

The Law Relating to Migratory Birds of Prey

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INTRODUCTION

Legislation for the protection of birds of prey is in existence in many countries; however, the effectiveness of its enforcement varies from one country to another. Consequently, migratory species have a special need for international co-operation for their legal protection. This paper examines the current state of the law in respect of the Middle East and, to some extent, other Mediterranean countries.

The migration of birds has been observed and marvelled at over the centuries. It is mentioned in biblical writings and Hill (1987) quotes a 13th century German writer who attached a parchment note to the leg of a swallow saying: "O Swallow, where do you spend the winter?" It returned in the spring with the reply: "In Asia, at the house of a certain Peter". Since that time, the Middle Eastern migratory routes have been studied and there are a number of maps available, one of the most recent being a poster (ICBP 1985a) which shows the flyways between Africa and Europe; others appear in WSPA (1983), Bruun (1985), Leshem (1985) and Porter & Beaman (1985).

LEGAL PROTECTION

It is well-established that migratory raptors require legislative protection and indeed it is well-known that many countries have such legislation and that international agreements exist on the subject. To examine the present legal situation, it is necessary to look at two levels:

1. International

This is to be found in the form of Conventions, with either world-wide, regional or bi-lateral membership.

2. National

To identify the extent and efficacy of national bird protection laws, one must ask certain questions:

- a) Does legislation exist? If so, what form does it take - parliamentary statute or ministerial decree? Is it national or regional?
- b) Which species are protected? All raptors or certain species?
- c) What form does protection take? Close season or complete protection? Does it prohibit shooting, trapping and other forms of killing or taking? Is aviculture, falconry, taxidermy or trade permitted?

d) Are there officers with powers of enforcement, such as police, wardens, rangers, voluntary organisations? Is the law in fact enforced?

Information on legislation relating to migratory birds is available from various sources:-

1. Government departments, embassies or high commissions. Sometimes legislation is readily available; in other cases, not. Copies are usually available from government printers.
2. Local conservation societies may supply the legislation itself or a summary, and are able to comment on the application or effectiveness of the law.
3. The International Union for Conservation of Nature and Natural Resources (IUCN) maintains, at its Environmental Law Centre in Bonn, a computer data bank on wildlife conservation law. This shows the relevant legislation, species protected and type of protection.
4. Literature: Information (although not the actual legislation) on national bird protection law appears in Woldhek (1978); IUCN (1986a) provides information from its data bank on conservation legislation for Africa and Robinson (1987 & this volume) provides the bird of prey protection laws for that continent.

International conventions are set out in IUCN (1985a) and discussed by Lyster (1985) and IUCN (1986b). The text of a convention is also often incorporated in the legislation of countries which have ratified it.

NATIONAL LEGISLATION

Many countries have legislation protecting birds of prey; although such laws may not refer specifically to those which are migratory, such species are often covered by protection given to all birds of prey.

This has not always been the case. Some of the earlier legislation protected only birds "useful to agriculture" such as storks and swallows; those classified in French as "nuisible" or harmful, including raptors, were not protected (Lyster 1985). The term "useful" still appears in the laws of Lebanon, Jordan and Egypt, although birds of prey are now protected in these countries (IUCN continuing). This is derived from the concepts of the Convention for Protection of Birds Useful to Agriculture 1902, the first international conservation agreement which, incidentally, counted owls as "useful" species.

In his summary of bird hunting regulation, Woldhek (1978) reports that most Mediterranean countries have laws to protect raptors except Malta, Greece, Cyprus, Algeria and Morocco. He reported that migratory birds, as such, have legal protection in the Lebanon but that this is not enforced, a view confirmed by WSPA (1983). Since 1978, the EEC Directive on the Conservation of Wild Birds (1979) has come into force in (*inter alia*) France, Italy, Spain and Greece (although the former two countries have been referred to the European Court of Justice for failure to implement the Directive fully, and the Berne Convention (COE 1979) has been signed by all members of the Council of Europe except Malta and Iceland, although not yet ratified by Belgium, Cyprus and France. The EEC and Finland are also signatories.

Raptors are most at risk from trapping and shooting for sport, for taxidermy and, in some countries, for falconry, although in common with other species they face other hazards (MacDonald & Goriup 1985). Woldhek (1978) reported that enforcement was generally ineffectual except in Israel, Mallorca, Turkey and Tunisia, although some countries had a limited amount of control; the prospect was particularly bleak in Egypt, Italy, Jordan, Lebanon and Malta. Recent personal correspondence and discussion suggest that, while the situation has not greatly changed in countries such as France, Italy or Malta, great efforts are being made by conservationists to educate public opinion and encourage law enforcement. Spain has recently incorporated the EEC Birds Directive into its legislation and there is much enthusiasm for raptor conservation amongst biologists in Spain. In Cyprus, however, there is very little enforcement at present. Tunisia's law on bird protection has been enforced for some 10 years now, largely due to the energy of members of the Association des Amis des Oiseaux in educating the public and lobbying the government. Even so, they have noted illegal trade in birds of prey and the destruction of nests by shepherds, who consider raptors harmful. The traditional taking of Sparrowhawks at Cap Bon for falconry is permitted by law but is now supervised (AAO 1986).

