

# British Influences on International Environmental Law: The Case of Wildlife Conservation

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## I Introduction: Prince Charles, David Beckham, and the Elephants

On 13 February 2014, the UK Government hosted an international conference on illegal wildlife trade at the Lancaster House in London, with a view to protecting some of the world's most iconic species from the threat of extinction.<sup>1</sup> A brainchild of Prince Charles and his son Prince William, the London Conference, one of the highest-level gatherings ever held on the issue of wildlife crime, was attended by some 50 world leaders, various UN agencies and many conservation organisations, all supported by a flurry of stars including Jackie Chan and David Beckham. Concerned specifically with the issue of poaching of elephants, rhinos and tigers, the summit led to the adoption of a Declaration in which the signatories undertook to take measures to tame demand for illegal wildlife products, strengthen law enforcement and criminal sanctions against poachers, and support the development of sustainable livelihoods for communities affected by illegal wildlife trade.<sup>2</sup>

The spectacle of the British Royals convening a conference in London to address African and Asian heads of states on the need to crack down on wildlife crime is an uncanny one. The spectacle is strange, if we consider that Britain was among the states that voted in 2007 to lift the global ban on ivory trade to allow a one-off legal sale to China of 108 tonnes of ivory, a move widely believed to have contributed to the rapid surge in elephant poaching in the last decade.<sup>3</sup> It is strange also in light of the Royal family's long tradition of enjoying blood sports, an irony made only too apparent when, days before

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1 *London Conference on the Illegal Wildlife Trade 2014* (13 February 2014). For more information, see: <https://www.gov.uk/government/topical-events/illegal-wildlife-trade-2014/about>.

2 *London Declaration on the Illegal Wildlife Trade* (13 February 2014), see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281289/london-wildlife-conference-declaration-140213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281289/london-wildlife-conference-declaration-140213.pdf).

3 Decision 14.77, *14th meeting of the Conference of the Parties to CITES* (The Hague, 2007).

opening the London Conference and proclaiming himself a 'passionate advocate' of wildlife, Prince William was spotted hunting wild boar on the Duke of Westminster's vast estate in Andalusia. For all its apparent strangeness, however, the spectacle of the London Conference is a familiar one too. The international protection of wildlife is a project that has indeed been largely influenced by Britain, and in which British aristocrats, hunters-turned-conservationists, officials, and celebrities have played a major role.

In the year 2015, we are entering the earth's sixth great mass extinction crisis.<sup>4</sup> Present-day efforts to conserve wildlife (and biodiversity more generally) are, except for a few narrowly defined examples, failing. To make sense of this failure that continues despite a proliferation of bilateral and multilateral treaties in recent decades, this chapter examines the history of the international conservation project, with special emphasis on British influences. We begin with the colonial origins of the project and the early twentieth century London hunting treaties (Part I), before considering the lasting influence of these colonial beginnings on international conservation law in the inter-war (Part II) and post-war periods (Part III). In each period, we will see that a variety of British actors – government, colonial officials, diplomats, traders, hunters, scientists and civil society organisations – have been instrumental in shaping international ideas about nature, wilderness, and conservation. A key argument of this chapter is that these (predominantly colonial) ideas have remained entrenched in today's international norms and institutions governing wildlife conservation, rendering them largely inadequate in addressing the problem of species extinction, and biodiversity loss more generally.<sup>5</sup>

The primary focus of this chapter is international conservation law – a discrete branch of international environmental law – with special attention to the governance of animal life. This is partly a reflection of the fact that wildlife conservation is the area of environmental law where British influences have been the most evident, and partly a reflection of the fact that fauna, not flora, has traditionally been the principal concern of conservation efforts. Nevertheless, many of the themes addressed in this chapter – the anthropocentric and Eurocentric nature of environmental protection; the tension between resource

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4 G Ceballos, P Ehrlich, A Barnosky, A Carcia, R Pringle and T Palmer, 'Accelerated modern human-induced species losses: Entering the sixth mass extinction' (2015) 1(5) *Science Advances* 1. This research shows that even at its most conservative estimate, species are disappearing up to 100 times the background extinction rate.

5 This argument is developed in a more detailed and systematic manner in a wonderful book by Rachelle Adam, *Elephant Treaties: The Colonial Legacy of the Biodiversity Crisis* (University Press of New England 2014).

use and resource preservation; the importance of colonial contexts and ideas in the emergence of environmental laws; the dominance of Western ideas and representations of nature – are characteristic of conservation law, and indeed of international environmental law more generally.

The important issues of whaling and marine conservation cannot be addressed here. Despite the role played by British ports and British corporations (e.g. Unilever) in the whaling trade, and the immense influence exerted by British diplomats over the terms of the whaling conventions, as well as the significance of over-fishing and marine pollution, these issues must remain beyond the scope of this chapter due to limitations on space.<sup>6</sup> It should also be noted at the outset that much of what we are tracing here is a history of privileged men, in so far as it is men who have been recorded as the primary actors in the international domain: hunters, administrators, politicians and scientists, who have shaped the terms of what Arjun Appadurai calls ‘tournaments of value’ with regard to the lives of wild animals.<sup>7</sup> Without further research to uncover the significant role of others (women, ‘indigenous people’ and those who have resisted regulation, to name a few), we cannot have a full understanding of Britain’s legacy for the development of international conservation law.

## II Preservation in the Early Twentieth Century: Protecting Animals to Kill Them

Ideas about nature conservation have existed for centuries. The history of international conservation law, however, is one that begins in the second half of the nineteenth century. It was shaped by an essential aspect of the European imperial culture, the importance of which has not been fully recognised: hunting.<sup>8</sup> The meanings of game hunting in the imperial enterprise were multiple

6 Some helpful sources on whaling are: A Gillespie, *Whaling Diplomacy – Defining Issues in International Environmental Law* (Edward Elgar 2005); P Stoett, *The International Politics of Whaling* (University of British Columbia Press 1997); and Malgosia Fitzmaurice, *Whaling and International Law* (CUP forthcoming).

