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**A Comparative Study of
Wildlife Law in the UK and Japan
and the Differences in a Cultural Context**

Mari Momii

Submitted as a Ph.D. Thesis
Kent Law School
University of Kent at Canterbury
November 2002

Abstract

The thesis examines the implementation and the enforcement of CITES in the UK and Japan, in order to ascertain whether different cultural traditions influence attitudes to conservation.

In international wildlife law, the implementation of the primary conservation concept of sustainable use is subject to varying interpretations, with anthropocentrists emphasising the utilitarian and ecocentrists the precautionary approach. Japan belongs to the 'sustainable user' group, and the UK and many other Western countries to the 'protectionist' group. The examination of national implementation and enforcement of CITES in the UK and Japan reveals that the UK's approach is more effective and protective than that of Japan. Japan's implementation of CITES is a fulfilment of the minimum obligations required by CITES, and its approach is less effective and more utilitarian than the UK's.

The realities of conservation in the UK and Japan contradict the image of the 'East' and the 'West' held by many, including some ecocentrists, who consider Eastern cultural traditions to be 'ecological' whilst the Western traditions provide for 'exploitative' attitudes toward nature. The examination of Christianity and rationalism reveals that although these factors may provide a basis for inherently anthropocentric and therefore 'exploitative' attitudes toward nature, current conservation principles, including ecocentric concerns, also arose from them. On the other hand, although Shinto and Buddhist views of nature can provide an 'ecocentric' basis for conservation, they are not inherently 'ecological' or animal-friendly, and the Japanese view of nature has aspects that are not compatible with 'science' as developed in the West and currently accepted internationally.

The thesis concludes that the conservation approach taken by the UK and Japan differ, and that each approach reflects different cultural traditions. The thesis suggests that these cultural factors should be taken into consideration by both Japan and the 'West', in order to seek a way forward in reconciling different views of conservation.

Table Of Contents

| | |
|---|------|
| Abstract | i |
| Table Of Contents..... | ii |
| Acknowledgements..... | ix |
| List of Abbreviations | xi |
| Table of Legislation | xiii |
| Treaties and Conventions..... | xiii |
| European Legislation | xiii |
| UK Statutes | xiii |
| UK Statutory Instrument..... | xiv |
| Japanese Law..... | xiv |
| Japanese Enforcement Order..... | xv |
| Table of Cases | xvi |
| Chapter 1 Introduction | 1 |
| 1.1. Introduction | 1 |
| 1.2. Research Objectives..... | 3 |
| 1.3. Terminology | 5 |
| 1.4. Methodology..... | 6 |
| 1.5. Research Area..... | 8 |
| 1.6. Thesis Structure | 15 |
| 1.7. International Theoretical Context: The Development of Values and Concepts in International Wildlife Law | 15 |
| 1.7.1. Anthropocentrism and Ecocentrism..... | 16 |
| 1.7.2. Early Treaties..... | 17 |
| 1.7.3. The Stockholm Conference | 19 |
| 1.7.4. Between Stockholm and Rio | 20 |
| 1.7.5. UNCED and The Biodiversity Convention..... | 21 |
| 1.7.6. 'Sustainable Use' and the Precautionary Principle..... | 23 |
| 1.8. Practical Context: Ideological Discrepancies | 26 |
| 1.8.1. CITES..... | 28 |
| 1.8.2. The African Elephant | 30 |
| 1.8.3. Tigers | 34 |
| 1.8.4. Sustainable Use, the Precautionary Principle and Science | 36 |
| 1.8.5. The 11 th Conference of Parties | 37 |
| 1.9. Conclusion..... | 39 |
| Chapter 2 CITES Implementation and Enforcement in the UK..... | 41 |

| | |
|---|----|
| 2.1. Introduction | 41 |
| 2.2. Historical Background | 41 |
| 2.2.1. The Endangered Species (Import and Export) Act 1976 | 42 |
| 2.2.2. Enforcement under the Endangered Species Act | 43 |
| 2.2.3. Amendment to the Endangered Species Act | 46 |
| 2.2.4. Legislative Change and Current Legislation | 46 |
| 2.3. Regulation (EC) 3626/82 | 48 |
| 2.3.1. Background | 48 |
| 2.3.2. Summary of Regulation 3626/82 | 49 |
| 2.3.3. Limitations of Regulation 3626/82 | 49 |
| 2.4. Regulation 338/97 | 51 |
| 2.4.1. Initial Proposal | 52 |
| 2.4.2. EU Discussions of Regulation 338/97 | 52 |
| 2.4.3. General Mechanism | 55 |
| 2.4.4. Objectives | 56 |
| 2.4.5. Scope of Specimens | 57 |
| 2.4.6. Scope of Species | 57 |
| 2.4.7. Import Control and Internal Control | 60 |
| 2.4.8. EU Import Restrictions | 64 |
| 2.4.9. Export Control | 66 |
| 2.4.10. Animal Welfare Provisions | 68 |
| 2.4.11. Derogations | 70 |
| 2.4.12. Enforcement | 71 |
| 2.4.13. Case Study: Illegal Import Via Austria into the UK | 72 |
| 2.4.14. Conclusion | 73 |
| 2.5. UK Implementation and Enforcement Mechanisms | 74 |
| 2.5.1. Overview | 74 |
| 2.5.2. Border Control by Customs | 75 |
| 2.5.2.1. Legislation | 75 |
| 2.5.2.2. Internal Structure | 75 |
| 2.5.2.3. Inspections | 76 |
| 2.5.2.4. Inspection, Seizure and Confiscation: Example | 77 |
| 2.5.2.5. Live Specimens | 78 |
| 2.5.2.6. Prosecutions and Convictions | 80 |
| 2.5.2.7. The Green Parrots Project | 81 |
| 2.6. The Global Wildlife Division | 82 |
| 2.6.1. The Global Wildlife Division 1: CITES Policy and Zoo Branch | 83 |
| 2.6.2. Global Wildlife Division 2: The Wildlife Crime and Inspectorate Unit ... | 85 |

| | |
|---|-----|
| 2.6.2.1. Wildlife Inspectors | 85 |
| 2.6.2.2. PAW Secretariat..... | 86 |
| 2.7. Partnership Against Wildlife Crime | 87 |
| 2.7.1. Enforcement Agencies | 87 |
| 2.7.2. Objective | 89 |
| 2.7.3. Structure | 90 |
| 2.7.4. Enforcement Initiative 1: Blood Sampling Inspection for DNA Testing .. | 91 |
| 2.7.5. Enforcement Initiative 2: Data Exchange and Management..... | 95 |
| 2.7.6. Legal Problems Relating to Wildlife Crime and the CRoW Amendment. | 96 |
| 2.8. Case Studies..... | 100 |
| 2.8.1. Wild Birds | 100 |
| 2.8.2. Traditional Medicine..... | 102 |
| 2.8.3. Taxidermy | 103 |
| 2.9. The involvement of the RSPCA in Wildlife Conservation | 104 |
| 2.9.1. The Rhino Horn Case..... | 105 |
| 2.9.2. The Northumberland Taxidermist Case..... | 105 |
| 2.9.3. Inspectors and the Special Operation Unit..... | 106 |
| 2.9.4. The RSPCA and Wildlife Crime | 106 |
| 2.10. Conclusion..... | 107 |
| Chapter 3 CITES Implementation and Enforcement in Japan | 109 |
| 3.1. Introduction | 109 |
| 3.2. Historical Background | 109 |
| 3.2.1. Before Ratification..... | 109 |
| 3.2.2. From Ratification to the First Internal Control Legislation | 111 |
| 3.2.3. International Pressure and Some Improvements | 114 |
| 3.2.4. The 1987 Law..... | 115 |
| 3.2.5. The Japanese Perspective on Wildlife Conservation in the 1980s | 117 |
| 3.3. Legislative Change | 118 |
| 3.4. Japanese Implementation and Enforcement Mechanisms..... | 120 |
| 3.4.1. Border Control by Customs..... | 121 |
| 3.4.1.1. Legislation | 121 |
| 3.4.1.2. The Internal Structure of Customs | 122 |
| 3.4.1.3. Procedure for Dealing With Offences | 122 |
| 3.4.1.4. Seizure and Confiscation..... | 123 |
| 3.4.2. Summary of the Species Conservation Law | 123 |
| 3.4.2.1. Scope of Species | 125 |
| 3.4.2.2. Scope of Specimens | 126 |
| 3.4.2.3. Registration Schemes | 127 |

| | |
|---|-----|
| 3.4.2.4. Possession..... | 131 |
| 3.4.2.5. Confiscation..... | 131 |
| 3.4.2.6. Live specimens..... | 132 |
| 3.4.3. Case Studies | 135 |
| 3.4.3.1. The Illegal Import of Primates | 135 |
| 3.4.3.2. Ivory | 138 |
| 3.4.3.3. Bears..... | 141 |
| 3.5. Comparisons and Conclusion | 145 |
| Chapter 4 UK Cultural Factors..... | 148 |
| 4.1. Introduction | 148 |
| 4.2. Criticisms Against the Cultural Tradition in the West..... | 149 |
| 4.2.1. Criticisms Against Christianity | 149 |
| 4.2.2. Criticisms Against Rationalism..... | 151 |
| 4.3. Christianity and Greek Philosophy | 153 |
| 4.3.1. The Biblical Story of the Creation..... | 153 |
| 4.3.2. Greek Philosophy..... | 155 |
| 4.3.3. The Incorporation of Rationalism into Christian Teaching | 158 |
| 4.4. The Development of Cultural Factors and 'Exploitative' Attitudes Towards Nature..... | 160 |
| 4.4.1. The Medieval Period..... | 161 |
| 4.4.2. The Reformation and Social and Environmental Changes | 165 |
| 4.4.3. Cartesian Thinking..... | 166 |
| 4.4.4. Human Treatment of and Attitudes Towards Animals | 168 |
| 4.4.5. Modern Science | 170 |
| 4.5. The Development of Cultural Factors and 'Ecological' Attitudes Toward Nature..... | 174 |
| 4.5.1. Natural History: The Scientific Root..... | 176 |
| 4.5.2. Romanticism: The Aesthetic Root..... | 179 |
| 4.5.3. Animal Welfare | 181 |
| 4.5.3.1. Social Conditions | 182 |
| 4.5.3.2. Religious and Philosophical Foundations..... | 183 |
| 4.5.3.3. Early Animal Welfare Law..... | 184 |
| 4.5.3.4. The Protection of Birds and Wild Animals During the 19th Century | 186 |
| 4.5.3.5. Animal Welfare in the 19th Century | 186 |
| 4.5.3.6. Animal Welfare in the 20th Century | 187 |
| 4.5.4. Modern 'Ecology' | 189 |
| 4.6. Conclusion..... | 190 |
| Chapter 5 Japanese Cultural Factors..... | 193 |

| | |
|--|-----|
| 5.1. Introduction | 193 |
| 5.2. Shinto | 195 |
| 5.2.1. Introduction | 195 |
| 5.2.2. The Shinto Worldview | 199 |
| 5.2.2.1. The Shinto Story of the 'Creation' | 199 |
| 5.2.2.2. The Nature of <i>Kami</i> | 201 |
| 5.2.3. <i>Kami</i> , Humans and Nature | 204 |
| 5.3. Buddhism | 206 |
| 5.3.1. Introduction | 206 |
| 5.3.2. The Buddhist Worldview: Basic Principles of Buddhism | 208 |
| 5.3.3. Characteristics of Buddhism in Japan..... | 209 |
| 5.3.4. People's Attitudes Toward Animals 1: Meat-Eating..... | 212 |
| 5.3.5. People's Attitudes Toward Animals 2: Hunting | 214 |
| 5.4. Contradictions..... | 216 |
| 5.5. 'Japanese' Ecology | 218 |
| 5.6. Japanese Primatology..... | 220 |
| 5.6.1. Introduction | 220 |
| 5.6.2. The Historical Background of Primatology | 221 |
| 5.6.3. Characteristics of Japanese Primatology..... | 222 |
| 5.6.3.1. Methodology..... | 222 |
| 5.6.3.2. 'Culture' and Society..... | 223 |
| 5.6.4. The Difference between Japanese and Western Primatology | 225 |
| 5.7. Imanishi Kinji's Evolutionary Theory and "Study of Nature"..... | 228 |
| 5.7.1. Introduction | 228 |
| 5.7.2. The Difference Between Imanishi's Theory and Darwinism | 229 |
| 5.7.2.1. Darwinism | 230 |
| 5.7.2.2. Imanishi's Theory..... | 231 |
| 5.7.3. Characteristics and Cultural Implications | 232 |
| 5.7.4. 'Japaneseness'..... | 234 |
| 5.7.4.1. Imanishi's Criticisms of Western Tradition | 235 |
| 5.7.4.2. The "Study of Nature"..... | 237 |
| 5.7.4.2.1. Intuition and Consciousness..... | 238 |
| 5.7.4.2.2. 'Japaneseness'..... | 240 |
| 5.7.4.2.3. Imanishi and 'Western' Science..... | 241 |
| 5.7.4.3. Conclusion of Imanishi's Images | 242 |
| 5.7.5. 'Japaneseness' and Nationalism..... | 243 |
| 5.8. Conclusion and 'Japanese' Conservation..... | 247 |
| 5.9. Animal Welfare in Japan..... | 251 |

| | |
|--|-----|
| 5.9.1. Introduction | 251 |
| 5.9.2. Before the 1973 Law..... | 253 |
| 5.9.3. Movements Toward the Creation of the Law..... | 256 |
| 5.9.4. The 1973 Law..... | 257 |
| 5.9.4.1. Objectives and Summary of the Law | 257 |
| 5.9.4.2. Limitations of the Law | 258 |
| 5.9.4.3. Implementation and Enforcement | 259 |
| 5.9.5. Traditions | 262 |
| 5.9.5.1. Animal Fighting..... | 262 |
| 5.9.5.2. <i>Shamisen</i> | 263 |
| 5.9.6. The 1999 Revision | 264 |
| 5.9.6.1. Background..... | 264 |
| 5.9.6.2. Summary of the <i>Aigo</i> Law..... | 265 |
| 5.9.6.3. Limitations of the <i>Aigo</i> Law | 266 |
| 5.9.6.3.1. The Scope of Animals | 267 |
| 5.9.6.3.2. Commercial Dealers | 268 |
| 5.9.6.3.3. Penalties..... | 269 |
| 5.9.6.3.4. The Definition of Cruelty | 270 |
| 5.9.7. Conclusion..... | 272 |
| 5.10. The Case Study of Implementation and Enforcement of the <i>Aigo</i> Law and Policies..... | 272 |
| 5.10.1. Background of Kitakyushu City Council..... | 273 |
| 5.10.2. Legislation | 273 |
| 5.10.3. Structure | 273 |
| 5.10.4. Implementation and Enforcement..... | 274 |
| 5.10.4.1. The <i>Aigo</i> Aspect | 274 |
| 5.10.4.2. The Control Aspect | 274 |
| 5.10.5. Problems Relating to <i>Aigo</i> Policies | 276 |
| 5.10.6. <i>Doubutsu Kuyou</i> : Memorial Services for Animals..... | 277 |
| 5.10.7. <i>Burakumin</i> People: Occupations Dealing with Dead Animals..... | 280 |
| 5.10.8. Animal Welfare in Japan..... | 281 |
| 5.11. Chapter Conclusion..... | 281 |
| Chapter 6 Conclusion..... | 283 |
| Appendix 1 List of Interviews..... | 286 |
| UK | 286 |
| Japan | 286 |
| Appendix 2 List of Major Cases in the UK..... | 288 |
| Appendix 3 List of Newspaper Articles..... | 289 |

| | |
|---|-----|
| UK (<i>The Times</i>)..... | 289 |
| Japan (<i>Asahi Shimbun</i>)..... | 291 |
| Appendix 4 Glossary of Japanese Terms | 294 |
| Bibliography | 295 |
| Books And Articles | 295 |
| Official Publications | 310 |
| Press Releases | 312 |
| Newspaper Articles (UK) | 312 |
| Newspaper Articles (Japan) | 313 |
| Archive Materials | 314 |
| Miscellaneous..... | 316 |

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List of Abbreviations

| | |
|---------|--|
| CITES | The Convention on International Trade in Endangered Species of Fauna and Flora |
| COP | Conference of Parties |
| COTES | The Control of Trade in Endangered Species (Enforcement) Regulations |
| CPS | Crown Prosecution Service |
| CRoW | The Countryside and Rights of Way Act 2000 |
| CWEO | Customs Wildlife Endangered Officers |
| DEFRA | Department of the Environment, Food and Rural Affairs |
| DETR | The Department of the Environment, Transport and Regions |
| DoE | The Department of the Environment |
| ESC | The Economic and Social Committee |
| EU | European Union |
| FoE | Friends of the Earth |
| FSS | The Forensic Science Service |
| GWD | The Global Wildlife Division |
| IATA | The International Air Transport Association |
| ICRW | International Convention for the Regulation of Whaling |
| IUCN | The World Conservation Union |
| IWC | The International Whaling Commission |
| LAR | IATA's Live Animal Regulations |
| MAFF | Ministry of Agriculture, Forestry and Fisheries (in Japan) |
| MAFF | The Ministry of Agriculture, Fisheries and Food (in the UK) |
| METI | The Ministry of Economy, Trade and Industry |
| NGO | Non-Governmental Organisation |
| PAW | Partnership for Action against Wildlife Crime |
| PWLO | Police Wildlife Liaison Officer |
| RSPB | The Royal Society for the Protection of Birds |
| RSPCA | The Royal Society for the Prevention of Cruelty to Animals |
| SOU | The Special Operation Unit (of the RSPCA) |
| SRG | The Scientific Review Group |
| SUN | Sustainable Users Network |
| TRAFFIC | Trade Records Analysis of Flora and Fauna in Commerce |

UNCED United Nations Conference on the Environment and Development
WWF World Wildlife Fund

Table of Legislation

Treaties and Conventions

Convention for the Conservation of Nature and Natural Resources

Convention for the Preservation of Wild Animals, Birds and Fish in Africa

Convention for the Protection of the World Cultural and Natural Heritage

Convention for the Protection of Birds Useful to Agriculture

Convention on Biological Diversity

Convention on International Trade in Endangered Species of Fauna and Flora

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere

Convention Relative to the Preservation of Fauna and Flora in their Natural State

Convention on Wetlands of International Importance

International Convention for the Regulation on Whaling

International Convention for the Protection of Birds

European Legislation

European Council Regulation 81/348/EC

European Council Regulation 82/3626/EC

European Council Regulation 91/3254/EC

European Council Regulation 97338/EC

Council Directive 79/409/EEC

Council Directive 91/628/EEC

Council Directive 92/43/EEC

UK Statutes

Badgers Act 1992

Badgers Act 1973
Countryside and Rights of Way Act 2000
Cruelty to Animals Act 1876
Customs and Excise Management Act 1979
Endangered Species (Import and Export) Act 1976
Grey Seals (Protection) Act 1914
National Parks and Countryside Act 1949
Protection of Animals Act 1911
Sea Bird Protection Act 1869
Wild Birds Protection Act 1904
Wildlife and Countryside Act 1981
Wild Mammals (Protection) Act 1996

UK Statutory Instrument

Control of Trade in Endangered Species (Enforcement) Regulations 1997

Japanese Law

Criminal Law (For Less Serious Offences) 1948
Cultural Heritage Protection Law 1949
Foreign Exchange and Foreign Trade Law 1949
Natural Environment Preservation Law 1972
Natural Parks Law 1957
Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora 1992
Law Concerning the Prevention of Rabies 1950 (The Rabies Law)
Law Concerning the Protection and Control of Animals 1973
Law Concerning the Protection and the Hunting of Birds and Mammals 1918
Law Concerning the Regulation of Internal Trade of Endangered Species of Wild Fauna and Flora 1987

Tariff Law 1954

Japanese Enforcement Order

Enforcement Order for the Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora 1992

Enforcement Order for the Law Concerning the Regulation of Internal Trade of Endangered Species of Wild Fauna and Flora 1987

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- Kirkland v Robinson [1987] Criminal Law Review, 643-644.
- Partridge v Crittenden [1968] 2 All England Law Reports, 421-425.
- Pepper v Hart [1993] 1 All England Law Reports, 42.
- R v Marylebone Magistrates Court and another, ex parte Amdrell Limited (t/a "Get Stuffed") and others [1998], NLJ 1230.
- R. v Azadehdel [1989] 11 Cr. App. R. (S), 377.
- R. v Canning [1996] 2 Cr. App. R (S) 202.
- R. v Cooke [1980], available in LEXIS, UK library, Case file (Court of Appeal [Criminal Division]), No. 517/B1/80, 4 Sep. 1980.
- R. v Sissen (Henry Thomas) [2001] Criminal Law Report 232
- R. v Sperr [1991] 13 Cr. App. R. (S) 8.
- Robinson v Everett [1987] Criminal Law Review, 699.
- Robinson v Whittle [1980] 3 All England Law Reports 459-463.
- Seiga v Walkingshaw [1993] S.C.C.R, 146-147.

Chapter 1 Introduction

1.1. Introduction

In the Far East, by way of contrast [to the West], the man-nature relationship was marked by respect, bordering on love, absent in the West. . . . Man was understood to be a part of nature, and wilderness, in Eastern thought In Japan the first religion, Shinto, was a form of nature worship that deified mountains, forests, storms, and torrents In linking God and the wilderness, instead of contrasting them as did the Western faiths, Shinto and Taoism fostered love of wilderness rather than hatred.¹

The concept that 'Eastern' tradition provides an environmentally sound philosophical basis has been discussed by various critics in the fields of philosophy, religion and ethics. Coupled with this thought is the notion that the 'West' has an opposite cultural tradition:

In these prosaic days of ours, there is a craze among the young men of Japan for climbing high mountains just for the sake of climbing; and they call this “conquering the mountains”. What a desecration! This is a fashion no doubt imported from the West along with many others not always worth while [*sic*] learning. . . . We of the Orient have never conceived Nature in the form of an opposing power. On the contrary, Nature has been our consistent friend and companion, who is to be absolutely trusted in spite of the frequent earthquakes assailing this land of ours. . . . Yes, we climb Fuji, too, but the purpose is not to “conquer” it, but to be impressed with its beauty, grandeur, and aloofness; it is also to worship a sublime morning sun rising gorgeously from behind the multicoloured clouds.²

In this trend of thought, existing discussions on Japanese culture have attempted to establish that Japan had no cultural tradition which would consider “conquering” nature, prior to its exposure to Western culture in the mid 19th century. These opinions, held both by the Japanese and observers of Japan, have attempted to establish that the Japanese have a high regard, appreciation, and affection for nature

¹ R. Nash, *Wilderness and the American Mind* (New Haven: Yale University Press, 3rd ed, 1967) 20-21.

² D.T. Suzuki, *Zen and Japanese Culture* (Princeton: Princeton University Press for Bollingen Foundation Inc., 1959) 334.

and therefore live in harmony with nature.³ There are many cultural elements which contribute to this image. The elements of Japanese culture most commonly referred to in describing Japan's appreciation of nature are in the areas of religion and art, such as, Shinto⁴ and Buddhism⁵, especially Zen Buddhism⁶, and traditional poems⁷, the tea ceremony⁸, bonsai trees and rock gardens.⁹

However, when one observes the modern history of Japanese environmental conservation, the reality does not correspond with the opinions held above. Most notably, numerous health problems caused by pollution have occurred all over Japan, some of which existed as early as the 1860s.¹⁰ The victims of these diseases filed law suits in the late 1960s and 1970s, which received international attention. These two decades were also when Japan's economy grew to fifty-five times its pre 1946 size owing to the intensive industrial development of the country. The development destroyed large areas of the natural environment and habitats for wildlife.¹¹ Not only the international community¹² but also Japanese society realised that the Japanese quest for development had not been in harmony with the environment.¹³ This has of course applied to almost every country during extensive economic development.

Japan is also criticised for being responsible for the depletion of the world's wildlife. Particularly during the 1980s and early 90s, severe criticism was directed at Japan for the mass exploitation of wildlife and for undermining international wildlife treaties like the Convention on International Trade in Endangered Species of Fauna and

³ See for instance: M. Watanabe, 'The Conception of Nature in Japanese Culture' (1973) 183 *Science* 279-282; J. Stewart-Smith, *In the Shadow of Fujisan: Japan and Its Wildlife* (New York: Viking/Rainbird, 1987).

⁴ For discussions of Shinto, see 5.2.

⁵ For discussions, see 5.3.

⁶ A. Kalland and P.J. Asquith, 'Japanese Perceptions of Nature: Ideals and Illusions' in A. Kalland, and P.J. Asquith (eds), *Japanese Images of Nature: Cultural Pictures* (Surrey: Curzon Press, 1997) 2. See also Suzuki, n 2 above.

⁷ *Haiku* is a style of Japanese poem. For detailed discussions on the relation between poetry and the Japanese view of nature, see: S. Arntzen, 'Natural Imagery in Classical Japanese Poetry: The Equivalence of the Literal and the Figural' in Kalland and Asquith, n 6 above, 54-67.

⁸ See; Suzuki, n 2 above, 384.

⁹ For discussions about Japanese gardens and the Japanese view of nature, see: J. Hendry, 'Nature Tamed: Gardens as a Microcosm of Japan's View of the World' in Kalland and Asquith, n 6 above, 83-105.

¹⁰ The four major pollution cases were; Minamata mercury poisoning, Niigata mercury poisoning, Yokkaichi asthma, and the *Itai Itai* cadmium poisoning. For discussions on the development of pollution problems and the response of the Japanese government, see: J. Gresser, K. Fujikura and A. Morishima, *Environmental Law in Japan* (Cambridge: MITI Press, 1981). For discussions of local environmental movements against the pollution, see: J. Broadbent, *Environmental Politics in Japan* (Cambridge: Cambridge University Press, 1998).

¹¹ For the Japanese Government's development plans during the 1960s, see *ibid.*, 36-37. For a general discussion of species extinction in Japan from a legal point of view, see: H. Isozaki, '*Seibutsu Shu ga Kieteiku* (Species Are Going Extinct)' (1995) 491 *Hougaku Seminar (Law Seminar)* 64-67.

¹² Japan was severely criticised at the Stockholm Conference for its pollution problems, after which its pollution regulations were improved significantly. Gresser, et.al., n 10 above, 315.

¹³ The Japanese environmental movement started with citizens' movements against pollution. However, these movements never transcended the basic motivation of a "Not-In-My-Back-Yard" psychology. See; Broadbent, n 10 above, 286-292.

Flora (CITES).¹⁴ The examples are numerous: “damaging whaling practices”¹⁵ and “excessive wildlife products exploitation (e.g., ivory, tortoise shell, musk),¹⁶ harmful high-seas drift-net use, and tropical forest destruction”, according to Kellert.¹⁷

Of course, Japan is not the only country that utilises wildlife resources in mass volume. The US and Europe are also two of the world’s three biggest wildlife markets along with Japan.¹⁸ In that sense, Japan is also a consumer state just like the aforementioned Western countries. However, in the field of international wildlife law, Japan does not ally with those Western countries. Instead, it generally allies with developing countries, particularly African countries. This behaviour is puzzling to many, especially when one considers Japan's non-reliance on wildlife resources for economic reasons and alleged cultural tradition of 'love of nature', as described above.

1.2. Research Objectives

The thesis attempts to provide an explanation for Japanese behaviour seen in the field of international wildlife law. This is because Japan's approach toward wildlife conservation differs from that of the majority of industrialised countries. The Japanese approach is predominantly based upon the concept of active ‘sustainable use’, promoting the utilisation of wildlife. This attitude stands out internationally, because many other industrialised countries, most of which are ‘Western’, tend to take a precautionary or protective approach toward wildlife conservation. Therefore, the thesis examines Japanese and Western wildlife conservation, and considers the differences between them in a cultural context, in order to explain the discrepancy between the image of cultural tradition and reality.

¹⁴ 993 U.N.T.S. 243. For criticisms against Japan with regard to CITES-related matters, see: E. McFadden, 'Asian Compliance With CITES: Problems and Prospects' in (1987) 5 *Boston University International Law Journal*, 313. Also see: K. Kihara, 'Shizen Hogo Gyosei to Kokusaiteki Sekinin: Washington Jōyaku Kokunaihou no Sekou o Ki ni (Nature Conservation Governance and International Responsibility: Marking the Enactment of CITES-Implementing Legislation)' (1988) 901 *Jurist*, 46-49. H. Obara, 'Washington Jōyaku to Nippon: Yasei Seibutsu "Mitsuyunyu" Taikoku (CITES and Japan: The Country of Illegal Importation of Wildlife)' (1988) 509 *Sekai (The World)*, 318-328. H. Isozaki, 'Washington Jōyaku o Meguru Gimon: Yasei Seibutsu no Fusei Yunyu ha Naze Soshi Dekinai ka (Questions Surrounding CITES: Why Illegal Import of Wildlife Cannot Be Prevented)' (Nov 1989) *Kagaku Asahi: Monthly Journal of Science*, 34-38.

¹⁵ The moratorium on all commercial whaling was adopted in 1982. Par. 10(e), IWC Schedule. Japan presently carries out scientific whaling which involves lethal research, under Article VIII of the International Convention for the Regulation of Whaling. See for instance: Institute of Cetacean Research, *Whaling Issues and Japan's Whale Research* (Tokyo: Institute of Cetacean Research, 1996); and Institute of Cetacean Research, *Whaling for the Twenty-First Century*, (Tokyo: Institute of Cetacean Research, 1996).

¹⁶ See 3.2.

¹⁷ S. Kellert, 'Japanese Perceptions of Wildlife', (1991) 5 *Conservation Biology*, 297-308.

¹⁸ See for instance, the table showing the trade figures in wildlife products in UNDP, UNEP, World Bank and World Resources Institute, *World Resources 2000-2001: People and Ecosystems: The Fraying Web of Life* (Washington, D.C.: World Resources Institute, 2002) 250-251.

Much criticism levelled against Japan has been made for its failure to sufficiently implement and enforce international wildlife law, and for its utilisation approach toward conservation. The international community has repeatedly put pressure upon Japan to change its approach, only to see legislative changes, rather than changes in attitude. However, even recently, Japan has expanded its whaling operations, and has also become more influential at conferences of CITES and the International Whaling Commission (hereafter the IWC). This indicates that the pressure put on Japan has so far failed to have a fundamental effect on its attitudes.

The lack of success in securing improvements may partly be due to the fact that criticism and pressure, mostly imposed by Western governments and environmental organisations, has failed to take into account wider cultural perspectives, as well as the legal and political situations relating to wildlife conservation. As the thesis compares the West and Japan later, internal provisions concerning CITES implementation and enforcement differ significantly between the two, and this practical difference is due to cultural differences to an extent. The West is in line with, or rather, initiates, international conservation efforts, since concepts in international wildlife treaties are of Western-origin, as shown in the thesis. However, as it has different traditions and a different history of wildlife conservation, Japan finds these concepts difficult to follow.

The examination of cultural differences with regard to wildlife conservation may therefore serve to explain Japanese attitudes that are puzzling to the Western eye. This is particularly because Japan prefers to stress the cultural or traditional aspects of wildlife utilisation. The former Japanese chairman of the CITES Standing Committee is reported to have stressed the importance of “the promotion of sustainable use, not emotional but objective and scientific discussions, and *culture and tradition*” for the fair implementation of CITES.¹⁹ As a former Japanese delegate to the CITES Conference and officer of what was the Environment Agency stated; “The effectiveness of law cannot be measured solely from the number or the text of legislation”, as it largely depends upon “cultural background” amongst other things.²⁰ She continued to emphasise that such differences could be the cause of “misunderstandings” between Parties to CITES.²¹

Such cultural “misunderstandings” can indeed create adverse effects. As the thesis seeks to demonstrate, since Western criticism of Japan has failed to include wider cultural discussions, such criticisms sometimes led to non-cooperative attitudes being taken by Japan, fuelled by nationalism and self-justification. The aim of the thesis is

¹⁹ M. Sakamoto, *Teiyakukoku Kaigi no Houkoku to Zouge Torihiki Saikai Mondai no Bunseki* (The Report of COP and Analysis of the Resumption of Ivory Trade) in Japan Wildlife Conservation Society, *The Bulletin of Japan Wildlife Conservation Society*, vol. 1 (Tokyo: Japan Wildlife Conservation Society, 2001) 68-69.

²⁰ Maki Koyama to author, a fax correspondence, 21 May 1999.

²¹ Ibid.

to consider how cultural factors affect conservation perceptions and attitudes toward nature, in turn influencing the more practical aspects of wildlife conservation. Hence, the study will contribute to putting international conflict into national cultural perspectives.

Cultural factors are more of a secondary consideration in today's economic- and science-based world. All areas of society, including law, politics and administrative systems, are contributing to differences in the effectiveness of legislation. However, as the thesis attempts to describe, values and perceptions, do have an influence on how wildlife law is implemented and enforced. Reid states; “[nature conservation] law has developed in keeping with changing perceptions of environmental issues and of the value of wild plants and creatures”.²² Chapters 4 and 5 of the thesis show that there are differences between Japan and the West in terms of these “perceptions” and “values” relating to nature. Moreover, the core notion of today's science-based world, science, also has cultural influences as seen in Chapters 4 and 5.

1.3. Terminology

The thesis involves the extensive examination of Japanese materials. All Japanese names are addressed as they are in Japan, in the order of: last names, and then first names. All Japanese words are italicised, apart from words commonly used in English such as 'Shinto'. All translations of Japanese words, quotes, and bibliographical titles are by the author, unless otherwise stated.

The Convention on the International Trade in Endangered Species, commonly referred to as CITES, is an international treaty which regulates trade in endangered species. CITES has a Secretariat, and the Conference of Parties is commonly referred to as the COP. CITES was adopted on 3 March 1973 and entered into force on 1 July 1975.

