efforts. Because the World Heritage Species concept derives from primatologists and conservationists interested in great apes, IELP chose three gorilla populations that are known to have low numbers: Cross River gorillas, Virunga mountain gorillas, and Bwindi mountain gorillas.

⁵⁸ Statutes of the International Coordinating Council, as amended by the General Conference at its 19th (19 C/Resolution 2.152), 20th (20 C/Resolution 36.1) and 28th (28 C/Resolution 22), art. II(1), available at <http://www.unesco.org/mab/mabicc.htm#background>.

⁵⁹ *Id.* at art. IV(1).

⁶⁰ See <http://www.unesco.org/mab/bureau.htm#2004>.

⁶¹ James Murphy, IELP Law Clerk, *A World Heritage Species Case Study: The Bwindi Gorillas* (May 10, 2005); Tami Santelli, IELP Law Clerk, *A World Heritage Species Case Study: Cross River Gorillas* (July 20, 2005); Melissa Fung, IELP Law Clerk, *A World Heritage Species Case Study: The Virunga Mountain Gorillas* (May 6, 2005). All three case studies available at: <http://www.lclark.edu/org/ielp/heritage.html>.

Moreover, great apes in general, and the mountain gorilla especially, have become flagship species for the conservation of the tropical forest habitats in which they are found.⁶² By testing the World Heritage Species concept using charismatic great apes, it is hoped that more attention and resources will be devoted to all the ecosystems on which they depend and that more attention will be given to implementation of the World Heritage Species idea and existing international treaties. Designation of these gorilla populations as a World Heritage Species would continue their reputation as flagship species and hopefully provide more structure and institutional support to Parties that have designated them as World Heritage Species.

A. Cross River Gorillas

The Cross River gorilla (*Gorilla gorilla diehli*) is the most endangered subspecies of gorilla, with a total population of approximately 250 gorillas living near the Nigeria-Cameroon border. These gorillas live in isolated subgroups, often in the most remote areas of the forests. Although most subpopulations of Cross River gorillas live within domestically protected areas, the immediate vicinity supports villages of people who use the forests for their everyday needs. This human use of the forest has resulted in infringement on gorilla habitat. In addition, Cross River gorillas have historically been the target of local hunters. Fragmentation of the gorilla subpopulations is also a threat, as roads and other human development continue to further isolate the groups.

Local researchers are already involved in many efforts in Nigeria and Cameroon, and the governments of these two range states have made initial steps towards collaborating on conservation goals. However, enforcement of existing national laws is weak, and the countries lack the funds necessary to implement recommendations that have arisen from bilateral meetings. To increase conservation efforts for the Cross River gorillas, these governments need additional funding for enforcement and continued collaboration, and the local people need incentives to stop exploiting the resources in gorilla habitat.

Cross River gorillas would benefit from a comprehensive conservation scheme that guarantees the involvement of the national governments, facilitates collaboration between Nigeria and Cameroon, and raises international awareness about the gorillas' conservation status. Designating Cross River gorillas as one of the first "World Heritage Species" would provide a framework for this kind of comprehensive scheme and would add an international component to the current largely local efforts. A World Heritage Species designation would recognize that Cross River gorillas are indeed subspecies of "outstanding universal value" and that these gorillas are in danger of extinction. Cross River gorillas have a "significant relationship or connection to humans" because they provide an evolutionary link between humans and our ancestors. This evolutionary connection is a precious part of our world heritage and its loss would constitute "an impoverishment of the heritage of mankind."

⁶² A flagship species is a species that represents an environmental cause, such as an ecosystem in need of conservation. These species may be chosen due to their conservation status, attractiveness, or other factors to best engender attention and support. Promotion of a flagship species may thus successfully leverage conservation of an entire ecosystem and all species dependent on that ecosystem.

Among international agreements, the World Heritage Convention provides a way to protect Cross River gorilla habitat and to acknowledge the international importance of this subspecies and its habitat. While some Cross River gorillas live in nationally protected areas, enforcement of national laws in these areas is often weak, and other Cross River gorillas currently live in completely unprotected areas. Designating the entire Cross River gorilla range, including areas in both Nigeria and Cameroon, as a transboundary World Heritage Site would be an important step toward better protecting this subspecies. The development of a proposal for a Transboundary World Heritage Site to protect Cross River gorillas would increase cooperation with respect to enforcement and management between Nigeria and Cameroon.