7 A Appadurai, ‘Introduction: Commodities and the Politics of Value’ in A Appadurai (ed), *The Social Life of Things: Commodities in Cultural Perspective* (1988) 21. Appadurai uses this phrase to describe events that determine the status of those involved in an exchange (in our case the event could be a hunt or a conservation conference, and the exchange the successful killing of large game or the comparison of administrative reports).

8 On the significance and meanings of hunting in the imperialism of the nineteenth and twentieth centuries, see generally J MacKenzie, *The Empire of Nature: Hunting, Conservation and British Imperialism* (1997).

and complex. For colonial administrators and military officers, killing for sport was not simply the standard recreation. It came to be regarded as an essential privilege of serving in Africa and Asia, a welcome release from social conventions and the routine of colonial service, 'relegating work to the sidelines, as a disagreeable duty to be fitted in among hunting experiences'.<sup>9</sup> To European elites, at home and in the colonies, the hunt had undeniable character-forming qualities, imparting Christian morality and (manly) virtues of bravery and composure required of noblemen and representatives of the crown. As a form of para-military training, it promoted physical fitness, invigorating and strengthening young men posted in 'unhealthy climates'.<sup>10</sup> It enabled these same men to display and demonstrate the use of their guns to local villagers. To the commercial elites of the port cities, hunting was a useful means of social bonding within colonialist circles, and social bridging with local tradesmen. Hunting was also, of course, the basis of an enormously lucrative trade in ivory, skins and feathers. The exotic nature of elephants, lions, rhinos and zebras spurred the desire and demand for these products in international markets, as they became incorporated in the luxury goods (clothing, hats, rugs, furniture and decorative objects) of the European wealthy. The trade in exotic products, most of all in elephant ivory, became a foremost source of revenue for many colonial governments and, as prices rose, served to finance further penetration of colonial territories by missionaries, prospectors and entrepreneurs.<sup>11</sup>

Humans, to be sure, have always hunted wild animals, whether for business, pleasure or subsistence. In the imperial context of the nineteenth century, however, hunting gained cult status, a symbol of European dominance over colonial territories and their inhabitants. Nowhere was the hunting cult more prevalent than in the British Empire, where it became the emblem of the style in which Britain governed the human and natural worlds.<sup>12</sup> In the British possessions, the hunt was a ritualised display of authority and a core component of the civilising mission: 'wild animals represented the obstacles that had hitherto prevented colonial territories from joining the march of progress, and that had to be eliminated before their native territories could enjoy the blessings of

9 Ibid 168.

10 On imperial health anxieties, see generally J Beattie, *Empire and Environmental Anxiety: Health, Science, Art and Conservation in South Asia and Australia, 1800–1920* (Palgrave Macmillan 2011).

11 M Cioc, *The Game of Conservation: International Treaties to Protect the World's Migratory Animals* (Ohio University Press 2009) 4; D Hughes, *An Environmental History of the World – Humankind's Changing Role in the Community of Life* (Psychology Press 2001) 126.

12 H Ritvo, 'Destroyers and Preservers – Big Game in the Victorian Empire' [2002] *History Today* 33.

European civilisation'.<sup>13</sup> At home, hunting novels, lecture circuits and trophy exhibitions became the source of immense prestige for game hunters, as well as stirring nationalist and expansionist sentiments.<sup>14</sup>

For a while, controlling the hunt seemed unnecessary. Game was plentiful and killing wild animals was perceived as a useful service to human communities, clearing swathes of land for settlement or agriculture. By the middle of the nineteenth century, however, the passion for hunting started to have visible impacts on populations of wild animals. When breech-loading and magazine rifles began to be used, the problem became difficult to ignore. These high-velocity weapons, powerful enough to obliterate entire herds in a short period of time, lead to the mass killing of hundreds of thousands of animals in a short period of time, in what some have called a true 'killing frenzy'.<sup>15</sup> Travelers, colonial officials and natural historians began to sound a note of alarm and alerted their governments to the rapid and spectacular decline in animal populations.<sup>16</sup> With media reports of the dying fauna of the empire, the problem became an issue of immense public concern and of international debate in the imperial metropolises.<sup>17</sup> As a result, a stream of game regulations (heavily influenced by English game regulations enacted during the enclosure movement) appeared in the last two decades of the century, most notably in British

13 Ibid.

14 See, for example, R Gordon-Cumming, *Five Years of a Hunter's Life in the Far Interior of South Africa: With Notices of the Native Tribes, and Anecdotes of the Chase of the Lion, Elephant, Hippopotamus, Giraffe, Rhinoceros, etc.* (Harper and Brothers 1850); F Selous, *A Hunter's Wanderings in Africa: Being a Narrative of Nine Years Spent Amongst the Game of the Far Interior of South Africa* (Richard Bentley and Son 1881); C Whitehead, *The Adventures of Gérard the Lion Killer: Containing a History of His Ten Years' Campaign Among the Wild Animals of Northern Africa* (Derby and Jackson 1856).

15 Cioc (n 1). Though figures are not reliable, colonial sources estimate that some 65,000 Africans elephants were killed yearly in the 1880s and 1890s. See Adam (n 726) 20.

16 See the diplomatic correspondence between colonial officials and the Foreign Office, as recorded in *Correspondence relating to the Preservation of Wild Animals in Africa*, Parliamentary Papers, vol. lxxix, 25 (1906).

