1. Introduction

1. THIS BOOK

The international community has awoken to the concern that much of the world’s biodiversity is under threat. In a relatively sudden display of concern, a series of goals and targets have been unveiled in an attempt to stop a problem which has been hundreds, if not thousands, of years in the making. Nevertheless, at its 83rd plenary meeting in 2007, the General Assembly of the United Nations declared 2010 would be the International Year of Biodiversity.1 This was two years after the International Year of Planet Earth in 2008.2

The year of 2010 was also the year when the vast majority of nations of the planet had pledged to significantly reduce the current loss of biodiversity.3 Whilst the 2010 year and the 2010 targets were commendable, they failed to be achieved. Systematic reviews in 2010 showed that, although the rate of the loss of species and ecosystems had slowed in some areas, overall the target had not been met.4 The international community responded by setting new targets to be achieved by 2020, and invited the General Assembly to consider making the following ten years to be the decade of biodiversity.5

There are many reasons for this failure. My contention is that one part of the reason this is occurring is because decision makers and those giving advice are getting increasingly lost over what to do, and fail to see each issue in its wider context. This problem is amplified when dealing with difficulties whereby the solutions can only be global. This book is about some of these difficulties and the way the international community has responded to them. To look at this area, this book has been divided into four parts. The first part of this book, Chapters 2, 3 and 4, looks at the way species and areas are identified, their levels of threat, and how they are classified in science, policy, and law. The second part, Chapters 5 and 6, examines the values of species and areas, in terms of both tangible benefits that are of direct self-interest to humans, and in terms of intangible benefits, where they are protected for non-anthropocentric reasons. Both the tangible and intangible reasons are explained through how they are reflected in international conservation law. Chapters 7 to 13 deal with all of the major threats to species and protected areas.

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and how these are being dealt with through international conservation. These chapters form the third part of this book. The threats covered are habitat loss, trade, alien (including pest and genetically modified) species, incidental catch, and threats from modern processes. Additional threats such as climate change, multiple types of pollutants, and war are dealt with in the final chapter of this section. The fourth part of this book is about the ‘tools’ which are available to help achieve all of the conservation goals that the international community has set itself. Within this section of the book, Chapters 14 to 18 deal with compliance in general, and compliance on the high seas; various management tools (such as the precautionary principle and environmental impact assessment); access and benefit sharing; and finally the importance of local populations, education, and financial assistance.

Although this book is about law, it has a very strong background of science, philosophy, and policy considerations. It is these foundations which ultimately make up the edifice of international law in this area. I attempt to use science to provide as many of the facts about conservation as are possible. In my opinion, conservation without science is better suited to discussions about philosophy and theology. I have utilized a number of scientific journals in this book. The main source of the scientific information I have in this book comes from the weekly journal *New Scientist*. For the reader interested in a particular area, I suggest they use the references from this source as the starting point from which the primary scientific papers can be found.

Although science, philosophy, and politics run throughout this manuscript, this is ultimately a book about law and, in this setting, it is important to realize that law is different from these three other disciplines. Law, in matters of international conservation, is a reflection of the rules that are agreed. It is also the foundation upon which all other considerations are built. These foundations must be stable, rational, and easy to ascertain. Unfortunately, this is not always the case with matters of international conservation. In this area the laws, policies, and principles of both earlier times and alternate regimes are often scattered, lost, or seen in isolation.

The spine of this book is a collection of over 100 treaties or similar agreements. The heart of this book is the subsequent resolutions and decisions which have been reached by the international community over the last 100 years in applying their treaties to the problems of conservation which have evolved before them. This book is light on secondary sources but it is weighty in terms of what has actually been agreed in terms of international conservation. I have no idea how many resolutions or decisions are in this book, but I expect it is in the thousands. I have chosen to write this book in this manner because I have been actively involved in international negotiations involving conservation for over a decade. Before this time, I studied the theory of international environmental law and its application for a further decade in various academic institutions. Since the end of the 20th century, I have attended, as a representative of New Zealand, numerous meetings with the World Heritage Convention, the Convention on International Trade in Endangered Species of Flora and Fauna, and the Convention on Migratory Species. I have lost count of how many meetings of the International Whaling Commission I have attended. From these meetings, and the wisdom of others, I have learnt to discern what matters in such diplomatic gatherings. Precedent, comparative analysis, a solid understanding of scientific backgrounds, and a dash of philosophy are the recipe for success in all of these areas.
2. SOME OF THE NOTABLE REGIMES