In the alternative, or perhaps to complement a transboundary “Cross River Gorilla World Heritage Site,” the Convention on the Conservation of Migratory Species (CMS) would also contribute to a more comprehensive, cooperative conservation scheme. CMS protects species that regularly cross international boundaries and facilitates cooperation between range states of migratory species. Given the Cross River gorilla’s range, which expands over the Nigeria-Cameroon border, and the budding collaboration between those two countries regarding conservation of the gorillas, inclusion of Cross River gorillas in CMS could have significant positive effects, particularly if an agreement or memorandum of cooperation could be developed through which the CMS Secretariat and Parties could provide technical assistance.

B. Bwindi Mountain Gorillas

The Bwindi mountain gorilla inhabits the Bwindi Impenetrable National Park (BINP) of Uganda and wanders into the Sarambwe Special Reserve in the Democratic Republic of Congo (DRC). The population of Bwindi mountain gorillas numbers just 300 individuals. They are currently classified as *Gorilla beringei beringei* a separate mountain gorilla population (with the Virunga population also constituting a separate population). Some, however, believe that the Bwindi mountain gorillas may form a third subspecies of the eastern gorilla, *Gorilla beringei*.⁶³ Regardless of its taxonomic status, its conservation needs are clear. With a dense human population using the area in and around the habitat of the Bwindi gorilla, habitat loss constitutes the primary threat to the Bwindi gorilla. The International Union for the Conservation of Nature (IUCN) has declared it “critically endangered.”

Despite several research, local development, and tourist-related projects already underway to improve the condition of the Bwindi gorilla and the people who reside in the area of the Bwindi gorillas, these gorillas could benefit from increased international collaboration among researchers, wildlife managers, and enforcement, tourism, and other officials from Uganda and DRC. That Bwindi gorillas remain critically endangered and subject to loss of habitat suggests more is needed. The designation of Bwindi gorillas as a World Heritage Species, which can include subspecies and geographically separate populations, may provide the impetus necessary to secure a more stable future for Bwindi gorillas. World Heritage Species status may generate transboundary collaboration between Uganda and the DRC, encourage increased political will to enforce existing laws, and motivate the international donor community to focus attention on these unique creatures, which share a close evolutionary link to humans.

⁶³ Alastair McNeilage et al., *Bwindi Impenetrable National Park, Uganda: Gorilla Census 1997*, 35 ORYX 39, 39–47 (2001).

As with Cross River gorillas, CMS may provide an attractive alternative for improved conservation. Because Bwindi gorillas travel from BINP in Uganda to Sarambwe Special reserve in the DRC, they are migratory within the meaning of CMS. An Agreement or Memorandum of Understanding (MOU) between Uganda and the DRC under Article IV of CMS can benefit Bwindi gorillas by formalizing current field-based collaborations. It would also bring the DRC and Uganda together to coordinate conservation efforts and eco-tourism efforts.

However, UNESCO's Man and Biosphere Programme (MAB), through the creation of a biosphere reserve, may provide a more attractive alternative. The creation of BINP engendered animosity between the local people of the area on the one hand and gorillas and the Ugandan government on the other.⁶⁴ The use of MAB, which specifically incorporates zones of economic activity that surround core areas dedicated to scientific research, may help avoid additional friction, particularly if the goal is to enlarge the size of existing parks and other protected area designations to create a "Bwindi Gorilla Biosphere Reserve."

C. Virunga Mountain Gorillas

The Virunga mountain gorilla (*Gorilla beringei beringei*) is one of the rarest mammals on earth and is the second rarest of all of the gorilla subspecies.⁶⁵ Mountain gorillas were categorized as "critically endangered" on the IUCN Red List in 2000.⁶⁶ The most recent census, carried out in September and October 2003, estimated a total of 380 gorillas.⁶⁷ The Virunga mountain gorilla is threatened not only by traditional dangers, including habitat degradation and loss, but also by new threats from war, political unrest and other changing social/economic considerations.⁶⁸ Although CMS, the Convention on International Trade in Endangered Species of Wild Fauna and Flora among other treaties have provisions that govern particular threats to the Virunga mountain gorilla, they have failed to completely mitigate threats to gorillas and their habitat.