17 On 27 May 1890, *The Morning Post* of London published a lengthy piece on the extinction of the lion, reporting that 'the species has disappeared from a great number of places where it was formerly found and has diminished in an extraordinary degree everywhere ... The wild fastnesses which have hitherto afforded shelter to the king of beasts are opened up, and the scientific weapons of his enemy, man, seal his fate ... Civilisation and the rifle are too much for the lion, and though it is impossible to say when it may come, the end is nonetheless inevitable'; 'The Extinction of the Lion' *The Morning Post* (London, 2 May 1890) 6.

and German territories, limiting and occasionally prohibiting European hunting parties.<sup>18</sup>

The limits of a colony-by-colony approach to conservation became quickly apparent however. Prohibitions imposed in one colony were too easily bypassed by smuggling animal products in neighbouring territories, undermining the efficacy of game laws and providing an unfair advantage to colonies with no hunting regulation (a classical 'level the playing field' problem).<sup>19</sup> British and German officials alerted their governments to the problem, calling for greater international co-operation and the harmonisation of game laws in Africa. First developed by Hermann von Wissmann – an explorer, hunter and the ruthless governor of German East Africa – the idea of an international conference was received favourably by Lord Salisbury, then Prime Minister and Foreign Secretary of the UK. At his insistence, and owing to the availability of experts (hunters, naturalists, zoologists and so on) in the British imperial capital, London was chosen as the location for holding the 1900 London Conference on the preservation of wild animals in Africa.<sup>20</sup>

Dubbed by some as the 'first-ever international environmental conference', the London conference was neither truly international nor genuinely conservationist. Deeply influenced by the colonial context, its internationalism was confined to the circle of 'civilized' European imperial powers: Germany, France, Belgium, Spain, Italy, Portugal and, most pre-eminently, the UK. Africans were notably absent as Liberia and Abyssinia – the only two independent African countries of the day – were not invited to the proceedings. Hunting

18 In 1890, the first imperial governor of German East Africa, Julius von Soden, declared the East African coast closed to European sportsmen and African or Zanzibari caravans. In 1891, the British Imperial East Africa Company forced all sporting expeditions to apply for a permit at its head office in London. In 1895, a licensing system was introduced in the district of Moshi near Kilimanjaro charging an annual fee of 500 rupees for the right to hunt elephants. Similar game regulations were introduced in the Cape Colony and the Transvaal in 1858, 1891 and 1894. See B Gissibl, 'German Colonialism and the Beginnings of International Wildlife Preservation in Africa' (2006) 3 *German Historical Institute Bulletin Supplement* 121, 124; and Cioc (n 732) 29.

19 Writing to Lord Salisbury, Alfred Sharpe – acting commissioner of the British Central Africa Protectorate – highlighted the limits of unilateralism and called for all powers holding territory in Africa to agree on common hunting regulations, 'for one power alone, or two or three, to pass such regulation would be useless unless all the others joined in it, as it would simply result in ivory no longer being exported through those particular territories where it was forbidden, but going by new channels to the territories which had no such regulations'. Quoted in Cioc (n 732) 33.

20 Gissibl (n 739) 130–31.

interests were the driving force behind the conference, a fact revealed, among other things, by the list of participants, composed almost entirely of hunters-turned-conservationist and colonial administrators, all of them concerned with the continued supply of valuable species for future generations of European hunters.<sup>21</sup>

Chaired by Sir Clement Hill, an experienced hunter and the head of the African Protectorates Department, the proceedings were dominated by antagonisms between Britain and Germany, on the one hand, which sought to 'civilise' the hunt to allow its continuation, and France, Belgium and Portugal, on the other hand, which were primarily concerned with preserving their trade interests. Having just concluded the 1892 *Congo Basin Convention*, by which they created uniform export duties on elephant tusks, France, Belgium and Portugal were not prepared to modify their existing arrangements to make room for Anglo-German proposals aimed at curtailing commercial hunting. The outcome of the conference was the adoption of the *London Convention for the Preservation of Wild Animals, Birds and Fish in Africa* ('1900 London Convention'), a watered-down treaty marked by compromise and soft language.<sup>22</sup>

The 1900 London Convention enumerates a number of conservation measures that the parties undertake to implement in their respective possessions. Chief among these are hunting prohibitions for certain endangered species, and the creation of publicly controlled game sanctuaries to allow for the regeneration of game stocks ('reserves'). The Convention focuses on a small number of species, nearly all of which are central to sporting and commercial hunting. It operates by listing species in various 'schedules' annexed to the treaty, with varying degrees of protection ranging from complete hunting prohibition (Schedule I) to partial prohibition when young and mothering (Schedule II and III). Animals listed in Schedule IV can be killed 'in limited numbers', whilst those in Schedule V, deemed dangerous to men and cattle, are classified as 'vermin' and can be killed at will. Ironically, the latter category includes the lion and the leopard, two darlings of present-day conservation movements. Whilst giraffes, gorillas and zebras are accorded complete protection, the elephant, for its part, is conspicuously absent from Schedule I, allowing for the lawful killing of (adult) elephants in limited but unspecified numbers.<sup>23</sup>

21 See Cioc (n 732), who speaks of 'game cropping' as the main objective of the conference.

22 London Convention for the Preservation of Wild Animals, Birds and Fish in Africa (adopted 19 May 1900).

23 The Convention, at the insistence of British negotiators, includes a blanket ban on the killing of young elephants and provides for the confiscation by local governments of immature tusks weighing less than five kilogrammes. See 1900 London Convention, Art 2.11.