The International Convention for the Regulation on Whaling,²³ commonly referred to as the ICRW, is an international treaty which restricts commercial whaling activities. The IWC holds annual meetings.²⁴

²² C. Reid, *Nature Conservation Law* (Edinburgh: W. Green/Sweet & Maxwell, 1994) 2.

²³ 161 U.N.T.S. 72.

²⁴ For brief discussions on whaling issues, see the beginning of 1.8.

1.4. Methodology

Answering the research question, why Japan behaves in the way it does in the field of wildlife conservation, requires Japan to be considered from Japanese perspectives, and an appreciation of how different these perspectives may be from 'Western' perspectives. For this purpose, the thesis will make a comparison between Japanese and Western wildlife law. The UK has been chosen as the country representative of these Western perspectives for the purpose of this study.

In order to identify the Japanese attitude to conservation, and that of the UK, the thesis will first examine wildlife law and its enforcement in both countries. This will be carried out by examining the implementation of international wildlife law, taking CITES as an example. Although examining CITES-implementing legislation limits the thesis to the consideration of only international species to an extent, examining exactly how the Convention operates within each country gives an opportunity to examine issues relating to domestic species. This will allow the thesis to study national conservation attitudes that are reflected upon conservation attitudes seen at the international level. The examination is achieved by reviewing the relevant legislation and enforcement records, as well as other materials as explained below. The relevant legislation is stated as of 20 October 2002.

Relatively few studies exist on wildlife law compared to other types of environmental law,²⁵ and therefore research methods include interviews, participant observation and an extensive search of newspaper articles. Interviews were carried out with both governmental and non-governmental agencies, and a list of these interviews is provided in the Appendix. Interviews were generally more informative on the UK side, where interviewees were more co-operative, as discussed below. Participant observation was achieved by attendance at conferences and other types of meetings. These meetings include the Police Wildlife Liaison Officer's Annual Conference in the UK in 1999 and 2000, a symposium on biodiversity conservation in Japan in 2002, and the 54th Annual Meeting of the International Whaling Commission in 2002. Less formal conversations with attendants of those meetings provided valuable research information, as well as what was discussed during the meetings. Regarding the final point, the newspaper search, a search for enforcement records with regard to both CITES and national wildlife crimes was carried out, looking for relevant articles between January 1970 and July 1999 (See Appendix 3). The newspaper used was *Times* for the UK side and *Asahi Shimbun* for the Japanese. The newspaper search was necessary because there is no central record for wildlife crimes in the UK or Japan, and only a few cases of wildlife crime are published in legal journals or other sources.

²⁵ For instance, this point is acknowledged by the following article; T. Hatakeyama, 'Kankyō Hou (Environmental Law)' (1998) 70 *Houritsu Jihou (Time Signal of Law)* 13, 84-89.

In the latter half of the thesis, cultural factors are examined. This required an interdisciplinary approach of considering materials from various fields. A switch of research methods was therefore necessary. Examination of three cultural factors was carried out according to the following reasons; Wildlife conservation has many aspects, such as “moral”, “religious”, “aesthetic” and “utilitarianism” aspects, according to Reid.²⁶ Another important aspect is the ecological aspect. Amongst these, religious factors play a significant role in discussions on Japanese perceptions towards nature, as already mentioned.²⁷ Also, Japanese wildlife conservation lacks “moral” and “ecological” aspects, when compared to the West, according to Kellert. Based on these existing opinions, this part of the thesis considering cultural aspects will involve the examination of religious, moral and ecological factors. The examination attempts to ascertain how these three factors contributed to or did not contribute to the development of current wildlife conservation concepts.

In comparing Japanese and 'Western' cultural aspects, relevant studies already exist on the UK side, in relation to the cultural origin of 'exploitative' and 'ecological' attitudes toward nature, as will be seen in Chapter 4. The examination of the UK side is therefore achieved by reviewing these materials. Discussions on the UK side will be relatively concise, as the purpose of such discussions is to provide the basis for comparison with the Japanese side, which is of primary concern to the thesis.

There were two major methodological problems encountered during the research. The first concerns the difficulties encountered in arranging interviews and interviewing in Japan. Whereas in the UK swift invitations responding to the requests for interviews were obtained in all cases, this was not the case in Japan. Most interview requests to both governmental and non-governmental agencies were never replied to, and therefore interviews could only be arranged where the author could utilise a personal connection with the interviewee.

The problem described above was probably mostly due to time and resource constraints within those agencies in Japan, as well as unfamiliarity with research on this topic. The World Wildlife Fund (hereafter WWF) Japan stated in its response to the request for information; “We hope that you would understand that most [non-governmental organisations (hereafter NGOs)] in Japan have much less financial and human resources available compared to the UK, and therefore cannot meet people's requests so readily”.²⁸ However, there was also an occasion where reluctance to answer questions relating to wildlife issues was expressed more directly; one respondent stated; “There have been students studying in the West who asked for

²⁶ Reid, n 22 above, 2.

²⁷ See 1.1, 5.2 and 5.3.

²⁸ WWF Japan to author, an email correspondence, 25 Oct. 1999. For discussions of problems faced by Japanese NGOs due to the lack of human and financial resources, see for instance; K. Matsushita, 'Global Environmental Issues and the Role of NGO: Looking Back on Five Years of the Japan Fund for Global Environment' (1998) 111 *Environmental Research Quarterly*, 71-78.

information, based on a masochistic motivation [to criticise their own country] . . . Therefore I regret to say that I am reluctant to meet you. . .”²⁹ These responses themselves provide valuable information, such as that the scale of Japanese non-governmental agencies is much smaller than that of those in the UK, and that scepticism exists towards Western criticism of Japan in relation to wildlife conservation.

The second methodological problem concerns the interdisciplinary approach taken in the latter half of the thesis. With regard to materials on the Japanese side, relevant studies equivalent to those of the UK scarcely exist. Discussions exist primarily where Japan's culture is praised for having 'nature-loving' elements, however, these discussions are not related to practical conservation problems. To compensate for the lack of directly relevant existing studies, a wide variety of materials relating to perceptions and attitudes towards nature were reviewed. Therefore, some speculative assumptions have had to be made, and materials not necessarily directly related to conservation had to be explored.

One of the speculative issues, due to the lack of relevant sources, concerns the area of ecology. As Chapter 5 shows, critics suggest that the 'Japanese way' of viewing or approaching nature exists, without referring to specific evidence. Therefore, an examination of Japanese primatology is carried out, in order to see what the 'Japanese' approach to ecology is. The examination of primatology is assumed worthwhile, because it illustrates how Japanese views of nature are reflected on ecology. Also, relating to primatology, the approach taken by one particular ecologist, Imanishi Kinji, is examined, as he was repeatedly referred to by critics praising the 'Japanese way' of viewing nature. Although examining one particular figure in the field is somewhat limited, it does give some insight into 'Japanese' ecology bearing in mind the lack of other relevant resources in this so far practically unstudied area of Japanese culture as shown in Chapter 5.³⁰

1.5. Research Area

First of all, the reason why the UK and CITES are chosen for comparison purposes should be clarified. As it is impractical to cover all Western countries, the UK is chosen as an example. The UK, of course, does not necessarily represent the 'West' and all countries are different within the West. Nevertheless, the differences in a cultural context amongst Western countries are smaller than differences between Japan and those countries. For example, referring to the political culture of Japan, Bradley and Flanagan state that Japan's cultural heritage, traditional values and

²⁹ Ms. M. Koyama, n 20 above.

³⁰ See 5.5, 5.6, and 5.7.

beliefs are “strikingly different” from those of the West, and therefore it is necessary to take those into consideration when considering Japanese politics.³¹ Comparison between Japan and the UK is pertinent to this study because they are firstly both so-called 'consumer countries', countries that import wildlife, rather than exporting their native species. Secondly, they are both active in international wildlife forums, yet, thirdly, often take opposing positions. Geographic and political differences are relatively small³² compared to other key Western conservation countries such as the U.S. or Australia. As for the legislation, where discrepancy exists between England, Wales, Scotland, and Northern Ireland, the legislation applicable in England is to be examined.

Secondly CITES is chosen as an example of a wildlife conservation treaty.³³ Although choosing CITES may limit the validity of the conservation perceptions and attitudes to be explored as already mentioned,³⁴ CITES serves as an appropriate basis for at least four reasons; Firstly, the issues addressed at CITES COPs express the attitudinal contrast between Japan and the West, as seen later in this chapter.³⁵ Secondly, CITES is also more appropriate than other treaties in examining national situations, since it provides for a more tangible basis of implementation and enforcement for a wildlife treaty. For example, the Biodiversity Convention only provides for a 'soft' control framework and neither Japan or the UK has directly implementing legislation. Thirdly, CITES has had the most significant effect on the development of Japanese wildlife legislation and people's awareness toward wildlife issues.³⁶ Fourthly, the legislation implementing internal CITES controls also encompasses the conservation of protected species within Japan, providing an opportunity to examine how the conservation approach taken toward domestic species contributes to the effectiveness of international treaties.³⁷

Furthermore, CITES itself recognises the importance of taking into account the diversity of the Parties. In 1992, at COP 8, Resolution 8.4 was adopted, directing the Secretariat to review and evaluate the domestic measures the Parties have taken to implement the Convention.³⁸ In implementing the National Legislation Project, the Secretariat considers it important to take into account “a great diversity of existing legislation and legal systems”³⁹, and the Strategic Plan⁴⁰ produced for this Project

³¹ M.R. Bradley and S.C. Flanagan, *Politics in Japan* (Canada: Little, Brown and Company Ltd., 1984) 162.

³² For general discussions of the Japanese political system, see; H. Abe, M. Shindou and S. Kawato, *Gaisetsu Nihon no Gendai Seiji (Introduction to the Present Japanese Politics)* (Tokyo: Tokyo Daigaku Shuppan, 1990).

³³ See discussions of the mechanisms of CITES below.

³⁴ See 1.4.

³⁵ See 1.8.

³⁶ See: K. Hoshino, 'Seibutsu Tayousei Mondai o Meguru Naigai no Doukou (Internal and External Currents Surrounding the Issue of Biodiversity)' (March 1993) *Kankyō (The Environment)*; and Isozaki, n 14 above, 34.

³⁷ See 3.4.3.3 for instance.

³⁸ Res. 8.4, n 14 above.

³⁹ Doc. 11. 21. 1, n 14 above.

recognises, *inter alia*, the “need for deeper understanding of the cultural and economic issues at play in [wildlife] producer and consumer countries”.⁴¹ In an effort to assist the Parties, the Secretariat has also produced *Guidelines for Legislation to Implement CITES*, in co-operation with the World Conservation Union (hereafter IUCN) Environmental Law Centre.⁴²

The background to the establishment of CITES is as follows. International wildlife trade is worth billions of US dollars annually.⁴³ However, this is an estimation of the value of legal trade. Illegal trade, which is “unquantifiable” according to the WWF UK,⁴⁴ is thought to be second only to that of drugs in terms of the cash value of illicit trade, and the trend is that illegal wildlife trade is increasingly related to other organised crime.⁴⁵ Although habitat destruction is still the largest threat to wildlife, trade in wildlife has certainly caused massive declines in the numbers of many species of animals and plants.⁴⁶ CITES was therefore adopted, on the premise that regulation of international wildlife markets would contribute to the protection of species. This is why CITES is considered to be a conservation treaty, rather than a trade-regulating treaty. Its Preamble states;

Recognising that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come; Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic point of view; . . .⁴⁷

CITES now has 158 Parties.⁴⁸

⁴⁰ The Secretariat is now moving towards assisting the Parties to develop adequate measures to implement the Convention, and produced the Strategy Plan for this purpose.

⁴¹ Other issues considered to be important in the Strategic Plan were; (1) stewardship of natural resources and their use at sustainable levels; (2) safeguarding wildlife as an integral part of the global ecosystem on which all life depends; (3) the wider involvement of civic society in the development of conservation policies and practices. *Notifications to the Parties*, No. 1999/76 Geneva, 21 Oct. 1999.

⁴² C. de Klemm, *Guidelines for Legislation to Implement CITES*, IUCN Environmental Policy and Law Paper No. 26 (Switzerland: IUCN, 1993).

⁴³ UNDP, et.al., n 18 above, 319.

⁴⁴ WWF UK, “Traded Towards Extinction?” (2002), a report, at; <http://www.wwf-uk.org/>, visited on 10 Feb. 2002.

⁴⁵ C. Cook, M. Roberts, and J. Lowther, “The International Trade and Organised Crime: A Review of the Evidence and the Role of the UK”, (June, 2002), a report commissioned by WWF UK, at; www.wwf.org.uk/filelibrary/pdf/organisedCrime.pdf, visited on 20 Oct 2002. M. Roberts, et. Al., “Wildlife Crime in the UK: Towards a National Wildlife Crime Unit”, (Oct. 2001), a report commissioned by the DEFRA, at; <http://www.defra.gov.uk/wildlife-countryside/wacd/>, visited on 4 Apr. 2002.

⁴⁶ UNDP, et.al., n 18 above, 51.

⁴⁷ Preamble, n 14 above.

⁴⁸ As of 20 Oct. 2002. Official homepage of CITES at; <http://www.cites.org/>, visited on 10 Oct. 2002. For general details of CITES mechanisms, see: D.S. Favre, *International Trade in Endangered Species, A Guide to CITES* (London: Martinus Nijhoff Publishers, 1989).

The mechanisms of CITES are as follows. CITES categorises species into three groups in its Appendices according to their endangered status⁴⁹; Those included in Appendix I, the most endangered species, receive the strictest protection, and commercial trade is prohibited in these species except for non-commercial purposes. Species included in Appendix II are considered to be at risk of becoming endangered if unregulated trade continues, and therefore trade in these species is subject to regulation. Those in Appendix III are considered to be in need of regulation by individual Parties. In addition, although trade under CITES is regulated as above, Parties may enter reservations on particular species, which exempts them from adhering to the trade obligations with regard to those species.⁵⁰

Parties meet every few years at a COP, in order to review the implementation of the Convention.⁵¹ The CITES Secretariat, based in Geneva, is responsible for organising a COP, and it circulates any relevant information to or receives it from Parties. At a COP, the primary focus of heated debate concerns the amendment of Appendices I and II.⁵² Amendment requires a two-thirds majority of those present and voting.⁵³

At a national level, Parties are required to establish Scientific and Management Authorities, which are responsible for the implementation of trade controls.⁵⁴ Trade controls are carried out by a system of import and export permits, where relevant Authorities consider whether import or export should be permitted.⁵⁵ Trade in Appendix I species requires both import and export permits, and is only allowed for non-commercial purposes. Trade in Appendix II and III species requires an import permit and either an export permit or certificate of origin respectively.

⁴⁹ Art. II, n 14 above.

⁵⁰ Art. XV(3), *ibid.*

⁵¹ Art. XI, *ibid.*

⁵² Appendix III can be amended by notification of a Party requesting to list a species on this Appendix.

⁵³ Art. XV, n 14 above.

⁵⁴ Art. IX, *ibid.*

⁵⁵ Arts. III, IV, and V, *ibid.*

| | Appendix I | Appendix II | Appendix III |
|-------------------------|---|---|--|
| State | Endangered | At risk of becoming endangered | Considered to be in need of regulation |
| Required Permits | Both import and export permits | Export permit | Export permit or certificate or origin |
| Trade Conditions | <p>Scientific Authority has advised that the import will not be for purposes detrimental to the survival of the species.</p> <p>Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes.</p> <p>Scientific Authority has advised that such export will not be detrimental to the survival of that species</p> <p>Management Authority is satisfied that (1) the specimen was obtained in accordance with its national wildlife law, and that (2) the importing permit has been granted.</p> | <p>Scientific Authority has advised that such export will not be detrimental to the survival of that species.</p> <p>Management Authority is satisfied that the specimen was obtained in accordance with its national wildlife law.</p> <p>Prior presentation of the export permit.</p> | <p>Management Authority is satisfied that the specimen was obtained in accordance with its national wildlife law.</p> <p>Prior presentation of the export permit or certificate or origin.</p> |

Table 1: Trade conditions required by CITES

Apart from regulating trade by the permit system, Parties are to take appropriate implementation and enforcement measures, as required by Article VIII. It requires the Parties to;

Penalise trade in and possession of species in contravention of the Convention,⁵⁶

Confiscate or return to the exporting country the specimens,⁵⁷

Designate ports of exit and entry,⁵⁸

Treat living specimens accordingly after confiscation,⁵⁹

⁵⁶ Art. VIII (1) (a), *ibid.*

⁵⁷ Art. VIII (1) (b) and (2), *ibid.*

⁵⁸ Art. VIII (3), *ibid.*

Maintain records of trade, prepare periodic reports on implementation and submit them to the Secretariat.⁶⁰

With regard to the national legislation to be examined, on the Japanese side, the legislation primarily examined is the Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora (the Species Conservation Law) 1992.⁶¹ The Species Conservation Law encompasses the protection of not only CITES-listed species but also nationally important species. As well as providing the legal basis for the internal regulation of CITES specimens, it is Japan's first attempt at a comprehensive wildlife conservation law.⁶² The Species Conservation Law has largely taken over national conservation measures including existing legislation such as the Law Concerning the Protection and the Hunting of Birds and Mammals 1918⁶³ and the Natural Parks Law 1957,⁶⁴ both of which had a limited effect in protecting wildlife.⁶⁵

With regard to CITES regulations, direct border control is provided by the Foreign Exchange and Foreign Trade Law 1949⁶⁶ and the Tariff Law 1954.⁶⁷ The Species Conservation Law primarily provides for measures required by CITES such as conditions required for issuing import and export permits,⁶⁸ and measures for the internal control of CITES species, including enforcement measures.⁶⁹ Species to be protected are listed in the Enforcement Order⁷⁰ supplementing the Species Conservation Law, and include both national and international (CITES-listed) species. As for the conservation of national species, the Species Conservation Law prohibits activities such as taking, killing⁷¹, selling⁷², and displaying⁷³ of protected

⁵⁹ Art. VIII (4) and (5), *ibid.*

⁶⁰ Arts. VIII (6), (7) and (8), *ibid.*

⁶¹ Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora 1992, Law No. 75.

⁶² See 3.3.

⁶³ Law Concerning the Hunting and Protection of Birds and Animals 1918, Law No. 32.

⁶⁴ Natural Parks Law 1957, Law No. 161.

⁶⁵ For details of the conservation effect of these pieces of legislation, see: M. Numata (ed), *Shizen Hogo Handbook (Nature Conservation Handbook)* (Tokyo: Asakura Shoten, 2000). See also K. Yamamura, *Shizen Hogo no Hou to Senryaku (Law and Strategies for Nature Conservation)* (Tokyo: Yuhikaku, 2nd ed, 1994).

⁶⁶ Foreign Exchange and Foreign Trade Law 1949, Law No. 228.

⁶⁷ Tariff Law 1954, Law No. 61.

⁶⁸ Details of conditions are listed in the Enforcement Order. Art. 3, Enforcement Order Concerning the Law for the Conservation of Endangered Species of Wild Fauna and Flora 1993, No. 17.

⁶⁹ For detailed discussions, see 3.4.2.

⁷⁰ Enforcement Orders are drafted and issued by the government. Utilisation of Enforcement Orders allows laws which only provide a framework to pass the Diet and more significant details are made after the laws have passed the Diet. Abe, et.al., n 32 above, 23.

⁷¹ Art. 9, n 61 above.

⁷² Art. 12, *ibid.*

⁷³ Art. 17, *ibid.*

species. Apart from such direct protection, the Law also provides for conservation measures such as habitat protection via the designation of protected areas⁷⁴ and facilitation of breeding programmes for endangered species.⁷⁵

With regard to the legislation in the UK, both European and UK legislation will be examined. The legal structure in the UK is fundamentally different from that of Japan in the sense that the UK is a member of the European Union (EU) and it is subject to European legislation as well as international treaties. Currently with regard to CITES obligations EC Regulation 338/97⁷⁶ (which superseded Regulation 3626/82⁷⁷) is directly binding in the UK. Whilst regulations relating to import and export are provided by EC Regulations and the Customs and Excise Management Act 1979⁷⁸ enforcement measures for offences under the EC Regulation are provided by Statutory Instrument, the Control of Trade in Endangered Species (Enforcement) Regulations (COTES) 1997⁷⁹ (which superseded COTES 1985⁸⁰).

With regard to the conservation of national species, the primary legislation in the UK is the Wildlife and Countryside Act 1981.⁸¹ The 1981 Act gives protection to; all wild birds, and mammals and plants listed in its Schedules.⁸² Species protected by the Act also include species protected by CITES and EC Regulation 338/97, therefore the 1981 Act is closely adhered to and utilised to fulfil the conservation objectives of CITES. Provisions concerning the enforcement of this Act have recently been enhanced by the Countryside and Rights of Way Act 2000 (CRoW).⁸³ Apart from the 1981 Act, there are numerous other pieces of legislation that contribute to the protection of wildlife in the UK.⁸⁴

⁷⁴ Sec. III, *ibid.* Only for national species.

⁷⁵ Sec. IV, *ibid.* Only for national species.

⁷⁶ 1997 O.J. (L61) 40.

⁷⁷ 1982 O.J. (L384) 1.

⁷⁸ Customs and Excise Management Act 1979.

⁷⁹ Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI NO. 1372.

⁸⁰ Control of Trade in Endangered Species (Enforcement) Regulations 1985, SI No. 1155.

⁸¹ Wildlife and Countryside Act 1981.

⁸² Schedule 1 lists birds that are protected by special penalties; Schedule 2 includes birds that may be killed or taken; Schedule 3 includes birds that may be sold; Schedule 4 includes birds that must be registered and ringed if kept in captivity; Schedule 5 includes protected animals; Schedule 6 includes animals which may not be killed or taken by certain methods; Schedule 7 includes protected mammals; and Schedule 8 includes plants which are protected. *Ibid.*

⁸³ See 2.8.6 for details of the amendment.

⁸⁴ For instance, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) is a leading organisation in bringing prosecutions for offences involving animals. The RSPCA has brought prosecutions using various legislation including; Protection of Animals Act 1911, Wildlife and Countryside Act 1981, Protection of Badgers Act 1992, Wild Mammals Protection Act 1996, Deer Act 1991, Game Act 1831, Conservation of Seals Act 1970, Animal Cruel Poisons Act 1962, Animal Health Act 1981, Endangered Species Act 1976, etc. A list of legislation provided by Inspector Alan Fisher of the RSPCA, 20 Apr. 1999. For further discussions of animal welfare in the UK, see 4.5.3.

1.6. Thesis Structure

The rest of Chapter 1 provides an explanation of the theoretical and practical context of the research. This will include discussions on the development of values and concepts relating to wildlife conservation. Tensions which exist around CITES between those who promote the utilisation of wildlife and those who promote its protection are also discussed. Japan belongs to the former group, and the UK, although acknowledging the significance of utilisation in developing states, supports the latter approach.

Chapter 2 examines the UK implementation of CITES. The chapter attempts to identify the UK's conservation attitude, with regard to CITES. Examination of the relevant legislation, as well as of the enforcement mechanisms is provided.

Chapter 3 examines Japanese implementation of CITES. The examination will attempt to identify the differences from the UK legislation and enforcement mechanisms.

Chapter 4 provides a discussion about UK cultural factors affecting perceptions and attitudes towards nature. This primarily involves an examination of Christianity and rational thinking, considering what perceptions towards nature they have provided for people throughout history, leading first to negative and then positive attitudes toward nature. The role played by the ecological movement is also closely examined, as well as moral movements, for which discussions on the animal welfare movement are provided.

Chapter 5 provides a discussion about Japanese cultural factors. The perceptions towards nature based upon Shinto and Buddhism, which contributed to the development of the 'Japanese' way of appreciating nature, are primarily discussed. Also provided are discussions on primatology, the ecological approach of Imanishi Kinji, and the animal welfare movement and examining whether those elements have contributed to the development of conservation in Japan.

Chapter 6 draws conclusions and gives suggestions for the way forward in international efforts to conserve wildlife.

1.7. International Theoretical Context: The Development of Values and Concepts in International Wildlife Law

It is now necessary to consider the conservation concepts accepted at international level, in order to provide a basis for comparison. The following paragraphs will first

discuss the development of the conservation concepts seen in international wildlife law. Secondly discussion is provided as to what kind of tensions are seen in the field of international wildlife conservation. This is to illustrate the positions taken by groups promoting different approaches toward principles of the conservation.

This section briefly examines the history of international wildlife law, considering how the value of wildlife and conservation concepts have developed within the international legal framework. It attempts to describe how two virtually opposing conservation concepts have developed. One of them is the protective approach, which varies from a cautious, non-utilisation approach to the more extreme ecocentrism. The other is the utilitarian approach, which is endorsed by the principle of sustainable use.

1.7.1. Anthropocentrism and Ecocentrism

The motivation for conservation emerges primarily from two different strands of thought. According to de Klemm and Shine,

Concern has steadily grown about the need to conserve species and natural habitats in the face of rapidly-developing threats to all kinds. There are two very different strands to this concern about the loss of biological diversity. Firstly, the *anthropocentric* view is centred on a loss to science and the economy, as well as a more general loss of potential benefits for both present and future generations. Secondly, what is now referred to as the “*ecocentric*” view is concerned with the intrinsic value of biological diversity, which humanity may use but which it has no moral right to destroy, as well as with its fundamental role in maintaining the life-sustaining systems of the biosphere and the evolutionary potential of the Earth.⁸⁵

International wildlife law began in the late 19th century purely from a utilitarian point of view, to protect only species considered “useful” to humans,⁸⁶ and the value attributed to wildlife was predominantly economic. In other words, the early treaties were solely based upon strictly anthropocentric views. Anthropocentrism is defined by Pepper as follows: “a world view placing humans at the centre of all creation - one which is 'taken for granted by most Westerners'.”⁸⁷ It sees humans as the source of all value (i.e. it is they who bestow value on other parts of nature) since the

⁸⁵ C. de Klemm and C. Shine, *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems* (Cambridge: IUCN, 1993) 7. Italicised by the author. For general details on the development of international wildlife law, see also; S. Lyster, *International Wildlife Law* (Dyfed: Grotius Publications Ltd., 1985) 2-3 and 63-64.

⁸⁶ See 1.7.2.

⁸⁷ Quoted from J. Button, *A Dictionary of Greek Ideas*, (London: Routledge, 1998).

concept of value itself is a human creation”.⁸⁸ The utilitarian point of view still continues to constitute mainstream conservation principles in international wildlife law, with wildlife referred to as 'natural resources', over which states have sovereignty.⁸⁹

Nevertheless, at a fundamental level,⁹⁰ the non-economic value of wildlife has also been acknowledged and a less anthropocentric approach to conservation can be observed in later treaties. Recently, even ecocentric views have been observed in the developing body of international wildlife law.⁹¹ Ecocentrism, according to Pepper, can be defined as “a 'mode of thought'⁹² which regards humans as subject to ecological and system law. Essentially it is not human-centred,⁹³ but centred on natural ecosystems, of which humans are reckoned to be just another component. There is a strong sense of respect for nature in its own right⁹⁴ as well as for pragmatic reasons”.⁹⁵ The ecocentric standpoint therefore differs greatly from the anthropocentric and “anthropocentrism opposes ecocentrism”, and vice versa.⁹⁶ This means that conservation concerns can arise from these two contradictory viewpoints, and both of them can be identified in the international legal framework concerning wildlife conservation. The following examination of the history of wildlife treaties and other instruments attempts to show the parallel development of anthropocentric and ecocentric views.

1.7.2. Early Treaties

As mentioned earlier, the need to conserve wildlife and a modern international legal framework for this end were recognised as early as the end of the 19th century.⁹⁷ The effort was initiated from a strictly anthropocentric utilitarian view, and before the 1970s, treaties were mostly confined to a regional basis. The early treaties did not include concepts which are considered to be important in wildlife conservation in

⁸⁸ D. Pepper, *Modern Environmentalism* (London: Routledge, 1996), 328.

⁸⁹ Principle 21, the Stockholm Declaration. Stockholm Declaration of the United Nations Conference on the Human Environment in P. Sands, R.G. Tarasofsky and M. Weiss, *Documents in International Environmental Law* (Manchester and New York: Manchester University Press for IUCN, CSERGE, FIELD, 1994) 9-14.

⁹⁰ For instance, a State cannot have sovereignty over a particular 'species', and there is no principle of joint sovereignty in international law. De Klemm and Shine, n 85 above.

⁹¹ See 1.7.4.

⁹² Quoted from T. O'Riordan, *Environmentalism*, (London: Pion, 2nd ed, 1981).

⁹³ (anthropocentric)

⁹⁴ (bioethic)

⁹⁵ Pepper continues; “Ecocentrics lack faith in modern large-scale technology and society, and the technical, bureaucratic, economic and political elites”. Pepper, n 88 above, 329.

⁹⁶ Ibid, 328. For criticisms of ecocentrism and emphasis on rational management based purely on science, see for instance; F.H. Wagner, 'Principles for the Conservation of Wild Living Resources: Another Perspective' (1996) 6 *Ecological Applications* 2, 365-367.

⁹⁷ See *ibid*, 18.

more recent treaties, such as the ecological importance of wildlife, or biodiversity. One of the earliest treaties, the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa,⁹⁸ was based upon a strictly anthropocentric, utilitarian approach. In order to control over-hunting in Africa, its objective was “to prevent the uncontrolled massacre and to ensure the conservation of diverse wild animal specieswhich are *useful to man or inoffensive*”.⁹⁹

Subsequently three major wildlife treaties were adopted before the war;¹⁰⁰ one of which took a step further in its conservation philosophy. The first two treaties, the 1902 Convention for the Protection of Birds Useful to Agriculture¹⁰¹ and the 1933 London Convention Relative to the Preservation of Fauna and Flora in their Natural State,¹⁰² were still based upon a strictly anthropocentric, utilitarian view of wildlife conservation.¹⁰³ However, the third treaty, the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere,¹⁰⁴ recognised the importance of protecting *all* species which are threatened with extinction, in their natural habitat.¹⁰⁵ Also, although it became a ‘sleeping’ convention, the Western Hemisphere Convention introduced many conservation mechanisms included in more recent treaties. Such mechanisms were; the establishment of protected areas;¹⁰⁶ the regulation of international trade in wildlife;¹⁰⁷ special protection for migratory birds¹⁰⁸ and the need for international co-operation to achieve conservation.¹⁰⁹

After World War II, the International Convention for the Regulation of Whaling (ICRW)¹¹⁰ came into existence. The ICRW was also premised on the strictly utilitarian concept, although many Parties have since moved away from this concept.¹¹¹ Soon after the formation of the ICRW, a new bird treaty, the 1950 International Convention for the Protection of Birds was adopted, superseding the 1902 Convention. The 1950 Convention gave protection to all birds, regardless of

⁹⁸ 94 B.F.S.P. 715. This treaty was never ratified.

⁹⁹ Preamble, *ibid.* Italicised by the author.

¹⁰⁰ For an early history of wildlife treaties, see; De Klemm and Shine, n 85 above, 7.

¹⁰¹ IV I.P.E. 1615. See also; Lyster, n 85 above, 63-64.

¹⁰² 172 L.N.T.S. 241.

¹⁰³ The 1902 Convention was, as can be seen from its name, solely aimed at the protection of agriculture. The principal objective of the London Convention was; “preserving supplies of species which were economically valuable or popular with trophy hunters” “was much the same”. Lyster, n 85 above.

¹⁰⁴ 161 U.N.T.S. 193.

¹⁰⁵ Preamble, *ibid.*

¹⁰⁶ Art. II, *ibid.*

¹⁰⁷ Art. IV, *ibid.*

¹⁰⁸ Art. VII, *ibid.*

¹⁰⁹ Art. VI, *ibid.*

¹¹⁰ n 23 above.

¹¹¹ See the first few paragraphs of 1.8.

their usefulness to humans. It acknowledged “the interests of science” and “the protection of nature and the economy of each nation”.¹¹²

One other major treaty that should be noted is the African Convention for the Conservation of Nature and Natural Resources adopted in 1968.¹¹³ This Convention superseded the 1933 London Convention, and envisaged both *conservation and utilisation* of wild resources, a conservation concept which was later crystallized into the concept of sustainable development.¹¹⁴ The African Convention also recognised various values of natural resources: “economic, nutritional, scientific, educational, cultural and aesthetic”.¹¹⁵

1.7.3. The Stockholm Conference

The United Nations Conference on the Human Environment (the Stockholm Conference),¹¹⁶ held in 1972, is a significant landmark for conservation, and a consolidation of the conservation efforts that had begun in the 1960s.¹¹⁷ A Declaration of 26 Principles,¹¹⁸ adopted at the Conference, is now considered to be the source of modern conservation principles, “from which a body of international environmental law has since been developed”.¹¹⁹

With regard to wildlife conservation, the Declaration recognised that the conservation of wildlife and its habitat was one of the tasks the international community should pursue. Principle 4 of a Declaration states;

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must therefore receive importance in planning for economic development.¹²⁰

¹¹² Preamble, the International Convention for the Protection of Birds. 638 U.N.T.S. 186. The 1950 Convention did not attract enough contracting parties to make it effective.

¹¹³ 1001 U.N.T.S. 4.

¹¹⁴ See 1.7.6.

¹¹⁵ It included water and soil. “Fully conscious that soil, water, flora and faunal resources constitute a capital of vital importance to mankind...” Preamble, the African Convention for the Conservation of Nature and Natural Resources, n 113 above.

¹¹⁶ Stockholm Declaration, n 89 above.

¹¹⁷ The first Red Data Book was published in 1966 by the International Union for the Conservation of Nature and Natural Resources. T. Nagaike and T. Nakai, 'Red Data Book' in Numata, n 65 above, 102-113. Also, the ongoing Man and Biosphere Programme (MAB) was also derived from an intergovernmental conference in 1968. Y. Ariga, 'MAB: Man and Biosphere Programme' in Numata, n 65 above.