To return to the Middle East, in Israel, protection is given to all birds of prey under the Wildlife Protection Law of 1955. The Act makes the use of traps, nets and poison (*inter alia*) illegal. Taking

for trade, taxidermy (unless under permit), falconry and aviculture are illegal. It is reported that there is little trouble from trapping but poisoning, arising from agricultural use of pesticides, causes a problem. Energetic support for raptors is provided by the Israel Raptor Investigation Centre and the Society for Protection of Nature in Israel.

It is clear that the three most important factors in the improvement of migratory raptor protection are conservation studies, public education and legal protection.

INTERNATIONAL LEGISLATION

One must look at the four major worldwide Conventions, which provide the legal structure for the IUCN World Conservation Strategy, to consider their contribution to the legal protection and conservation of migratory raptors. They are examined at length by Lyster (1985) and, briefly but within the present context, by Osterwoltdt (1986).

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Washington Convention).

This controls the international trade and movement in endangered species, including birds of prey. Its restrictions on trade are intended to stem the demand for, and discourage the taking of, such birds from the wild and are therefore beneficial to migratory raptors although that may not be its main purpose.

2. Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), and

3. Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention).

These two Conventions are intended to provide habitat, rather than species, protection; nevertheless, where areas of land are protected, some shelter may also be awarded to migratory birds of prey.

4. Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention or CMS).

The Bonn Convention is specifically designed to provide international co-operation in the protection of endangered migratory species. At present very few species of raptors are covered by it. However, it has potential value for the future and merits more detailed examination. The Convention came into force on 1 November 1983 and the first meeting of the Parties to the Convention was held in October 1985 (CMS 1985), with representatives from the 18 member countries (including Israel, Egypt, Italy and Spain), while 45 other countries (including Cyprus, Morocco and France) sent observers.

The Convention makes provision for establishing the "conservation status" of migratory species and the "range states" through whose country any particular species passes on its journeys. It provides for range states to make agreements which would deal with conservation, habitat protection and illegal killing or taking.

The Convention allows for the identification of "endangered" migratory species and for their listing in Appendix I on the basis of scientific evidence. "Endangered" is defined in the Convention as "in danger of extinction throughout all, or a significant portion, of its range". This definition should be compared with that of "endangered" as "taxa in danger of extinction and whose survival is unlikely if the causal factors continue operating", which is used in a broader context by the IUCN (IUCN 1985b). The lists of species classified as endangered by CMS and by IUCN do not entirely correspond at present.

Range states have a duty to:

- a) conserve habitats important for the survival of the species to be protected;
- b) prevent or minimise adverse activities or obstacles which seriously impede or prevent the migration of a species; this includes activities such as shooting and trapping;
- c) prevent, reduce and control other factors endangering the species (the introduction of exotic species is mentioned but other factors include pollution, building or tourist development).

Range states are obliged to prohibit the "taking" of migratory species. This is defined as "taking, hunting, fishing, capturing, harrassing, deliberate killing or attempting to engage in such conduct". Exceptions are made for taking for scientific purposes, propagation, the needs of traditional subsistence users or for exceptional purposes which do not "operate to the disadvantage of the species".

Appendix II of the Convention lists species which have an "unfavourable conservation status" and are in need of international agreements for their conservation and management. It may also include species which would significantly benefit from an international agreement. Species may appear on both Appendices.

The Convention indicates the areas which such agreements should cover, of which the most important are:-

- a) conservation and management plans with periodic reviews of the conservation status and adverse factors;
- b) scientific research, e.g. ecology and population dynamics, with exchange of information;
- c) habitat restoration and protection;
- d) elimination of adverse activities and obstacles to migration and the prevention of illegal taking;
- e) reintroduction of endangered species;
- f) publicity for agreements.

The Convention is very much in its early days and few birds of prey are listed on the Appendices to date. Appendix I includes *Haliaeetus albicilla* (White-tailed Eagle) and *Haliaeetus pelagicus* (Steller's Sea Eagle). At the 1985 meeting it was proposed, but not accepted, to add *Aquila heliaca* (Imperial Eagle) and *Falco cherrug* (Saker Falcon), the former turned down for lack of scientific information and the latter because it might deter other countries from joining the Convention. More raptors are listed in Appendix II, namely any migratory species of the *Cathartidae*, *Pandionidae*, *Accipitridae* and *Falconidae*. A format has been prepared for proposals for additions to, or removals from, the Appendices, which specifies requirements for biological, ecological and legal data.

Little, if anything, has yet been done to implement the Bonn Convention in respect of birds of prey and, in common with the other world conservation Conventions, it lacks the means of enforcing its provisions and must rely upon public, political and diplomatic pressure to persuade member states to implement its provisions. There is, however, hope that eventually agreements will be made between range states, and a model on which they might be based has been produced by IUCN (1983).