The Convention further provides for the establishment of game reserves within which the killing of wild animals is prohibited. The control and management of reserved areas are vested in the colonial administration and no mechanisms are envisaged for the protection of traditional rights of people to wildlife and its products.<sup>24</sup> Game reserves are to be established by way of land enclosures. Though this is not explicitly stated, it was clear at the time of adopting the treaty that this would, more often than not, involve the displacement of indigenous communities and the removal of key resources from their control.<sup>25</sup> Additional measures are specified which are meant to reinforce the efficacy of hunting prohibitions and game reserves. These include, among other things, the establishment of close seasons to facilitate the rearing of young, the use of hunting licenses to raise revenue and control access to game, and the prohibition of certain hunting techniques deemed primitive and wasteful (nets and pitfalls), or unethical (poison and explosives).<sup>26</sup>

The 1900 London Convention was ratified promptly and enthusiastically by Britain and Germany, its two initiators. Other signatories, however, failed to ratify it and, with the outbreak of the First World War, the Convention never formally entered into force. Importantly, though, and following intense diplomatic activity by the British Foreign Office, the Convention's principles were largely established in colonial legislation. Britain repeatedly prodded other signatories to tighten up their hunting regulations and game laws in nearly all African colonies were rewritten to conform with the principles of the London Convention, including laws mandating closed seasons, hunting licences and the protection of immature animals. France, Belgium and Portugal, despite their refusal to ratify the convention, amended their hunting regulations too and established protected areas in line with its provisions.<sup>27</sup>

The impact of the 1900 London Convention on the protection of African wildlife was modest by most accounts. Game laws adopted on the basis of the Convention were notoriously complex and onerous to implement, with vast territories requiring constant monitoring and revenues from the international trade in animal products providing a strong economic incentive for laissez-faire. The establishment of nature reserves was often opposed by locals who were dispossessed of their land and of essential means of subsistence, and also

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24 Ibid, Art 2.5.

25 See generally A Kameri-Mbote and P Cullet, 'Law, Colonialism and Environmental Management in Africa' (1997) 6 *RECIEL* 23; and R Neumann, *Imposing Wilderness: Struggles over Livelihood and Nature Preservation in Africa* (2002).

26 1900 London Convention, Art 2.6–9.

27 Cioc (n 732) 39–40. See also P-L Dekeyser, *Les Animaux Protégés de l'Afrique Noire* (1951).

by white settlers for whom wildlife was a nuisance and a cost to agriculture that could not be tolerated. Nature reserves were thus often established in areas considered to be of little economic value, with little or no thought given to ecosystem dynamics and migration patterns, resulting in a 'hotchpotch of poorly-placed, ill-designed megazooos' offering only partial protection to animal populations.<sup>28</sup> The 1900 London Convention was arguably never intended to abolish the large-scale extermination of wild animals in Africa but rather to provide a legal framework within which the symbolic hunt could continue.

Despite this, the significance of the 1900 London Convention on the international conservation project should not be underestimated. The Convention, with its strong Anglo-German imprint, established key concepts and ideas of preservation that came to dominate international conservation efforts in the twentieth century. It transposed legal technologies from English hunting law that have since become core components of international conservation treaties. The listing of species in different schedules/annexes, according to perceived levels of threat and with varying degrees of protection, is one example.<sup>29</sup> Likewise, the reservation of land for wildlife conservation has become a hallmark of international conservation treaties and of wildlife legislation in many African and Asian countries.<sup>30</sup>

The legacy of the 1900 Convention also resides in its focal points and blind spots. Although the Convention speaks of the need to 'preserve the various forms of animal life existing in the wild', its focus is in reality much narrower. It targets a limited number of species, all carefully selected on utilitarian and anthropocentric grounds, either because of their 'iconic' nature, or because they are 'harmless' or, better yet, 'useful to man' (ie white, male hunters).<sup>31</sup> Equally, the convention focuses on a single issue (unregulated hunting) in a way that excludes a host of other considerations such as land-use change or habitat loss

28 Ibid 19.

29 Although the rigid categorisation of species using annexes is problematic from an environmental point of view (in that it makes it difficult to account for complex ecosystem dynamics and the intra and inter-relationships between species) it remains an essential feature of many conservation agreements, most notably the International Convention for the Regulation of Whaling (ICRW) and the Convention on International Trade in Endangered Species (CITES): E Couzens, *Whales and Elephants in International Conservation Law and Politics* (Routledge 2014) 18.

30 The 1933 London Convention on the Preservation of Fauna and Flora in their Natural State and the 1968 African Convention on the Conservation of Nature and Natural Resources, to cite but two examples, both provide for the retention and extension of the nature reserves established under the regime of the 1900 London Convention.

31 1900 London Convention, Preamble.

due to human expansion. The 1900 Convention thus defined conservation, from the start, as a project resting on a patchwork of self-contained, species-specific and issue-specific legislative regimes, a patchwork that is largely unable to embrace the more complex, deep-rooted cultural or socio-economic causes of animal extinction.

The last important legacy of the 1900 Convention lies in the criminalisation of African hunters. The Convention, as was noted above, was never intended to eliminate game hunting but merely to 'civilise' it by imposing the practices and values of nineteenth century aristocratic hunts to colonial territories. Civilising the sport meant, in 1900, excluding Africans from it. The Convention organised this exclusion in important ways. The system of hunting licences ensured tight control over social access to wild animals. Whilst the convention did not bar Africans from holding hunting permits, game ordinances enacted to implement it generally did, either directly by holding that 'natives' could only take part in hunting parties as servants, gun bearers or porters, or indirectly by setting licence fees that indigenous hunters could not afford. Combined with the exclusion of traditional trapping methods and the prohibition to sell firearms and ammunition to African blacks, these provisions worked to turn subsistence hunting into poaching. This tension between white 'hunters' and Asian and African 'poachers' is one that continues to structure the field of wildlife conservation to this day.<sup>32</sup>

### III The Inter-war Period: A Change of Heart

The advent of the First World War brought international conservation efforts to a halt. Shortly after the war, however, Britain played a leading role in reviving these efforts and resuming international cooperation. The British Government was supported and influenced in its diplomatic efforts by various pressure groups, most notably by the Society for the Preservation of the Fauna of the Empire. Known as the 'penitent butchers club' on account of its nucleus of avid hunters, the Society, a London-based organisation established in 1903 with the specific purpose of lobbying colonial governments and ensuring full implementation of the London Convention, had local chapters across a wide swathe of Asia and Africa.<sup>33</sup> In its ranks were hunters, naturalists, officials and aristocrats (including several members of the House of Lords), comprising a

32 For a historical account, see E Steinhart, *Black Poachers, White Hunters: A Social History of Hunting in Colonial Kenya* (James Currey 2006).