¹¹⁸ It also contained an Action Plan for the Human Environment which included 109 Recommendations and Resolutions on various environmental issues.

¹¹⁹ De Klemm and Shine, n 85 above, 5.

¹²⁰ Principle 4, n 89 above.

However, the above statements are based upon an anthropocentric worldview, in which “[man]” has a “special responsibility” to “wisely manage” wildlife. They connote the concept of stewardship and scientific and rational thinking, all of which originate from Western cultural factors.¹²¹ The Stockholm Conference and subsequent instruments¹²² did not go beyond the “enlightened” anthropocentric view, as seen in the concept of future generations, according to Pallamaerts.¹²³ The Conference's focus remained “the benefit of mankind”,¹²⁴ and therefore remained fundamentally anthropocentric.

Still, the Conference marks the formal beginning of international co-operation in the field of conservation. Whereas previous treaties tended to develop in a piecemeal fashion and lacked co-ordination between each other, with the Stockholm Conference, the need for international co-operation was formerly recognised, and three of what Lyster calls the “big four” treaties were adopted around this time.¹²⁵ They are; the 1971 Ramsar Convention on Wetlands of International Importance¹²⁶; the 1972 Convention for the Protection of the World Cultural and Natural Heritage¹²⁷; and CITES. The importance of ecology was also recognised in these treaties, as they state in their Preambles that wildlife is an 'irreplaceable' component of ecosystems.¹²⁸ These treaties still continue to serve as some of the primary nature conservation treaties to this date.

1.7.4. Between Stockholm and Rio

Between the Stockholm Conference and the United Nations Conference on the Environment and Development (UNCED), held in 1992 in Rio, a number of legal instruments developed, facilitating current key conservation values and concepts. The most significant concept that was developed through these instruments was the concept of sustainable development.¹²⁹ Such instruments are: the 1980 World Conservation Strategy, a scientific instrument¹³⁰; the 1982 World Charter for Nature,

¹²¹ This point is discussed in Chapter 4.

¹²² For details, see for example: P. Sands, *Principles of International Environmental Law*, vol. I (Manchester: Manchester University Press, 1995) 38-42.

¹²³ M. Pallemarts, 'International Environmental Law from Stockholm to Rio: Back to the Future?' in P. Sands (ed), *Greening International Law* (London: Earthscan, 1993) 12.

¹²⁴ Sands, n 122 above, 42.

¹²⁵ Lyster, n 85 above, xxii. Another treaty is the Convention on the 1979 Conservation of Migratory Species of Wild Animals (the Bonn Convention). 19 I.L.M. (1980)15.

¹²⁶ 996 U.N.T.S. 245.

¹²⁷ 27 U.N.T.S. 37.

¹²⁸ Lyster, n 85 above, 180. See; Preamble, n 14 above; Preamble, n 126 above; and Preamble, n 127 above.

¹²⁹ See 1.7.6.

¹³⁰ Three objectives of conservation were set as: (a) to maintain essential ecological processes and life-support systems; (b) to preserve genetic diversity; and (c) to ensure the sustainable utilisation of species and ecosystems. IUCN, UNEP and WWF, *World Conservation Strategy* (1980).

a legal instrument¹³¹; the 1991 Caring for the Earth, a “follow-up” document for the World Conservation Strategy¹³²; and the 1987 Brundtland Report, a report that consolidated the concept of sustainable development.¹³³

Sustainable development is still an anthropocentric concept, and is now the key concept in environmental conservation.¹³⁴ On the other hand, the ecocentric concept also came to be recognised in legal documents, as represented by the World Charter for Nature. In the Charter nature conservation was recognised as an end in itself, rather than for human benefit, and the Charter acknowledged an intrinsic value in wildlife. It states; “Every form of life is unique, *warranting respect regardless of its worth to man*, and, to accord other organisms such recognition, man must be guided by a *moral code of action*”.¹³⁵

1.7.5. UNCED and The Biodiversity Convention

The conservation concepts introduced by these instruments were crystallized into the Convention on Biological Diversity (The Biodiversity Convention).¹³⁶ The Biodiversity Convention was adopted at UNCED along with other legal instruments.¹³⁷ The key conservation concepts consolidated by UNCED are; the protection of biodiversity, intrinsic value thereof, the precautionary principle, sustainable development and the sustainable use principle.

First of all, with the Biodiversity Convention, biodiversity has officially become “a key element in scientific thinking and conservation policy” at all levels, according to Bowman.¹³⁸ Biodiversity is as an umbrella term for variety of genetic strains, species and ecosystems.¹³⁹ According to Boyle, the Biodiversity Convention “represents, at least in principle, an attempt to internationalise, in a more

¹³¹ Reflects the three objectives stated in the World Conservation Strategy. *World Charter for Nature*, UNGA Res. 37/7; UN Doc.A/37/51 (1982).

¹³² De Klemm et.al., n 85 above, 4. IUCN, UNEP and WWF, *Caring for the Earth: A Strategy for Sustainable Living* (1991).

¹³³ *Our Common Future* (1987). Published by the World Commission on Environment and Development. For discussions of the Brundtland Report, see Sands, n 122 above, 45.

¹³⁴ For discussions, see 1.7.6.

¹³⁵ *World Charter for Nature*, n 131 above. Italicised by author.

¹³⁶ 31 I.L.M.(1992) 822.

¹³⁷ UNCED adopted three non-binding instruments: the Rio Declaration on Environment and Development, a non-legally binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forest (The UNCED Forest Principles), and Agenda 21. Also adopted was the UN Framework Convention on Climate Change.

¹³⁸ M. Bowman, 'The Nature, Development and Philosophical Foundations of the Biodiversity Concept in International Law' in M. Bowman and C. Redgwell (eds), *International Law and the Conservation of Biological Diversity* (London: Kluwer Law International, 1996) 7.

¹³⁹ Art. 2, n 136 above.

comprehensive and inclusive way, the conservation and sustainable use of nature, based on the concept of biological diversity”.¹⁴⁰

Secondly, ecocentric concern for conservation was further acknowledged by the Biodiversity Convention. In its Preamble it recognised “the *intrinsic value* of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components”.¹⁴¹

Further, as a means to protect biodiversity, the UNCED stressed the importance of the precautionary principle. Principle 15 of the Declaration states;

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.¹⁴²

Finally, as the UNCED focused on problems in developing countries as root causes of environmental degradation,¹⁴³ the overall tone of both the UNCED and the Biodiversity Convention is more utilitarian and anthropocentric, despite its ecocentric elements.¹⁴⁴ Principle 1 of the Declaration states that “[human] beings are at the centre of concerns for sustainable development”.¹⁴⁵ Sustainable development and sustainable use of wildlife are the concepts which were the most stressed at the UNCED. The Biodiversity Convention's objectives are not only the conservation of biodiversity but the *sustainable use* thereof,¹⁴⁶ integrating conservation and development together. Parties are “[determined] to conserve and sustainably use biological diversity for the benefit of present and future generations”.¹⁴⁷

¹⁴⁰ A.E. Boyle, 'The Rio Convention on Biological Diversity' in Bowman and Redgwell, n 138 above, 33-34.

¹⁴¹ Preamble, n 136 above. Italicised by the author.

¹⁴² Principle 15, Rio Declaration on Environment and Development, A/Conf. 151/26 (Vol. I). The Biodiversity Convention does not specifically refer to the precautionary principle, although it endorses the principle in practice in its Preamble. For detailed discussions of the precautionary principle, see; J. Holder, 'Safe Science? The Precautionary Principle in UK environmental Law' in J. Holder (ed), *The Impact of EC Environmental Law in the United Kingdom* (Chichester: John Wiley & Sons Ltd., 1997) 123-146; E. Fisher, 'Is Precautionary Principle Justifiable?' (2001) 13 *Journal of Environmental Law* 3, 315-334; L. Bergkamp, 'Understanding the Precautionary Principle (Part II)' (2000) 2 *Environmental Liability*, 67-82. For further discussions of the precautionary principle, see 1.7.6.

¹⁴³ See; Sands, n 122 above, 48-61.

¹⁴⁴ *Ibid.*

¹⁴⁵ Principle 1, n 142 above.

¹⁴⁶ Art. 1, n 136 above.

¹⁴⁷ Preamble, *ibid.*

Therefore, “[by] the UNCED in 1992, sustainable use had become universally accepted as the basis upon which all living resources should be managed”, according to Johnston.¹⁴⁸ This connotes at least four implications with regard to current conservation principles seen in international wildlife law. One is that the major conservation concept has become the concept of sustainable use. The second is that the concept of sustainable use is anthropocentric; It is based upon the instrumental value of wildlife to humans,¹⁴⁹ and therefore it is, according to Bowman, a “modern form of utilitarianism”.¹⁵⁰ The third is that both anthropocentric and ecocentric concepts are acknowledged to be international conservation concepts, although the former is given more emphasis. The last implication is that the sustainable use of wildlife is to be achieved by utilisation of the “wise management” principle.¹⁵¹

1.7.6. 'Sustainable Use' and the Precautionary Principle

Although in principle, it is considered to be a key concept, the implementation of the sustainable use concept has proven problematic.¹⁵² The concept is ambiguous, and “views inevitably differ upon what, in practice, sustainable use should be understood to mean”, according to Hepworth.¹⁵³ How is the term defined? The Biodiversity Convention defines the sustainable use of biodiversity as follows;

'Sustainable use' means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.¹⁵⁴

The concept of sustainable use can be examined by considering the definition of sustainable development, as laid down by the Brundtland Report as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.¹⁵⁵ This definition of sustainable development

¹⁴⁸ S. Johnston, 'Sustainability, Biodiversity and International Law' in Bowman and Ridgwell, n 138 above, 51.

¹⁴⁹ For the definition, see the next section.

¹⁵⁰ Bowman, n 138 above, 17.

¹⁵¹ See 1.7.3.

¹⁵² For practical examples, see 1.8.

¹⁵³ R. Hepworth, 'The Independent Review of CITES', (1998) 1 *Journal of International Wildlife Law and Policy* 3, 419.

¹⁵⁴ Art. 2, n 136 above.

¹⁵⁵ Our Common Future, n 133 above.

is criticised by Pallemmaerts as “sufficiently ambiguous so as not to directly threaten vested interests”.¹⁵⁶

Following the current definitions mentioned above, sustainable development and sustainable use, may be interpreted in two opposing ways. On the one hand, the sustainable use concept should be the fair distribution of resources between generations.¹⁵⁷ This interpretation may arise if the concept of sustainable development is based upon the sustainable yield of resources. By this interpretation, in implementing the concept of sustainable use, the precautionary principle or other protective measures may prevail.¹⁵⁸ On the other hand, there exists the utilisation-orientated view which considers that sustainable use is to be understood to mean that renewable resources should not be utilised to the degree that they become irrecoverable. This interpretation encourages the utilisation of wildlife “under the [name] of sustainable development”, so that wildlife can pay for its own conservation, according to Sakamoto.¹⁵⁹ Although this interpretation does now allow room for ecocentrism, it has gained increasing support, as discussed below.¹⁶⁰

Indeed, it has been argued that the international community has “[increased] anthropocentricity”¹⁶¹ from the previously pluralist approach of anthropocentrism and ecocentrism seen in the World Charter for Nature¹⁶² to the utilitarian, economic priorities of the UNCED. As a side effect of this trend, the ambiguity of the concept's definition has allowed the “deliberate” utilisation of the term.¹⁶³ Those who benefit from the utilisation of wildlife came to deliberately choose the second interpretation mentioned above, which compromises conservation policy. These so-called “sustainable users”¹⁶⁴ argue that active utilisation will enable the “wise

¹⁵⁶ Pallemmaerts, n 123 above, 14. For the development of the sustainable development principle, see: A.S. Timoshenko, 'From Stockholm to Rio: the Institutionalisation of Sustainable Development' in W. Land (ed), *Sustainable Development and International Law* (London: Graham & Trotman Ltd, 1995) 143-160. For general discussions on sustainable development and international law, see; Boyle, A. and Freestone, D. (ed), *International Law and Sustainable Development: Past Achievements and Future Challenges* (Oxford: Oxford University Press, 1999).

¹⁵⁷ M. Sakamoto, 'Yasei Seibutsu no “Sustainable Use” o Meguru Giron (Debates Surrounding the 'Sustainable Use' of Wildlife)', *The Bulletin of Japan Wildlife Conservation Society*, n 19 above, 150.

¹⁵⁸ Annex 4, Res. 9.24, n 14 above. See 1.8.4.

¹⁵⁹ Sakamoto, n 157 above. Kaneko considers that appropriate utilisation will contribute to the conservation and states that “consumptive use [of wildlife resources] is human nature”. Y. Kaneko, 'Washington Jōyaku to Gyogyō Mondai (CITES and Fisheries Problems)' (Feb. 1997) *Kankyō (The Environment)*, 14-17. For arguments for sustainable use, see also; R. Cooney, 'CITES and the CBD: Tensions and Synergies' (2001) 10 *Review of European Community & International Environmental Law* 3, 259-267. Cooney considers the creation of funds from wildlife utilisation as a “positive incentive”. Cooney, at 265.

¹⁶⁰ See 1.8.

¹⁶¹ Pallemmaerts, n 123 above, 12.

¹⁶² n 131 above.

¹⁶³ H. Obara, 'Ima Naze Sustainable Use (Jizoku Kano na Riyo) o Ronkyū Surunoka (Why 'Sustainable Use' Is Discussed and Examined Now)' *The Bulletin of Japan Wildlife Conservation Society*, n 19 above, 146-149.

¹⁶⁴ This group are also called “wise users”. For discussions of the conflict between sustainable users and protectionists, see generally; M. Freeman and U. Kreuter (eds), *Elephants and Whales: Resources for Whom?* (Switzerland: Gordon and Breach Science Publishers, 1994).

management” of resources, and that that is how wildlife conservation should be implemented; Obara states; “In this case, the term sustainable is interpreted as managing [resources] rationally (ecologically), and they call [this interpretation] scientific”.¹⁶⁵

The precautionary principle is also acknowledged as an important component of conservation concepts, and plays a significant role in preventing the sustainable use principle from being used to excess. It provides a defence for the protective approach preferred by many animal welfarists and ecologists against sustainable users who argue that their concerns are 'irrational' or 'emotional'.

The implementation of the precautionary principle is also problematic, as “[there] is no uniform understanding of the meaning of the precautionary principle among states and other members of the international community”, according to Sands.¹⁶⁶ The principle originated from the concept that action should be taken where there is scientific evidence that significant environmental degradation is taking place, as stipulated in some of the early legal instruments in the 1970s.¹⁶⁷ The principle was increasingly adopted particularly by many of the legal instruments concerning the marine environment.¹⁶⁸ Since the 1970s, the interpretation of the principle has evolved, and the burden of proof has now shifted from those who advocate protection to those who utilise the environment.¹⁶⁹ However, the degree of scientific evidence and environmental degradation that is required to implement the principle differs between legal instruments, and therefore “there is no uniform understanding” of its meaning.¹⁷⁰ Furthermore, since the “concept assumes that science does not always provide the insights needed to protect the environment effectively”, varying values attributed to wildlife come into play, as discussed below.¹⁷¹

¹⁶⁵ Ibid, 146-147.

¹⁶⁶ Sands, n 122 above, 212.

¹⁶⁷ Ibid, 209. Sands raises the example of Article 4(4) of the Agreement on an International Energy Programme 1974. 14 I.L.M. (1975).

¹⁶⁸ Freestone and Hey state that the Declaration of the Second International North Sea Conference on the Protection of the North Sea (London Declaration) is the first occasion where the precautionary principle was formed explicitly. D. Freestone and E. Hey, 'Origins and Development of the Precautionary Principle' in D. Freestone and E. Hey (eds), *The Precautionary Principle and International Law: The Challenge of Implementation* (London: Kluwer Law International, 1996) 5.

¹⁶⁹ See Principle 15 of the Rio Declaration in 1.7.5.

¹⁷⁰ For discussions of the varying degree of those elements found in different legal instruments, see: Sands, n 122 above, 211-212. For more discussions of the precautionary principle, see for instance: Freestone and Hey (eds), n 168 above.

¹⁷¹ Freestone and Hey, n 168 above, 12.

1.8. Practical Context: Ideological Discrepancies

Sugg and Kreuter point out; “conflicts over resource use are conflicts over values”.¹⁷² The abovementioned utilisation-orientated interpretation of the sustainable use concept is in conflict with the more protective approach towards conservation.¹⁷³ Those who take this type of approach are generally called protectionists, and they generally advocate a more protective approach endorsed by the precautionary principle.¹⁷⁴ Among these protectionists, there are those who are simply more cautious about the active utilisation of wildlife. Further along this line, as Bowman points out, some “argue that real, ultimate justification for conservation does indeed derive from an *ethical argument* which would regard elements of the natural world as possessing *intrinsic value*, and therefore as falling within the scope of 'moral considerability' in their own right”.¹⁷⁵ At this end, concerns vary, with animal welfarists and animal rights advocates concerned with the protection of individual animals, to deep ecologists concerned with taking a more holistic approach, concerned with the protection of ecosystems.¹⁷⁶

Conflict is illustrated explicitly over issues involving so-called “charismatic megafauna”, species such as whales and elephants.¹⁷⁷ The whaling convention the ICRW, was created due to utilitarian needs, when countries were utilising whale oil and other parts of whales for economic reasons.¹⁷⁸ However, as the economic importance of whaling declined and subsequently non-consumptive values were attributed to whales by most Western countries, the International Whaling Commission (IWC) came to face a polarisation of the Parties.¹⁷⁹

The majority of the Parties to the ICRW can be now categorised into two groups; sustainable users and protectionists. The former group is led by the whaling states like Japan and Norway, followed by small developing states. Japan advocates the utilisation of whale resources, because of the “competition between fisheries and marine mammals” and for the purpose of “multi-species management” in the

¹⁷² I.C. Sugg and U.P. Kreuter, 'Elephants and Whales as Resources from the Noosphere' in Freeman and Kreuter, n 164 above, 17.

¹⁷³ See the next section.

¹⁷⁴ This group is also called “preservationists”.

¹⁷⁵ Bowman, n 138 above, 18. Italicised by the author. See, for instance, *World Charter for Nature* which recognises the significance of morality in conservation approach. See n 131 above.

¹⁷⁶ See discussions of whaling below.

¹⁷⁷ Ibid.

¹⁷⁸ See 1.7.2.

¹⁷⁹ For the legal history of the IWC, see: G. Rose and S. Crane, 'The Evolution of International Whaling Law' in Sands, n 123 above, 159-181.

ocean.¹⁸⁰ “Culture” and “tradition” are also emphasised as an important element of Japanese whaling.¹⁸¹ The latter group, comprising many Western and also non-Western countries, including the UK, advocates the present ban on whaling. Their concern arises from both ecological and animal welfare reasons, as whales are considered 'special' for their sheer size, speculated intelligence and emotions, and their popularity with the general public,¹⁸² as well as due to concerns about the scientific uncertainty regarding their populations and the increasing human impact on the marine environment.¹⁸³

The conflict between the two groups was particularly apparent at the 54th Annual Meeting of the IWC in 2002.¹⁸⁴ The difference in views and perceptions toward whale species was observed in discussions on many Agenda items. For instance, Japan and Norway requested items such as “whale watching” and “whale killing methods and associated welfare issues” to be deleted or at least included in “other matters”. Japan reasoned that these issues were “outside the regime of IWC”.¹⁸⁵ Japan also condemned the proposal by Australia and New Zealand to establish a South Pacific Whale Sanctuary¹⁸⁶ was “in breach of the ICRW”, as there was no scientific evidence with regard to whale populations to require such establishment.¹⁸⁷

The most contentious of the Agenda items was the issue of aboriginal subsistence whaling. Although traditionally agreed to by consensus, the renewal of the bowhead quotas for Alaskan Eskimos and the native people of Chukotka was put to vote, as Japan and other pro-Japan countries refused to agree by consensus. With the first proposal for the aboriginal quota renewal defeated,¹⁸⁸ Japan sought to tie it with its own coastal whaling quota.¹⁸⁹ In order to link its coastal whaling to aboriginal whaling, Japan had already managed to move forward this Agenda item that was

¹⁸⁰ J. Morishita and D. Goodman, 'Competition Between Fisheries and Marine Mammals: Feeding Marine Mammals at the Expense of Food for Humans' in Institute of Cetacean Research, *A New Focus for the International Whaling Commission* (Tokyo: Institute of Cetacean Research, 2001) 21-32.

¹⁸¹ The Committee for the Promotion of the IWC Meeting in Shimonoseki, *Hogei no Bunka Jisedai e Keishou (Whaling Culture Inherited by the Next Generation)*, a leaflet distributed at the 54th Annual Meeting of the IWC, 20-25 May, 2002.

¹⁸² A. D'Amato and K. Chopra, 'Whales: Their Emerging Right to Life' (1991) 85 *American Journal of International Law*, 21-62.

¹⁸³ For arguments by sustainable users and protectionists about whaling issues, see for instance; M.M.R. Freeman, 'A Commentary on Political Issues with Regard to Contemporary Whaling' (1989) 2 *North Atlantic Studies* 1-2, 106-116; H.S. Schiffman, 'The Protection of Whales in International Law: A Perspective for the Next Century' (1998) 12 *Brooklyn Journal of International Law* 2, 305-360; A. Kalland, 'Whose Whale Is That? Diverging the Commodity Path' in Freeman and Kreuter, n 149 above, 159-187; A. Kalland and B. Morean, *Japanese Whaling: End of an Era?* (Surrey: Gordon and Breach Science Publishers, 1992).

¹⁸⁴ The author was present at this Meeting as an observer.

¹⁸⁵ Commissioner of the Government of Japan, statement made at the 54th Annual Meeting of the IWC, 20 May, 2002, Shimonoseki, Japan.

¹⁸⁶ IWC/54/16.

¹⁸⁷ Commissioner of the Government of Japan, n 185 above, 21 May, 2002.

¹⁸⁸ IWC/54/20.

¹⁸⁹ IWC/54/38.

scheduled to be discussed on the following day. Both Japan's coastal quota and aboriginal quota were rejected, although Japan has withdrawn its opposition against the renewal of the aboriginal quota since the Meeting. The aboriginal quota for bowhead whales was subsequently allocated at a special meeting of the IWC held in October 2002.¹⁹⁰

The issue of aboriginal quotas mentioned above indicates the increasing political influence of Japan on smaller countries, this influence became subject to criticism by anti-whaling nations. Strong anti-whaling countries like Mexico openly criticised Japan for its non-cooperative attitudes and the influence it exerted on others, which prompted some 'pro-Japanese' countries like Antigua and Barbuda to condemn anti-whaling countries for accusing small countries like themselves of being Japan's "lapdog".¹⁹¹

1.8.1. CITES

Issues addressed at CITES also show tensions between sustainable users and protectionists. Overall, CITES now acknowledges that the primary conservation concept is sustainable use, in an attempt to operate in harmony with the Biodiversity Convention.¹⁹² Resolution 8.3 states;

Recognising that the sustainable use of wild fauna and flora, whether consumptive or non-consumptive, provides an economically competitive land-use option; . . . The Conference of the Parties to the Convention recognises that commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.¹⁹³

Therefore, CITES recognises that utilisation "may be beneficial" to conservation, if carried out sustainably.

On the other hand, CITES also acknowledges less anthropocentric concerns, and the importance of the precautionary principle to endorse such concerns. Annex 4 of

¹⁹⁰ IWC, *Final Press Release 2002 Special Meeting*, at: <http://www.iwcoffice.org/Final%20Press%20Release%202002SM.htm>, visited on 1 Nov. 2002.

¹⁹¹ Commissioner of the Government of Antigua and Barbuda, statement made at the 54th Annual Meeting of the IWC, 24 May 2002, Shimonoseki, Japan.

¹⁹² For detailed discussions on the relation between CITES and the Biodiversity Convention, see; Cooney, n 159 above. Cooney considers that CITES and the Biodiversity Convention have fundamental discrepancies, as the former's "antecedents . . . can be found in the trade controls of conservation conventions signed by colonial powers earlier in the century, which sought to preserve African game species from over-hunting". Cooney, at 261.

¹⁹³ Res. 8.3, n 14 above.

Resolution 9.24, adopting a new criteria of listing species, lays down various provisions regarding the process of downlisting species from Appendix I to II according to the precautionary principle.¹⁹⁴ The Annex states; “[When] considering any proposal to amend Appendix I or II the Parties shall apply the precautionary principle so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species”.¹⁹⁵ In summary, the relation between sustainable use and the precautionary principle is as follows; The precautionary principle prevails over sustainable use, unless scientific certainty exists.

However, in reality, scientific evidence is not always sufficient. Quite often it is contradictory. Then, although in principle the precautionary principle should prevail, with no convincing scientific evidence to justify protective measures either, tensions between sustainable users and protectionists are generated. “Anyone who has worked with CITES, or indeed attended this Conference, will be aware of these tensions”, states Hepworth.¹⁹⁶

Both Japan and the UK import wildlife and products thereof, as shown in Table 2. However, their approaches are different towards CITES, and the following paragraphs will compare their approaches.

| | Live Primates | Live Parrots | Live Tortoises | Live Lizards | Live Snakes | Wild Orchids | Cat Skins | Crocodile Skins | Lizard Skins | Snake Skins |
|--------------|---------------|--------------|----------------|--------------|-------------|--------------|-----------|-----------------|--------------|-------------|
| Japan | 3,556 | 9,413 | 30,670 | 39,255 | 4,772 | 128,911 | (354) | 82,166 | 318,159 | 120,999 |
| UK | 2,424 | 3,297 | 1,684 | 16,326 | 3,752 | 453 | 7,000 | (5,624) | 747 | 34,066 |

Table 2 UK and Japanese imports of CITES species in 1997¹⁹⁷ (Numbers in parentheses are those of exports.)

¹⁹⁴ Annex 4, Res. 9.24, *ibid.* For discussions on the precautionary principle and CITES, see; B. Dickson, 'Precaution at the Heart of CITES?' in J.M. Hutton, and B. Dickson (ed), *Endangered Species: Threatened Convention* (London: Earthscan, 2000) 38-46.

¹⁹⁵ *Ibid.* For a brief discussion of the relationship between the precautionary principle and CITES, see; J. Cameron and J. Abouchar, 'The Status of the Precautionary Principle in International Law' in Freestone and Hey (eds), n 168 above, 49-50.

¹⁹⁶ Hepworth, n 153 above, 419.

¹⁹⁷ Figures compiled from the table shown in UNDP, et.al., n 18 above.

| Species | Number of Specimens | Japan's World Position as an Importer | Percentage of the World's Imports |
|-----------------|---------------------|---------------------------------------|-----------------------------------|
| Live Primates | 5,374 | 2 | 21.6 |
| Live Bears | 42 | 1 | 30.7 |
| Cat Skins | 5,985 | 2 | 30.6 |
| Live Birds | 136,179 | 1 | 42.5 |
| Live Tortoises | 29,051 | 1 | 54.5 |
| Reptile Skins | 686,440 | 1 | 20.0 |
| Crocodile Skins | 160,831 | 2 | 17.0 |
| Orchids | 1,776,931 | 2 | 18.2 |

Table 3 Japanese imports in 1996 Source: TRAFFIC Japan

1.8.2. The African Elephant

Issues concerning the African elephant *Loxodonta africana* illustrate such tensions. Debates over this species began in COP 4 in 1983, and elephants were heavily exploited for ivory prior to this COP. As soon as debates over this species began, Japan, in fear of a trade ban, imported the largest amount of raw ivory it ever had in 1984. This import accounted for 78 per cent of all ivory exports from Africa in that year.¹⁹⁸ Continuous exploitation had led to the population of the African elephant decreasing from 1340,000 in 1979 to 625,000 in 1989.¹⁹⁹

After fierce debates between protectionists and sustainable users,²⁰⁰ in 1989, all populations of African elephant were transferred to Appendix I of the Convention, and therefore commercial trade in this species was banned.²⁰¹ The uplisting was controversial as some populations were considered not to qualify for Appendix I status.²⁰² Many southern African range states expressed opposition and entered reservations.²⁰³ They saw elephants as a resource, over which they had sovereign rights. By contrast, the US had imposed a unilateral ban on the import of ivory prior to the CITES ban²⁰⁴, and this action was followed by the EC. Many of the 'Western'

¹⁹⁸ Japan Wildlife Conservation Society, n 19 above, 62.

¹⁹⁹ African Elephant Database, at: <http://www.iucn.org/themes/ssc/sgs/afesg/aed/>, visited on 1 Nov. 2002.

²⁰⁰ See: U.P. Kreuter and R.T. Simmons, 'Economics, Politics and Controversy Over African Elephant Conservation' in Freeman and Kreuter, n 164 above, 39-57.

²⁰¹ Res. 7.9, n 14 above.

²⁰² Dec. 7.9, n 14 above.

²⁰³ Botswana, Malawi, Namibia, South Africa, Zambia and Zimbabwe. See: P.H. Sand, 'Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment' (1997) 8 *European Journal of International Law* 1, 44.

²⁰⁴ The US, France, Germany and then the European Community. Ibid.

countries saw elephants as a symbol of environmental conservation. By contrast, Japan, which has an internal market for ivory products, abstained from voting.²⁰⁵

Following the ban, CITES COPs saw continuous attempts to downlist some populations of African elephant. In 1992, at COP 8 held in Kyoto, Japan, proposals were made to downlist populations in Botswana, Malawi, Namibia, Zambia, Zimbabwe and South Africa.²⁰⁶ These proposals were withdrawn having met strong opposition from protectionists. At the next COP in 1994, proposals to downlist South African and Sudanese populations were made. Again, they were withdrawn in the face of strong opposition. However, the African states agreed to take a united stance on the elephant issue by the next COP, particularly with regard to exporting the large stockpiles of ivory that had built up since the ban, which could make a significant contribution to those states financially.

At COP 10 held in 1997, populations of African elephant in Botswana, Namibia and Zimbabwe were downlisted to Appendix II.²⁰⁷ Resolution 10.10 was adopted to allow a one-off transshipment of ivory from Botswana, Zimbabwe and Namibia, to a single country: Japan.²⁰⁸ This decision, although greeted with dismay by protectionists, was considered to be a good example of combining sustainable use and precautionary principles by Robert Hepworth, the former UK chairman of CITES Standing Committee; He stated that application of the sustainable use principle was “the way forward for CITES” where scientific evidence is sufficient, as it is in this case.²⁰⁹

However, the decision was not welcomed by all. The responses to the decision of a one-off shipment still varied amongst the Parties. “Strains” existed even within Member States of the European Union with regard to coming to the decision to allow the shipment, according to Julian Claxton, who was in the UK delegation to COP 10.²¹⁰ The US and Australia both publicly stated that they had voted against the proposals even though voting was by secret ballot.²¹¹

Japan, in contrast to the US and Australia, actively supported the proposals. One of the Japanese delegates stated that the sustainable use of wildlife was particularly important to developing states, and stressed that exporting and importing countries

²⁰⁵ Ibid. See 3.4.3.2.

²⁰⁶ Three proposals were made with regard to populations of those countries.

²⁰⁷ Decs. 10.1 and 10.2, n 14 above.

²⁰⁸ UNEP, “CITES Standing Committee (8-12 February 1999)”, *Press Release*, Feb. 11, 1999.

²⁰⁹ Robert Hepworth, head of the Global Wildlife Division, DETR, former CITES Standing Committee chairman, interview by author, recorded on tape, Bristol, 7 May 1999.

²¹⁰ During the meeting of the Standing Committee following Resolution 10.10. Julian Claxton, head of CITES Policy Unit, the Global Wildlife Division, DETR, interview by author, recorded on tape, Bristol, 7 May 1999.

²¹¹ Sakamoto, n 19 above, 86.

were already making preparations for the shipment.²¹² The UK, on the other hand, took a position that was close to the middle-ground, as it was the chair of the Standing Committee. The UK considered that “[the decision] on elephant ivory was sustainable”, according to Mr. Claxton.²¹³

Still, the UK as well as many others considered that precautionary measures should be taken to ensure that this decision would contribute to the 'sustainable use' of elephants. Parties agreed that a comprehensive set of safeguards should be put in place before limited trade could resume.²¹⁴ These safeguards, for which the Standing Committee was responsible, were as follows;

1. The remedy of deficiencies in enforcement and control measures in both exporting and importing countries.²¹⁵
2. Withdrawal of reservations on ivory entered by the concerned countries.²¹⁶
3. Commitment to international law enforcement co-operation.
4. Re-investment of trade revenues into elephant conservation.
5. Various safeguards undertaken to be put in hand at the time any authorised sale and shipment of ivory to be in place.
6. Agreement by the countries concerned, the Secretariat, IUCN, and TRAFFIC International to an international system for reporting and monitoring trade and killing of elephants.²¹⁷
7. A mechanism for halting trade and transferring populations to Appendix I if the conditions are not met, etc.²¹⁸

On 11 February 1999, the CITES Standing Committee agreed that a one-off transshipment of ivory could go to Japan “to support conservation and community development projects in Zimbabwe and Namibia,” (and Botswana later)²¹⁹ although

²¹² Ibid, 80-81. For the Japanese Government's approach endorsed by the sustainable use concept, see; H. Kobayashi, 'Washington Jouyaku to Yaseiseibutsu no Hozen (CITES and Wildlife Conservation)' (Feb. 1997) *Kankyō (The Environment)*, 6-9. N. Ishii, 'Yaseiseibutsu Hozen no Atarashii Chōryū to Washington Jouyaku (The New Current of Wildlife Conservation and CITES)' (Feb. 1997) *Kankyō (The Environment)*, 10-13.

²¹³ n 210 above.