Humanity and the communities it has gathered within have been protecting species and places of special significance for thousands of years. Antiquity, from the Persians to the Greeks and then the Romans, is rich in such practices. From the Dark Ages to the Renaissance, throughout Europe, vast sections of land were protected for the benefits of the nobility. For example, during the reign of Henry II in England, just under a third of the country was included as a type of protected area. By the Age of the Enlightenment, following the impacts of the Industrial Revolution, the importance of conserving both places and species was becoming a common theme in national thinking. In 1791 the first commonly recognized modern environmental sanctuary, as in one that was established by the State and not an individual, was established on the West Indian island of St Vincent. By the end of the following century, national governments were purchasing or gifting large tracts of land to their populations. In 1864 the United States Congress gave a small part of the present Yosemite National Park to the State of California for ‘public use, resort and recreation’. Other notable national protected areas included the Blue Mountains in New South Wales, Australia in 1866, Yellowstone in the United States in 1872, parts of the Canadian Rockies in 1879, and Tongariro in New Zealand in 1877. The Tongariro gift of 1877 was particularly notable as it was given by a leader of the indigenous peoples, to all of the people of New Zealand, as represented by the Crown, to be protected indefinitely. Krueger National Park was established in South Africa in 1898, and a few decades later King Albert Park (later known as Virunga National Park) was established in 1925 after the King of the Belgians sought to ensure protection for the Mountain gorillas living on the flanks of the Virunga volcanoes. The first dedicated marine protected area followed a decade later in 1935 with the Fort Jeff erson National Monument in Florida.

The only global body of influence which keeps a regular overview on all matters of international environmental concern is the United Nations General Assembly (UNGA). The UNGA has developed this position, because the Security Council very rarely comments on matters of environmental importance. The only time that that Council has done so, has been with regards to when conflict and the environment overlap. Conversely, the UNGA covers a vast array of topics ranging from climatic change through to biodiversity. As such, each year, the UNGA will pass over one dozen environment-related resolutions. These usually relate to fisheries, oceans, and the Convention on Biodiversity. The UNGA resolutions on the United Nations Environment Programme are also important,

7 Poole, A (1954) From the Domesday Book to the Magna Carta (Oxford, OUP) 30–32.
10 As noted in IMO General Assembly, 17th Session, A 17/Res.720 Guidelines for the Designation of Special Areas 4.
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as these often provide clear pointers for where the next emerging issues will arise. However, the UNGA does not formulate policy. It does, however, act as a very useful barometer by which ideas are discussed, before being advanced through specific treaties or other types of international regimes.

The idea of a ‘World Treaty on the Conservation of Species and Ecosystems’ is not new. It was originally launched at an international conference in Berne in 1913, and later at the Lake Success Conference in 1949. However, a universal treaty on this topic was very slow in developing. In large part, this was because of the diversity of the objectives that it has come to encompass. Nevertheless in 1987, the World Commission on Environment and Development argued for a new ‘Species Convention’ similar in spirit and scope to the Law of the Sea Treaty and other international conventions reflecting principles of universal resources.11 In the same year, the United Nations Environment Programme (UNEP) called for a series of expert group meetings, from which the core of a treaty emerged. Formal negotiations began in 1989.12 After three years of negotiation, the Convention on Biological Diversity (CBD) was concluded at the 1992 Earth Summit. It currently has 191 Parties, and they have met collectively ten times. In 1999, the Parties to this Convention on Biological Diversity added the Cartagena Protocol on Biosafety to their regime. There are currently 153 Parties to the Protocol, and this group has met five times. The other treaty of note, which is a close relation to the CBD, is the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture. This regime, which grew out of a number of undertakings in 1983 from the Commission on Genetic Resources for Food and Agriculture, and the earlier Recommendation 39 from the 1972 Stockholm Conference on the Human Environment, currently has 120 Parties. Since coming into force in 2004, the Parties have met three times.

The necessity to control the international trade in endangered species was repeatedly recognized by most regional conventions from the 1930s onwards. However, it was only in 1963 that the International Union for Conservation of Nature (IUCN) Congress suggested that an international treaty on this topic was necessary.13 This idea was picked up at the 1968 UNESCO Conference on the Use and Conservation of the Biosphere.14 The IUCN continued to support and promote this idea,15 until the Convention on International Trade in Endangered Species of Wildlife Flora and Fauna (CITES) was opened for signature at Washington on 30 April 1973, and on 1 July 1975 CITES entered into force. By the middle of 2010, it had 175 Parties, and this group had met 14 times.