33 R Guha, *Environmentalism – A Global History* (Penguin 2000) 46.

pseudo-scientific body that gained the ear of leading government figures, both in imperial metropolises and colonial territories. Supported in its endeavours by renowned scientific advisers, famous honorary members, and an extensive network of overseas correspondents, the Society wielded considerable influence within the corridors of power and its recommendations, most notably concerning the establishment of nature reserves and the tightening of hunting regulations, were largely implemented by colonial administrators.<sup>34</sup>

Following the creation of the International Union of Biological Sciences<sup>35</sup> in 1925 (headquartered in Paris) and an International Conference for the Protection of Nature (also held in Paris) in 1931, Britain (heavily influenced by the 'penitent butchers club') convened a meeting in 1933 in London. There, the British delegation introduced a draft Convention for the Protection of African Fauna and Flora, and invited the colonial powers to a further conference, held at the House of Lords in 1933. It was proposed that the hunting of animals from cars, motorboats and aircraft should be banned. The concept of 'vermin' was removed from the Convention as it was decided that it could not be sufficiently well defined, and animal species deemed worthy of protection were placed into one of two schedules: Class A and Class B.<sup>36</sup> Unlike the 1900 Conference, negotiations at the 1933 Conference quickly led to the adoption of the new treaty, based largely on the British draft.<sup>37</sup> The 1933 Convention was ratified by most parties, with the notable exception of France and Spain, and entered into force in 1936. Its provisions were largely incorporated into legislation in British and other colonial territories. The 1933 Convention was eventually superseded, post-independence, by the 1968 African Convention on the Conservation of Nature and Natural Resources.<sup>38</sup> A critical development in the 1933 Convention was the move away from the establishment of nature reserves (where human activities such as hunting are controlled through the establishment of open seasons, quotas and licences) to a system of national parks (where humans and animals are strictly segregated). Furthermore, a growing interest in the

34 D Prendergast and W Adams, 'Colonial wildlife conservation and the origins of the Society for the Preservation of the Wild Fauna of the Empire (1903–1914)' (2003) 37 *Oryx* 251.

35 This was established in 1925 by P van Tienhoven, the founder of the Netherlands Commission for International Nature Protection, and formally constituted in 1934 as the International Office for the Protection of Nature (which is known today as the International Union for the Conservation of Nature, or 'IUCN').

36 Second International Conference for the Protection of the Fauna and Flora of Africa (May 1938) 26 ['Second International Conference'].

37 1933 London Conference for the Protection of African Flora and Fauna, which led to the Convention Relative to the Preservation of Fauna and Flora in the Natural State.

38 1968 *African Convention on the Conservation of Nature and Natural Resources*.

civilising potential of conservation, both in terms of the aesthetic appreciation of nature, and in terms of the prevention of cruelty, triggered a shift in conservation discourse.<sup>39</sup> The 1933 Convention took on a moralising tone: the ‘wickedly cruel’ character of African hunting methods were noted,<sup>40</sup> and in East Africa ‘natives’ were still forbidden to possess arms of precision altogether.<sup>41</sup>

Britain began convening regular conferences after the 1933 Convention to review reports on progress toward the implementation of the Convention, a diplomatic technique that became a hallmark of later international environmental agreements.<sup>42</sup> From 24–27 May 1938, the Second International Conference for the Protection of the Fauna and Flora of Africa was held at the House of Lords in London in order to review progress on the implementation of the Convention.<sup>43</sup> A committee of experts was established to consider the list of protected species. This was notable as they took into consideration the rate of decline (and consequent threat of extinction) of individual species in making their decisions, rather than solely focusing on charismatic megafauna.<sup>44</sup> Chaired by Lord Onslow, the Conference opened with reports by the delegations as to progress in ratifying the agreement and in establishing national parks and game reserves in their territories. The British delegation reported that it had overseen the creation of important reserves in its dependencies

39 See S Humphreys and Y Otomo, ‘Theorising International Environmental Law’ in A Orford, F Hoffmann and M Clark (eds) *The Oxford Handbook of the Theory of International Law* (Forthcoming), and Bruggemeier, M Cioc, T Zeller (eds) *How Green Were the Nazis? Nature, Environment and Nation in the Third Reich* (Ohio University Press 2005).

40 Distinguished visitors, however, were of course granted exemptions. The acting governor of Kenya, for example, allowed Theodore Roosevelt to undertake massive kills during his visit there in 1909. Prosecutions of Europeans for infringements were rare, despite the fact that the legislation often enacted that one witness was enough and that half the fine should be paid to the informer:

41 Second International Conference (n 757) 132. They were, however, allowed shotguns.

42 ‘Conferences of the Parties’ (COP) usually take place annually or biennially for most multilateral environmental agreements in operation today.

43 Delegations from the Governments of the Union of South Africa, Belgium, Egypt, France, Italy, Portugal the Netherlands and Anglo-Egyptian Sudan were present at the invitation of the United Kingdom of Great Britain and Northern Ireland. Representatives from museums, zoological societies, the Dominions Office, the Foreign Office and the Royal Botanical Gardens in Kew, attended as part of an advisory team to the British delegation.