²¹⁴ “Conditions for the resumption of trade in African elephant ivory from populations transferred to Appendix II at the 10th meeting of the Conference of the Parties”. Dec. 10.1, n 14 above. See also: UNEP, n 208 above.

²¹⁵ Japan amended its internal control legislation. See 3.4.3.2.

²¹⁶ Recognised to have been met in March 1998.

²¹⁷ Endorsed in February 1999.

²¹⁸ The operational procedure for this mechanism and transfer was agreed in February 1999.

²¹⁹ Botswana was still under scrutinisation, and its export was later authorised. Namibia and Zimbabwe were authorised to sell and ship 13.8 tons and 20 tons of ivory respectively to Japan on or after 18 March 1999. UNEP, n 208 above.

“there were strains and tensions in Europe” as some of the EU Member States even “wanted to go back to the initial debate” of whether or not to allow the transshipment at all, according to Mr. Claxton.²²⁰ Ivory stocks from the above three countries were exported to Japan in July 1999.

At this meeting, the Monitoring Illegal Killing of Elephants (MIKE) was established, to monitor the poaching of elephants not only in Africa but also in Asia.²²¹ The operational procedures to trigger a mechanism to halt trade and possibly put back relevant elephant populations on Appendix I if there was evidence of increased poaching, illegal trade, or non-compliance with the agreed conditions were finalised.

The position taken by Japan toward the elephant issue, as shown above, is the promotion of utilisation. Being aware of the priority given to sustainable development in international environmental law, Japan tries to ally with developing countries. Japan persuaded these countries to join the 'sustainable users' group, by pointing out their sovereign rights over natural resources.²²² This tactic is seen in many other cases.²²³ Internally, the Japanese Government gives protection to the industries that involve the consumptive use of wildlife, such as the seal industry, as shown in Chapter 5.

On the other hand, the UK actively facilitates the conservation of elephants. For instance, in response to the Standing Committee's request to support the non-commercial disposal of registered ivory stocks in countries other than Botswana, Namibia and Zimbabwe, it decided to participate in a project for registered buyers to buy ivory stocks from range states with Appendix I populations.²²⁴ In the Standing Committee held in March 1998, the Committee discussed the issue of growing stockpiles of government-held ivory in other African countries. It was agreed that these stockpiles would be registered by TRAFFIC prior to being offered for non-commercial disposal, in return for which donors would provide funds for elephant conservation in the relevant countries. This is an incentive for range states to protect their populations, and also provides conservation funds.

The UK made efforts to implement its active conservation policy on elephant issues from an early stage. Immediately after this Standing Committee meeting in March 1998, the UK Environment Minister announced that he was giving £350,000 to support work for the protection of species such as elephants and tigers.²²⁵ Out of

²²⁰ Mr. Claxton, n 210 above.

²²¹ Initiated and managed by Species Survival Committee, African Elephant Specialist Group.

²²² Sakamoto, n 19 above, 95.

²²³ See the section on the IWC in 1.8.5.

²²⁴ Dec. 11.3, n 14 above.

²²⁵ DETR, “Meacher Marks 25 Years of Wildlife Protection with Funding Boost for Endangered Species”, *News Release*, 6 Mar. 1998.

this, £100,000 were to be provided for the conservation of the African elephant, in November 1998.²²⁶ Four thousand pounds of the funding was for the monitoring system and the rest was for conservation work in return for the disposal of ivory.²²⁷ The UK decided to buy ivory stocks from Mozambique, although this sale did not take place in the end. Other contributors are Japan, the European Commission, and the US.

1.8.3. Tigers

Another example is the conservation of tigers, although for this species, the scientific evidence is difficult to argue against and therefore the Parties agreed in basis on its protection, rather than utilisation. However, the approach taken by Japan was still a reluctant one as a major consumer state, whereas the UK actively promoted the conservation of the species, suppressing its internal demand for tiger products, as discussed below.

Tigers are highly endangered, with an estimated population of between 5,000 to 7,000 in the wild and they are listed in Appendix I of CITES. The primary reason for the rapid disappearance of this species since the 1990s is poaching. They are highly sought after for traditional medicines. In order to tackle this problem, the 9th COP adopted Decision 9.13 which required consumer states including Japan to improve enforcement.²²⁸

However, as the situation had not improved by COP 10, the Decision had to be strengthened²²⁹ and it was decided to send both technical and political missions to the relevant Parties. In January 1999, CITES began fact-finding missions to analyse the protective measures taken by certain countries with markets for tiger products.²³⁰ The task of the technical mission was to identify key states relating to tiger products and to research and advise on the technical aspects of law enforcement. The states which were considered in need of further visits were then visited by the political mission, to facilitate political initiatives in those states.

The technical mission visited Japan in June 1999 and concluded that the Japanese system regulating wildlife products including those of tigers was not adequate and needed improvement; For instance, 30 out of 50 dispensaries and pharmacies in Japan surveyed by TRAFFIC East Asia were found to sell tiger products or tiger

²²⁶ DETR, "Meacher Pledges £100,000 for Elephant Conservation", *News Release*, 5 Nov. 1998.

²²⁷ DETR, *ibid.*

²²⁸ Dec. 9.13, n 14 above.

²²⁹ Dec. 10.43, n 14 above.

²³⁰ DETR, "Meacher Calls for End to Tiger Poaching", *News Release*, 20 Jan. 1999.

parts.²³¹ It was decided that the political mission should also be sent to Japan. Considerable reluctance of the part of the Japanese Government towards improving internal control was observed; Sakamoto considers that the inadequate regulation was due to pressure from the pharmaceutical industry and the reluctance of the Ministry of Health and Welfare to get involved, as well as the lack of initiatives undertaken by the Environment Agency.²³² Finally, facing international pressure, the Japanese Government decided to amend the regulatory system for tiger products.²³³ This amendment was acknowledged by the CITES missions to be adequate, however, in reality, it is far from satisfactory as, for instance, mere possession is not prohibited.²³⁴

Conversely, the UK seized the initiative in terms of tiger protection. Before the start of the 1999 tiger mission, the UK started combating national problems concerning the illegal import and sale of tiger products. In 1995, the Department of the Environment, Transport and Regions (hereafter DETR), which is now the Department of the Environment, Food and Rural Affairs (hereafter DEFRA), HM Customs and Excise and the Police undertook Operation Charm,²³⁵ a series of raids on traditional medicine practitioners and retailers, targeting tigers and other endangered species used in such medicines.²³⁶ It has resulted in a number of high profile operations, which have led to a steady decline in the open sales of medicinal products containing endangered species.²³⁷ The UK was reported to be the only country amongst Japan, the USA and the Netherlands where the researchers were unable to buy tiger parts or products containing them,²³⁸ although the UK Government is still cautious as it was “not convinced that there [was] no offence going on”, according to Mr. Claxton.

²³¹ See; TRAFFIC, “Urgent Action Needed to Close Legal Loopholes to Conserve Tigers in the Wild”, *Press Release*, at: <http://www.traffic.org/news/press-release/loopholw-tigers.html>, visited on 22 Mar. 1999. See 3.2.4.3 for discussions on the registration scheme under the Species Conservation Law.

²³² M. Sakamoto, ‘The Strengthening of the Decision at CITES COP 10’ in *Japan Wildlife Conservation Society*, n 19 above, 36.

²³³ For details, see Chapter 3.

²³⁴ See Chapter 3. Possession is not prohibited, even if the products are not registered. Also, products can be registered if proven to have been imported before 1980, and therefore can be traded. The Japanese government gave a guidance to the industries to stop selling or displaying following the amendment. However, it is doubtful whether such guidance was adhered to, according to Sakamoto. Sakamoto, n 19 above, 54.

²³⁵ See; DETR, *Wildlife Crime: A Guide to Wildlife Law Enforcement in the UK* (London: The Stationery Office, 2nd ed, 1998).

²³⁶ Holden, *By Hook or by Crook* (Bedfordshire: RSPB, 1998) 29.

²³⁷ Holden, *ibid.*

²³⁸ DETR, “Prescott Pledges Support for Global Tiger Forum”, *News Release*, 5 Mar. 1999.

1.8.4. Sustainable Use, the Precautionary Principle and Science

The position taken by the UK on sustainable use is as follows. Whilst it was the Chair of the Standing Committee, the UK hoped to be “in the middle”²³⁹ and it played the role of “broker” between protectionists and sustainable users to settle the issue.²⁴⁰ Yet generally as a government, it “supports” the sustainable use of wildlife resources, and considers that CITES decisions have to be “based upon sound scientific evidence”, according to Mr. Claxton.²⁴¹ However, importantly, whilst supporting sustainable use the UK's considers it necessary to ensure that *precautionary* measures are taken where there is a lack of scientific evidence. For instance, with regard to the elephant issue, it “[had argued] for some time that there should be no further trade in ivory at least until the monitoring system [was] in place”.²⁴²

The UK's position corresponds with the principles contained in Resolution 9.24,²⁴³ Sustainable use should be the basis for decisions but the precautionary principle should prevail where there is not sufficient scientific evidence.²⁴⁴ This principle, however, is difficult to implement, not only because of its ambiguity and the various possible interpretations of the sustainable use concept but also because scientific evidence is not always conclusive. According to Sakamoto, “the absence of scientific discussions and the independent usage of the term 'scientific'“ was more distinctive than usual at COP 10.²⁴⁵ He points out that the decision to allow a one-off transshipment was made without sufficient scientific evidence presented, and yet it was stressed that the decision should be “scientific” and not “emotional”.²⁴⁶

Depending upon the species, it may be difficult to obtain enough scientific evidence with regard to their population status, which can allow room for the “manipulation” of the sustainable use principle. With a lack of scientific evidence that is satisfactory to all, there emerges room for ideologies, public opinions, political and economic interests and other factors to come into play, even though the precautionary principle *should* prevail. This is often the case with marine species. Whale species are one such example of this, and because of disagreement over the scientific evidence currently presented,²⁴⁷ there is more room for ideological differences to play a key

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Official homepage of UK CITES at; <http://www.UKcites.gov.UK/news/default.htm#1>, visited on 23 Apr. 2002.

²⁴³ See the beginning of 1.8.1.

²⁴⁴ Res. 8.3 and Annex 4, Res. 9.24, n 14 above.

²⁴⁵ Ibid.

²⁴⁶ Sakamoto, n 19 above.

²⁴⁷ For instance, at the 54th Annual Meeting of the IWC, the Scientific Committee simply “[could] not give” a satisfactory answer to some of the population disputes.

role. For instance, the UK Government “is not relying heavily on science” when it comes to the issue of whaling, according to Mr. Claxton.²⁴⁸ There are at least two reasons for this. One is that the responsibility for IWC matters was down to the Ministry of Agriculture, Fisheries and Food (hereafter MAFF), which had “a very strong anti-whaling line, which politically, the Ministers will find it very hard to move away from”, according to Mr. Claxton. The other reason is that once a policy has been set by the previous government, it is inherited by the new government as long as it is “something popular amongst British public”.²⁴⁹ The public's concerns with regard to whaling issues predominantly are primarily based upon animal welfare and ecological principles.²⁵⁰ As discussed in Chapter 4, animal welfare plays a significant role in UK wildlife conservation. Mr. Hepworth said, “The UK’s position is, science-based and sustainable use, however, the Government can’t ignore public opinions”, which may be deeply rooted in cultural background.²⁵¹

1.8.5. The 11th Conference of Parties

At COP 11, held in 2000, the overall tone was less utilisation-orientated, however, attempts by the sustainable user group to downlist certain species continued, as well as opposition to such attempts. Three major subjects of discussions were African elephants *loxodonta africana*, hawksbill turtles *eretmochelys imbricata* and some species of whales.

As for African elephants, the population in South Africa was downlisted to Appendix II. This means that populations in four countries, South Africa, Botswana, Namibia and Zimbabwe are listed in Appendix II now, although it was decided that the resumption of the ivory trade was not to be discussed until the 12th COP.²⁵² There are signs that poaching incidents are increasing, not only in Africa but also in Asia, as well as seizures of illegal shipments of ivory.²⁵³ This prompted India and Kenya to put forward a proposal for COP 12 to put all African elephant populations back on Appendix I, whilst five African range states have put forward proposals to resume commercial trade in elephant populations in their countries.²⁵⁴ Meanwhile, continuous efforts by the ivory industry to encourage customers to buy ivory products can be observed in Japan, in the expectancy of trade resumption.²⁵⁵

²⁴⁸ Mr. Claxton, n 210 above.

²⁴⁹ Ibid.

²⁵⁰ These issues are taken as important tasks of the IWC, and there are working groups on both of them.

²⁵¹ Mr. Hepworth, n 209 above.

²⁵² Currently, Monitoring the Illegal Killing of Elephants and Elephant Trade Information System are operating to prepare for the resumption of the trade.

²⁵³ Environmental Investigation Agency, *Back in Business: Elephant Poaching and the Ivory Black Markets of Asia* (2002). For discussions of the recent seizure of ivory shipments destined for Japan, see 3.4.3.2.

²⁵⁴ Proposals 6-11 for COP 12, at: <http://www.cites.org/>, visited on 10 Oct. 2002.

²⁵⁵ See 3.4.3.2.

As for hawksbills, Cuba's second attempt to downlist its hawksbill population failed again.²⁵⁶ In its original proposal, Cuba proposed that hawksbill shells would be exported to Japan, and/or any other qualifying countries every year. However, following advice from TRAFFIC, Cuba decided to amend its proposal so that it followed the example of the African elephant: a one-off transshipment to Japan.

The proposal still failed due to two major reasons. The first reason was that the migratory nature of hawksbill turtles makes their population management difficult, and fears were expressed as to the influence the Cuban proposal would have on other Caribbean countries. The other reason was the inadequacy of the regulatory system in Japan, which, again, was appointed as the sole country to import to.²⁵⁷ The UK was against it, although it had to abstain from voting as the EU could not agree with consensus. However, the UK “pressed the view that any international trade should only be permitted in the context of wider global action” to secure the future of marine turtles and deal with other threats such as the destruction of nesting or breeding sites.²⁵⁸ For the COP 12, Cuba withdrew its proposal which was the same as the one put forward for the COP 11.

For whales, proposals were submitted again by Japan and Norway to downlist some species of whale. Three proposals by Japan to downlist two populations of minke whales *Balaenoptera acutorostrata* (46:69 and 49:67), and a population of gray whale *Balaenoptera robustus* (40:63) were defeated.²⁵⁹ Similarly, the proposal by Norway to downlist populations of minke whales was also defeated (52:57).²⁶⁰ These proposals were met with less supporters than at COP 10.²⁶¹ However, Japan extended the range of its scientific whaling from the already hunted minke whales to sperm whales *Physeter macrocephalus* and Bryde’s whales *Balaenoptera edeni*. It also decided to begin importing whales from Norway, whilst intensively promoting the consumption of whale meat internally. In addition, at COP 11, Japan proposed to exclude Greenpeace from having observer status, for the reason that this organisation had tried to disturb Japanese scientific whaling. The proposal was not accepted. Compared to Japan, The UK “continues to recognise the primacy of the IWC in this area and will continue to oppose any CITES downlisting proposals which might undermine the IWC moratorium on commercial whaling”.²⁶² For COP 12, Japan

²⁵⁶ Cuba submitted the same proposal at COP 10.

²⁵⁷ See 3.4.2.

²⁵⁸ n 244 above.

²⁵⁹ Docs. 11.15, 11.16 and 11.17, n 14 above.

²⁶⁰ Doc. 11.18, *ibid*.

²⁶¹ Although unless the ban on commercial whaling was lifted at the IWC, whales caught in the international waters cannot be taken back to Japan, the downlisting of the whale species to Appendix II is considered by the Japanese government to have an impact on the IWC decisions.

²⁶² n 242 above.

proposes to downlist the populations of minke whales in northern hemisphere and those of bryde's whales in the western North Pacific to Appendix II.²⁶³

1.9. Conclusion

The international community has now acknowledged that the primary conservation principle should be the sustainable use principle. However, its implementation has proven difficult, due to the ambiguity of the term and uncertainty over scientific evidence. Similarly, the precautionary principle, although it is acknowledged that this principle should prevail where scientific evidence is lacking, is subject to different interpretations.

When science fails to present compelling evidence to all, the above principles are interpreted differently, according to the differing values attributed to wildlife. For 'sustainable users', "sustainable use" means utilisation to the maximum degree until scientific evidence can prove with certainty that the species exploited is being threatened to an irreversible level. For 'protectionists' who attribute non-economic and non-anthropocentric values to wildlife, the precautionary approach should prevail where there is lack of evidence that the species is abundant. Although both anthropocentric and ecocentric concerns are acknowledged in international legal instruments, 'sustainable users' dismiss the protective approach as being 'emotional' or 'irrational'.

The UK is 'protectionist'. It agrees with the CITES principle of combining the sustainable use and precautionary principles, although its approach is in general more precautionary. On the other hand, Japan belongs to the 'sustainable user' group, and it does not take the precautionary approach in the field of CITES. The approaches taken by the UK and Japan towards international wildlife law seem contradictory to the cultural images mentioned at the beginning of this chapter,²⁶⁴ which portrayed Japan as having 'ecological' cultural factors and the West as having 'exploitative' attitudes toward nature. In the next chapters, the thesis examines UK and Japanese CITES implementation and enforcement, in order to examine their internal conservation approaches, and to ascertain the differences in these approaches. The thesis then considers the difference in views and perceptions of nature and conservation in a cultural context, trying to explain the contradiction between

²⁶³ Proposals 4 and 5 for COP 12, at; <http://www.cites.org/>, visited on 20 Oct. 2002.

²⁶⁴ See p. 1 of this chapter.

cultural images and conservation realities, in order to see whether cultural factors affect the approach to conservation.

Chapter 2 CITES Implementation and Enforcement in the UK

2.1. Introduction

This chapter examines the UK's CITES implementation and enforcement, in order to ascertain its approach towards CITES and wildlife conservation in general. This examination will be carried out by considering each successive piece of relevant legislation, followed by discussions on the more practical aspects of enforcement. The legislation primarily examined are the Endangered Species (Import and Export) Act 1976,¹ the European Council Regulation (EC) 3626/82,² the European Council Regulation (EC) 338/97,³ the Control of Trade in Endangered Species (Import/Export) Regulations 1997 (COTES 1997),⁴ and the Wildlife and Countryside Act 1981.⁵

This chapter initially examines the history of CITES implementation in the UK. Discussions will be provided as to the difficulties and problems in enforcement under each piece of legislation illustrated by some of the significant cases and how each of these cases may have facilitated legislative change. The chapter then examines the current primary CITES-implementing legislation, Council Regulation (EC) 338/97. The chapter subsequently examines the general implementation and enforcement of CITES at a national level under Regulation 338/97, the Customs and Excise Management Act 1979,⁶ COTES 1997, and the Wildlife and Countryside Act 1981. In this part of the examination, practical aspects of enforcement mechanisms are closely examined, considering how the relevant legislation is enforced by each enforcement actor, as well as the inter-relationship between such actors.

2.2. Historical Background

The first CITES-implementing legislation in the UK was the Endangered Species Act 1976. The 1976 Act implemented CITES until 1982, when the European Community created its own CITES-implementing Regulation 3626/82.⁷ The Regulation became directly binding in all EC Member States. In order to provide for

¹ Endangered Species (Import/Export) Act 1976. For discussions, see 2.2.1, 2.2.2 and 2.2.3.

² 1982 O.J. (L384) 1. For discussions, see 2.3.

³ 1997 O.J. (L61) 40. For discussions, see 2.4.

⁴ Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI No. 1372. For discussions, see 2.7 and 2.8.

⁵ Wildlife and Countryside Act 1981. For discussions, see 2.6, 2.7 and 2.8.

⁶ Customs and Excise Management Act 1979.

⁷ n 2 above. See 2.3.

internal enforcement measures for the Regulation within the UK, COTES 1985⁸ was enacted, thereby largely superseding the 1976 Act. Further, following the creation of the single market, a new European Regulation, EC Regulation 338/97 replaced Regulation 3636/82, for the more harmonious implementation of CITES. COTES 1985 were therefore repealed and re-enacted by COTES 1997. Regulation 338/97 and COTES 1997 are therefore the current legislation implementing CITES within the UK.

2.2.1. The Endangered Species (Import and Export) Act 1976

The UK enacted the Endangered Species (Import and Export) Act 1976⁹ in order to ratify CITES.¹⁰ According to the *Times*, in 1976, Britain still imported many products made of endangered species,¹¹ and the Act was introduced to control internal market.¹² Significant points to be noted about the 1976 Act are that it allowed private prosecutions and that its enforcement was therefore supported by environmental organisations. This shows that the UK clearly considered CITES as a conservation treaty rather than a trade-regulating treaty as stated in the objectives of the 1976 Act¹³; “[It] is expedient to give effect in the United Kingdom to the restrictions on international trade contained in the Convention and to make certain other provisions in connection with the conservation of endangered animals and plants”.¹⁴

During Parliamentary discussion, private prosecutions were strongly pressed for by some members of Parliament, particularly those in the Lords. They recognised the significance of the role played by environmental NGOs in the history of wildlife law enforcement, such as the Royal Society for the Protection of Birds (hereafter RSPB), which “had acted cautiously in this field - and almost entirely successfully”.¹⁵ It was initially expected that HM Customs and Excise (hereafter Customs) would be the sole enforcement body, as it is the governmental agency that enforces general trade controls. The Government considered that private prosecutions under the 1976 Act

⁸ Control of Trade in Endangered Species (Enforcement) Regulations 1985, SI No. 1155

⁹ n 1 above.

¹⁰ UK ratification was one of the earliest amongst Parties to CITES, as shown in the Table in 3.2. The reason it took the UK three years to ratify was because the UK was waiting to jointly ratify CITES with other EC Member States, and for accession to the Convention by the UK commonwealth countries. When neither of the above occurred, the UK joined alone. HC Deb vol 917 col 892 15 Oct. 1976. Prior to the enactment of the Endangered Species Act, trade in CITES species was regulated by the Import, Export and Customs Powers (Defence) Act 1939.

¹¹ These included: 112 jaguar skins, 159 leopard skins, 400,000 lizard skins of various kinds, 3,000 metres of boa constrictor skin, 150 African elephant tusks, 262 elephant hair bracelets, 10 hippopotamus teeth, 316,000 peacock feathers, etc. “DoE Publishes Report on CITES”, *Times*, 4 Oct. 1977.

¹² As shown later, high street shops in London were selling fashion products made of endangered species. See 2.2.2.

¹³ It provides a contrast to the Japanese approach towards CITES during the 1980s. See 3.2.

¹⁴ n 1 above.

¹⁵ n 10 above. See also; HL Deb vol 368 col 1254 16 Nov. 1976.

were not likely to work, and would disrupt the work of Customs.¹⁶ Nevertheless private prosecution was ultimately provided for.¹⁷

The contents of the Act are as follows. It restricts the importation and exportation of all species listed in Schedule 1 (animals) and 2 (plants). Schedule 3 contains parts and derivatives of the specimens of the species prohibited from being traded. In order to import or export the listed species, a license must be obtained. The license is issued by the Secretary of State,¹⁸ but only after consultation with the appropriate scientific authorities as required by CITES.¹⁹

As the actual trade is regulated by trade control legislation, offences under the 1976 Act concern licenses issued by the Department of the Environment (hereafter DoE) and internal regulations.²⁰ It is an offence to provide false information or documents to obtain licenses, and a penalty is provided for this offence. A maximum sentence of two years is included, as well as the possibility of a fine.²¹

2.2.2. Enforcement under the Endangered Species Act

The enforcement of the 1976 Act was initiated by environmental organisations, and therefore was marked by a relatively high-profile start. The first prosecution under the 1976 Act was a private prosecution, brought by the environmental organisation, Friends of the Earth (hereafter FoE) in 1978.²² Although the influence that this case had in terms of publicity and raising-awareness is significant, it also illustrates some of the difficulties in the application of the Act.

The prosecution was brought against a shop called “Eatons Shell Shop” in Soho, London. A FoE employee found 15 tortoiseshells on sale at £20 each. Hawksbill turtle *eretmochelys imbricata*, the sole source of commercial tortoiseshells, was already endangered and listed in CITES Appendix I and the 1976 Act, and therefore its possession and sale were prohibited under section 4(1) of the Act.²³ The species was also listed in the Red Data Book compiled by IUCN.²⁴ Responding to a phone

¹⁶ “Endangered Species Act”, *Times*, 16 Oct. 1976.

¹⁷ Some Members of Parliament considered compiling a list of NGOs which could take private prosecutions in order to limit the ability to prosecute to recognised bodies. However, others considered that this was not feasible. n 15 above.

¹⁸ It also allows the Secretary of State to modify Schedules, which list protected species, ports of entry for live animals. ss. 3, 5 and 6, n 1 above.

¹⁹ s. 1(2) and (3), n 1 above. Arts. III, IV and V, CITES.

²⁰ The fact that the Department of the Environment had become the primary department for the implementation of the Act was considered vital and appreciated highly. n 15 above. For discussions of border controls, see 2.5.2.

²¹ s.1(6), n 1 above.

²² “FoE Fail in Case against Shop Selling Turtle Shells”, *Sunday Times*, 29 Oct. 1978.

²³ “. . . a person who sells, offers or exposes for sale, has in his possession [or transports] for the purpose of sale, or displays to the public, . . . shall be guilty of an offence; . . .”. s. 4(1), n 1 above. Population in the Atlantic was listed in 1975, and the one in the Pacific in 1977. See CITES official homepage at: <http://www.cites.org/>.

²⁴ “Government Makes Review of Import Controls Following Allegations of Loophole”, *Times*, 19 Apr. 1978.

call from FoE reporting the incident, Customs seized the shells. The Customs officers then had to consider whether the importation of the shells was illegal.²⁵

The 1976 Act restricted the importation of “the shell, scales, if *unworked or simply prepared*, the waste of shell and scales, and the flippers of any animal of the family Cheloniidae (sea turtles)”.²⁶ In this case, the shells were not fragmented and therefore were complete, but polished. Customs officers chose to interpret the words “unworked or simply prepared” to be inapplicable to those shells because they were polished. Subsequently, the shells were returned to the shop. Being unsatisfied with this result, FoE took on the prosecution in this case, as it considered that “the shop was in possession of illegally imported hawksbill shells”, according to *Sunday Times*.²⁷ The prosecution failed, however. The magistrate shared the view of the Customs officers and dismissed the summons.

FoE’s defeat dismayed many conservationists. FoE considered that this case could establish the rule that “dealers can now bring into Britain as many turtle shells, rhino horns, elephant and walrus tusks as they wish, by simply polishing them first”.²⁸ Clearly this was not the intention of the legislator, as the result of the case was also regretted by Lord Wynne-Jones who piloted the 1976 Act in the House of Lords. He explained the meaning of this rather vague phrase: “unworked or simply prepared” as the attempt “to cover *all* products, which were evidently identifiable, and not as a legal excuse for evading the absolutely clear intention of the Act”.²⁹ The relevant part of the 1976 Act was later amended as follows in 1982; “Anything made wholly or partly from the bony shell, its covering scales and the claws, or any member of the family Cheloniidae”.³⁰ With this amendment, hawksbill turtles *eretmochelys imbricata*, along with other sea turtles, came to receive stricter protection.³¹

The second prosecution attempt became the first successful case under the Endangered Species Act. On January 29, 1979, a prosecution was brought under the 1976 Act, again, by FoE.³² The case involved three leopard skins which were on sale at a shop in Oxford Street, London called “the House of Sears”. They were priced at; £2,000, £1,500 and £750 respectively. Leopard *panthera pardus* was listed in Appendix I of CITES and Schedule 1 of the 1976 Act. As a penalty, a fine of £550

²⁵ “FoE Complains over Sale of Hawksbill Turtle Shells”, *Sunday Times*, 30 Apr. 1978.

²⁶ Para. 16, Sched. 3, n 1 above. Italicised by author.

²⁷ *Sunday Times*, n 25 above.

²⁸ *Ibid.*

²⁹ *Ibid.* It is now possible for the court to consider the Parliamentary debates as an aid to interpretation of the Act. See: *Pepper v Hart* [1993] 1 *All England Law Reports*, 42.

³⁰ Sea turtles. Sched. 3, n 1 above. Substituted by the Endangered Species (Import and Export) Act 1976 (Modification) Order 1982, SI 1982/1230.

³¹ For other types of turtles; “Anything made wholly or partly from the bony shell, its covering scales, if unworked, simply prepared or polished, of any animal of the order *Tetsudinata* (turtles, tortoises and terrapins).” Sched. 3, *ibid.*

³² “Leopard Skins for Sale Cost Shop £550 Fine”, *Daily Telegraph*, 29 Jan. 1979, 3.

was imposed on the shop.³³ However, considering the conservation threat posed to this species and also the expected profits on the sale of the skins, the fine was far from adequate.

In *R. v Cooke*,³⁴ however, the sentence considered the implications of wildlife crimes to a fuller extent. In this case both the 1976 Act and the Customs and Excise Management Act 1979 were applied. The offender was charged with illegally importing and exporting birds under the 1979 Act.³⁵ Further, he was also charged with the delivery of a fake document relating to the import of rare birds under the Endangered Species Act.³⁶ The offender was a dealer in exotic birds, and was “regarded as of high repute in this particular connection”.³⁷

The result of this case indicates a higher awareness towards wildlife issues in the UK. The offender received a prison sentence of three months, as the court took notice of the fact that he abused his position as a CITES expert. The court upheld the immediate custodial sentence imposed by Crown Court, and stated that the sentence was “not only to deter this man . . . but to deter others in the future”.³⁸ It also considered that the monetary value of the birds should be irrelevant to seriousness of the offence.

The first two cases under the 1976 Act show the significance and the influence of the role played by environmental organisations in implementing and enforcing CITES. The involvement of such organisations is crucial in the implementation of international wildlife law. As indicated by the first case example, a lack of awareness or willingness to prosecute can be seen amongst non-environmental authorities, such as Customs officers and magistrates, who, in this case, chose to interpret the provisions of the Act narrowly. This problem of a lack of awareness or willingness to prosecute still continues today in the UK.³⁹ However, the involvement of environmental organisations at the early stage of CITES implementing law undoubtedly compensated against the limitations inherent in enforcing wildlife law. This provides a contrast to the early stage of CITES implementation in Japan.⁴⁰

³³ It was not clear under which offence the case was brought against. According to a telephone inquiry to FoE, it keeps no record of its past prosecution initiatives. FoE, a telephone inquiry by author, Mar. 1999.

³⁴ *R. v Cooke* [1980], available in LEXIS, UK library, Case file (Court of Appeal [Criminal Division]), No. 517/B1/80, 4 Sep. 1980.

³⁵ Six charges for the import and one charge for the export. *Ibid.*

³⁶ Twenty four specimens required licences. *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ See 2.7.6.

⁴⁰ See 3.2.

2.2.3. Amendment to the Endangered Species Act

The UK's problems in enforcing CITES largely related to products, rather than raw materials.⁴¹ Parts and derivatives imported were of various types, and the regulation of the internal movement of these various products proved complex. In order to increase the effectiveness of enforcement, the Department of the Environment drew up proposals to place more restrictions on trade in parts of endangered species in 1978.⁴² The Endangered Species Act was subsequently amended by the Wildlife and Countryside Act 1981, and the UK really started suppressing the internal demand for products from endangered species.

The three major features of the amendment were as follows. First, new Schedules were inserted to ensure the enforcement of the Act for conservation purposes. The Wildlife and Countryside Act inserted Schedules 4 and 5 specifying animals and plants, the sale of which are prohibited, *regardless of whether they were imported legally or illegally*.⁴³ This meant that specimens of listed species could no longer be sold at all for commercial purposes within the UK. By placing a blanket ban on those species, the legal difficulty of proving their illegal importation was circumvented. Schedule 4, for instance, includes a significant number of species for which a significant demand existed; primates, parrots, crocodiles, chelonians, bears, leopards and wild cats.⁴⁴

The second feature of the amendment was the licensing system for commercial activities⁴⁵ such as sales.⁴⁶ This also enhanced the effectiveness of enforcement, as the burden of proof now fell upon those who carried out commercial activities. The last feature of the amendment was the establishment of a power of entry for search. This gave the Police stronger powers in enforcing the 1976 Act. Although the 1976 Act was largely superseded by EC Regulation 3626/82 and COTES 1985 soon after this amendment, these changes to the internal control provisions remained in COTES 1985.

2.2.4. Legislative Change and Current Legislation

When EC Regulation 3626/82⁴⁷ was created, to take a harmonised approach towards CITES within the European Community, a major legislative change in CITES

⁴¹ For instance, around 1981, there were continual protests against 'high fashion' products made from endangered species. "FoE Protests High Fashion Products", *Times*, 6 Jun. 1980. FoE circulated the list of products made from endangered species. "FoE Circulates the List of Endangered Species Products", *Times*, 13 Sep. 1980.

⁴² "DoE Seeks More Protection for Threatened Species by Restricting Trade", *Times*, 26 Oct. 1978.

⁴³ Schedules 4 and 5, n 1 above.

⁴⁴ Sched. 4, n 1 above.

⁴⁵ What is constituted by 'commercial activities' itself needed legal definition by case law. See *Partridge v Crittenden* in 2.7.4.

⁴⁶ s. 4(1), n 1 above. Other subsections amended or inserted by Wildlife and Countryside Act 1981 are; s. 1(3A) and (3B), s. 1(9)-(11), s. 3(dd), and other subsections relevant to such amendment or insertion.