The World Heritage Species concept suggests that a State take a close look at their own domestic legislation and other international conventions to determine the steps it should take in the conservation of a species of "outstanding universal value." In the case of the Virunga mountain gorillas, a World Heritage Species designation may encourage the three range States—the DRC, Rwanda, and Uganda—to collaborate through CMS, MAB, and the World Heritage Convention, all of which encourage transboundary habitat protection that supports both the biological needs of the mountain gorilla and the needs of local communities. CMS in particular

⁶⁴ ROBERT G. WILD & JACKSON MUTEBI, CONSERVATION THROUGH COMMUNITY USE OF PLANT RESOURCES: ESTABLISHING COLLABORATIVE MANAGEMENT AT BWINDI IMPENETRABLE AND MGAHINGA GORILLA NATIONAL PARKS, UGANDA 8-9 (UNESCO 1996), at <http://peopleandplants.org/web-content%201/pdf/wp5e.pdf>.

⁶⁵ Many consider the Virunga population of mountain gorillas and the Bwindi population of mountain gorilla to be separate subspecies. See *infra* part II.

⁶⁶ IUCN, *Gorilla beringei*, IUCN Red List of Threatened Species (2003), at <http://www.redlist.org/search/details.php?species=39994>.

⁶⁷ *Virunga Gorilla Census*, 28 *Gorilla Journal* (2004) available at <http://www.berggorilla.de/english/gjournal/texte/28census.html> (publication of final census report forthcoming).

⁶⁸ UNEP-WCMC, *Parc national des Virungas*, Protected Areas Programme, at <http://www.unep-wcmc.org/sites/pa/0066p.htm> (last modified May 1990).

seems particularly suited for enhancing Virunga mountain gorilla conservation efforts. Although mountain gorillas are included in Appendix I of CMS, that only engages domestic conservation obligations. If mountain gorillas were placed in Appendix II, then CMS could provide the institutional structure to bring together the three range States to develop a species-specific and site-specific Article IV agreement or less formal MOU. This could occur even though Rwanda is not a Party to CMS, because CMS encourages and allows non-Parties to participate in Article IV agreements and MOUs.

In the alternative, the three governments could develop a transboundary “Mountain Gorilla World Heritage Site” using three existing national parks with mountain gorillas: Virunga National Park in the DRC, Volcans National Park in Rwanda, and Mgahinga National Park in Uganda. These national parks have obvious biological or natural value due to the presence of the mountain gorillas, and they are also adjacent or nearly adjacent to each other. In fact, Virunga National Park in the DRC is already a World Heritage Convention site.⁶⁹ (It would also be possible to add Bwindi Impenetrable Forest in Uganda, which is already World Heritage Site, for a larger “Mountain Gorilla World Heritage Site” that includes the Bwindi population (or subspecies) of mountain gorilla).⁷⁰ The World Heritage Convention specifically encourages international cooperation between State Parties for facilitating transboundary protection as part of the State’s commitment to protect “world heritage.”⁷¹

Because Virunga National Park has been heavily affected by the war in Rwanda and the subsequent influx of refugees and by civil unrest in the DRC, a strategy involving MAB may be more appropriate. In fact, refugees now use up to sixty percent of the park’s boundaries and designated buffer zone areas for residence and cultivation, though the area inside the park remains relatively unsettled.⁷² As such, MAB’s system of core non-use areas and zones of economic activity may be better tailored for these realities. A transboundary “Mountain Gorilla Biosphere Reserve” also may be the marketing gem on which to build conservation and eco-tourism efforts.

⁶⁹ UNESCO World Heritage, Virunga National Park, at http://whc.unesco.org/pg.cfm?cid=31&id_site=63 (last accessed Mar. 25, 2005).

⁷⁰ Indeed, Natarajan Ishwaran, then the Chief of the Natural Heritage Section at the UNESCO World Heritage Centre, encouraged the UN Foundation, UNESCO and GRASP to create a trans-border conservation initiative grouping the Virunga National Park (in the DRC), and, with the Volcans National Park (in Rwanda), since all three are critical to conserving the habitats of the mountain gorillas. *Id.*

⁷¹ World Heritage Convention, *supra* note 2, arts. 6-7.

⁷² UNEP-WCMC, *Virunga National Park World Heritage Site*, Protected Areas Programme, at http://www.unep-wcmc.org/protected_areas/data/wh/virunga.html (last accessed Mar.25, 2005).