Regional conventions on migratory species have been in existence in other parts of the world for many years, the first being the Convention for the Protection of Migratory Birds 1916 made between Canada and the USA. Since then other agreements have been made involving variously the USA, Japan, Canada, Mexico, Australia, the USSR and India (Kiss 1976; Lyster 1985). The EEC Birds Directive (EEC 1979) requires member countries to provide for the needs of "regularly occurring migratory species" which are not listed in Annex 1 to the Convention as subject to special protection; the Council of Europe Berne Convention (COE 1979; Lyster 1985) requires special attention to be given to the habitat required by migrants.

CONCLUSION

It is clear that, despite the fact that there is legislation in many countries protecting birds of prey, this is often only of limited effect. Such countries should be urged to re-examine their legislation and some might consider more comprehensive laws. Governments should also be urged to give more attention to the enforcement of their laws. This may come from pressure within, from conservationists, both professional and amateur, and from public opinion expressed by those who have been educated in the values of protection (Verheught 1986). The European Committee for the Prevention of Mass Destruction of Migratory Birds set up by ICBP represents many conservation and animal welfare organisations and provides educational and publicity materials and equipment for bird conservation in Southern European countries (WSPA n.d.; Verheught 1986).

Pressure may come from outside a country in the form of inter-governmental diplomacy or from national or international public opinion or pressure groups. The existence of the major inter-

national Conventions, despite their lack of enforcing powers can, if they have a Secretariat, provide support finance and advice. The Bonn Convention is very young but holds potential.

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REFERENCES

- AAO 1986. Assemblée Générale Ordinaire de l'Association. 10ème Anniversaire (Report). Les Amis des Oiseaux, Tunis.
- BRUUN, B. 1985. Raptor Migration in the Red Sea area. In: I. Newton and R. D. Chancellor 1985 (eds.) *Conservation Studies on Raptors*. ICBP Technical Publication No. 5, Cambridge.
- CMS 1985. *Convention on the Conservation of Migratory Species of Wild Animals*: (CMS). Proceedings of the First Meeting of the Parties, Vol 1. Secretariat of the Convention, Bonn.
- COE 1979. *Convention on the Conservation of European Wildlife and Natural Habitats 1979*. Council of Europe, Strasbourg.
- EEC 1979. *Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds*. Official Journal Vol. 22 No. L103 of 25 April 1979.
- HILL, R. 1987. *Both Small and Great Beasts* (2nd edn.). Universities Federation for Animal Welfare, Potters Bar.
- ICBP 1985a. *Flying Visitors. Migratory Birds of Europe and Africa* (Map). ICBP, Cambridge. Also in *Naturopa* 54: 16.
- IUCN (continuing). Computer data bank on conservation legislation.
- IUCN 1983. *Elements of an Agreement on the Conservation of Western Palearctic Migratory Species of Wild Animals*. Environmental Policy and Law Paper No. 21. IUCN, Cambridge and Gland.
- IUCN 1985a. *Status of Multilateral Treaties in the Field of Environment and Conservation*. Environmental Policy and Law Occasional Paper 1. IUCN, Cambridge and Gland.
- IUCN 1985b. *Threatened Birds of Africa and Related Islands*. The IUCN Red Data Book Part 1 (3rd edn.). N. J. Collar & S. N. Stuart (eds.). ICBP/IUCN, Cambridge.
- IUCN 1986a. *African Wildlife Laws*. Environmental Policy and Law Occasional Paper 3. IUCN, Cambridge and Gland.
- IUCN 1986b. *Migratory Species in International Instruments: An Overview*. Environmental Policy and Law Occasional Paper 2. IUCN, Cambridge and Gland.
- KISS, A. C. 1976. *Survey of Current Developments in International Environmental Law*. IUCN Environmental Policy and Law Paper No. 10. IUCN, Morges.
- LESHEM, Y. 1985. **Israel: an international axis of raptor migration**. In: I. Newton & R. D. Chancellor 1985 (eds.). *Conservation Studies on Raptors*. ICBP Technical Publication No. 5, Cambridge.
- LYSTER, S. 1985. *International Wildlife Law*. Grotius, Cambridge.
- MACDONALD, A. & P. GORIUP 1985. *Migratory Birds: Problems and Prospects in Africa*. 14th Conference of the ICBP European Continental Section, ICBP, Cambridge.
- OSTERWOLDT, R. 1986. International Agreements. *Naturopa* 54: 11-13.
- PORTER, R. F. & M. A. S. BEAMAN 1985. A résumé of raptor migration in Europe and the Middle East. In: I. Newton & R. D. Chancellor 1985 (eds.). *Conservation Studies on Raptors*. ICBP Technical Publication No. 5, Cambridge.
- ROBINSON, P. R. 1987. *Legal Status of Diurnal Birds of Prey in Africa*. RSPB, Sandy.
- VERHEUGHT, W. 1986. Education. *Naturopa* 54: 28-30.
- WOLDHEK, S. 1978. *Bird Killing in the Mediterranean*. European Committee for the Prevention of Mass Destruction of Migratory Birds, Zeist.
- WSPA (undated). *Slaughter of Migratory Birds in Europe and the Middle East*. Information sheet. World Society for the Protection of Animals, London.
- WSPA 1983. The Massacre of Birds in Lebanon. *Animals International* 111, 11: 204.

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