

DRAFT DISCUSSION PAPER

Designing a World Heritage Species Protocol

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I. General Comments

Before a treaty's detailed provisions can be drafted, its general framework must be decided upon. The following are among the general issues that should be included in any treaty:

Scope. Perhaps the most important question is identifying the purpose of the Protocol. Is the purpose simply to raise awareness of a species' conservation status by granting the special status of "world heritage" or it or to conserve the species through substantive obligations? Once that decision is made, a series of additional treaty elements must be addressed:

- *Species to include in the treaty.*
- *Listing Criteria, if any.*
- *Nature and scope of obligations.*

Institutions. There is universal agreement that any successful treaty regime needs a solid institutional structure. This structure may include:

- *Secretariat.* The Secretariat administers the treaty on behalf of the Parties. Common responsibilities of a Secretariat include receiving and distributing documents, notifying Parties of reporting deadlines and other activities, and organizing Conferences of the Parties. Depending on the nature of the treaty, a Secretariat may have scientific, legal, enforcement and other staff.
- *Conference of the Parties (COP).* The COP is the decisionmaking body of a treaty that meets at regularly scheduled meetings to discuss implementation of the treaty.
- *Standing Committee.* Many treaties have a standing committee that addresses compliance and other implementation and interpretation questions between meetings of the COP.
- *Scientific Committee.* Most environmental treaties have one or more scientific committees that address issues specific to a group of species. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has an Animals Committee and a Plants Committee, as well as a Nomenclature Committee.

Enforcement. Almost all multilateral environmental agreements (MEAs) include reporting obligations as a principal means for enforcing obligations. A growing number of MEAs, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, also include implementation and compliance regimes that can impose penalties on Parties that fail to implement or comply with the treaty's provisions. For example, the Montreal Protocol denies

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financing from its Multilateral Fund to those Parties that fail to report relevant data or meet their targets and timetables for reducing production and consumption of ozone depleting substances. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) recommends that Parties reject trade in CITES-listed species with Parties that have inadequate implementing legislation

Final Clauses. Every treaty needs provisions for reservations, amendments, ratification, accession, entry into force, withdrawal, working languages of the treaty, and depositary government or institution for submission of instruments of ratification. These issues are not addressed in this discussion paper.

Lastly, whether labeled a protocol, convention or treaty, the international and domestic legal significance is the same: a State that wishes to be bound by the treaty must submit the document to its domestic legal process for ratification before that State is bound by the terms of the treaty. Moreover, the treaty is not binding on any State that has consented to be bound by it until the treaty “enters into force.” The treaty includes provisions for determining when the treaty enters into force, such as upon the deposit of the tenth instrument of ratification to the depositary government/institution.

II. Designing a World Heritage Species Protocol

A. Candidate Species for World Heritage Status

In designing a World Heritage Species Protocol, at least two core ideas seem necessary to ensure its success. First, because this protocol is being negotiated under the auspices of UNESCO’s world heritage concept, a starting point for identifying which species to include should start with the World Heritage Convention’s core principle of “universal and outstanding value.” While that concept should underpin a World Heritage Species Protocol, that still leaves unanswered the question of what constitutes a species of “universal or outstanding value.”

Second, several multilateral environmental agreements (MEAs) already regulate or manage species in different ways. To ensure the Protocol does not duplicate the efforts of existing MEAs and finds its appropriate niche, the Protocol should consider an approach that fills the gaps in existing international law. The underlying goal for the Protocol should be to add conservation value. For that reason, care should be given to a Protocol that makes certain taxa, such as northern fur seals, polar bears, sea turtles, or whales, eligible for World Heritage status, because they are already covered by existing species-specific agreements unless there are grounds for using another treaty regime to assist in the conservation of such species.

With these two principles in mind, a range of possibilities exists for identifying which species are eligible for inclusion in a List of World Heritage Species.

1. Species Focus
 1. think of species and then defend inclusion
 2. apes, whales, pandas, monarchs, amphibians.
2. Focus on Non-biological Factors
 1. No present treaty addresses threats
 2. Other factors
 1. close genetic relationship between humans and a species (Great Apes),
 2. the uniqueness of the phenomena to be protected (North American monarch butterfly migration),
3. Type of Species Focus
 1. endangered species,
 2. keystone species,
 3. charismatic megafauna,
 4. migratory or highly migratory species,
 5. species for which international cooperation is essential,
 6. species or taxon of “global concern” such as amphibians which are in global decline.