⁴⁷ n 2 above.

implementation in the UK occurred. This is because European Regulations are directly binding within the UK. As the Regulation provided the legal basis for trade control, as well as for the control of internal movement of the protected species, the Endangered Species Act was largely superseded.⁴⁸ Instead, COTES 1985⁴⁹ was created, to provide enforcement measures for the Regulation.⁵⁰

Fifteen years after its establishment, Regulation 3626/82 was replaced by Regulation 338/97.⁵¹ This was because of the 1993 establishment of the common market in the European Union (EU). CITES control within the EU was going to become more difficult, as once specimens were within the EU, there would be no internal border control. Therefore tighter controls at the EU's external borders became considered to be vital. Furthermore, the common market was also going to require a more harmonised application of the Regulation throughout the EU.⁵² With this background, Regulation 338/97 replaced the former European Regulation.

Accordingly, within the UK, COTES 1997 was created to implement Regulation 338/97, replacing COTES 1985. COTES 1997 provides enforcement measures, including penalties and forfeiture measures. COTES 1997 also provides various enforcement measures for internal control. As for commercial activities, Regulation 8 of COTES provides a penalty if such activities take place without valid permits or certificates acquired in accordance with Regulation 338/97.⁵³ Although possession is not prohibited unless specimens are kept for sale, under COTES, the burden of proof falls on the person who keeps the protected species.⁵⁴ Other measures include powers of entry for the Police and Wildlife Inspectors,⁵⁵ seizure by the Police,⁵⁶ and a forfeiture order by court.⁵⁷

⁴⁸ For discussions of Regulation 3626/82, see 2.3.

⁴⁹ n 8 above.

⁵⁰ For an example case, see *R. v Canning* in 2.7.4.

⁵¹ For discussions, see 2.4.

⁵² The fear was expressed that some Member States might have to downgrade their measures that might be stricter than the Regulation. "Nature Conservation: New Legislation On Trade In Wild Fauna And Flora", *European Environment*, 26 Nov. 1991, available in LEXIS European Library, EC News file.

⁵³ Reg. 8, n 4 above. Article 8 of the Regulation lays down conditions for commercial activities, and Article 10 requires certificates to be issued for such activities. Arts. 8 and 10, n 3 above. See 2.4.7.

⁵⁴ For discussions on internal controls in Japan, see 3.4.2.

⁵⁵ Reg. 9, n 4 above. Discussions on Wildlife Inspectors are provided in 2.6. For a practical case example, see *R v Marylebone Magistrates Court and another, ex parte Amdrell Limited (t/a "Get Stuffed") and others* [1998], available in LEXIS, UK library, Case file, 148 NLJ 1230, CO/185/98. Also see: *Times* 17 Sep. 1998. A search warrant was sought under Regulation 9(1) of the 1997 Regulations, and the conditions required for a warrant to be granted were discussed.

⁵⁶ Reg. 10, *ibid.* For discussions on seizure, confiscation and forfeiture measures in Japan, see 3.4.1.4 and 3.4.2.5.

⁵⁷ Reg. 11, *ibid.* See *Hashwani v Letherby (acting for the Customs & Excise Commissioners)*[1997], available in LEXIS, UK library, Case file. Forfeiture was ordered although the offender was outside the country. Enforcement under COTES 1997 is discussed in 2.7, 2.8 and 2.9. For discussions on seizure, confiscation and forfeiture measures in Japan, see 3.4.1.4 and 3.4.2.5.

In addition to the above legislation that directly implements CITES, the Wildlife and Countryside Act 1981 also plays a part in protecting endangered species within the UK, whilst complementing CITES implementation. Although the 1981 Act is primarily concerned with national conservation of native species, it also encompasses CITES-related issues, and compliments CITES enforcement, particularly where birds are concerned. The protection of endangered species provided by the Wildlife and Countryside Act 1981 encompasses; (1) any native wild bird, some of which receive stricter protection in comparison to the rest;⁵⁸ (2) wild mammals and plants which are listed in the Schedules of the Act.⁵⁹ Commercial activities including sale of the protected species is prohibited, and the 1981 Act gives a stricter protection to certain species of birds than required by CITES, prohibiting the possession of unregistered birds, and therefore many CITES-listed species also enjoy this protection.⁶⁰ The Act provides for fines and a custodial sentence.⁶¹

2.3. Regulation (EC) 3626/82

2.3.1. Background

The EU occupies one third of the world market for wildlife products.⁶² The EU is also the largest single market for wild birds.⁶³ The Community is not a party to CITES in its own right, due to the delayed ratification of the Gaborone Amendment, which allows its accession.⁶⁴ However, in the hope of taking a united approach towards CITES, the EU implemented CITES⁶⁵ after 1984 by Council Regulation (EEC) 3626/82⁶⁶ The following paragraphs provide discussions on the EU implementation of CITES,⁶⁷ in order ascertain whether the EU gives stricter protection to endangered species than required by CITES. The section will conclude that it does.

⁵⁸ s. 1, n 5 above. Any person convicted of an offence involving birds specified in Schedule 1 is liable to special penalty.

⁵⁹ ss. 9 to 13, *ibid*.

⁶⁰ Birds listed in Schedule 4 must be registered and ringed. See discussions on 2.7.4.

⁶¹ For discussions on enforcement under the 1981 Act, see 2.7 and 2.8.

⁶² The world's trade in wildlife is estimated to be worth approximately US \$ 50 billion a year, excluding timber and all fisheries products. In 1996, one quarter of all trade was found to be illegal. "EU Adopts Tightening of Wild Species Trade Rules", *The Reuters European Community Report*, 9 Dec. 1996, available in LEXIS European Library, EC News file.

⁶³ See for instance; UNDP, UNEP, World Bank and World Resources Institute, *World Resources 2000-2001: People and Ecosystems: The Fraying Web of Life* (Washington, D.C.: World Resources Institute, 2002) 250-251. Spain and Portugal are the biggest bird importers. See; "Parrot Smugglers Find Spain a Soft Touch", *Reuters World Service*, 16 Dec. 1994. Between 1988 and 1991 the EU was the number one importer of live parrots and alligator, caiman and crocodile skins. "WWF Criticises EU Over Trade in Endangered Species", *The Reuters European Community Report*, 8 Sep. 1994, available in LEXIS European Library, EC News file.

⁶⁴ Article XXI of CITES was amended accordingly at the 4th COP, in Gaborone, Botswana.

⁶⁵ n 19 above.

⁶⁶ n 2 above.

⁶⁷ For the overall picture of CITES enforcement in the UK, see 2.5.

2.3.2. Summary of Regulation 3626/82

Burns and Mosedale consider that the implementation of Regulation 3626/82 in the EU was unsatisfactory.⁶⁸ Mosedale describes the Regulation as “not so much to implement CITES but to ensure the implementation causes the minimum disruption to internal trade”.⁶⁹ The EU was criticized at the 8th COP of CITES, in March 1992, for poor implementation of CITES. Resolution 8.2 urged the EU to take appropriate measures for improvement.⁷⁰ In its text, Regulation 3626/82 generally correlates with CITES provisions, providing for more detailed or stricter measures in parts, as shown below.

The species protected were listed in Annexes C(1) and C(2). Annex C(1) included all Appendix I species, and also numerous Appendix II species.⁷¹ Trade in those species required both import and export permits, and trade for commercial purposes is prohibited, as required by CITES for Appendix I species.⁷² Annex C(2) included the rest of the Appendix II species, and Appendix III species. Trade in species listed in this Annex also required an import permit, although trade for commercial purposes was not prohibited.⁷³ This meant that species listed in CITES Appendix III also enjoyed the same level of protection as was given to those in Appendix II. Despite the stricter protection than required by CITES, however, the listings in the Regulation's Annexes “[were] marked by a certain level of arbitrariness”, according to Burns and Mosedale.⁷⁴ This, they point out, was due to the absence of any procedure for Annex amendment.⁷⁵

2.3.3. Limitations of Regulation 3626/82

The most significant factor in considering the limitations of Regulation 3626/82 was the creation of the single market. Tighter controls at the EU's external borders were going to be necessary, a point also stressed by the CITES Secretariat.⁷⁶ Particularly problematic were cases where the importation of specimens took place at a point of entry in a Member State that was not the final destination for the consignment. The specimen could enter the EU without sufficient control since the Member State at the

⁶⁸ W.C. Burns and C.T.D. Mosedale, 'European Implementation of CITES and the Proposal for a Council Regulation(EC) on the Protection of Species of Wild Fauna and Flora', (1997) IX *The Georgetown International Environmental Law Review* 2, 389.

⁶⁹ T. Mosedale, 'EU Draft Regulation on CITES', (1996) 5 *Review of European Community & International Environmental Law* 4, 345.

⁷⁰ Res. 8.2, n 19 above. See also E. Fleming, TRAFFIC Europe, 'Interim Report of EU Wildlife Trade Control', *Reuters European Community Report*, 9 Sep. 1994, available in LEXIS European Library, EC News file.

⁷¹ Art. 3(1), n 2 above.

⁷² Art. 10(a), *ibid.*

⁷³ Requires an import permit. Art. 3(2), *ibid.* There were approximately 700 species listed in this Annex.

⁷⁴ Burns and Mosedale, n 68 above, 404-405.

⁷⁵ This problem was dealt with by Regulation 338/97, which contains objective listing criteria. See 2.4.6.

⁷⁶ Doc. 9. 23, n 19 above.

point of entry usually left the responsibility for enforcement to the Member State of destination, which in turn assumed controls had been undertaken by the Member State at the point of entry. After 1993, enforcement efforts by Member States were criticised as “[having] not kept pace with the development of the market”.⁷⁷

The establishment of the single market was also going to require a more harmonised application of CITES implementation and enforcement. In *EC Commission v France*, the French Government was taken to the European Court of Justice for wrongly issuing an import permit for Bolivian wild cat fur skins.⁷⁸ The Court upheld the claim by the European Commission that the French Government failed to fulfil its obligations under Article 10(1)(b) of the Regulation, which provided that an import permit should not be issued unless it was clear that the capture or collection of the specimen in the wild would not have a detrimental effect on the conservation of the species.⁷⁹ The Commission, to support this claim, referred to CITES Resolution 5.2, which recommended that Parties did not import specimens from Bolivia until the Bolivian Government had demonstrated that it had adopted all the measures which applied CITES.⁸⁰ The implication of this case was that the EU Member States were required to have a standard way of managing trade control.

Another point that was considered to be a limitation of the Regulation relates to the EU Member States' failure to issue permits and documents in accordance with provisions of the Regulation. Many of them issued permits without verifying the necessary details, and therefore were criticised by the CITES Secretariat.⁸¹ Abusive use of permits was also criticised.⁸² As permits were valid throughout the EU, multiple applications were known to be made using the same permit.⁸³ This was due to the lack of coordination and communication between Member States, the European Commission and the CITES Secretariat.⁸⁴

The last point to be noted as a limitation of the Regulation was that the scope of species it protected was considered too small.⁸⁵ Further, amendments to Annexes required the Council's approval, which was a lengthy process, and therefore Annexes did not necessarily include species newly added to CITES Appendices. These limitations imposed a “serious impact on the EC’s ability to protect threatened

⁷⁷ Flemming, n 70 above.

⁷⁸ *EC Commission v France* [1990] *European Court Reports* I 4337.

⁷⁹ Art. 10(1)(b), n 2 above.

⁸⁰ Res. 5.2, n 19 above.

⁸¹ Doc. 9.23, *ibid.* See Burns and Mosedale, n 68 above, 408-412.

⁸² *Ibid.*

⁸³ The multiple use of permits occurred when the permit only covered some of the specimens to be imported, as otherwise it was kept or invalidated by Member States.

⁸⁴ This point was dealt with by Regulation 338/97. See 2.4.9 and 2.4.12.

⁸⁵ Art. 9, n 2 above. For the scope of species covered by Regulation 338/97, see 2.4.6.

species not covered by CITES.”⁸⁶ This criticism was based upon the fact that the EU was a major consumer of wildlife products, as Article XIV of CITES allows Parties to take stricter domestic measures.⁸⁷ Pointing to the financial and human resources available within the EU, TRAFFIC, the wildlife trade monitoring network, a programme of the WWF and IUCN, criticised the EU as follows;

Unlike many developing areas of the world, the EU should have ample financial resources and human expertise available to bring about greatly improved regulation of its wildlife trade, given the political commitment to do so. The EU as a wealthy consumer must acknowledge that its demand drives the trade, having direct impact on certain species by causing their removal from the wild. Conservation initiatives are hindered in developing countries, which supply most of the wildlife in trade to the global marketplace, when consumer countries fail to support wildlife management and trade monitoring efforts.⁸⁸

With the view that developed states should provide for stricter enforcement to compensate for the lack of it on the side of the developing states, as mentioned above, Regulation 338/97 was created, with the expectation that it would be “among the strictest in the world” in limiting trade in endangered species.⁸⁹

2.4. Regulation 338/97

On 1 June 1997, the long-awaited Council Regulation (EC) 338/97⁹⁰ came into force. Regulation 338/97 places the species to be protected into four different Annexes⁹¹ and each group of species receives levels of protection corresponding to their status. As in the former Regulation, protection is achieved using trade control measures.⁹² The Regulation also prohibits commercial activities involving the protected species.⁹³ The new features of the Regulation include harmonised implementation and enforcement of CITES, a wider scope of protected species, mandatory sanctions and improved scientific aspects for decision-making.⁹⁴ The following paragraphs

⁸⁶ *European Environment*, n 52 above.

⁸⁷ Art. XIV, n 19 above.

⁸⁸ n 86 above.

⁸⁹ “Council Adopts Regulation on Trade in Endangered Species”, *European Report*, 11 Dec.1996, available in LEXIS European Library, EC News file.

⁹⁰ n 3 above.

⁹¹ Art. 3, *ibid*.

⁹² Arts. 4 and 5, *ibid*.

⁹³ Art. 8, *ibid*.

⁹⁴ “EU Ministers Agree Strong New Moves To Control Wildlife Trade”, *Reuter European Community Report*, 10 Dec. 1996, available in LEXIS European Library, EC News file. Other features include; improved flexibility, transparency and co-ordination of controls at all levels and new bodies established at the EU level.

will examine how the Regulation came into existence, and what their implications may be in terms of European implementation of CITES.

2.4.1. Initial Proposal

Facing the limitations of Regulation 3626/82, an independent study was carried out and completed in 1988 in preparation for the new Regulation.⁹⁵ Following this study, the Commission made a proposal for a new Council Regulation in 1991.⁹⁶ The proposal “has taken account of current nature conservation techniques, trade control mechanisms, trade patterns and technical and scientific knowledge”⁹⁷ that were gained from past experience. The EC Commissioner for Environment described the proposed measures as representing “the most advanced and progressive wildlife trade legislation in the world.”⁹⁸ The Commission's proposal was therefore conservation-orientated, including in its Annexes non-CITES species such as those protected by other European conservation legislation.⁹⁹

2.4.2. EU Discussions of Regulation 338/97

In drafting the Regulation, the primary subject of heated debate was the criteria governing the inclusion of protected species, particularly non-CITES species. Views differed within different sections of the EU as to whether CITES implementation was to be conservation- or trade-orientated. The Economic and Social Committee (hereafter ESC) described the proposal as “ambitious and highly technical”.¹⁰⁰ The ESC considered that “the major objectives of the Regulation” were “the uniform application of commercial legislation and the avoidance of different interpretation of CITES in the Member States”.¹⁰¹ The ESC therefore expressed reservations about the inclusion of non-CITES species, the restriction of possession, and the provision for sanctions.

First, regarding the inclusion of non-CITES species, the ESC considered it inappropriate to group the species actually threatened together with other species. Therefore it asked for listing criteria to be established. Furthermore, it suggested that a separate Annex should be formed to include “harvested” species, in order to protect

⁹⁵ “The Commission Proposes Comprehensive Legislation on the Possession and Trade in Wild Fauna and Flora”, RAPID, 13 Nov. 1991, available in LEXIS European Library, EC News file.

⁹⁶ 1992 O.J. (C26) 1, COM (91) 448.

⁹⁷ n 95 above.

⁹⁸ Ibid.

⁹⁹ The Commission also included power to amend the Annexes, as well as restriction on the possession of specimens, infringement details and sanctions and the application of uniform principles. “The Legislative Observatory: Identification of Procedure”, official website of European Parliament at: <http://www.europarl.eu.int/scripts/envviewproc.idc?lang=2&id=3459>, visited on 10 Dec. 1998.

¹⁰⁰ 1992 O.J. (C223) 19-22.

¹⁰¹ Ibid, 20.

legitimate trade in “[pest]” species or “game” species.¹⁰² Secondly the ESC considered that the Regulation should only be concerned with trade, and therefore opposed the restriction on possession.¹⁰³ Finally, concerning sanctions, the ESC stated; “the Commission should encourage Member States to impose sanctions appropriate to the infringement according to scales and criteria”, although acknowledging that “for the Commission to include details of penalties” would be “a major innovation in Community law”.¹⁰⁴

The European Parliament's response was more conservation-orientated. Following the ESC's Opinion, 108 amendments were adopted by the Committee on the Environment, Public Health and Consumer Protection,¹⁰⁵ the Parliamentary body which scrutinises environmental legislative proposals. Although the Commission was not willing to accept some amendments, including those regarding sanctions,¹⁰⁶ the Parliament, after its first Reading, amended the text by taking further the Commission's approach of including non-CITES species.¹⁰⁷ The Parliament included all non-CITES species protected by other Community legislation in Annex A, in which the strictest protection is given, whereas the Commission placed some in Annex B.¹⁰⁸ The Parliament also provided for detailed penalties for convictions for infringement,¹⁰⁹ as well as detailed communicative obligations between the Commission and the Member States.

The amendments made by the Parliament were partly accepted by the Commission in its Amendment to the Initial Proposal in January 1994.¹¹⁰ The dispute over the criteria governing the inclusion of species became the main reason for the delay of the new Regulation. Finally, the environmental ministers of the Council decided to reduce the number of protected species, by not listing species covered by other Community legislation. The compromise was described as follows;

Since [1994], negotiations on the Regulation have bogged down on the issue of the content of the Annexes. Now, for the first time in two years, the dossier seems to have reached cruising speed. . . . With the abandonment of the rather utopian goal of protecting all known species, the scope of application of the Regulation would be limited to the species covered by the

¹⁰² Ibid, 22.

¹⁰³ Ibid.

¹⁰⁴ Ibid, 21.

¹⁰⁵ “Decision of Committee Responsible”, n 99 above.

¹⁰⁶ “21/06/93-Council/Commission Statement in Plenary”, n 99 above.

¹⁰⁷ 1993 O.J. (C194) 292-293.

¹⁰⁸ Annex E was deleted in this amended text.

¹⁰⁹ Penalty provisions are included in Article 26(2) of Regulation 338/97. Provisions concerning confiscation and trade restriction are provided in Article 26 (2)(a). Arts. 26(2) and (2)(a), n 3 above.

¹¹⁰ 1994 O.J. (C131). COM (93) 599.

Convention and to a list of priority species now being drawn up. Relief is apparent at the Commission, as the French Presidency's proposals can only "improve the situation, given the current state of affairs".¹¹¹

In the end, "[objective]" criteria were established for the appropriate inclusion of species to be protected by the Regulation.¹¹² The Council considered that "the 'Birds' and 'Habitats' directives"¹¹³ [were] sufficient" to protect the European species at that stage.¹¹⁴ It therefore concentrated on the species in danger of being threatened by trade.¹¹⁵ Further compromise was the reduction of the species included in Annex A. Initially, in the Council's Common Position, almost all species listed in Annex C(1) of the former Regulation, to which the highest protection was given, were included in Annex A. However, some species were subsequently moved to Annex B and therefore came to receive less strict protection.

Despite certain points of compromise, the Council's approach towards the Regulation remained the same; "[The] main purpose of the Regulation is the protection of species - regulating trade therein being only a means to that end".¹¹⁶ Therefore, the legal basis of the Treaty of the European Community for the Regulation changed from Articles 100a and 113, which are concerned with the internal market and common commercial policy, to Article 130s(1), which is concerned with the environment.¹¹⁷

The compromise made by the Council as to the number of protected species was criticized by some members of the European Parliament; The German Member, Mrs Undine von Blottnitz, commented; "This proposal marks a turning point in the policy for protecting threatened species of fauna and flora. The principles of precaution and lasting development have quite simply been cast overboard".¹¹⁸

¹¹¹ "Wildlife Protection: Progress on Endangered Species Regulation", *European Environment*, 9 May 1995, available in LEXIS European Library, EC News file.

¹¹² "27/02/96-Common Position", n 99 above.

¹¹³ Council Directive 79/409/EEC. O.J. (L103) 1 (1979). Council Directive 92/43/EEC. O.J. (L206) 7 (1992).

¹¹⁴ "Schengen of Endangered Species", *Agence Europe*, 28 Jun. 1995, available in LEXIS European Library, EC News file. However, the species protected both by CITES and the Birds and Habitats Directives were placed in Annex A (III(2)(x)), although the species covered by other Community legislation are no longer automatically listed in Annex A. (III(2)(ii)). "Statement of the Council's Reasons", 1996 O.J. (C196) 125-129.

¹¹⁵ n 112 above.

¹¹⁶ *Ibid.*

¹¹⁷ However, it is now customary to give both the old and new numbers. 1996 O.J. (C17) 430. "26/02/96 Council Activities", n 99 above.

¹¹⁸ She stated that about 510 kinds of mammals and birds, almost all birds of prey and owls as well as 110 kinds of orchid, might be traded. "Undine von Blottnitz Invites Parliament to Reject New CITES Regulation Approved on the Whole by Environment Committee with Several Amendments", *Agence Europe*, 14 Sep. 1994, available in LEXIS European Library, EC News file. For the practical implications of this relaxation, see the case mentioned in 2.9.1.

The Parliament accepted the Council's Common Position in its second Reading on 18 September 1996, subject to several amendments such as those concerning animal welfare.¹¹⁹ The Parliament called for better protection of live bird species, as well as for providing appropriate accommodation for live specimens by the Scientific Authority, for their well-being. Provisions concerning animal welfare are one of the features of the new Regulation, making it “of great interest” to animal welfarists and environmentalists.¹²⁰

After the long process of drafting, the final Regulation still kept the following major features included in the initial proposal; (1) the harmonised application of the Regulation throughout the EU; (2) protection of species not covered by CITES; (3) stricter controls on the import of a much greater number of species; (4) transparency and coordination of inspection at all levels; (5) mandatory sanctions; (6) the establishment of new bodies at EU level. The following paragraphs will discuss the general mechanisms of the Regulation and various points to be noted in considering the Regulation's implications on European CITES implementation.

2.4.3. General Mechanism

At the national level, EU Member States are required to establish a Management Authority and Scientific Authority by Article 13 of Regulation 338/97, and this is a requirement of CITES itself.¹²¹ These authorities are responsible for the management side of the implementation and enforcement of CITES. The Regulation also requires the Member States to designate customs authorities to carry out the enforcement of trade controls.¹²² Such authorities are required to have sufficient and adequately trained staff.

At the EU level, three bodies were established for the coordinated implementation of the Regulation; the Scientific Review Group (hereafter SRG), the Committee and the Enforcement Group.¹²³ The SRG plays an important role not only in the listing of the species but also in the issue of permits by individual Member States. It examines scientific matters relating to the application of the Regulation and gives opinions to individual Scientific Authorities of Member States. Scientific Authorities are not obliged to, but normally do, follow the opinions of the SRG. The Committee,

¹¹⁹ “18/09/96 EP Vote 2nd Reading”, n 99 above.

¹²⁰ The environment committee also adopted an amendment which foresees the possibility of sanctions “if the standards for caring for live specimens during transport and quarantine are not complied with”. “03/09/96 Decision of the Committee Responsible”, n 99 above. A Protocol on Animal Welfare has been appended to the Treaty of the European Community in 1999. For discussions, see: T. Camm and D. Bowles, 'Animal Welfare and the Treaty of Rome: A Legal Analysis of the Protocol on Animal Welfare and Welfare Standards in the European Union' (2000) 12 *Journal of Environmental Law* 2, 197-205. For discussions of animal welfare provisions in the Regulation, see 2.4.10.

¹²¹ Art. 13, n 3 above. Art. IX, n 19 above.

¹²² Art. 12, *ibid.*

¹²³ Arts. 17 and 18, *ibid.*

consisting of representatives of Management Authorities of Member States, assists the Commission in implementation and enforcement. The Enforcement Group examines technical matters relating to enforcement. It consists of representatives of authorities of Member States that are responsible for monitoring compliance with the Regulations. These bodies work closely with the Commission, which plays an important role in implementing the Regulation. The obligations for communication between the Commission and Member States are provided by Article 15 of the Regulation.¹²⁴

With regard to enforcement, the Regulation requires the Member States to monitor compliance, and any matter may be investigated by the Commission.¹²⁵ In addition to such measures, the Regulation requires the Member States take appropriate measures against breaches of the provisions¹²⁶ though the effectiveness of enforcement depends upon the individual Member States as legal and administrative systems may differ between them.

2.4.4. Objectives

Regulation 338/97 recognises the significance of CITES as a conservation treaty in its Preamble;

. . . the purpose of the Convention is to protect endangered species of fauna and flora through controls on international trade in specimens of those species;¹²⁷

. . . in order to improve the protection of species of wild fauna and flora which are threatened by trade or likely to be so threatened, Regulation (EEC) No 3626/82 must be replaced. . . .¹²⁸

In addition, it also emphasises the incorporation of past experience, the influence of the single market, and scientific knowledge acquired.¹²⁹ The Regulation goes “beyond CITES in a number of respects”.¹³⁰

¹²⁴ Art. 15, *ibid.*

¹²⁵ Art. 14, *ibid.*

¹²⁶ Art. 16, *ibid.*

¹²⁷ Preamble (1), *ibid.*

¹²⁸ Preamble (2), *ibid.*

¹²⁹ Preamble (2), *ibid.*

¹³⁰ EC, “The Differences Between EU and CITES Provisions in a Nutshell”, at <http://europa.eu.int/comm/environment/cites/>, visited on 10 Aug. 2002.

2.4.5. Scope of Specimens

EC Regulation 338/97 provides for a broader scope of specimens than CITES. Article 2 of the EC Regulation defines the scope of 'specimen' as; (1) any animal or plant, whether alive or dead, of the species listed in Annexes A to D; (2) any part or derivative thereof, unless specifically exempted. Article 2(t) gives the following definition;

any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.¹³¹

The Regulation's definition, which remained the same as that in the former Regulation, is reflected in CITES Resolution 9.6. As the CITES text merely defines parts and derivatives as "any readily *recognisable* part or derivatives", CITES recommended Parties interpret this as it was stated in the former Regulation.¹³² Resolution 9.6 was subsequently adopted in order to provide for stricter definitions as are provided in both Regulations 3626/82 and 338/97.¹³³ This is because the loose definition set down in the CITES text provides a loophole which may be taken advantage of by Parties, including Japan as shown in Chapter 3.¹³⁴ Furthermore, CITES does not include parts or derivatives of Appendix III animals and plants and Appendix II plants, except for those that are specified. Compared to this, there is no doubt that the definition given in the Regulation provides a stronger basis for enforcement.

2.4.6. Scope of Species

The Regulation encompasses a wider range of species than required by CITES, and it confers stricter protection by placing many species listed in Appendix II of CITES in Annex A, which provides for the strictest protection (see Table below). The most significant point to be noted when comparing the Regulation with CITES, is that the former takes a *precautionary approach*, by protecting species which *may* be affected,

¹³¹ Art. 2(t), n 3 above.

¹³² At the 4th and 5th CITES COPs, the recommendation to interpret the text in the way seen in the former Regulation were made.

¹³³ Art. I(b), *ibid.*

¹³⁴ See 3.4.2.2.

as well as those already endangered or threatened. It also takes into consideration the regional and ecological aspects of conservation, actively protecting European species. Article 3(5) of the Regulation requires the Member States to feed the European approach into CITES.¹³⁵

| Annex | Species Included |
|----------------|--|
| Annex A | All CITES Appendix I species Some CITES Appendix II and III species, for which the EU has adopted stricter domestic measures. Some non-CITES species |
| Annex B | All other CITES Appendix II species Some CITES Appendix III species Some non-CITES species |
| Annex C | All other CITES Appendix III species |
| Annex D | Some CITES Appendix III species for which the EU holds a reservation Some non-CITES species |

Table 1: CITES species included in Annexes A to D of Regulation 338/97

Annex A includes all the species listed in Appendix I of CITES, except those for which the Member States have entered reservations. The CITES criteria for the species to be listed in this Appendix are that they are “threatened with extinction” and “are or may be affected by trade”.¹³⁶ The Regulation includes any species deemed to be threatened with extinction or so rare that any level of trade would imperil the survival of the species.¹³⁷ The species in a genus where most of the species are listed in Annex A, or those whose subspecies are listed in Annex A are also included.¹³⁸

Additionally, although it is not specifically included in the criteria, Annex A also contains many species indigenous to the EU that are included in CITES Appendices II and III only. These provisions are consistent with the level of protection extended to the Birds Directive and/or the Habitats Directive.¹³⁹ Therefore, the inclusion of species already covered by Community legislation is partly realised.

¹³⁵ “Where the conservation status of species covered by this Regulation warrants their inclusion in one of the Appendices to the Convention, the Member States shall contribute to the necessary amendments.” Art. 3(5), n 3 above.

¹³⁶ Art. II(1), n 19 above.

¹³⁷ Art. 3(1)(b)(i), n 3 above.

¹³⁸ Art. 3(1)(b)(ii), *ibid.*

¹³⁹ Annex A, n 3 above. Council Directive 79/409/EEC, n 113 above. Council Directive 92/43/EEC, n 113 above.

Annex B contains many more species than CITES, too. First, it contains the species listed in Appendix II and Appendix I for which the Member States have entered reservations.¹⁴⁰ Secondly it also contains any species that may be threatened by international trade in individual countries or whose role in particular *ecosystems* may be threatened.¹⁴¹ Thirdly, it also includes species whose introduction may threaten the species indigenous to the Community.¹⁴² Fourthly, species whose appearance is similar to the species listed in Annexes A or B may be listed in Annex B.¹⁴³ The second and third criteria illustrate the Regulation's ecological concerns. The CITES definition of 'species' to be included in Appendix II is; "not necessarily now threatened with extinction but may become so",¹⁴⁴ although Article II(2)(b) of CITES allows a species to be included in Appendix II if its inclusion may bring about the effective control of trade in Appendix II species.

Annex C contains the species listed in Appendix III of CITES and the species listed in Appendix II for which the Member States have entered reservations.¹⁴⁵ The last Annex, Annex D, is the monitoring category and it may enter species not listed in any other Annex which are imported into the Community in such numbers as to require control. It also includes the species listed in Appendix III of CITES for which reservations have been entered by the Member States.¹⁴⁶

The listing criteria provided in the Regulation is "a tangible application of the precautionary principle", according to Burns and Mosedale.¹⁴⁷ CITES does not include species in Appendix I until they are actually threatened in principle. However, for vulnerable species, a sudden commencement in trade in them may threaten their existence before appropriate measures can be taken by the international community. The Regulation's precautionary approach has taken into consideration the fact that the EU is a major wildlife consumer state, and can provide effective measures for conserving vulnerable species in the anticipation of actual trade. Further, the application of the precautionary principle by the Regulation is endorsed by scientific acknowledgement of the complexity of the environment. The consideration for ecosystems, indigenous species, and so-called look-alike species is an indication of ecological awareness.

¹⁴⁰ Art. 3(2)(a) and (b), n 3 above.

¹⁴¹ Art. 3(2)(c), *ibid.*

¹⁴² Art. 3(2)(d), *ibid.*

¹⁴³ Art. 3(2)(c)(ii), *ibid.*

¹⁴⁴ Art. II(2)(a), n 19 above.

¹⁴⁵ Art. 3(3), n 3 above.

¹⁴⁶ Art. 3(4), *ibid.*

¹⁴⁷ Burns and Mosedale, n 68 above, 417. The European Commission issued a communication on the precautionary principle; European Commission, "Communication from the Commission on the Precautionary Principle" (2000) COM 1.

2.4.7. Import Control and Internal Control

Trade control under Regulation 338/97 is operated by a permit system, as required by CITES. Permits and certificates issued by importing Member States, are valid throughout the European Community.¹⁴⁸ Conditions and requirements imposed by the issuing authority of the importing state may be included in them.¹⁴⁹ Expiry dates for permits and certificates are set out by the Commission,¹⁵⁰ as the previous lack of such details caused illegal use of the permits and certificates.¹⁵¹ Conditions vary according to the Annex in which the species are included, with Annex A species having the strictest conditions.

Annex A

According to Article III of CITES, an import permit for Appendix I species is only to be granted when;

- (a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;
- (b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it;
- (c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.¹⁵²

The Regulation sets out conditions for granting an import permit for Annex A species that are generally in line with CITES, although some provide for stricter protection for species. The conditions are the same for Annex B species, except for the condition concerning the commercial purposes of the trade.¹⁵³ There are mainly two points to be noted with regard to import regulation of Annex A; non-commercial aspect and a protective approach based on conservation and animal welfare objectives.

First of all, provision (c) of CITES can be found in its entirety in provision (d) of the Regulation. Indeed both for CITES and the Regulation, the most distinctive feature which separates the species in this category from the rest of the protected species is

¹⁴⁸ Art. 11(1), n 3 above.

¹⁴⁹ Art. 11(3), *ibid.*

¹⁵⁰ Art. 11(5), *ibid.*

¹⁵¹ This point was mentioned during the discussion on Regulation 3626/82. See 2.3.3.

¹⁵² Art. III(3), n 19 above.