44 The Committee, to give but one example, recommended the listing of the crested brush rat, a rodent found in the mountains of Abyssinia, Somaliland and Kenya, not because of its ‘majestic’ nature or hunting value (it had none), but simply because ‘its numbers are known to have diminished considerably in recent years’, Second International Conference (n 757) 55.

and territories.<sup>45</sup> An emerging concern with the ‘rights of natives’ can be seen, particularly in the UK Government’s memorandum which notes:

the extent of native habitation should not be such as on the one hand to interfere with the general policy of game preservation within that area or on the other hand to necessitate serious interference in the rights of these natives in the interests of game preservation.<sup>46</sup>

The legacy of this brief period is an interesting one. Not only does the focus shift from managing hunting quotas in nature reserves to the establishment of national parks, there is a growing involvement of scientists and political administrators in the organisational management of the conservation movement. An important shift also takes place in the British outlook toward indigenous inhabitants and toward animals: in a period that sees the rise of independence movements in India and Ireland and the growing independence of the Dominions, the rights of ‘natives’ begin to be taken seriously. At the London Conference in 1933, the British also put forward the idea that new provisions should be added to the Convention regarding the treatment of wounded animals, making it an offence to wound an animal and fail to use all reasonable endeavours to kill it at the earliest opportunity.<sup>47</sup> There was thus a shift towards seeing animals as sentient beings whose treatment – while still reflecting the civility or barbarism of the human – was nonetheless something that had an impact on the individual animal. This emerging sense of the wild animal’s welfare was the culmination of a broader movement in nineteenth

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45 Other Governments reported that they were in the process of establishing additional game reserves. The Tanganyika Government established a national park of some 4,000 square miles on the Serengeti plains. The Governments of Nyasaland, Nigeria, Sierra Leone, Kenya and Northern Rhodesia reported that they were considering establishing national parks. In addition to a large number of existing game reserves across the territories and dependencies, the Government of Uganda established a gorilla sanctuary: *Second International Conference* (n 757) 130–31. In terms of forest conservation, extensive reserves had already been established in Kenya, Uganda, Tanganyika Territory, Northern Rhodesia, Nyasaland, Nigeria, the Gold Coast and Sierra Leone: *ibid* 132. For more on this, see for example Roderick P. Neumann, ‘The Postwar Conservation Boom in British Colonial Africa’ (2002) 7 *Environmental History* 22.

46 *Second International Conference* (n 757) 130.

47 The UK Parliament has enacted a large body of animal welfare regulations over the past 180 years, throughout which the prevention of ‘unnecessary suffering’ remains a recurrent theme: Mike Radford, ‘“Unnecessary Suffering”: the Cornerstone of Animal Protection Legislation Considered’ (1999) *Criminal Law Review* 702.

century industrial England that feminised women, children, domestic animals and pets, attributing characteristics such as innocence and beauty to those beings.<sup>48</sup> Men, on the other hand, dominated public space and were characterised as the protectors of weaker beings (against other marauding men). While hunting has always been characterised as a masculine and territorial pursuit, we can see how this gendered economy is carried over in the transformation of 'butcher' to 'saviour': white conservationists are repeatedly portrayed as civilised, with a heightened aesthetic sensibility that allows them to see the value of both the kingly male lions and elephants, while 'poachers' are portrayed as being uneducated and barbarous, preying on feminised animals (killing mothers and their children).<sup>49</sup>

#### IV Evolutions since WWII: Conservation Goes Global and the Rise of the Scientific Establishment

Wildlife has occupied a relatively unimportant place in the national economy of the past...Now we are witnessing a reversal in national policies.<sup>50</sup>

The immediate post-war period marked a further sea change for international conservation. With the US taking on the rhetoric of nature conservation as part of their new global identity, the Allied states and Germany, together with former colonies and dependencies, began serious work to regulate environmental exploitation.<sup>51</sup> While no environmental body was designated by the United Nations at the time of its establishment, the Food and Agriculture Organisation (FAO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Meteorological Organisation (WMO) and the International Maritime Organisation (IMO) nonetheless had jurisdiction to deal with various environmental issues. In 1946, the International Convention for the Regulation of Whaling was signed.<sup>52</sup> In 1949 the UN convened the

48 See for example YO and C Limon (eds), 'Dogs, Pigs and Children: Changing Laws in Colonial Britain' (2014) 40 *Australian Feminist Law Journal* 163 (special issue).

49 The *Kenya Wildlife Society Report* (1956) is an excellent later example of this.

50 R Connery, 'The Changing Place of Wild Life in the National Economy' in *Governmental Problems in Wild Life Conservation*, doctoral thesis, Columbia University (1935) 15. For another example of the post-war sentiment, see A Tansley, *Our Heritage of Wild Nature: a Plea for Organized Nature Conservation* (CUP 1945).

51 See, for example, T Lekan, *Imagining the Nation in Nature: Landscape Preservation and German Identity 1885-1945* (Harvard University Press 2004).

52 This entered into force on 10 November 1948, with its predecessor being the 1937 International Agreement for the Regulation for Whaling (adopted 2 December 1946). There is a

first global conference on the environment – the Conference on the Conservation and Utilisation of Resources.<sup>53</sup> In 1950 the International Convention for the Protection of Birds was agreed by various European nations,<sup>54</sup> followed by various plant protection agreements and the first treaty to tackle marine pollution.<sup>55</sup> The Third International Conference for the Protection of the Fauna and Flora of Africa was held in 1953. The discussions at this conference had a strong focus on conservation education, as well as a further attempt to consolidate ‘native’ hunting rights.<sup>56</sup>

This was followed some years later by the signing of the Antarctic Treaty by the major powers and claimants to the southern continent.<sup>57</sup> While it is

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wealth of scholarship on this topic (the conservation of whales), but, as noted in our introduction, it is beyond the scope of this chapter to canvass the wide-ranging discussions on cetacean conservation.