B. Which Listing Criteria

Listing criteria are completely dependent on the approach adopted in Section A above to the question of which species to include as candidates for World Heritage status.

4. Criteria relating to “endangerment” can be very detailed or very general. Both types of criteria can become more political than biological depending on the institutions and voting structure in place.
 1. U.S. Endangered Species Act (ESA) asks the relevant agency to evaluate information in the following categories: (1) present or threatened destruction, modification of habitat or range; (2) overutilization; (3) disease or predation; (4) other factors.
 2. CITES had general criteria similar to the ESA until COP9 adopted more specific criteria. Some parties have asked for taxon-specific criteria. Much time and many resources have been spent on this question.

5. Migratory. Migratory in the biological sense or the geopolitical sense (cross national borders), like the Convention for the Conservation of Migratory Species (CMS)?

C. Procedure for Inclusion

6. Format for Proposals
 1. Any Party (and perhaps NGOs) can propose. Governments may have a conflict concerning the imposition of substantive obligations to a species. Thus, allowing other Parties to submit proposals prevents a range state from vetoing the inclusion of a species from designation.
 2. Only a range state may propose.
 3. All range states must submit proposal. This gives any one range state “veto” power but also ensures that all range states support the substantive obligations that flow from designation as a World Heritage species.
7. Voting Procedure
 1. Consensus
 2. Supermajority (e.g., two-thirds of the Parties present and voting)
 3. Approval by a special committee, as is done in the World Heritage Convention

D. Substantive Obligations

8. If the Protocol is more than a mechanism to attract funding or publicity, then what obligations do parties have?
 1. monitor
 2. habitat conservation
 3. domestic trade (since all will be in CITES)
9. Recommendations from a GRASP Sept. 2002 meeting
 1. Urgent recommendations include:
 1. Surveys of little-known areas to establish which apes survive where, in particular in the Mayumbe Forest, Bas-Fleuve, which is contiguous with forests in Angola's Cabinda Enclave.
 2. Rehabilitation of the neglected Maiko National Park, which holds important populations of eastern lowland gorillas and chimpanzees.
 3. Re-claiming the 90 per cent of Kahuzi-Biega National Park currently in rebel hands and surveying it to establish whether any

- large mammals have survived the onslaught of bushmeat hunters feeding the coltan miners.
4. Development of community conservation initiatives to create jobs in areas of rural poverty, for example around the village of Lomoko in bonobo habitat.
 5. Strengthening of existing laws protecting great apes and improved awareness among law enforcement agencies and the courts was called for by a legal commission at the workshop.
 6. The fate of infant apes, confiscated by the authorities was also addressed; resources are urgently needed for sanctuaries to care for them and develop their potential for conservation education.
10. Paragraph 5 above applies only to great apes, but it gives a sense of the specificity that can apply if the approach of adopting specific management plans or “agreements”, in the terminology of CMS. Other species would obviously have very different provisions. Should the Protocol have one set of obligations that apply to all species or should it following the CMS model of applying certain obligations to all species and then negotiating a separate, detailed set of obligations for particular taxa?

E. Institutional Structure

11. Secretariat
 1. UNESCO
 2. New, free standing Secretariat
12. COP
 1. Annual: perhaps too frequent and certainly costly
 2. Every other year
 3. Some other time frame
13. Scientific Committees
 1. Must scientific committees be reproducible? That is, if a scientific committee is established for each species or group of species, must the structure for each scientific committee be the same?

2. Tasks of Scientific Committee

1. Disburse funds?
2. Undertake projects itself?
3. Monitor populations?
4. Monitor threats?
5. Act as mini-COP?

14. Relationship to GRASP?

15. Funding Mechanism. See paragraph 13 above.

F. Enforcement

16. Establish Implementation and Compliance Committee?
17. Rely on reporting?

G. Final Clauses.

18. Reservations to substantive obligations
19. Reservations to inclusion of species in the List of World Heritage Species
20. Languages
21. Number of ratifications to enter Protocol into force
22. Depositary government or institution. UNESCO seems like the obvious choice.