¹⁵³ See the following discussions on the import control for Annex B species.

that they *cannot be imported for commercial purposes*. There are, however, exceptions, as provided by CITES, although the Regulation defines “non-commercial purposes” as “all purposes the non-commercial aspects of which do not clearly predominate”.¹⁵⁴ It further specifies such non-commercial purposes to be; the advancement of science or essential biomedical purposes;¹⁵⁵ breeding or propagation and research or education for the preservation or conservation of the species.¹⁵⁶ For scientific or biomedical purposes, it ensures that the specimen to be used must prove to be the only suitable one and that there are no suitable specimens born and bred in captivity.¹⁵⁷ In contrast, Article VII(6) of CITES states that trade restrictions required by Articles III, VI and V do not apply to the “non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their state . . .”.¹⁵⁸

Secondly, some of the conditions of Regulation 338/97 are more protective and precautionary than required by CITES. First, the principle seen in provision (a) of CITES as shown above can be found in the Article 4(1)(a) of the Regulation, which states;

the competent scientific authority, after considering any opinion by SRG, has advised that the introduction into the Community;

would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species.¹⁵⁹

The Regulation's criteria are more specific, taking a precautionary approach, whilst CITES merely warns against the effect on “survival” of the species.

Article 4(1)(e) also ensures that conservation objectives are not compromised. It requires that the Management Authority has to be satisfied that “there are no other factors relating to the conservation of the species which militate against issuance of the import permit”.¹⁶⁰ In order to make decisions based upon science, and also for the uniformed approach to be taken within EU, both Management and Scientific Authorities of the Member States have to consult with the SRG with regard to conditions required for an import permit.¹⁶¹

¹⁵⁴ Art. 2(m), n 3 above. Art. III (3)(c), n 19 above.

¹⁵⁵ Art. 8(e), *ibid*.

¹⁵⁶ Art. 8(f) and (g), *ibid*.

¹⁵⁷ Art. 8(e), *ibid*. However, the Regulation allows room for purposes other than those specified above, providing they are not detrimental to the survival of the species concerned. Art. 4(a)(ii), *ibid*.

¹⁵⁸ Art. VII(6), n 19 above.

¹⁵⁹ Art. 4(1)(a)(i), n 3 above.

¹⁶⁰ Art. 4(1)(e), *ibid*.

¹⁶¹ See 2.4.3 and discussions on Annex B later.

Thirdly, Article 4(1)(c) of the Regulation also incorporates the animal welfare principle seen in provision (b) of CITES. It states;

the competent scientific authority is satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly.¹⁶²

The word “conserve” is used instead of “house”, implying that specialist conservation care is required.

The Regulation also requires the Member States to control their internal market. Article 8 prohibits commercial activities within the EU concerning the species included in Annex A as follows;

The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A shall be prohibited.”¹⁶³

Although possession is not prohibited, unless it is for sale, certificates must be issued for the above commercial activities, and the Regulation provides a penalty if such activities take place without valid certificates.¹⁶⁴ Although previously these certificates were required for every transaction of Annex A specimens, this rule has recently been relaxed, allowing the certificates to ‘travel’ with specimens. (This applies only to specimens that can be marked uniquely.)¹⁶⁵ The prohibition on commercial activities also applies to the species in Annex B, unless the specimen is proven to have been acquired or imported legally.¹⁶⁶ The Member States are also allowed to independently prohibit the holding of live animals of species listed in Annex A at their discretion.¹⁶⁷ The Commission also has the power to define general derogations from the prohibition on commercial activities.¹⁶⁸

Annex B

The conditions required for an import permit to be issued are the exactly same as those for Annex A species, except that the requirement for non-commercial purposes

¹⁶² Art. 4(1)(c), *ibid.*

¹⁶³ Art. 8(1), n 3 above.

¹⁶⁴ Arts. 10 and 8, *ibid.* See above discussions on COTES in 2.2.4.

¹⁶⁵ Art. 32(2) Regulation 1808/2001. 2001 O.J. (L250) 1

¹⁶⁶ Art. 8(5), *ibid.*

¹⁶⁷ Art. 8(2), *ibid.*

¹⁶⁸ Art. 8(4), *ibid.*

does not apply to these species.¹⁶⁹ This means that the import of Annex B species also requires import permit, which is the most significant difference from CITES Appendix II species, which only require a certificate. Strict conditions as examined above are applied in considering issuance of the import permit for Annex B species. This means that in practice, the EU may restrict trade in species that are allowed to be traded under CITES.¹⁷⁰ Scientific Authorities are required to take a precautionary approach in determining such conditions and must take into account “the *current or anticipated* level of trade”.¹⁷¹

There are slight derogations in the wording from that of Annex A species. For instance, a Scientific Authority should be “of the opinion”¹⁷² instead of having to give advice as required for the import of Annex A species, and the appropriateness of the accommodation may be proved by “the applicant” himself by documentary evidence.¹⁷³ Confiscated specimens of the species included in Annex B (to D) may be sold by the competent authorities of the Member States.¹⁷⁴

Annex C

In order to introduce Annex C species into the Community, the applicant must provide an export permit, re-export permit or certificate of origin,¹⁷⁵ which is also the document CITES requires for trade in Appendix III species.¹⁷⁶ Whether a permit or certificate is required depends upon whether the exporting or re-exporting state has listed that species in Appendix III of CITES. If it has, a permit is required and otherwise, a certificate is required. The applicant must also provide import notification.¹⁷⁷ However, this is a self-completed notification, and therefore no condition is required by the responsible authorities.

Annex D

The introduction of Annex D species into the Community only requires the presentation of import notification.¹⁷⁸ Such notification is intended to monitor the importation of the species so that appropriate action can be taken quickly if required. If the necessity is seen, species in this category may be upgraded to other categories which accord stronger protection to the species.

¹⁶⁹ Art. 4, *ibid.*

¹⁷⁰ For further discussions, see 2.4.8.

¹⁷¹ Art. 4(2)(a), *ibid.* Italicised by author.

¹⁷² Art. 4(2)(a), *ibid.*

¹⁷³ Art. 4(2)(b), *ibid.*

¹⁷⁴ Art. 8(6), *ibid.*

¹⁷⁵ Art. 4(3), *ibid.*

¹⁷⁶ Art. V(3), n 19 above.

¹⁷⁷ Art. 4(3), n 3 above.

¹⁷⁸ Art. 4(4), *ibid.*

| Annex | Import Permitted When |
|----------------|---|
| Annex A | <ul style="list-style-type: none"> • Scientific Authority has advised that the import would not have a harmful effect on the conservation status of species or its habitat. • The specimen was obtained in accordance with the legislation. • Scientific Authority is satisfied that the living specimen will be adequately conserved and cared for. • Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. |
| Annex B | <ul style="list-style-type: none"> • Scientific Authority has advised that the import would not have a harmful effect on the conservation status of species or its habitat. • The specimen was obtained in accordance with the legislation. • Scientific Authority is satisfied that living specimen will be adequately conserved and cared for. |
| Annex C | <ul style="list-style-type: none"> • Export permit is provided. |
| Annex D | <ul style="list-style-type: none"> • Import notification is provided. |

Table 2: Import conditions required by Regulation 338/97

Some specimens are exempt from the requirements for import permits. CITES also provides for these exemptions in Article VII. Under Regulation 338/97, such specimens are previously legally introduced specimens which are being re-introduced¹⁷⁹ and worked (processed) specimens acquired more than 50 years ago.¹⁸⁰ CITES specifies that the specimen must be one acquired before the provisions of CITES applied to it.¹⁸¹ This CITES definition has caused a debate between Parties over its ambiguity¹⁸² whereas the Regulation's limit of 50 years provides a more specific basis for enforcement.

2.4.8. EU Import Restrictions

On the whole, import into the EU is controlled more strictly than required by CITES. Import control is a significant part of European trade regulation, not only because the EU is a major wildlife consumer, but also because of the single market. The

¹⁷⁹ Art. 4(5)(a), *ibid.*

¹⁸⁰ Art. 4(5)(b), *ibid.*

¹⁸¹ Art. VII(2), n 19 above.

¹⁸² See D. S. Favre, *International Trade in Endangered Species, A Guide to CITES* (London: Martinus Nijhoff Publishers, 1989).

establishment of the single market has made internal control more difficult,¹⁸³ and therefore the Regulation is especially concerned with stricter trade control at the EU's external border.¹⁸⁴

Import restrictions into the EU also have a significant influence internationally. Article 4(6) of the Regulation gives the power to the Commission to establish import restrictions into the Community, providing that certain conditions are not met. Such conditions relate to; a potential effect of the import on Annexes A and B; the import of live specimens of Annex B species which are vulnerable to transportation or captivity; the import of live specimens whose introduction into the natural environment imposes an ecological threat to indigenous species within the Community.¹⁸⁵ If the Commission is not satisfied with conditions relating to these, then a unilateral ban on imports is imposed, until it is satisfied that the situation involving the conditions in question has improved. The Commission, however, is obliged to consult with the countries of origin and the SRG before taking such action. This means that the quotas are set on a country-by-country basis, where trade is allowed.

Restrictions can be general or applied to species from a specific country of origin. For instance, between 1991 and 1995, the import of any species from Indonesia was banned, due to the facts that many of the Indonesian species were endemic and represented the total world population of the species, and control of their capture and trade was inadequate.¹⁸⁶

Unilateral import restrictions have been provided for since the former Regulation. The species subject to this measure were CITES Appendix II species, included in Annex C2 of Regulation 3626/82, and therefore the measure was commonly referred to as the "C2 system".¹⁸⁷ The C2 system served as a model for the Significant Trade Review Process adopted by all CITES parties during the 8th COP.¹⁸⁸ With the introduction of Regulation 338/97, the number of species subject to a possible ban

¹⁸³ D.M. Ong, 'The Convention On International Trade In Endangered Species (CITES, 1973): Implications of Recent Developments In International And EC Environmental Law', (1998) 10 *Journal of Environmental Law* 2, 306.

¹⁸⁴ See 2.4.8.

¹⁸⁵ Art. 4(6)(a)-(d), n 3 above. The Commission publishes a list of such restrictions in the *Official Journal of the European Communities*. Art. 4(6), n 3 above.

¹⁸⁶ G. Valaoras, *Monitoring of Wildlife Trade in the European Union: Assessing the Effectiveness of EU CITES Import Policies* (Brussels: TRAFFIC Europe, 1998), 9. For criticisms on such "unilateral" action, see: J.M. Hutton, 'Who Knows Best? Controversy over Unilateral Stricter Domestic Measures' in J. Hutton and B. Dickson (ed), *Endangered Species: Threatened Convention* (London: Earthscan, 2000), 57-66.

¹⁸⁷ Valaoras, *ibid.* In 1992, the Commission contracted WWF Belgium to develop and maintain a database.

¹⁸⁸ However, the CITES's process is "much slower and more bureaucratic than the C2 system". *Ibid.*

increased by over 19,200¹⁸⁹ because a ban could be imposed on species in any Annex under Regulation 338/97.¹⁹⁰

A unilateral ban on imports may provide an effective conservation measure. According to Valaoras, the “capability to impose stricter regulations on the part of the EU, as a single economic entity, has proven effective in improving the management of trade for certain species”.¹⁹¹ This is premised upon the view that developed countries have the financial and human resources to impose stricter enforcement.¹⁹² Valaoras adds, however, that utilising stricter controls is best achieved where there is a “sound scientific basis for subsequent decisions” supported by *in situ* field studies.¹⁹³

In the case of EU import restrictions, it is up to the EU, not range states, to determine whether a “sound scientific basis” exists for a particular species. Therefore, unsurprisingly, such unilateral measures may be “unpopular” amongst range states.¹⁹⁴ For those who advocate sustainable use, trade should be encouraged to provide for the costs of conservation, and they are critical of unilateral measures taken by the EU or the US. It may also be seen as an infringement of sovereign national rights. Furthermore it creates conflict with the World Trade Organisation (WTO). In 1996, the CITES Environment Report noted such concerns. However, the EU's import restrictions are still considered to be more “consultative” than US measures.¹⁹⁵

2.4.9. Export Control

The conditions required by the Regulation for an export or re-export permit to be issued generally correspond with those of CITES.¹⁹⁶ The conditions required for the export of species included in Annex A are;

- (1) the scientific authority has advised that the capture or collection of the specimens of their export will not have a harmful effect on the conservation status or habitats of the species¹⁹⁷;

¹⁸⁹ Ibid.

¹⁹⁰ For analysis of the EU import ban system, also see UNEP and WCMC, “Effectiveness of Past EC Stricter Measures on Wildlife Imports: a Preparatory Methodological Study on the Assessment of EC Import Bans”, (2001), a report, at; http://europa.eu.int/comm/environment/cites/studies/stricter_measures_wcmc_study.pdf, visited on 7 Jan. 2002.

¹⁹¹ Valaoras, n 186 above, 48.

¹⁹² This point was mentioned earlier. See 2.3.3.

¹⁹³ Valaoras, n 186 above, 48.

¹⁹⁴ Hutton, n 186 above, 58.

¹⁹⁵ Ibid, 59 Swanson considers that the EU's unilateral approach undermines the national sovereignty of range states. T. Swanson, 'Developing CITES: Making the Convention Work for All of the Parties' in Hutton and Dickson, n 186 above, 146-148.

¹⁹⁶ Arts. III(2),(4), IV(2),(5), and V(2),(4), n 19 above.

(2) the applicant provides documentary evidence that the specimens have been obtained in accordance with law¹⁹⁸;

(3) the management authority is satisfied that any live specimens will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment, that specimens will not be used for commercial purposes, and that an import permit has been issued¹⁹⁹;

(4) the management authority of the Member State is satisfied that there are no other factors relating to the conservation of the species which militate against issuance of the export permit.²⁰⁰

The above requirements apply to species in other Annexes, except for the requirement for non-commercial purposes, which does not apply to species listed in Annexes B and C, and the requirement for an import permit, which does not apply to Annex C.

Re-exportation of specimens requires conditions (3) and (4) to be met for exportation as described above, and the applicant must provide documentary evidence that the specimens were introduced into the Community in accordance with the relevant legislation.

Although the conditions under the Regulation generally correspond to CITES provisions, the Regulation has several original provisions. One such provision requires that where the specimens are introduced under an import permit issued by another EU Member State, the Management Authority of the re-exporting state must consult with the Management Authority of that state to confirm the validity of the documents.²⁰¹ This is expected to contribute to the control of movement of specimens within the Community.²⁰² Another example is that the Scientific Authority monitors the issuing of export permits of Annex B species and gives advice to the Management Authority for suitable measures to be taken when they determine that the export of such species should be limited for conservation reasons.²⁰³ The Management Authority, having received such advice, then has to inform the Commission, which then may recommend restrictions on exports of the

¹⁹⁷ Art. 5(2)(a), n 3 above.

¹⁹⁸ Art. 5(2)(b), *ibid.*

¹⁹⁹ Art. 5(2)(c), *ibid.*

²⁰⁰ Art. 5(2)(d), *ibid.*

²⁰¹ Art. 5(5), *ibid.*

²⁰² Problems relating to free movement within the Community were mentioned earlier. See 2.3.3.

²⁰³ Art. 7(a), n 3 above.

species concerned.²⁰⁴ This provision denotes that the Regulation allows a swift response to any sign of deterioration in the species status.

Both provisions are based upon the borderless nature of the Community, where communication between EU Member States is easier in comparison with communication between other sovereign states. To ensure this, there is a provision requiring communication in the case where an application for import or export is rejected.²⁰⁵ When a Member State has rejected an application, it has to inform the Commission which then informs other member States of the rejection. This may provide a warning to other Member States. Thus communication is actively utilised by this Regulation and indeed, Article 15 is devoted to “communication of information” between the Commission and the Member States, and the CITES Secretariat and the Commission in order to ensure the uniform implementation and enforcement of the Regulation.²⁰⁶

2.4.10. Animal Welfare Provisions

As well as providing for strict conservation measures, Regulation 338/97 also lays down a number of provisions relating to the welfare of individual animals, and therefore prohibits EU Member States from issuing permits if certain welfare conditions are not met. Species listed in Annexes A and B cannot be imported unless the scientific authorities of the Member States are satisfied that the intended accommodation for a live specimen is “adequately equipped to conserve and care for it properly”.²⁰⁷ Similarly as a condition for an export permit for species in Annexes A to C, the Regulation requires the management authority to ensure that a live specimen will be prepared and shipped so as to “minimize the risk of injury, damage to health or cruel treatment”.²⁰⁸

The aforementioned provisions ensuring the welfare of individual animals are also required by CITES, which “contains many provisions intended to ensure the welfare of species introduced into international trade”, according to Bowman.²⁰⁹ The welfare conditions required by Regulation 338/97 as described above are also found in the Convention's Articles III to V, which lay out conditions for a trade permit.²¹⁰ In fact, under CITES, as well as Regulation 338/97, the requirement of a welfare aspect is a

²⁰⁴ Art. 7(b), *ibid.*

²⁰⁵ Art. 6, *ibid.*

²⁰⁶ Art. 15, *ibid.*

²⁰⁷ Art. 4(1)(c) and (2)(b), *ibid.*

²⁰⁸ Art. 5(2)(c) and (4), *ibid.*

²⁰⁹ M. Bowman, 'Conflict or Compatibility? The Trade, Conservation and Animal Welfare Dimensions of CITES' (1998) 1 *Journal of International Wildlife Law and Policy* 1, 9. For more details on European animal welfare legislation, see: D. B. Wilkins, *Animal Welfare in Europe; European Legislation and Concerns* (London: Kluwer Law International Ltd., 1997).

²¹⁰ Arts. III(2)(c) and (4)(b), IV(2)(c), (5)(b) and (6)(b), and V(2)(b), n 19 above.

significant factor in the issue of export permits, as it is one of the three conditions required for issuance, with the other two being “conservation” and “domestic legality”, according to Bowman.²¹¹

Further, to ensure the welfare of animals during transport, the Regulation's Article 9 lays down the conditions required for the movement of live specimens into, from or within the European Community.²¹² It requires live specimens to “be prepared, moved and cared for in a manner such as to minimise the risk of injury, damage to health or cruel treatment and in the case of animals, in conformity with Community legislation on the protection of animals during transport”.²¹³ CITES also recognises the importance of ensuring the welfare of animals during transport. CITES adopted its own guidelines in 1980, with regard to the conditions required for the transport and preparation of live specimens.²¹⁴ In addition as the International Air Transport Association (hereafter IATA) contended, which has its own regulations concerning welfare conditions for preparation and shipment, Resolution 10.21 now acknowledges that IATA's Live Animal Regulations (hereafter LAR) are adequate and therefore should be incorporated into domestic legislation.²¹⁵

However, provisions concerning the welfare of individual animals may often be lacking in the CITES-implementing legislation of other countries. Indeed, animal welfare concern is one of the main features of the legislation adopted by the EU. The EU has adopted several pieces of legislation that promote animal welfare and it therefore requires a higher standard from other countries in trading with the EU Member States.²¹⁶ Regulation 3254/91 prohibits the use of the leghold traps in the EC and attempted to prevent the import of furs from other countries if they failed to meet the EU's satisfaction.²¹⁷ Similarly, Regulation 348/81 prohibits the import of cetacean products into the EC, including species not covered by the IWC. It was “introduced primarily to alleviate public concern for the methods used to hunt and kill whales”.²¹⁸ Particular concern for cetacean species is also found in Regulation 338/97. In importing these species, the Regulation requires the management authority to be satisfied that “any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment”.²¹⁹ According to

²¹¹ Bowman, n 209 above, 21.

²¹² Art. 9, n 3 above.

²¹³ Art. 9(4), *ibid.* The European legislation regulating the transport of animals is Council Directive 91/628/EEC.

²¹⁴ For detailed discussions, see Bowman n 209 above.

²¹⁵ The original Resolution was Resolution 9.23, which was repealed by Resolution 10.21. Res. 10.21, n 19 above.

²¹⁶ For detailed discussions on the compatibility of the EU's welfare legislation with the regulations of the WTO, see S. Harrop and D. Bowles, 'Wildlife Management, the Multilateral Trade Regime, Morals and the Welfare of Animals' (1998) 1 *Journal of International Wildlife Law and Policy* 1, 64-94.

²¹⁷ Arts. 2 and 3(1). 1991 O.J. (L 308) 1. The EU did not implement the ban, as the Commission feared conflict with the WTO. See *ibid.*, 74-78.

²¹⁸ *Ibid.*, 79.

²¹⁹ Art. 4(1)(f), n 3 above. Under CITES, it is only a requirement for an export permit.

Harrop and Bowles, “the EC enacts stricter legislation to protect cetaceans than is required by the relevant international conventions”.²²⁰ It is an interesting point to be noted in considering the EU's approach towards protection of cetacean species.²²¹

Although showing particular concern for cetacean species may give rise to the question of consistency in the EU's approach towards its welfare policy, ensuring the welfare of individual animals plays a role in contributing to species conservation. Bowman states; “Given that the specimen is by definition a representative of an endangered species, the fate of each individual becomes a matter of enhanced concern, and so the conservation and welfare objectives of the Convention can be seen to complement each other with particular force in this context”.²²² On the other hand, the stricter standard set by the EU concerning welfare provisions may also induce a conflict with range states and the WTO, particularly due to the import restriction mechanism in use.²²³

2.4.11. Derogations

Derogations from the provisions concerning trade controls are provided in Article 7 of the Regulation. Such derogations are basically the same as the exemptions made by CITES, as provided for in Article VII. The first is where specimens of the species listed in Annex A are born and bred in captivity or are artificially propagated. Such specimens will be treated as Annex B species.²²⁴ Plant species which are artificially propagated may be exempted from import and export controls.²²⁵ This derogation corresponds with Article VII(4) of CITES.²²⁶ However, the Regulation does not allow the commercial use of Annex A species even if they were born and bred in captivity or artificially propagated.²²⁷ Other derogations mostly corresponds with CITES provisions.²²⁸

²²⁰ Harrop and Bowles, n 216 above, 79.

²²¹ One of the main arguments against whaling is its cruelty. This point was mentioned earlier. See 1.7 and 1.8. Resolution 11.4 of CITES concerns; “Conservation of cetaceans, trade in cetacean specimens and the relationship with the IWC”, Res. 11.4, n 19 above.

²²² Bowman, n 209 above, 26.

²²³ The import ban on furs under Regulation 3254/91 failed for the fear of conflict with the WTO. Similarly, the ban on the marketing of cosmetics products tested on animals under Directive 93/35/EEC was withdrawn for the same reason.

²²⁴ Art. 7(1)(a), n 3 above.

²²⁵ Art. 7(1)(b), *ibid.*

²²⁶ Art. VII(4), n 19 above.

²²⁷ Arts. 7(1)(a) and 8, n 3 above. For instance, this makes it illegal to buy primates as a pet, whereas primates were found on sale in Japan. See 3.4.3.1.

²²⁸ Art. 7, *ibid.*

2.4.12. Enforcement

As stated in Article VIII (1) of CITES, which requires Parties to take appropriate measures to enforce the Convention including the imposition of penalties and the confiscation of specimens,²²⁹ the Regulation also requires Member States to take appropriate sanctions. It specifically lays out thirteen activities subject to sanction in Article 16.²³⁰ Such “infringements” include import or export with a false or invalid permit or certificate, making a false declaration to obtain a permit or certificate, not properly preparing live specimens so as to minimise the risk of injury, etc., misuse of specimens of species listed in Annex A, breach of prohibition of commercial activities, etc.²³¹

The measures to impose sanctions against breach are to be “appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens”.²³² The non-inclusion of detailed penalties in Regulation 338/97 was considered to be undermining, as some Member States are known to lack efficient legislation.²³³ The imposition of a penalty therefore varies according to the relevant national legislation of Member States, and in case of the UK, it includes imprisonment and fines.²³⁴ The provisions regarding confiscation are newly included by Regulation 338/97, and this inclusion corresponds with CITES Resolution 9.9.²³⁵ The confiscated specimens are entrusted to a competent authority which transfers or disposes of the specimens.²³⁶ In the case of live specimens, they may be returned to the state of export.²³⁷ These provisions correspond with Article VIII of CITES.²³⁸

The Regulation also provides measures to assist in effective and coordinated enforcement by Member States. Monitoring and investigation, based upon communication between the Member States and the Commission, assisted by the Enforcement Group,²³⁹ is required by Article 14.²⁴⁰ The competent authorities of the Member States are required to monitor compliance with the Regulation. They are

²²⁹ Art. VIII(1), n 19 above.

²³⁰ Art. 16(1), n 3 above.

²³¹ Art. 16(1), *ibid.*

²³² Art. 16(2), *ibid.*

²³³ Burns and Mosedale, n 68 above.

²³⁴ For penalties provided in the UK, see 2.5.2.6 and 2.7.6.

²³⁵ Resolution 9.9 urged Parties to provide for measures of seizure and confiscation of specimens exported in violation of the Convention. Res. 9.9, n 19 above.

²³⁶ The authority has to consult with the Scientific Authority of that State. Art. 16(3)(a), n 3 above.

²³⁷ This may be carried out at the expense of the convicted person. Art. 16(3)(b). In case of the live specimens of Appendix B or C, the competent authority may refuse to accept the shipment and require the carrier to return the specimen to its place of departure. Art. 16(4), *ibid.*

²³⁸ Art. VIII(4), n 19 above.

²³⁹ Art. 14(3), n 3 above.

²⁴⁰ Art. 14, *ibid.*

further required to inform the Commission and where necessary, the CITES Secretariat, of any steps taken against non-compliance.²⁴¹ Also, the Commission reserves the right to indicate matters to the Member States if it considers that the investigation of such matters is necessary. In such cases, the Member States need to inform the Commission and where necessary, the CITES Secretariat, of the outcome of any subsequent investigation.²⁴²

2.4.13. Case Study: Illegal Import Via Austria into the UK

Perhaps the most difficult problem faced by the EU is related to the free movement of goods within the EU. This problem is illustrated in *R. v Sissen (Henry Thomas)*,²⁴³ a case concerning the illegal import of parrots via Austria to the UK. The defendant was convicted under the Customs and Excise Management Act 1979, the UK trade control law and sentenced to the imprisonment of two and a half years.²⁴⁴ He appealed against the conviction, and contended that Article 5(1) of Regulation 3626/82 and Article 4(1) of Regulation 338/97 did not have direct effect in the UK. He submitted in the alternative that if those provisions had direct effect in the UK, they were only applicable to the introduction at the point of entry, which was not in the UK but in Austria. His defence was, therefore, that he had not committed an offence within the UK.

The appeal was dismissed on the following three grounds. Firstly, it was expressly provided for by EC Treaty Article 189 and now by Article 249, that Council regulations were directly applicable within Member States. Secondly, for the purposes of section 170 of the Customs and Excise Management Act, both of the European Regulations were “enactments” containing restrictions within the scope of the Act.²⁴⁵ Thirdly, the 1979 Act applied where restrictions were evaded in any country within the EU. Therefore, the point of entry did not matter.

The grounds for the dismissal of the appeal have significant implications for future similar cases. Enforcement powers vary amongst the EU Member States, and it is important for domestic enforcement legislation to be applicable, regardless of the point of entry, as penalties are provided for by domestic legislation, not Regulation 338/97. This case was taken to court as the result of a strong enforcement initiative taken by the UK. In Operation Palate, several enforcement actors including HM Customs and Excise, carried out a raid on the defendant's premises and found

²⁴¹ Art. 14(1), *ibid.*

²⁴² Art. 14(2), *ibid.*

²⁴³ *R. v Sissen (Henry Thomas)* [2001] *Criminal Law Report* 232. Also see; J. Lowther, D. Cook and M. Roberts, “Crime and Punishment in the Wildlife Trade”, a report commissioned by WWF and TRAFFIC (May 2002), at: http://www.wwf-org.uk/filelibrary/pdf/crime_and_punishment, visited on 20 Oct. 2002.

²⁴⁴ For discussions on enforcement under this legislation, see 2.5.2.

²⁴⁵ See 2.5.2.1.

illegally-imported parrots.²⁴⁶ The search warrants were obtained under the Customs and Excise Management Act 1979.

2.4.14. Conclusion

One of the most distinctive aspects of the Regulation, when compared to CITES, is that the Regulation takes a protective approach toward conservation. As it has set its main objectives to be the conservation of species and considers that trade control is a means to that end, Regulation 338/97 provides for a number of precautionary measures. Such measures are particularly apparent in its species listings. The Regulation's Annexes include a number of species which are not included in CITES but are deemed to have the potential to be threatened by trade or to adversely affect native species. The Regulation also imposes stricter trade controls on many CITES Appendix II species, by requiring an import permit. In this sense, the Regulation does go further than CITES.

Also, compared to the former Regulation, Regulation 338/97 provides the mechanisms required for a much more objective and harmonised implementation of CITES. The establishment of the SRG enabled a mechanism under which the EU Member States could make decisions based upon scientific opinions from it, and harmonise the application of such decisions within the EC. Various obligations relating to communications between the Member States, the Commission and the Secretariat, are also an improvement.

However, some derogation from the former Regulation is also found. Whereas the former Regulation required an import permit for all the protected species, the new Regulation does not require an import permit for Annex C species. This relaxation was incorporated in order to simplify the control procedures, and means that trade in the species listed on Appendix III of CITES is primarily controlled by the exporting country. The general lack of financial and human resources on the side of range states was previously mentioned.²⁴⁷ Therefore as these states are in charge of monitoring exports, without the need for an import permit, the EU's ability to provide stricter trade controls within the Member States is undermined.

On the whole, however, Regulation 338/97 provides for stricter trade control than provided by CITES and Regulation 3626/82. This has, as mentioned in the previous paragraph, provided a significant implication about the general effectiveness of CITES considering the financial and human resources and capacity available to the EU. As the previous paragraphs have examined, Regulation 338/97 requires the EU to take full responsibility in determining the conservation and welfare status of the specimens to be traded. Although conflicts with range states and the WTO are

²⁴⁶ S. Wallder, "Operation Palate: Sissens Case" (presentation given at 12th Annual Police Wildlife Liaison Officers' Conference, Portishead, Nr Bristol, 6-8 Oct. 2000).

²⁴⁷ See 2.3.3.

expected, this approach by the EU is an endorsement of the precautionary principle and a reflection of the tighter control required for the single market. The next section examines how the Regulation is enforced in the UK.

2.5. UK Implementation and Enforcement Mechanisms

This section will discuss how CITES is implemented and enforced in the UK. After introducing the overall picture of CITES-implementing mechanisms, the section examines how each statutory and non-statutory agency implements or enforces CITES. The section examines: border control by Customs; the internal management of CITES-related issues by DEFRA; the role played by the Police and other non-statutory organisations in enforcing CITES. The section examines the network system between those authorities facilitated by the partnership initiated by DEFRA, as well as individual mechanisms of enforcement actors.

2.5.1. Overview

CITES requires Parties to establish Management and Scientific Authorities for the implementation of the Convention.²⁴⁸ The Management Authority issues trade permits. The Scientific Authority gives advice on the conservation status of the relevant species to the Management Authority, which then decides whether such permits should be granted.²⁴⁹ In the UK, the Management Authority for CITES implementation is DEFRA. DEFRA is also the primary authority within the UK which is responsible for issues relating to wildlife conservation. It acts as a liaison point for relevant agencies.²⁵⁰ The Scientific Authority in the UK for animals is the Joint Nature Conservation Committee²⁵¹ and for plants it is the Royal Botanic Gardens, Kew. They are both independent bodies.

The main actors who enforce Regulation 338/97 are HM Customs and Excise and the Police. Customs are responsible for direct trade offences, whereas the Police enforce the provisions related to internal movement, as well as to direct trade offences. The legal basis of enforcement for Customs is the Customs and Excise Management Act 1979, and for the Police it is COTES 1997 or the Wildlife and Countryside Act 1981. DEFRA also contribute to enforcement, by providing wildlife inspectors who assist the above enforcement actors. Apart from the aforementioned statutory authorities, non-statutory organisations also take part in CITES enforcement and make a significant contribution to the protection of endangered species. Organisations such

²⁴⁸ Art. VIV, n 19 above. Also see 2.4.3.

²⁴⁹ Arts. III, IV and V, *ibid*.

²⁵⁰ See discussions on the Global Wildlife Division in 2.6.

²⁵¹ The Joint Nature Conservation Committee (JNCC) is the forum through which the Countryside Council for Wales, English Nature and Scottish Natural Heritage deliver their statutory responsibilities to the Government.

as RSPB or the Royal Society for the Prevention of Cruelty to Animals (hereafter RSPCA) may carry out their own investigations and prosecutions.²⁵²

In the UK, there is a network between all the agencies mentioned above. Partnership for Action against Wildlife Crime (hereafter PAW), initiated and managed by DEFRA, liaises and assists the enforcement actors. It organises an annual conference for police officers specialising in wildlife crime, and provides opportunities for other enforcement actors to exchange information and build networks. It is also developing many programmes to facilitate the enforcement of wildlife crimes, including CITES-related crimes.

2.5.2. Border Control by Customs

The following paragraphs will discuss the mechanisms of the UK's border control.²⁵³ First, the role of Customs, the enforcement actor for border control, will be examined. The examination centres around the role played by a specialist team dealing with CITES-related trade. The paragraphs will consider the flow of enforcement procedures such as inspection, seizure and prosecution. Lastly the initiative taken by Customs to improve its species identification ability is introduced.

2.5.2.1. Legislation

The legal basis of CITES enforcement by Customs is the Customs and Excise Management Act 1979.²⁵⁴ The Act creates an offence of exporting, shipping, or bringing to any place in the UK goods prohibited or restricted by other enactments,²⁵⁵ which, in the case of CITES enforcement, is Regulation 338/97. To enforce this Act, Customs check whether relevant permits and certificates are valid, which includes the identification of species. The 1979 act also allows for the seizure and detention of goods liable to forfeiture by the Police²⁵⁶ and also grants Customs officers the power to search any premises.²⁵⁷ Offences under the 1979 Act are prosecuted by Customs.

2.5.2.2. Internal Structure

Dealing with wildlife crime requires specialist resources. Also, as Customs are not an environmental authority, issues related to wildlife are not necessarily a high priority, which means initiatives are limited. Therefore, in 1992, due to the growing

²⁵² The RSPB now concentrates on investigation, rather than prosecution.