The 1979 Convention on Migratory Species was not the first treaty to deal with migratory species. Regional treaties designed to protect migratory birdlife began very early in the 20th century and then appeared at regular intervals every ten years or so after that. Multilateral and bilateral treaties for seal populations can be found in 1911, 1957, and 1971. The seals for Antarctica were given a specific convention in 1972. Conventions covering polar bears can be found in 1973 and 2001. Although a number of bilateral

12 UNEP Governing Council, Decision 15/34.
and regional agreements on migratory species continue to proliferate outside of the Convention on Migratory Species (CMS), the majority are now under its auspice. This is not surprising given that the regime has 110 Parties and a track record of nine international conferences. The agreements of note which have evolved from this arrangement include those for African–Eurasian waterbirds, European bats, gorillas, small cetaceans in the Baltic and North East Atlantic, as well as those in the Mediterranean and Black Seas, and the Wadden Sea seals. A typical example of such agreements, like that covering albatrosses and petrels, has 13 Parties. In addition to agreements, the CMS also has Memorandums of Understanding which cover a further 17 species, ranging from elephants in West Africa through to the Siberian crane.

The 1951 International Plant Protection Convention was a multilateral treaty deposited with the Director-General of the Food and Agricultural Organization. It was amended once in 1973 and again in 1997 to reflect its role with the GATT Agreements and the Agreement on the Application of Sanitary and Phytosanitary Measures in particular. The Plant Protection Convention has its lineage in the 1878 International Convention Respecting Measures to be Taken Against the *Phylloxera vastatrix*, and its successor, the 1929 International Convention for the Protection of Plants. The need to fight animal diseases at a global level also has a long lineage. The *Office International des Epizooties* (OIE) was created through a 1924 international agreement. As of 2010, 172 countries are members of the OIE. The OIE maintains permanent relations with 36 other international and regional organizations and has regional and sub-regional offices on every continent. In 2003 the OIE became the World Organisation for Animal Health, but kept its historical acronym OIE.

The 1972 World Heritage Convention (WHC) grew out of international interest in the early 1960s over the destruction of cultural and natural treasures.¹⁶ The idea of an international treaty for the preservation of treasures with an outstanding universal value became popular in the late 1960s, and following support at the 1972 Stockholm Conference on the Human Environment, was concluded and adopted at the end of the same year.¹⁷ The principle difference with the WHC, compared to all other international instruments, is that it seeks to inscribe sites only of ‘outstanding universal value’. Although this goal may be slightly easier to achieve with natural as opposed to cultural properties, the threshold for inscription is very high, with less than 1 percent of all protected areas being eligible for ‘the List’ of the WHC. There are 186 Parties to this Convention and they have had 32 formal meetings since their first gathering in 1977.

The Man and the Biosphere regime is another international instrument dedicated to the creation of protected areas. It began in the mid 1960s when the International Biological Programme, with the full support of the IUCN, proposed that a series of areas be protected for the systematic *in situ* protection of genetic resources.¹⁸ This idea was expanded upon at various UNESCO conferences between 1968 and 1971 when the idea of ‘biosphere reserves’ connected via a worldwide network of protected areas was

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¹⁷ Recommendations 38 and 98.


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concluded.19 The regime was revisited, and reoriented in 1983 and 1995.20 As of 2010, there were 531 biosphere reserves in 105 countries.

Regional conferences on the importance of waterfowl and their habitats were held repeatedly throughout the 1960s in Europe. These meetings, with support from the IUCN21 and the Stockholm Conference on the Human Environment,22 led to the formation of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention). There are 159 Parties to the Ramsar Convention and they have met formally nine times. They have listed 1843 wetland sites, totalling 180 million hectares.

Two regions are of particular interest to this book, and a large amount of material concerns both of them. These are Africa and Europe. In the first instance, treaties related to conservation in Africa can be found for the years 1900 and 1933. It was hoped that the 1933 convention could be extended first to Asia, and then further abroad. However, the conference for the Protection of Fauna and Flora of Africa and Asia, as planned for the end of 1939, was eclipsed by the outbreak of the Second World War. This, however, was not the fate of the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which tied the Americas together for conservation purposes, building on the work of the 1916 and 1936 migratory birds treaties of regional significance. In the decades after the Second World War, updated regional treaties for conservation in Africa were agreed in 1968, and 2003. Conversely, regional protections for Europe were relatively late in development. The first initiative for the creation of protected areas in Europe came with the creation of the European Diploma in 1965. Although the Diploma continues into the 21st century, the primary instrument in this region is the 1979 Berne Convention on the Conservation of Habitat and Wildlife in Europe. Although this is focused on European wildlife and habitats, non-European States can be invited to adhere to this. The Berne Convention was strongly supplemented by the 1992 Habitats Directive through which the Europeans fulfil their obligations arising from the Convention. The sites protected under the Habitats Directive and the Berne Convention form part of the Natura 2000 network. As of 2010, the Natura 2000 network comprised 20,862 sites, which make up over 10 percent of the European Union’s surface. The Parties to the Berne Convention have met 19 times since its inception.23