- 53 Held in the US there were 706 participants from 52 states present, as well as 22 non-governmental organisations and 152 scientific societies and institutions represented by observers at this 15-day Conference. The Conference was divided into six sections corresponding to the principal resource fields: minerals forests; fuels and energy; water; land; fish; and wildlife resources. Interestingly, this predecessor to international environmental conferences does not frame ‘wildlife’ and ‘resources’ into mutually exclusive categories (as they have been since 1950): Proceedings of the United Nations Scientific Conference, vol. 1, available at: [http://www.archive.org/stream/proceedingsofthe029855mbp/proceedingsofthe029855mbp\\_djvu.txt](http://www.archive.org/stream/proceedingsofthe029855mbp/proceedingsofthe029855mbp_djvu.txt).
- 54 International Convention for the Protection of Birds (adopted 18 October 1950). This Convention was the result of a series of conferences, following on from a 1902 Convention for the Protection of Birds, which was limited in its effectiveness. The 1950 Convention introduced some of the inter-war innovations such as the establishment of protected areas and the promotion of conservation education. Due to the lack of regular conferences, however, progress toward the Convention’s objectives was not recorded and the Convention ultimately failed: M Bowman, P Davies and C Redgwell, *Lyster’s International Wildlife Law* (2nd edn) (CUP 2010) 202–03.
- 55 International Convention for the Prevention of Pollution of the Sea by Oil (adopted 12 May 1954, amended in 1962 and 1969).
- 56 The Third International Conference for the Protection of the Fauna and Flora of Africa (held from the 26 to the 31 October 1953): ‘The Conference recommends that in collaboration with the customary authorities tribal law and written law should be co-ordinated in order that the natives should realize that no other object is sought than that prescribed by their ancestral laws, i.e. the conservation of their meat supply’. (Proceedings, Fourth plenary meeting, at 114). Admittedly this is a very narrow interpretation of the relationships that indigenous people have to the land and to their flora and fauna.
- 57 The Antarctic Treaty (adopted 1 December 1959). In 1917, led by the then Under-Secretary for State for the Colonies Leopold Amery, the British extended its initial territorial claim to the Falkland Islands by declaring sovereignty across all the present-day British

beyond the scope of this brief overview to discuss the contribution of individuals to the negotiation of each of these conventions, one figure is of particular note. Sir Julian Sorell Huxley was a British evolutionary biologist and an early example of a 'celebrity scientist'. Committed to popularising science, he wrote books on biology for general audiences, created radio and television natural history documentaries, and even directed an Oscar-winning film (*The Private Life of the Gannets*). An internationalist, he was appointed first Director of the United Nations Educational, Scientific and Cultural Organization (UNESCO) where he promoted environmental education, and a founding member of the World Wildlife Fund for Nature (WWF).<sup>58</sup> Scientists like Sir Huxley, together with other public figures such as Sir Peter Markham Scott, were instrumental in galvanising public international support and gathering personnel with scientific knowledge and expertise for the conservation movement.<sup>59</sup>

A brief review of the key agreements adopted during the 1970s, 1980s and 1990s shows the rapid evolution of global interest in conservation during this period: the Ramsar Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (1971) and the World Heritage Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) being two prime examples. The Convention on the International Trade in Endangered Species of Wild Flora and Fauna (1973) (CITES), which oversees the import and export of listed species through a system of licensing authorisation, operates very much like the inter-war Conventions, shaped by the British. It must be noted that CITES focuses on *regulating* the trade in endangered

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Territory. The primary reason for this was to be able to regulate and tax the whaling industry in the region; a motivation matched by Norway and noted by other powers. There were seven claimants to Antarctic territory: Britain, Australia, New Zealand, the US, France, Norway and Chile. Britain (unsuccessfully) submitted an application to the International Court of Justice in 1955 to adjudicate between territorial claims by Argentina and Chile, leading to renewed efforts to find a diplomatic solution. Following 18 months of intense scientific co-operation between these parties, the treaty was signed by the UK, the US, the Soviet Union and nine other states. The Treaty designates the Antarctic as a scientific preserve.

58 J Huxley was elected to the post of Director-General of UNESCO in 1946, where he was extremely active: see for example K Waters and A van Helden (eds) *Julian Huxley: Biologist and Statesman of Science* (Texas A & M University Press 2010). Founded in 1961, WWF is the world's largest conservation organization worldwide, working in over 100 countries using both private and public funds.

59 Peter Scott was also a founder of the WWF, and his work contributed to a shift in hunting policy for the International Whaling Commission. He also contributed to the signing of the 1959 Antarctic Treaty.

species and not on eradicating it. Like most conservation agreements, CITES is firmly rooted in the belief that trade in endangered species is 'here to stay' and that a pragmatic approach aimed at controlling the problem's excesses is likely to be more effective than an abolitionist approach. This accommodating attitude/outlook is not unproblematic for a treaty that concerns itself with species protection and biodiversity. While Conferences of the Parties are occasions for heated debate between conservationists (who believe in managed resource exploitation) and preservationists (who believe in the exclusion of humans from use of a particular resource altogether), CITES nonetheless remains focused on the monitoring of the movement of animals between states, with some capacity for education (in developing countries). The *Convention on Biological Diversity* (1992) opened for signature at the Earth Summit in Rio de Janeiro, entering into force in 1993. The Convention's focus on sustainable development, equitable sharing of genetic resources, and the conservation of biological *diversity* (rather than on the individual species) was innovative, leading a more general shift in international environmental policy toward ecosystem management.<sup>60</sup> The Convention on the Conservation of Migratory Species of Wild Animals was adopted in 1997, recognising explicitly that cross-border conservation was crucial to the successful management of wild animals. More recently, of course, much of the public discourse around conservation has been dominated by climate change, and this is reflected in the United Nations Framework Convention on Climate Change, which entered into force in 1994 and operates many working groups on biodiversity conservation.<sup>61</sup>

Despite the continuing influence of British experts and institutions on the development of international conservation law throughout the second half of the twentieth century, the explicit hierarchical relationship between the centre (London) and the periphery (colonies and dependencies) fades out of the public record during the post-war period.<sup>62</sup> Alongside the more internationalist

60 The Convention to Combat Desertification (signed 14 October 1994). For a theoretical analysis of desertification management, see J Beattie, 'Thwarting Imperial Agricultural Development: The Spectre of Drifting Sands, 1800–1920s' in *Empire and Environmental Anxiety* (n 731). The International Tropical Timber Agreement was signed in 1994, and similarly to CITES, seeks to monitor the trade in tropical timber. It has had limited success in reducing deforestation.