²⁵³ Based upon an interview with a Customs officer specialising in CITES matters. Christian Ashwell, CITES Team, HM Customs and Excise, interview by author, Heathrow, 22 Jun. 1999.

²⁵⁴ n 6 above.

²⁵⁵ ss. 68(1)(a) and (b), and 170(1) and (2), *ibid.*

²⁵⁶ s. 139, *ibid.*

²⁵⁷ s. 161, *ibid.*

trend in illicit wildlife trade, a small team of three anti-smuggling officers, was established as the CITES Team, based at Heathrow airport.²⁵⁸ The number of staff has currently been increased to eight.²⁵⁹ The Team is primarily responsible for: inspection, gathering and disseminating information with regard to CITES enforcement, and liaising with other Customs officers and enforcement agencies.²⁶⁰ It also carries out various training, presentation, and awareness raising activities.²⁶¹ The Team's responsibility covers all London airports.

Therefore, CITES enforcement in the UK centres around the CITES Team, which is supported by other Customs officers, especially Customs Wildlife Endangered Species Officers (hereafter CWEO). CWEOs assist the CITES Team, by providing relevant information. They are placed at 14 outfield zones, known as 'Collections', and concentrate on gathering and exchanging information. Through CWEOs, the CITES Team liaise with other Customs officers in the country, who provide information to or seek advice from the Team in dealing with the inspection of wildlife specimens.

The Team also liaises with other wildlife enforcement agencies in the UK, primarily the Police and DEFRA. It is in regular contact, particularly with DEFRA, whenever necessary to ensure the validity of permits, whilst conducting inspections. With regard to non-statutory agencies, the WWF and TRAFFIC are the primary agencies the Team works closely with. These organisations provide specialist help and information to the Team. Liaison between agencies is facilitated by PAW.²⁶²

Liaising with the Customs departments of other countries is also very important in enforcing CITES. For example, when the CITES Team at Heathrow suspects a potential offence may have been committed in another country, it contacts the International Liaison Department of Customs Headquarters. The Department then contacts the Customs department of that country, after which the CITES Team will be in direct contact with them. There is a World Customs Organisation in Brussels, but normally the relevant Customs department abroad is contacted first.

2.5.2.3. Inspections

The CITES Team carries out inspections in response to intelligence gathered against suspects. Shipments worthy of inspection may be selected after examining the data available. Such intelligence may be built up over the years from other parts of the world or within the UK, or it may be import and export data indicating that some

²⁵⁸ All officers of CITES Team are based at Heathrow, except for one based in Manchester.

²⁵⁹ CITES Team, "HM Customs & Excise: CITES Team" in CITES Secretariat, *CITES World, Official Newsletter of the Parties*, vol. 9 Dec. 1998, 5.

²⁶⁰ *Ibid.* Also see: J. Holden, *By Hook or by Crook* (Bedfordshire: RSPB, 1998) 36-37.

²⁶¹ CITES Team, *ibid.*, 5

²⁶² See the beginning of 2.5.1. For discussions on PAW, see 2.7.

individuals are trading endangered species frequently and/or in vast quantities. In the latter case, there may be a chance that the trade involves invalid permits. Alternatively, the Team may decide to carry out inspections when they consider that shipments in certain flights are likely to contain illegal specimens; for instance, if flights are coming from African countries on weekends during the hunting season, when there is a possibility that hunting trophies may be being illegally imported into the country.

A set of documents accompanying the goods, which include CITES permits, is available at any time for CITES Team officers to examine, in order to select shipments to be inspected, or to ensure that the declaration matches the contents of the shipments. Information also comes from other Customs officers who may warn the CITES Team that potential offences may be committed. In such cases, the CITES Team officers are called on for an inspection. The following paragraphs describe one example of how the Team conducts inspections, and the process between the discovery of the offence and prosecution.

2.5.2.4. Inspection, Seizure and Confiscation: Example

The CITES Team officers are empowered to seize specimens under the 1979 Act if they are not satisfied with the trade documents they are presented with. The power of seizure in CITES enforcement is particularly useful, when expertise for species identification is necessary, as Customs officers do not have such expertise. Identification of the species is carried out by the Animal Reception Centre²⁶³ at Heathrow Airport for animals and birds, the Royal Botanic Gardens Kew for plants, and Natural History Museum for parts and derivatives. Therefore, inspection by Customs officers involves checking the documents to ensure that the conditions provided in the trade documents are valid. When officers are not satisfied, they can seize the relevant specimens before getting expert help for identification purposes.

On 22 June 1999, when the author carried out the interview with the CITES Team, two officers from the Team conducted an inspection of a shipment which came from South Africa, to be imported into the UK. A set of documents indicated that the shipment contained a rhino skull and a crocodile skull. However, the documents included only an export permit for the rhino skull. There was no import permit for the rhino skull, and neither an import or export permit existed for the crocodile skull. These species are both listed on Annex A of Regulation 338/97 and therefore require both import and export permits.²⁶⁴

The Team's officers made their way to the shelf where the shipment was placed, amongst many other shipments. The container was opened and two skulls were

²⁶³ For discussions on its role, see 2.5.2.5.

²⁶⁴ See 2.4.7.

found inside. There was also a small cardboard box next to the container, which contained two dead corals. Although corals also require trade permits, there were none accompanying, and therefore they were seized immediately. Two containers were searched thoroughly by both officers, who made sure that the wooden box did not have a false bottom or false walls. After the seizure, two of the managers at the Animal Reception Centre were called in to identify the species, as the skull looked similar to that of the black rhino. The specimens without valid documents were subsequently confiscated by Customs. No penalty was likely to be imposed, as the intention of smuggling was not apparent, according to Mr. Ashwell.²⁶⁵

This example illustrates how the provision of seizure is utilised by Customs officers. Seizure of specimens when smuggling is suspected is a vital tool in enforcement, as required by CITES, Regulation 338/97 and the 1979 Act.²⁶⁶ Application of confiscation measures can also be observed, which are, again, encouraged by CITES.²⁶⁷ This contrasts with the lack of measures available for seizure and less frequent application of confiscation measures in Japan.²⁶⁸

2.5.2.5. Live Specimens

In the UK, after specimens are confiscated, and if they are dead specimens, they are most likely to be donated to such places as museums or other academic institutions. As for living specimens, the options laid down by the Wildlife Licensing, Enforcement and Information Systems Branch of DEFRA, which “generally follows guidelines outlines in Annex 1 of [CITES Resolution] 10.7”, are as follows.²⁶⁹ For Annex A specimens, after consultation with the Joint Nature Conservation Committee, specimens are normally introduced into breeding programmes. Annex B and C specimens will be donated to breeding programmes, zoos or wildlife parks, if the latter two wish to try and breed the species. Specimens may also be donated to specialist societies.

Although Article VIII(4)(b) of CITES recommends the return of confiscated specimens to the country of origin, this option is hardly ever chosen in practice, because of the problems relating to cruelty and mortality during transport, as well as the biological constraints in introducing individual specimens into a wild

²⁶⁵ Mr. Ashwell, n 253 above. The intention for illegal import has to be proven to prosecute the case. See 2.5.2.6.

²⁶⁶ Art. VIII, n 19 above. Art. 16(2), n 3 above. Art. 139, n 6 above.

²⁶⁷ Art. VIII(1), n 19 above. Res. 9.9, n 19 above. This point was considered in 2.4.12.

²⁶⁸ See 3.4.1.4.

²⁶⁹ DETR, “Disposal of Seized Live CITES Specimens”, provided by the Licence and Resource Management Unit (now the Wildlife Licensing, Enforcement and Information Systems Branch), the Global Wildlife Division, DETR. Resolution 10.7 lays down guidelines for the disposal of confiscated live specimens of species included in the CITES Appendices. Res. 10.7, n 19 above.

population.²⁷⁰ Euthanasia is also an option included in Resolution 10.7, it “has only been done on veterinary advice for sick or diseased animals” in the UK.²⁷¹

What happens, then, to living specimens before they are properly placed in suitable accommodation?²⁷² Article VIII of CITES requires Parties to provide adequate facilities for live specimens during transportation or after seizure.²⁷³ In the UK, live animals are kept in the Animal Reception Centre until they can be relocated²⁷⁴ to reputable zoos, wildlife parks or breeders,²⁷⁵ and the expenses for this are provided by Customs.²⁷⁶ The Animal Reception Centre, situated next to the Heathrow airport, is run by the Corporation of London and is part of the Trading Standards/Veterinary Section of the Environmental Health and Consumer Protection Department of the Corporation.²⁷⁷

Although the primary functions of the Centre are to fulfil the obligations under the statutory instruments embraced by the Animal Health Act 1981,²⁷⁸ it also plays an important role in assisting Customs in enforcing CITES, providing its expertise in matters related to animals. The Centre undertakes the identification of species listed in Regulation 338/97 for Customs²⁷⁹ and is commissioned by the Ministry of Agriculture, Fisheries and Food (now DEFRA) to quarantine birds seized by Customs.²⁸⁰ Although the Centre is not an ideal place to house endangered species with various needs, it provides better facilities and care than would be possible at Customs.²⁸¹

²⁷⁰ Mr. Ashwell, n 253 above. For discussions on this point, see Bowman, n 209 above, 55-56. Bowman states: “the process of return to the wild is likely to be fraught with difficulty”.

²⁷¹ DETR, n 269 above. Bowman discusses the welfare implications of the euthanasia option. Bowman, *ibid.*, 57-58.

²⁷² This subsection is based upon the following interview; Tristin Bradfield, Animal Reception Centre, Corporation of London, interview by author, Heathrow, 22 Jun. 1999.

²⁷³ Art. VIII (3), n 19 above. Concerns for animal welfare incorporated in Regulation 338/97 were considered in 2.4.10.

²⁷⁴ Large mammals such as primates are usually re-homed immediately.

²⁷⁵ Mr. Ashwell, CITES Team, HM Customs and Excise to author, a letter correspondence, 2 May 1999.

²⁷⁶ *Ibid.* In 1993, the Animal Reception Centre housed 570 reptiles, 2500 birds and 2 mammals. Corporation of London, *Corporation of London Heathrow Animal Reception Centre*, a general leaflet, n.d., provided by Mr. Bradfield, n 272 above.

²⁷⁷ Corporation of London, *ibid.*

²⁷⁸ Such statutory instruments are; Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, Importation of Birds, Poultry and Hatching Eggs Order 1979, and Welfare of Animals During Transport Order 1997. The Centre is operated under DEFRA as a short stay quarantine facility. The Centre must identify all imports of birds for commercial purposes from outside the EU. The ensurance of the welfare and health of the birds is also its responsibility. *Ibid.*

²⁷⁹ *Ibid.* An example is provided in 2.5.2.4.

²⁸⁰ *Ibid.*

²⁸¹ This point makes a contrast to situations in Japan. See 3.4.2.7.

The welfare of the animals is also ensured by the Centre. IATA's LAR and CITES Resolution 10.21²⁸² require certain conditions to be met under which animals are to be kept during transport. Airlines and owners of animals may be prosecuted for breaching these conditions which are incorporated in various legislation.²⁸³ The size of cages in which animals are kept is one example, and the Centre ensures that these conditions are satisfied, thereby assisting the enforcement of the welfare requirements in CITES.

2.5.2.6. Prosecutions and Convictions

With regard to the procedure leading to a formal penalty, Customs contact the CITES Secretariat, which subsequently contacts the Management Authority of the exporting state, to question, for example, why it has issued an export permit without confirming the existence of an import permit.²⁸⁴

When the offence is discovered or intelligence is accumulated to such a degree that it provides sufficient evidence, cases are passed on to the Investigation Team of HM Customs and Excise. This is the department that is generally responsible for legal investigation. Cases are then forwarded to the Solicitors' Office of Customs, which decides whether to take criminal proceedings or not. In most cases involving CITES species, legal proceedings are not taken.

The primary reason why CITES-related cases are not taken forward concerns the difficulties in proving that the offence was intentional. "It is hard to convince [the Solicitor's Office] to take cases on" as "the case has to be worth its cost", according to Mr. Ashwell.²⁸⁵ Under section 170 of the 1979 Act, it is an offence for a person to "knowingly" import prohibited goods.²⁸⁶ However, to prove that a trader knew he or she was committing an offence is difficult, as "it is so easy for him to say that he didn't know about CITES" or that "he didn't know what was sent by an exporter", according to Mr. Ashwell.²⁸⁷ The intention may be proved when an offence is repeated by the same trader, however, in most cases, prosecution does not take place. There have only been 23 successful convictions for cases prosecuted by Customs

²⁸² See 2.4.10.

²⁸³ These legislation include the Wildlife of Animals (Transport) Order 1997 and Animal Health Act 1981. For instance, in *Air India v Wiggins*, the prosecution took place under the Transit of Animals (General) Order 1973, although it was found inapplicable as the birds were deemed dead before arrival in the UK. *Air India v Wiggins* [1980] 2 *All England Law Reports* 593. Also see *British Airways Board v Wiggins* [1977] 3 *All England Law Reports* 1068.

²⁸⁴ This will be the procedure taken for the case mentioned in 2.5.2.4.

²⁸⁵ Mr. Ashwell, n 253 above.

²⁸⁶ s. 170(1) and (2), n 6 above.

²⁸⁷ *Ibid.*

between 1989 and 1996,²⁸⁸ although seizures amount to 490,627 specimens just in 1998.²⁸⁹

There is another problem relating to conviction for wildlife crimes. It is doubtful whether the imposed convictions are proportional to the seriousness of offences. Although the maximum penalty that can be imposed under the 1979 Act is imprisonment for seven years, until 2001, the maximum sentence that had been imposed was two-years imprisonment, which is the maximum sentence provided for by COTES and Wildlife and Countryside Act 1981.²⁹⁰ It was considered difficult to obtain the maximum term of seven years provided by the Customs and Excise Management Act 1979. However, recently, a smuggler of exotic birds was sentenced to a term of imprisonment of six and a half years, which marks the longest sentence ever imposed for wildlife crimes in the UK; Judge Lowen stated; "I intend to send a clear message to those who would take these creatures from the wild, whose existence is enriched by their diversity and survival".²⁹¹ The imposition of such a long sentence may be an indication of the fact that the judiciary in the UK is taking wildlife crime more seriously.

2.5.2.7. The Green Parrots Project

One of the difficulties involved in Customs' role in CITES enforcement is species identification. Most Customs officers do not possess expert knowledge, and therefore identifying exotic species or products made of those species is difficult, although vital for the enforcement of CITES. In order to tackle this problem, in 1994, Customs commissioned a software development company²⁹² to develop a computer programme for the officers of Customs and the Police to use on site in order to identify the listed species.

The project, called "Green Parrots Project", encompasses most species of mammals, birds and reptiles.²⁹³ It also covers parts and derivatives such as Traditional East Asian Medicines. The programme contains photographs of the species as well as details of their body parts, to help differentiate the listed species from the non-listed species which may appear to be similar. It also allows users to enter descriptions of

²⁸⁸ A record of convictions between 1989 and 1996 provided by Customs Headquarters. For one of the early cases, see; *R. v Sperr* [1991] 13 Cr. App. R. (S) 8. In this case, however, the sentence was reduced from 18 to nine months by High Court.

²⁸⁹ HM Customs and Excise and Department of the Environment Report; "A Record of Seizure in 1998", provided by Customs Headquarters.

²⁹⁰ See 2.7.6.

²⁹¹ The offender smuggled exotic birds from Thailand. The Police and Customs had carried out the joint investigation since 1997, and Customs intercepted the offender in July 2000. See; "Builder Cleared of Bird Smuggling Charges", *This is Local London*, available in LEXIS, UK Newsquest Regional Press, 28 Jan. 2002. For further discussions, see 2.5.7.

²⁹² Concept Imaging Limited.

²⁹³ Based on the following interview; Chris Beeson, Concept Imaging Limited, interview by author, Heathrow, 22 Jun. 1999.

specimen's features, and searches show matching species. By 1999, seven police forces around the country and all Customs Collections had introduced the programme and "a very good response" was observed, according to Mr. Beeson.²⁹⁴ The Project is also used in other countries such as the Netherlands, Belgium and Ireland.

2.6. The Global Wildlife Division

This section discusses the management mechanism of CITES implementation.²⁹⁵ As mentioned earlier,²⁹⁶ implementation of CITES is primarily carried out by a division of DEFRA called the Global Wildlife Division (hereafter GWD).²⁹⁷ It is responsible for implementing statutory controls generally concerning wildlife, both at national and international levels.

There are three branches within the GWD, whose work includes CITES-related matters: the CITES and Zoos Policy Branch, the Wildlife Crime and Inspectorate Unit and the Wildlife Licensing, Enforcement and Information Systems Branch.²⁹⁸ Policies on CITES implementation and enforcement are formulated by the CITES Policy and Zoo Branch of the GWD. This Branch is also responsible for the negotiation and presentation of the governmental position at CITES COPs.²⁹⁹ Permits and certificates required under Regulation 338/97 are issued by the Wildlife Licensing, Enforcement and Information Systems Branch. The Wildlife Crime and Inspectorate Unit is responsible for ensuring the conditions for those permits and certificates are met. Therefore, the Wildlife Crime and Inspectorate Unit operates primarily under COTES 1997 when its work involves CITES matters. It also plays the most significant role in co-ordinating the enforcement of wildlife law within the UK, whether under national or international law, by playing the role of the Secretariat for PAW.

The Wildlife Crime and Inspectorate Unit and the Wildlife Licensing, Enforcement and Information Systems Branch also carry out work relating to national conservation, operating primarily under the Wildlife and Countryside Act. The Licensing Branch manages the registration system required under the 1981 Act for

²⁹⁴ Ibid.

²⁹⁵ This section is based primarily upon interviews with DEFRA officials of the GWD on 7 May, 1999. For details, see the list of the interviews provided in the Appendix. Other sources of information in this section are; Holden, n 260 above; DETR, *Wildlife Crime: A Guide to Wildlife Law Enforcement in the UK* (London: The Statutory Office, 1998); DEFRA official homepage at <http://www.defra.gov.uk/wildlife-countryside/wacd/>, visited on 15 Apr. 2002.

²⁹⁶ See 2.5.1.

²⁹⁷ The GWD is comprised of approximately 45 staff and is based in Bristol.

²⁹⁸ See 2.5.2.4. One other branch, the International Conservation Policy Branch, carries out work related to the Convention on the 1979 Conservation of Migratory Species of Wild Animals (the Bonn Convention). 19 I.L.M. 15.

²⁹⁹ Julian Claxton, head of the CITES Policy Unit (now the CITES and Zoos Policy Branch), GWD, DETR, interview by author, recorded on tape, Bristol, 7 May 1999.

keepers of Schedule 4 birds to register with DEFRA. The registration process, which is similar to the permit granting system for CITES requirements, has been a “useful conservation tool” but is now being reviewed by DEFRA.³⁰⁰ The Wildlife Crime and Inspectorate Unit carries out inspections, ensuring registration conditions are being met, as well as carrying out other work necessary for the enforcement of the Wildlife and Countryside Act and other wildlife law.³⁰¹

2.6.1. The Global Wildlife Division 1: CITES Policy and Zoo Branch

The CITES Policy and Zoo Branch is responsible for formulating or advising Ministers on the policy of the UK Government with regard to CITES.³⁰² It also liaises between various sections of society so that national concerns are reflected in governmental policy. The following paragraphs will further discuss: how these policies are formulated, by liaising with other sectors of society; what these policies are; and how they are implemented in practice.

As mentioned above, the primary role of the CITES Policy and Zoo Branch is to formulate the policy of the UK Government in relation to CITES matters.³⁰³ In doing so, the Branch acts as a liaison between DEFRA and other governmental departments, and also consults with other branches of the GWD. The policy formulation process, however, is not closed to the public, and the Branch provides opportunities for national concerns to “feed over” into international policy.³⁰⁴ In order to do so, it works closely with other sectors of society, such as non-statutory environmental and animal organisations, as well as groups which have interests in the utilization of wildlife, as discussed in the following paragraphs. In addition, the Branch's role encompasses the publicity area, to raise public awareness.

The CITES Policy and Zoo Branch, as well as all other branches of the GWD, meet an umbrella group for NGOs called the Wildlife and Countryside Link³⁰⁵ twice a year. Apart from these regular meetings, meetings with individual NGOs may be arranged if requested. The meetings are held to enable the Branch to incorporate NGOs' concerns or opinions into governmental policy taken towards CITES so that NGOs can “feed their views into the process”, according to Mr. Claxton.³⁰⁶ Apart from such meetings, NGOs in the UK also have opportunities to voice their concerns

³⁰⁰ RSPB Investigation Section, “The Importance of Bird Registration: RSPB's Views on the Review of Schedule 4 of the Wildlife and Countryside Act 1981” (2002), 4. Discussions on the review is provided in 2.7.4.

³⁰¹ The role of the Wildlife Crime and Inspectorate Unit is fully discussed later. See 2.6.2.1.

³⁰² DETR, “Global Wildlife Division”, n.d., internal material, provided by the CITES Policy Unit.

³⁰³ This paragraph is based upon the interview with Mr. Claxton, n 299 above.

³⁰⁴ Ibid.

³⁰⁵ Approximately 20 NGOs are represented. They include many of the large organisations such as the WWF, the Environmental Investigation Agency, the International Fund for Animal Welfare, the RSPCA, the RSPB, etc.

³⁰⁶ Amongst the various organisations, the CITES Policy Unit meets the WWF and TRAFFIC International more frequently than the others.

at the delegation meetings held during the conferences of CITES and the IWC. The author was present at the UK delegation meeting during the 54th Annual Meeting for the IWC, and mutually cooperative attitudes were observed between NGOs and the delegates, forming policies together.

Organisations that meet with the CITES Policy and Zoo Branch are not only from the conservation field. The Branch also provides the opportunity for groups of traders to have their concerns about governmental policy reflected.³⁰⁷ The traders form an umbrella group called Sustainable Users Network, commonly called SUN. The Branch organises the meeting for both the Wildlife and Countryside Link and SUN on the same day, but separately. This is because the focus of discussions differ between the two groups. While the Wildlife and Countryside Link is more concerned with international and national governmental policy, SUN is concerned with more practical matters, such as changes in the licensing system.

The Branch clearly values such networks of NGOs as well as trader groups. Mr. Claxton stated; “NGOs are useful to us. They’ve got a network we simply can’t go into”. “If they do [things] sensibly and carefully they can actually make changes we could never make as a Government”.³⁰⁸ Referring to the issue of the tiger,³⁰⁹ Mr. Claxton explained that many Governments could not criticise other Governments so openly even if they were concerned with the latter's policy with regard to tiger protection. However, NGOs are free from such constraints and were able to campaign against such Governments more openly.³¹⁰

Another role NGOs play in formulating governmental policy is through their information resources. Mr. Claxton stated; “They can alert us to the problem we would otherwise be unaware of”.³¹¹ One significant example is the bushmeat trade, which is one of the fastest growing threats to primates. The Government was not fully aware of the size of the trade until a number of NGOs raised the issue.³¹² Subsequently, at COP 11, the UK Government submitted a proposal concerning the regulation of trade in bushmeat, and working group was established.³¹³ Also, the UK recently successfully prosecuted against illegal sale of bushmeat.³¹⁴

³⁰⁷ Conservationists and traders also have an opportunity to have a meeting together.

³⁰⁸ Mr. Claxton, n 299 above.

³⁰⁹ See 1.8.3 and 2.8.2.

³¹⁰ See 1.8. For example, the Environmental Investigation Agency has criticised India and Japan with regard to their conservation policy concerning tigers. For their criticisms about Japanese policy on tiger products, see for instance; H. Paxton, 'Bad Medicine for Tigers', (Dec. 1998) *BBC Wildlife Magazine*, 23.

³¹¹ Mr. Claxton, n 299 above.

³¹² Another example is the Tropical Forest Forum, which brings together interested NGOs.

³¹³ Department of Transport, Local Government and Regions, *News Release* 2000/03 39, 9 May 2000. Dec. 11.166, n 19 above.

³¹⁴ Two London shopkeepers were sentenced to imprisonment term of four months. UK CITES, *Bulletin* No. 16 (Summer 2002), at: <http://www.ukcites.gov.uk>, visited on 1 Aug. 2002.

2.6.2. Global Wildlife Division 2: The Wildlife Crime and Inspectorate Unit

The Wildlife Crime and Inspectorate Unit assists the Police and Customs in enforcing wildlife laws. It plays the following two primary roles to achieve this end. First, it ensures that the provisions of wildlife laws are met. Secondly, it provides a liaison point for various statutory and non-statutory agencies relating to wildlife law enforcement by providing information or as a Secretariat for PAW.³¹⁵ The following paragraphs will examine these two roles.

2.6.2.1. Wildlife Inspectors

The Wildlife Crime and Inspectorate Unit consists of a small team at headquarters and a panel of approximately 100 part-time paid consultants throughout the UK.³¹⁶ These consultants are Wildlife Inspectors whose primary role is to identify species to ensure the relevant provisions are met. Species identification involves specialist knowledge. Therefore, the part-time consultants are chosen for their expertise in particular groups of animals and plants.

Although the majority of inspectors specialise in bird identification,³¹⁷ there are many specialists covering other species. The Unit also has many contacts with other experts around the country, who are not appointed as inspectors, but may be able to accompany inspectors in order to help with identification.³¹⁸ The system of Wildlife Inspectors is a valuable one as in wildlife crimes it is crucial for enforcement actors to be able to identify species.³¹⁹

All inspections are monitored and controlled by the staff at headquarters within an overall inspection strategy. However, all Inspectors are also given certain legal powers under COTES 1997 when CITES-listed species are involved. Regulation 9(4) of COTES gives them a statutory power to enter into the premises of applicants for or holders of CITES permits, to ensure conditions under CITES permits are being met.³²⁰ This power encompasses not only trade permits but also licenses relating to

³¹⁵ For discussions on PAW, see 2.7.

³¹⁶ N.P. Williams and J.A. Evans, "The Application of DNA Technology to Enforce Raptor Conservation Legislation within Great Britain", n.d, provided by Mr. Williams, 2. The following paragraphs are based upon the following interview unless otherwise stated; Nick Williams, Chief Wildlife Inspector, Wildlife Inspectorate Unit (now Wildlife Crime and Inspectorate Unit), GWD, DETR, interview by author, recorded on tape, Bristol, 7 May 1999.

³¹⁷ This is because of the historical reason that the Wildlife Inspectorate started with the registration of birds. The bird registration scheme was established in 1982 under the Wildlife and Countryside Act 1981 and is now being reviewed. Williams and Evans, n 316 above, 3. See Art. 7(6), n 5 above.

³¹⁸ Mr. Williams, n 316 above.

³¹⁹ See 3.4.2.3 and compare this with the Japanese inspection system.

³²⁰ "An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter and inspect . . . any premises where he has reasonable cause to believe a specimen is being kept". Reg. 9(4), n 4 above.

commercial activities such as sales. Inspectors may also accompany the Police or Customs officers to assist investigations.

For native species, Inspectors are given power under the Wildlife and Countryside Act 1981 to enter into (1) the premises of keepers of birds listed on Schedule 4 of the Act³²¹ and (2) land of applicants for licences to release barn owls, *tyto alba*, or certain other species into the wild.³²² With regard to (1), another power of Wildlife Inspectors is to take blood samples for DNA testing, which is a vital tool in identifying the parentage of the bird in question.³²³

Mr. Williams considers that Inspectors need to be “objective and independent in their views and manners” as well as having “identification expertise”.³²⁴ Indeed, they have considerable authority, and types of inspection vary considerably. For example, inspection under the Wildlife and Countryside Act 1981 can be divided into two levels; the first level is when an owner claims to have a captive-bred bird that requires licence, which may include CITES species, the bird must be registered with the DEFRA and ringed. As registration under the 1981 Act uses strict liability, it is an offence simply when the bird is not registered, whether ringed or unringed. Therefore, if the bird is not registered with DEFRA, the Inspectors need to contact the Police.

The second level is when owners have two legitimately registered birds and claim that the bird inspected was captive-bred from these registered birds. In cases like this, there is a possibility that the bird in question comes from an egg or a chick that was removed from the wild, and subsequently registered and ringed. This is an offence commonly committed by those who blatantly break the law.³²⁵ In such a case, DNA testing is the only way to scientifically prove the parentage of the bird.³²⁶

2.6.2.2. PAW Secretariat

Another role of the Wildlife Crime and Inspectorate Unit is to act as a liaison point for enforcement actors, both statutory and non-statutory. In one way, it helps and monitors enforcement cases, by liaising with enforcement actors and providing information to them. Such information is both on national and CITES matters, and whilst preserving its confidential nature, its database is almost always available to the enforcement actors.

³²¹ s. 7(6), n 5 above.

³²² See s. 14(1)(b) and (5), *ibid*.

³²³ Discussions on DNA testing are provided later. See 2.7.4.

³²⁴ Mr. Williams, n 316 above.

³²⁵ In 1993, it was revealed that 22% of the combined number of peregrine falcons *falco peregrinus* and goshawks *accipiter gentilis* registered as captive-bred had been removed from the wild illegally. For major exemplary cases, see: *Seiga v Walkingshaw* [1993] S.C.C.R; 146-147; and *R. v Caming* [1996] 2 Cr. App. R (S) 202. Also see “Breeder is Jailed for Selling Wild Peregrine Falcons”, *Times*, 30 Sep. 1995.

³²⁶ See 2.7.4.

Apart from being a focal point of information, it is a Secretariat for PAW. PAW was initiated and launched by the Unit in November 1995, to bring together various enforcement actors in wildlife law, including CITES-related legislation. The following paragraphs will examine the primary enforcement actors participating in PAW. Subsequently, an examination is also carried out of the initiatives taken, difficulties and problems encountered, and suggestions and campaigns by PAW. In doing so, the section aims to provide insight into the UK's national conservation situation involving both CITES and national matters.

2.7. Partnership Against Wildlife Crime

2.7.1. Enforcement Agencies

The roles played by Customs, the CITES Policy and Zoo Branch and Wildlife Inspectors in CITES implementation and enforcement were mentioned earlier.³²⁷ There are a number of other enforcement actors involved in PAW, such as the Police, the courts, and various NGOs. The following paragraphs will briefly discuss their role in wildlife law enforcement.

The Police are the primary agency that enforces national legislation, and for national wildlife crimes, it primarily enforces the Wildlife and Countryside Act 1981, as well as other wildlife or animal welfare legislation.³²⁸ For CITES-related crimes, the Police are one of the two primary agencies along with HM Customs and Excise in enforcing CITES under Regulation 338/97 and COTES 1985. The Police often works with Customs, when a case involves illegal trade, helping them with investigations or making its statutory powers of detention available to them.

The UK Police has officers specializing in wildlife crime. Since the 1980s, the scale and seriousness of wildlife crime has been increasingly recognised by the Police.³²⁹ To combat organized wildlife crime, since the 1980s, each Police force began to appoint a Police Wildlife Liaison Officer (hereafter PWLO). Currently all 52 police forces in England, Scotland and Wales and the Royal Ulster Constabulary have at least one PWLO.³³⁰ Unfortunately, commitment to supporting the PWLO still varies between forces, and most of the PWLOs are not working exclusively on wildlife issues, although the appointed persons have a genuine interest in wildlife matters.³³¹ However, this network of PWLOs is “extremely valuable”, according to Mr. Williams.³³² The key advantage is that anyone involved in wildlife law enforcement

³²⁷ See 2.5.2 and 2.6.

³²⁸ For instance, they enforce the provisions under the Theft Act and the Dangerous Animals Act.

³²⁹ Mr. Williams, n 316 above.

³³⁰ Holden, n 260 above, 36.

³³¹ Mr. Williams, n 316 above.

³³² *Ibid.*

now has a contact in every force, although the decision on whether to take each case forward or not depends upon the resources available in individual forces.³³³

Furthermore, the London Metropolitan Police established a Wildlife Crime Unit in April 2001. It liaises with departments of the Government, NGOs, other police forces and individuals involved in wildlife protection, and acts as a focal information point. The Metropolitan Police appoints wildlife officers on a geographical basis, called Area Wildlife Officers, and the Unit coordinates and supports those officers. This initiative is significant, with London being the major destination for illegal wildlife specimens.

The Crown Prosecution Service (CPS) is responsible for prosecuting most criminal cases resulting from police investigations.³³⁴ The CPS makes the final decision as to whether or not to bring a case to court after it is submitted by the Police.

“All major wildlife trade cases in the UK have involved support from one or more [NGOs]”, according to Holden.³³⁵ NGOs play a vital role in wildlife law enforcement in the UK, and three organisations that work very closely with statutory agencies and play major roles in PAW are; the RSPCA, the RSPB and TRAFFIC International.³³⁶

The RSPCA was the first wildlife law enforcement body in Britain and preceded the formation of the police force by two years.³³⁷ In keeping with that tradition, today, the RSPCA’s inspectorate is the largest non-statutory law enforcement agency in the UK.³³⁸ Although its primary concern is animal welfare issues, the RSPCA has committed its resources towards pursuing wildlife cases, as they may involve cruelty, for instance, during the process of removing an animal from wild.³³⁹ As shown later in Chapter 4, animal welfare concerns were one of the origins of modern animal

³³³ Mr. Williams pointed out; “one has to accept that wildlife enforcement is not to be top priority in either of [the Police or HM Customs and Excise]”, and there is “a lack of enthusiasm” amongst these two agencies in general. Still, significant improvement can be recognised in the police force as well as Customs with regard to their efforts to enforce wildlife law. *Ibid.* See 2.5.2.6.

³³⁴ Holden, n 260 above, 37

³³⁵ *Ibid.*

³³⁶ Mr. Williams, n 316 above.