Treaties dealing with oceanic species traversing the high seas are remarkably numerous, and proliferating at a rapid speed. The multitude of treaties on these species is furthered by generic international conventions, such as the 1958 Law of the Sea Convention and the 1982 United Nations Convention on the Law of the Sea and associated 1995 Straddling Stocks Agreement. These are supplemented by a large collection of regional fisheries agreements which date back to the late 19th century. This book does not deal in the same level of detail with all of these regional fisheries agreements, although it does engage with the work of the FAO’s Committee on Fisheries (COFI). The COFI is a subsidiary body

20 The 1995 Seville Strategy, Objective 1.1.
22 Recommendation 99.
of the FAO Council, and was established in 1965. The COFI constitutes the only global intergovernmental forum where major international fisheries problems are examined. The COFI is also used as a forum in which global agreements and non-binding instruments are negotiated. In its work, the COFI supplements rather than supplants other organizations working in the field of fisheries. COFI membership is open to any FAO Member and non-Member eligible to be an observer of the organization. The Committee has held 28 sessions since 1966. Its last session was in early 2010. In addition, although not generally engaging with most of the Regional Fisheries Management Organizations (RFMOs), this book does deal with the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). I have included this organization due to it having an overlap with fisheries and ecosystem management and its strong international flavour – a result of the nature of the waters around Antarctica – more so, perhaps, than comparable regimes. The CCAMLR has 25 Commission members and a further nine signatories to the Convention. The Commission has met 28 times since the regime came into force in the early 1980s. The other oceanic regime of interest which I deal with at length is the International Whaling Commission, which originates from the Convention on Whaling in 1931. This was replaced by the 1946 International Convention on the Regulation of Whaling. There are 85 members of the Commission, and they have met formally over 60 times.

The main source of non-governmental information in this book comes from the International Union for Conservation of Nature (IUCN). National non-governmental conservation organizations were active by the turn of the 20th century. The first International Congress for the Protection of Nature was held in Paris in 1909, and 17 European nations signed the Act of Foundation of the Consultative Commission for the International Protection of Nature in Bern in 1913. However, the First World War broke out before the Commission ever had a chance to meet. After the war, the congress met in 1923 and 1933, out of which the International Office for the Protection of Nature emerged. This original organization did not survive the impact of the Second World War. A successor organization arose and the World Conservation Union was founded in October 1948 as the International Union for the Protection of Nature following an international conference in Fontainebleau, France. The organization changed its name to the International Union for Conservation of Nature and Natural Resources in 1956. Use of the name ‘World Conservation Union’ began in 1990, but the full name and the acronym are often used together because many people still know the Union as IUCN. The World Conservation Union is a multicultural, multilingual organization with 1,000 staff located in 62 countries. Its headquarters are in Gland, Switzerland. The objective of the IUCN is to influence, encourage, and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. This objective, which is buttressed by research related to the conservation of nature and natural resources, is sought in both national and international settings. As of 2010, its union of democratic membership was made up of more than 1000 government and non-governmental member organizations and almost 11,000 volunteer scientists in more than 160 countries. The IUCN has an unparalleled influence in international conservation law.

The newest body to come into this area was the Intergovernmental Science–Policy Platform on Biodiversity and Ecosystem Services. This was formed, and largely endorsed by the Parties to the CBD, in 2010. This panel is modelled on the Intergovernmental Panel on Climate Change (IPCC). In theory, it is meant to play a major role in shaping global environmental policy via the provision of independent advice and scientific evidence on the state and trends of biodiversity. It also expected to carry out peer reviews on scientific literature to establish a ‘gold standard’ for reporting of biodiversity to policy makers. As of the time of concluding this book, exactly how this new body will unfold is uncertain, especially given that the UNEP has traditionally possessed a similar role. Nevertheless, it is clear that a number of international conservation organizations are trying to ensure that their role receives due recognition within the new regime.

26 Cites Decision 15.12. (2010) the IPBES and CITES.