61 United Nations Framework Convention on Climate Change (adopted 9 May 1992).

62 To this day there is a preponderance of employees at the secretariats of environmental agreements who are nationals of the post-war Allied powers. The impact of foreign aid funding upon conservation can also be traced through reports such as the recent House of Commons' Audit Committee Report, 'The Impact of UK Overseas Aid on Environmental Protection and Climate Change Adaptation and Mitigation' (Fifth Report of Session, 2010–2014).

tone of conference proceedings emerges a shift in scientific concern, from that of protecting individual dominant species to that of studying and managing whole ecosystems. This shift is explained, in part, by the rise of the scientific establishment, progressively displacing the old hunting and colonial elites.<sup>63</sup> The civilising potential of education and aesthetic appreciation of nature, to finish, become central themes of post-war conferences and agreements, highlighting the gradual abandonment of the strict hunting ethos of early conservation treaties.

## V Conclusion – Saving the Colonies from Themselves: 1900–2014

As the foremost industrial state and colonial power, the UK played a central role in formulating and implementing animal protection treaties, most visibly perhaps in the first half of the twentieth century. The UK hosted the 1900 and 1933 conferences on African wildlife, and British conservationists played an instrumental role in establishing many of Africa's most famous nature parks and reserves. The Foreign Office was later highly influential in negotiating key international instruments, most notably the whaling treaties, while British diplomats, scientists and experts took on leading roles in post-war international institutions. As a result, international conservation law has been defined in large part by British (and later Anglo-American) notions and techniques of animal preservation. This British legacy was not merely conceptual or legal/technical. At a more fundamental level, Britain embedded the international conservation project within distinctly colonial political and symbolic economies, the effects of which continue to be felt today. The 1900 and 1933 Conventions and their policies, in particular, were driven – perhaps unsurprisingly – by European (or Euro-American) desires and fantasy structures about wilderness, nature, and the role of (civilised) men within it. The abundance of texts that surround the adoption of the Conventions (*travaux préparatoires*, diplomatic correspondences, game ordinances, and so on) reveal a vision of Africa as quintessentially natural, a nature 'in a state of nature', an empty, unsocialised, primordial nature uncorrupted by modernity.<sup>64</sup> In this vision, African animals and landscapes form a kind of 'lost Eden', the preservation of which rests on

63 Many influential scientists, such as Huxley, were nevertheless members of the British aristocracy.

64 On the global symbolic and political economies of African wildlife conservation, see generally E Garland, 'The Elephant in the Room: Confronting the Colonial Character of Wildlife Conservation in Africa' (2008) 51 *African Studies Review* 51.

Europeans as a matter of imperial legacy. African wildlife is never conceived as distinctly African but rather as a sort of common heritage of mankind, to which all (civilised) men are somewhat entitled. This vision of African wilderness allows, and indeed demands, that Africans be excluded from hunting and conservation, an alienation which the London Conventions organise in important ways, through the criminalisation of traditional hunting techniques, the system of hunting licences, and the establishment of nature reserves.

Not only did a discourse of Africans as being incapable of ‘managing’ their environments prevail during the interwar and post-war periods, but it also persists to this day. The development of international conservation law since 1915 include the emergence of a moralising tone that associated hunting with ‘uncivilised’ natives and a machismo associated with the cruelty of war. Furthermore, the gendered discourse of the hunt diverged to project masculinity upon the saviour-conservationists, personified by the ‘penitent butchers’ and newer members of the European elite who were versed in science. Alongside decolonisation movements around the world, a neo-colonial romanticisation of the exotic (symbolised by the fauna and landscapes of former colonies) translated into a focused attempt to civilise the global public through an education in aesthetic appreciation. While the explicit hierarchical relationship between the centre and the periphery gradually fell away from the texts of post Second World War agreements, the association of conservation with nationalist sentiment remains. International trade obligations have also become a much stronger feature of how international conservation agreements such as CITES and the CBD are updated and implemented, and the role of international non-governmental organisations with large public memberships (such as Greenpeace and the WWF, to name two), has increased.

As was noted above, important changes have occurred since the early hunting treaties. Modern conservation agreements are no longer as openly racist as they used to be. The 2014 London Conference on Wildlife Trade nevertheless serves to highlight the continued influence of this colonial legacy and how remarkably stable some of these themes have remained in the modern conservation project. The conference, as with previous London summits, focuses on a single, narrow frame that defines conservation efforts in a way that is not dissimilar – if only symbolically – to early twentieth century hunting conferences.<sup>65</sup> Concerned exclusively with the problem of illegal wildlife trade, the 2014 conference casts Africans as dangerous poachers and Asians as irresponsible

65 On the importance of ‘framing’ in promoting particular evaluations and conservation policies, see A Nollkaemper, ‘Framing Elephant Extinction’, *ESIL Reflection*, vol. 3, issue 6 (2014), available at: <http://www.esil-sedi.eu/fr/node/644>.

■ Please check the URL.

or irrational consumers of elephant/rhino/tiger products, whilst Europeans endorse the role of civilising agents, alerting and educating the world to the inhumanity of wildlife crime. Characteristically, the 2014 conference offers to resolve the problem of animal extinction through series of Western interventions, from the use of GPS and drone technologies, to carefully orchestrated marketing campaigns and capacity building activities for judges and prosecutors in states where wildlife crime is endemic. Europe's historical responsibility in bringing elephant, rhino and tiger populations to the brink of extinction is of course conveniently ignored, whilst Prince William's opening speech brings out familiar themes of stewardship, legacy, redemption and (white men's) entitlement to a timeless African wildlife:

Humanity is less than humanity without the rest of creation ... It is shocking that future generations may know a world without these magnificent animals ... I want my children to be able to experience the same Africa as I enjoyed as I child ... Let us be part of the movement that can tell our children and grandchildren that we have saved these extraordinary species for them ... We will stay the course with you until you succeed.<sup>66</sup>

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66 Available at: <http://www.princeofwales.gov.uk/news-and-diary/the-duke-of-cambridge-attends-reception-the-eve-of-the-london-conference-the-illegal>.  
■ Please check the URL.