³³⁷ Established in 1824. RSPCA, *RSPCA Information- The Story So Far...*, a general leaflet, n.d., available from the RSPCA. For discussions on the RSPCA's involvement in wildlife law enforcement in the UK, see 2.9.

³³⁸ *Ibid.*

³³⁹ The relation between animal welfare and CITES was considered earlier. See 2.4.10 and 2.5.2.5. For instance, at the fourth COP of CITES, an attempt was made to provide for restrictions on trade where the steel-jaw leghold trap was involved. For details, see Bowman, n 209 above, 26-27.

protection legislation in the first place.³⁴⁰ To this date, the RSPCA has brought many significant cases of wildlife crime to court.³⁴¹

The RSPB, on the other hand, has not taken any private prosecutions since 1992.³⁴² Instead, it shifted its efforts to assisting other statutory agencies to bring cases involving wild birds to court. Its Investigation Section receives approximately 1,000 incident reports annually and assists the Police with approximately 75 prosecutions annually. It played a major role in creating the PWLO, conducted various joint raids with the Police on premises of keepers of protected birds, and supported DNA testing programmes.³⁴³ The Investigation Section also holds a database of information on reported offences involving wild birds, and records of prosecutions. The record kept by the RSPB is the only comprehensive record of wildlife crimes involving birds in the UK.³⁴⁴

TRAFFIC International is the joint wildlife trade monitoring programme of the WWF and IUCN.³⁴⁵ It carries out investigations into illegal trade in endangered species within the UK, assisting statutory agencies. Holding approximately 20 offices around the world, it also co-ordinates international investigations and it is a source of expertise to wildlife law enforcers.³⁴⁶

2.7.2. Objective

According to Nick Williams, the head of the Wildlife Crime and Inspectorate Unit, PAW is “a major step forward” in wildlife law enforcement within the UK. Indeed, networking between agencies is vital in combating wildlife crimes,³⁴⁷ and PAW provides valuable networks. “There is no other mechanism available for the police and Customs to talk at this level”, said Mr. Williams.³⁴⁸ The significance of PAW has been acknowledged by the UK Government and its commitment to strengthen PAW was announced by Environment Minister Michael Meacher in June 1998.³⁴⁹

³⁴⁰ This point is stated by Reid; C. Reid, *Nature Conservation Law* (London: W. Green & Son Ltd, 1994) 4.

³⁴¹ For instance, in 1997, a case involving the largest seizure of rhino horns was brought to court by the Society. See 2.9.1. Also in 1997, the RSPCA took a prosecution against the killing of a badger, in which DNA testing was applied. See “DNA Used in Hunt for Killers of Badger”, *Times*, 19 Sep. 1997.

³⁴² RSPB, *Investigations Section, Fact File* (1997), a general leaflet on the RSPB’s Investigations Section, available from the RSPB.

³⁴³ *Ibid.*

³⁴⁴ RSPB, *Birdcrime: Offences Against Wild Bird Legislation*, reports, available from the RSPB. For other types of wildlife crimes, the central record does not exist yet. See 2.7.5.

³⁴⁵ See 2.4.8.

³⁴⁶ Holden, n 260 above, 37-38.

³⁴⁷ See cases described later in 2.8.

³⁴⁸ Mr. Williams, n 316 above.

³⁴⁹ DETR, *PAW Bulletin 1*, Oct. 1998.

PAW, consisting of various statutory and non-statutory agencies as mentioned above, was established “to promote effective wildlife law enforcement, nationally and internationally”.³⁵⁰ The focus is primarily on national matters, but it also aims at promoting international enforcement, pursuing co-ordinated enforcement between national wildlife legislation and CITES enforcement.

2.7.3. Structure

PAW’s activities are guided by a Steering Group which is comprised of representatives of statutory agencies including the Police and Customs.³⁵¹ PAW’s strategies are drawn together following the result of an annual Open Seminar, where its progress is reviewed, information and intelligence are gathered, and problems and difficulties are raised and discussed. PAW also has working groups which conduct research on and promote specific areas of wildlife law enforcement. Currently there are eight working groups dealing with the following issues, including; DNA and other forensic techniques, data exchange and management and legal issues. Administration of PAW is the responsibility of the Wildlife Crime and Inspectorate Unit as a Secretariat. Amongst these, DNA techniques, data exchange and management, conference and legal issues are of particular relevance in having a direct bearing on the enforcement of wildlife law, including CITES issues.³⁵²

One of the opportunities for enforcement actors of wildlife law, both statutory and non-statutory, to build a network is the Police Wildlife Liaison Officer's Conference (hereafter PWLO Conference). This is an annual meeting which primarily PWLO in each force attend, however, it is also attended by all sectors relating to wildlife: members from Customs, the GWD, Wildlife Inspectors, the CPS, Magistrates, Interpol, the RSPB, the RSPCA, TRAFFIC and various other wildlife-related NGOs. The Conference is also attended by those who utilize wildlife, including taxidermists, gamekeepers, falconers, etc. During the Conference, current issues and important legislative changes or cases are discussed, in order to keep delegates informed. It also provides opportunities for enforcers and those in primary industries such as gamekeepers to build networks and exchange information.

The network building function is extremely important in enforcing wildlife laws. The primary enforcement actors such as the Police and Customs can benefit from experts like Wildlife Inspectors and other specialist organisations which have expertise in wildlife issues. For instance, as already mentioned, the identification of species or specimens is one of the most crucial factors in enforcing wildlife law, and it cannot be achieved without the help of specialists.³⁵³

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² See 2.7.4-2.7.6.

³⁵³ See 2.5.2.4 and 2.5.2.5.

2.7.4. Enforcement Initiative 1: Blood Sampling Inspection for DNA Testing

The following paragraphs will discuss the blood sampling scheme under COTES 1997 and the Wildlife and Countryside Act 1981. The example of DNA sampling under the 1981 Act is considered below. This is because of the large number of wildlife cases involving birds protected by the 1981 Act, many of which include CITES species. The paragraphs examine how the sampling scheme was introduced, and how it is carried out in practice. Discussions on cases involving DNA testing are also provided.

Blood samples can be obtained during inspections under COTES 1997 in order to obtain the results of DNA tests. COTES gives not only the Police but also Wildlife Inspectors the power to insist on blood or tissue samples without the prior consent of the keepers of the animals. Regulation 9 (5) states;

An authorised person who is, by virtue of paragraph (4)³⁵⁴, lawfully on any premises may, in order to determine the identity or ancestry of any specimen for the purposes specified in that paragraph, require the taking from any specimen of a sample of blood or tissue³⁵⁵

A constable who is, . . . , lawfully on any premises may, in order to determine the identity or ancestry of any specimen, require the taking from any specimen of a sample of blood or tissue . . .³⁵⁶

It is to be noted, however, COTES ensures that samples may only be taken by a registered veterinary surgeon, and that the taking of samples must not cause lasting harm to the specimen.³⁵⁷

The Police and Wildlife Inspectors are also able to take samples under the Wildlife and Countryside Act 1981, which primarily involves the registration of captive birds, although the Police are empowered to insist on blood samples with regard to any offence under Part I of the Wildlife and Countryside Act 1981.³⁵⁸ The power for Wildlife Inspectors to insist on samples has been extended by the Countryside and Rights of Way Act 2000, and they are able to insist on samples in order to ascertain whether an offence has been committed concerning (1) commercial activities involving live or dead wild birds or eggs, (2) registration of captive birds,³⁵⁹ (3)

³⁵⁴ Regulation 9(4) provides for details of the purposes for entry into premises by the Wildlife Inspectorate. Reg. 9(4), n 4 above.

³⁵⁵ Reg. 9(5), *ibid.*.

³⁵⁶ Reg. 9(3), *ibid.*

³⁵⁷ This is another example of welfare considerations included in the UK wildlife legislation.

³⁵⁸ See s. 19, n 5 above. Sched. 12, Countryside and Rights of the Way Act 2000.

³⁵⁹ See 4.5.1.2.

commercial activities involving wild animals protected under the 1981 Act, (4) commercial activities involving plants protected under the 1981 Act, and (5) introduction of new species into wild.³⁶⁰

The sampling scheme was first introduced under the Wildlife and Countryside Act. It was introduced in order to tackle the problems of intentional non-compliance with the registration scheme. In 1993, the DETR conducted a review of sales and trade involving wildlife, and amongst other things, it was recognised that an unknown number of birds and their eggs were being illegally removed from the wild, and were subsequently 'laundered' into the bird registration scheme.³⁶¹ In order to tackle this problem, the tightening of enforcement was recommended. One of the main proposals was the expansion of the use of DNA testing techniques to verify the parentage of 'captive-bred' birds.³⁶²

The DETR sponsored research on DNA techniques at the University of Nottingham to be applied to certain birds of prey between 1987 and 94.³⁶³ Subsequently, a programme of blood sampling inspections was introduced in 1995, as part of inspections conducted by the Wildlife Inspectorate in order to obtain materials for DNA profiling.³⁶⁴ After careful preparations by the Wildlife Crime and Inspectorate Unit,³⁶⁵ "phase I" of the blood sampling inspections started in that year.³⁶⁶

Phase I of the blood sampling inspections concentrated on peregrine falcons *Falco peregrinus* and goshawks *Accipiter gentilis*, species which are highly sought after and prized by keepers. In preparation, all keepers of the approximately 4,000 registered birds were informed of the blood sampling inspections.³⁶⁷ This was considered to be a deterrent to those who might make false claims. The DEFRA also commissioned the Forensic Science Service (hereafter FSS) to audit the laboratory of the University of Nottingham and the subsequent recommendations made by the FSS were implemented. Meanwhile, Wildlife Inspectors received the guidance and training necessary for this new task.³⁶⁸ The results confirmed that all the offspring claimed to be captive-bred were genuinely so.

³⁶⁰ See s. 19, n 5 above. Sched. 12, n 358 above.

³⁶¹ Despite the original estimated number of birds to be registered (1,500), more than 16,000 birds were registered at this point. As the Scheme was designated according to the estimation, the scope of the Scheme was reduced, removing a large number of birds from Schedule 4. Williams and Evans, n 316 above, 3.

³⁶² Ibid.

³⁶³ Research was carried out at the University of Nottingham. Species chosen for research were; peregrine falcon, merlin, goshawk, and golden eagle. See; N. Williams, "PAW Makes an Impression" in RSPB, *Legal Eagle*, vol. 18 (Autumn 1998) 1.

³⁶⁴ Williams and Evans, n 316 above, 1.

³⁶⁵ A budget of £8,000 was calculated to meet all the costs associated with collecting the blood samples and the DNA analysis costs levied by the laboratory. Ibid, 5-7.

³⁶⁶ Ibid, 7.

³⁶⁷ Ibid, 8-9.

³⁶⁸ Ibid.

There are at least three major benefits to DNA testing³⁶⁹; Firstly, they can act as a deterrent factor for those who may otherwise be willing to risk breaking the law, and for those who abide by the law it enables them to substantiate the legality of their claims. Prior to the blood sampling for DNA profiling, keepers operating legitimately had no means to prove the legitimacy of their business if suspected.³⁷⁰ The blood sampling inspections enable keepers to prove their legitimacy at the Government's expense.

For example, in *Kirkland v Robinson*, the keeper genuinely believed the bird in question was bred in captivity.³⁷¹ It was one of the first cases brought to court under the Wildlife and Countryside Act.³⁷² The prosecutor was the RSPB,³⁷³ and the offender was convicted in the High Court of possessing live goshawks *accipiter gentilis*.³⁷⁴ Although “it [appeared] to have been accepted that the appellant acted innocently in that he honestly and reasonably believed that the birds were bred in captivity”,³⁷⁵ his appeal against the conviction was dismissed by the High Court. It was pointed out that the appellant did not offer any defence under section 1(3) of the Act,³⁷⁶ against an offence under section 1(2), which prohibits the possession of wild birds. It was held that the offence defined by section 1(2) is an offence of strict liability. The judge stated; “The Parliament so intended was evident first from the fact that the word 'intentionally' does not appear in subsection (2) whereas it does appear in subsection (1)”.³⁷⁷

The decision of the High Court in *Kirkland v Robinson* meant that “those who choose to possess (*inter alia*) wild birds are to be at risk to ensure that their possession is a lawful possession within the provisions of the Act”.³⁷⁸ However, prior to the DNA sampling scheme, such proof involved a more complicated procedure. For instance, in 1996, three egg collectors who had collected more than 10,000 rare birds' eggs were prosecuted under the Wildlife and Countryside Act. The prosecutor argued that “under the Wildlife and Countryside Act, the defendants were

³⁶⁹ Environment Minister James Clappison said; “These inspections provide two major benefits: first, they enable genuine bird keepers to substantiate their captive breeding claims unequivocally; and secondly, I believe they act as a major deterrent against the small number of unscrupulous keepers who may otherwise attempt to launder illegally taken wild birds into captivity”. DoE, “DNA Inspections Help Protect Wild Bird Populations”, *DoE News Release* 340, July 1996.

³⁷⁰ See *Kirkland v Robinson* in the next paragraph.

³⁷¹ *Kirkland v Robinson* [1987] *Criminal Law Review*, 643-644. See also: “High Court to Rule on Goshawk Case”, *Times*, 3 May 1985.

³⁷² *Times*, *ibid*.

³⁷³ *Ibid*.

³⁷⁴ *Ibid*. Three of them were sold for a total of £1,250 by the offender. He was fined £625 and was liable to the prosecution cost of £500.

³⁷⁵ Commentary, *Criminal Law Review*, n 371 above.

³⁷⁶ Subsection (3) states that a person shall not be guilty of an offence under subsection (2) if he shows birds concerned came into his possession lawfully. s. 1(3), n 5 above.

³⁷⁷ *Kirkland v Robinson*, n 371 above.

³⁷⁸ *Ibid*.

liable to prove the eggs were acquired legitimately”.³⁷⁹ Such proof usually means marking the egg and having a corresponding catalogue data card. However in this case, only 3,000 data cards were found and recording was not complete. The defendants were fined £5,000, £1,600 and £1,000 respectively.

The above cases illustrate that offences may not necessarily have been intentional. Yet what about an offender who may be able to forge documentary proof of legitimacy? The second major benefit of the DNA sampling scheme is that, with regard to those who try to deceive the Department with a false claim, it can act as a deterrent factor, if an appropriate penalty is subsequently imposed.³⁸⁰ For instance, DNA testing was used in *R. v Canning* in 1995, to prove an offence by a registered breeder of peregrine falcons *Falco peregrinus*.³⁸¹ The breeder took advantage of his position as a registered keeper and the birds hatched from stolen eggs were registered with DETR. He was sentenced to imprisonment for four months and banned from keeping falcons for five years.³⁸² DNA testing plays an important role in revealing the provenance of birds or eggs, and it has been argued that there were signs of offenders being deterred in an expectation of the introduction of the DNA testing.³⁸³

The third benefit is that DNA testing provides scientific evidence which increases the success rate of cases. It is proving “very successful” in encouraging agencies to take criminal proceedings and in obtaining convictions in court, according to Mr. Williams.³⁸⁴ Whether cases are taken forward by the Police and CPS largely depends upon the availability and sufficiency of evidence.³⁸⁵ The possibility of success in turn encourages enforcement actors to invest resources in bringing cases to courts.

For instance, in the first case where DNA was used was in 1992, the RSPB said; “In the past it has often been impossible to prove exactly where birds have come from. Only one case I recall succeeded. . . .” but that this time DNA tests had given it “an important weapon in defeating those seeking to exploit wild birds”.³⁸⁶ It defeated the offender’s false claim that the birds were bred in captivity, and the offender was convicted and a fine was imposed. There is “little doubt” that DNA analysis and

³⁷⁹ Three were found to possess the eggs after a nationwide police and RSPB operation which was aimed at collectors and traders in protected eggs. “Collectors Fined After 10,000 eggs Seized”, *Times*, 14 Aug. 1996.

³⁸⁰ A discussion on penalties will be provided later. See 2.7.6.

³⁸¹ *R. v Canning*, n 325 above. See 2.7.6.

³⁸² *Ibid.*

³⁸³ Between 1993 and 94, blood samples were taken from more than 100 birds. The result of the DNA testing proved that more than 11 per cent of the birds were falsely declared as ‘captive-bred’, and seven men were subsequently prosecuted and successfully convicted. This attained a high profile, and there was a fall in the number of ‘captive-bred’ birds in 1994. Williams and Evans, n 316 above, 16.

³⁸⁴ Mr. Williams, n 316 above.

³⁸⁵ The CPS explained, to PAW, that there are a number of reasons why prosecutions might not proceed, but “[the] quality of evidence presented can be a factor”. DETR, *PAW Bulletin* 2, Mar. 1999.

³⁸⁶ “Genetic Test on Hawks Helps Prosecution”, *Times*, 21 Oct. 1992.

other forensic technologies are increasing the chances of prosecutions being successful, according to Mr. Williams.³⁸⁷

However, review of the bird registration scheme was proposed by DEFRA in August 2002, and the possibilities it raised include the removal of certain species from Schedule 4, reducing requirements for keepers, and the abolishment of the scheme.³⁸⁸ DEFRA explains that this is to reduce the regulatory burden on keepers of birds. It is also to reduce the burden on DEFRA, as the registration system entails high costs and an enormous amount of administration. The RSPB considers that the registration system should be “retained” and should also be “extended”, as it is “intended as a protective measure for wild birds and not as a mechanism to facilitate trade or sustainable use of wild bird populations”, which it believes CITES to be.³⁸⁹ The relaxation or abolishment of the registration scheme would therefore be undermining to UK CITES implementation where birds are concerned, as the registration scheme under the 1981 Act regulates possession and maintains records of all keepers of birds. Further, should the scheme be abolished, the benefits of DNA testing would be seriously undermined.

2.7.5. Enforcement Initiative 2: Data Exchange and Management

The following paragraphs will discuss how records of wildlife crime are kept and managed in the UK. There is no central record for all wildlife crimes at present.³⁹⁰ In order to identify what kind of information is kept by which agency, PAW has initiated a working group on data exchange and management.³⁹¹ Some enforcement agencies keep their own records individually. Customs hold records of prosecutions for wildlife trading offences under the Customs and Excise Management Act 1979. The Police also keeps some records of wildlife crime.³⁹²

Some of the non-statutory agencies have more organised records. The RSPB keeps records of all prosecutions involving wild birds.³⁹³ Its database records offences prosecuted by other agencies such as the Police and the RSPCA. The records are compiled regardless of whether a conviction is secured or not.³⁹⁴ The RSPCA also keeps a record of prosecutions it has brought involving wildlife, under various

³⁸⁷ Mr. Williams, n 316 above.

³⁸⁸ DEFRA, *Review of Bird Registration: Consultation Paper*, 19 Aug. 2002. Combining the scheme with CITES permit system is also proposed.

³⁸⁹ RSPB, n 300 above, 14.

³⁹⁰ See n 344 above.

³⁹¹ See 2.7.3.

³⁹² Mr. Williams, n 316 above.

³⁹³ See 2.7.1.

³⁹⁴ The RSPB, n 344 above.

legislation such as the Protection of Animals Act 1911, the Badgers Act 1992, or the Wild Mammals Act 1996.³⁹⁵

In order to provide for more comprehensive information relating to wildlife crime, the Government announced the establishment of the National Wildlife Crime Unit in February 2000.³⁹⁶ The Unit, as a part of the National Criminal Intelligence Service, is funded by DEFRA, the Association of Chief Police Officers, the Home Office and the Scottish Executive. The Unit is to act as a focus for information on both national and international wildlife crime, especially organized crime. A report by the University of Wolverhampton *Wildlife Crime in the UK*, commissioned by DEFRA for use by the Unit, points out that CITES-related offences, along with offences involving badgers, are the most commonly identified as organised crime by enforcement actors.³⁹⁷ The Unit was launched in April 2002.³⁹⁸

2.7.6. Legal Problems Relating to Wildlife Crime and the CRoW Amendment

Wildlife crimes, considering their scale and persistency,³⁹⁹ are still given less priority by statutory enforcement actors, such as Customs, the Police and the judiciary, whose work involves many other types of crime. One of the major problems with wildlife crimes is that most cases remain undetected⁴⁰⁰ because they occur in rural areas. Then, there are several steps to be taken if an offence is detected, and the first stage is when enforcement actors decide whether or not to take up the case. “The majority of cases of illegal wildlife trade never reach court”, according to Holden.⁴⁰¹ For Customs or the Police, other types of crime such as drug smuggling are generally given a higher priority. Cases of wildlife crime often only result in cautions given by the Police. For instance, out of the 14 wildlife cases investigated under Operation Charm between 1995 and 97, seven of them resulted in cautions.⁴⁰²

The second stage is where the case goes to court, obtains conviction and a penalty is imposed. According to a survey contained in *Wildlife Crime in the UK*, 52 per cent of surveyed enforcement actors considered that the penalties available did not adequately reflect the seriousness of wildlife crime, and 72 per cent considered that

³⁹⁵ For the RSPCA's involvement in wildlife cases, see 2.9.

³⁹⁶ PAW, *PAW Bulletin Special Edition*, Dec. 2001.

³⁹⁷ M. Roberts, et. al., “Wildlife Crime in the UK: Towards a National Wildlife Crime Unit”, (Oct. 2001), a report commissioned by the DEFRA, at: <http://www.defra.gov.uk/wildlife-countryside/wacd/>, visited on 4 Apr. 2002.

³⁹⁸ NICS, “National Wildlife Crime Unit launched at NICS”, *Press Release*, 22 Apr. 2002.

³⁹⁹ Recently there was a case involving the collection of numerous eggs of wild birds. “Obsessive Egg Thief Jailed After 15 Years of Raiding Bird Nests” in *Independent*, 5 Sep. 2002.

⁴⁰⁰ Holden, n 260 above, 39.

⁴⁰¹ *Ibid.*

⁴⁰² *Ibid.* For discussions on Operation Charm, see 2.8.2. For recent discussions on problems relating to enforcement involving wildlife trade, see; J. Lowther, n 243 above.

the sentences applied by the courts failed to use these penalties to the full.⁴⁰³ In order to tackle these problems, PAW proposed amendments to the 1981 Act, which were subsequently incorporated into the Act, when amended by the CRoW 2000.⁴⁰⁴

The first point to be examined with regard to difficulties in bringing cases to court concerns the problem of proving the 'intention' to commit a crime. In considering offences under legislation directly implementing CITES, it was already mentioned that offences under the Customs and Excise Management 1979 have to be 'intentional', and that Customs finds it difficult to prove such intentions.⁴⁰⁵ There are provisions, however, that provide for strict liability under COTES 1997 with regard to the application of permits and certificates. For instance, Regulation 3 states that a person "shall be guilty of an offence and liable" to a penalty, if he/she "knowingly or recklessly" makes a false statement or furnishes a false document.⁴⁰⁶

Another type of offence PAW is concerned with in relation to the proof of intention relates to the removal of specimens from wild. The 1981 Act makes it an offence to disturb wild birds listed in Schedule 1 while they are building nests, or are in, or near nests containing eggs or young.⁴⁰⁷ The Act also provides for an offence if a person disturbs a shelter of protected animals or animals themselves whilst they are in their shelter.⁴⁰⁸ These provisions may act as a precautionary warning to potential offenders who may be found near relevant sites.

However, although the possession of wild birds is a strict liability offence,⁴⁰⁹ prior to the amendment to the 1981 Act by CRoW 2000, an offender had to "*intentionally*"⁴¹⁰ disturb the birds. "This is so difficult to prove that there is a reluctance to proceed with such cases", according to a PAW proposal for the amendment of the 1981 Act. The amendment was therefore made by CRoW.⁴¹¹ It is now an offence to "recklessly" as well as "intentionally" disturb birds that are building a nest or are in, on or near a nest containing eggs or young, or to disturb dependent young.⁴¹² CRoW also made it an offence to "recklessly" as well as "intentionally" damage or disturb wild animals in their shelters, and also to damage, destroy or obstruct such places.⁴¹³

⁴⁰³ Roberts, et.al., n 397 above.

⁴⁰⁴ Countryside and Rights of the Way Act 2000, n 358 above. For discussions on the CRoW amendment, see: J. Lowther, 'Wildlife Offences with Added Bite: Evaluating Recent Amendments to the Wildlife and Countryside Act 1981' (2000) 13 *Environmental Law and Management* 5, 249-253.

⁴⁰⁵ See 2.5.2.6.

⁴⁰⁶ Reg. 3, n 4 above. Italicised by author.

⁴⁰⁷ s. 1(5), n 5 above.

⁴⁰⁸ s. 9(4), *ibid.*

⁴⁰⁹ See *Kirkland v Robinson*, n 371 above.

⁴¹⁰ *Ibid.*

⁴¹¹ s. 81 and Sched. 12, n 358 above.

⁴¹² s. 1(5), n 5 above. Sched. 12, *ibid.*

⁴¹³ s. 5(4), n 5 above. Sched. 12, *ibid.*

By this amendment, more cases are expected to be brought before the courts. The strict liability offence introduced by CRow provides a precautionary measure towards wildlife crime.

Another amendment by CRow that may increase the possibility of success in prosecutions are the extended time limits for bringing prosecutions. Prior to the amendment, prosecutions for some of the offences under the 1981 Act had to be brought before Magistrates within six months of the offence being committed.⁴¹⁴ However, as the introduction of blood sampling is seen as a major tool in strengthening enforcement by providing compelling evidence,⁴¹⁵ the time limit for all offences under Part I of the Wildlife and Countryside Act has now been extended to within six months from the date on which sufficient evidence of the offence became available to the prosecutor, subject to a limit of two years from the commission of the offence.⁴¹⁶ Amendment was made accordingly. “Although only a small change”, as the results of DNA analysis can take several weeks, the amendment enables more cases to be brought forward, according to Mr. Williams.⁴¹⁷

The next stage in prosecution is when a case reaches court and obtains a successful conviction. It is agreed amongst wildlife law enforcers that the penalties imposed upon those who break wildlife laws are insufficient.⁴¹⁸ Prior to the amendment, under the 1981 Act, offences were only liable for summary prosecution, and the penalty only included fines, but not imprisonment. Fines are imposed according to the ability of each offender to pay, and therefore are not always in proportion to the seriousness of the crime. For instance, peregrine falcons *falco peregrinus* can attract up to £700 per bird on the black market⁴¹⁹ and approximately up to £550 on the legitimate market.⁴²⁰ In contrast, varying degrees of fine may not necessarily reflect the value of the birds or the impact the crime may have made on conservation.⁴²¹

In *Forsyth v Cardle*,⁴²² although the offender was initially fined a total of £16,000, the High Court allowed the appeal and the fine was reduced to £2,000 as “it is not proper for the court to impose a fine which it is completely beyond the capacity of the offender to pay”. There have been occasions when large fines have been

⁴¹⁴ s. 127, Magistrates’ Courts Act 1980.

⁴¹⁵ See 2.7.4.

⁴¹⁶ s. 20(2), n 5 above. s. 81 and Sched 12, n 358 above.

⁴¹⁷ Mr. Williams, n 316 above. Also see 2.7.4.

⁴¹⁸ See 2.5.2.6.

⁴¹⁹ Holden, n 260 above, 42.

⁴²⁰ Birds which are registered with the DoE as legally held tame birds were sold for approximately £550, according to the *Times* article in 1995. *Times*, n 325 above.

⁴²¹ “The overwhelming impression of those involved in enforcing wildlife trading laws in the UK is that the penalties given seem light compared with the seriousness of the crime, and the commercial value involved”. *Ibid.*, 44.

⁴²² *Forsyth v Cardle*, [1994] S.C.C.R. 769-771.

imposed,⁴²³ but if offenders cannot afford it, or if the profit from committing the crime overrides the imposed fine, it would have little significance or act only as a minor deterrent. This is why prior to the amendment by CRoW to the 1981 Act, COTES has been used more often than the 1981 Act, in order to impose custodial sentences.⁴²⁴ Another reason why fines may be inadequate involves the varying levels of awareness of wildlife issues amongst individual judges.⁴²⁵

In *R. v Canning*⁴²⁶ the offender became the first person⁴²⁷ to be imprisoned for keeping⁴²⁸ and selling⁴²⁹ (including exchanging⁴³⁰) wild birds caught in Britain, because COTES 1985 was used instead of the 1981 Act. It involved native species, the species in question was the peregrine falcon, which is one of the most endangered species in Britain, and it was listed in CITES and Regulation 3626/82. The offender was charged with seven offences involving 22 birds, most of which were peregrine falcons.⁴³¹

The offender had been previously convicted of advertising with intent to sell peregrine falcons in December 1991, under the Wildlife and Countryside Act.⁴³² This time, also, some of the sales and exchanges took place through a magazine called *Cage and Aviary Birds*. The prosecution was therefore brought under COTES, because he was clearly not deterred by the previous penalty. On conviction, a penalty of imprisonment for 18 months was imposed, against which he made an appeal. In the Court of Appeal, the judge stated;

[The offender] had previously been convicted of an offence in relation to peregrine falcons. . . . The prosecution on that occasion was under the statute, not under these Regulations. There was no power in the court, on the particular provisions which were relied upon, to impose any prison sentence. . . . The

⁴²³ For a comparatively more serious crime, an appeal against a fine which may seem excessive for an offender may be refused. See *Seiga v Walkingshaw*, n 325 above. A man was fined £5,000 when more than 10,000 eggs were seized by the Police. *Times*, n 379 above.

⁴²⁴ See *R. v Canning* in the next paragraph. "Rare Hawks to be Tested After Raids on Breeders", *Times*, 28 Sep. 1996.

⁴²⁵ Some judges appreciate conservation concerns more fully than the others. In *Kirkland v Robinson*, Lord Justice Steven Brown stated; "The Wildlife and Countryside Act is designed to protect the environment. That is an objective of outstanding social importance". *Kirkland v Robinson*, n 371 above. See also; Holden, n 260 above, 39. However, wildlife law enforcers still consider increasing awareness in the judiciary necessary.

⁴²⁶ *R. v Canning*, n 325 above.

⁴²⁷ For the enforcement record of wildlife crime, see Appendix.

⁴²⁸ Count 1, n 325 above.

⁴²⁹ Count 2, 5, 6, and 7, *ibid*.

⁴³⁰ Count 3 and 4, *ibid*.

⁴³¹ "Bird-Nest Raider Jailed for Trade in Wild Chicks", *Independent*, 19 May 1995. The population of peregrine falcons in Britain plummeted in the 1950s following the introduction of organo-chlorine pesticides. It has, however, made a strong recovery since then.

⁴³² ss. 6 and 21 (1), n 5 above.

relevance of the conviction, however, is that that should have stood as a warning to him He seems to have taken no account of the warning;⁴³³

Therefore, the judge did not consider that the imprisonment of 18 months was excessive and the appeal against the sentence was dismissed. The case illustrates why the use of COTES had been preferable, in order to impose a custodial sentence to deter repeat offenders, even where it involved national offences.⁴³⁴

However, as not all native species are included in COTES, PAW proposed to amend the 1981 Act to include custodial sentences. PAW's proposal states that including such sentences "will bring the Wildlife and Countryside Act 1981 closer in line with other wildlife legislation including the CITES enforcement regulations, the Protection of Animals Act 1911⁴³⁵, the Badgers Act 1992⁴³⁶ and the Wild Mammals (Protection) Act 1996⁴³⁷".⁴³⁸ Subsequently, the Act was amended to include a maximum term of imprisonment of six months by Magistrates, and two years by the Crown Court.⁴³⁹ The fine was also increased to a maximum of £5,000 by Magistrates and an unlimited amount by the Crown Court.⁴⁴⁰ Due to this amendment, the imprisonment sentence of six months was imposed on an egg collector in 2002. The magistrate stated; "The offences are so serious that the only a custodial sentence can be justified".⁴⁴¹

2.8. Case Studies

2.8.1. Wild Birds

Offences involving birds are the most common wildlife offences in the UK. The UK imports a large number of birds, along with other European nations.⁴⁴² (This is also a cause for welfare concern, as many birds die in consignment.⁴⁴³) The smuggling of

⁴³³ n 325 above.

⁴³⁴ In Japan, the Species Conservation Law excludes national species that are already protected by other wildlife legislation. See 3.4.2.1.

⁴³⁵ Protection of Animals Act 1911. For discussions, see 4.5.3.6.

⁴³⁶ Protection of Badgers Act 1992.

⁴³⁷ Wild Mammals (Protection) Act 1996.

⁴³⁸ Mr. Williams, n 316 above.

⁴³⁹ s. 21, n 5 above. s. 81 and Sched. 12, n 358 above.

⁴⁴⁰ Ibid.

⁴⁴¹ *Independent*, n 399 above. The first imprisonment sentence was in March 2002, when the offender was convicted of the possession of wild birds and eggs thereof, for the imprisonment of four months. "Easy Prey for Britain's Next Robbers", *Sunday Times*, 2 Jun. 2002.

⁴⁴² See UNDP, et.al., n 63 above.

⁴⁴³ Wilkins, n 209 above, 41.

exotic birds often involves organised crime, on a very large scale.⁴⁴⁴ The impact that the bird trade has upon wild populations is serious, particularly because many birds suffocate during transport and arrive dead or do not survive quarantine.⁴⁴⁵ A figure in 1990 shows that a total 21,600 of parrots, cockatoos, and other exotic species arrived in Britain dead or did not survive quarantine.⁴⁴⁶

In Operation Dorian, organised international smuggling on a large scale was revealed. It involved six countries, including Australia, New Zealand, South Africa, Austria, France and Switzerland, as well as the UK.⁴⁴⁷ Using contacts in various countries, eggs of Australian parrots were illegally taken from the wild, and smuggled into Europe, despite the fact that Australia has a complete ban on the export of its native parrots for commercial purposes. The total value of the birds smuggled was estimated at around £403,000 but may have been as much as £1,000,000. Using their contacts both inside and outside the UK, Customs and TRAFFIC International accumulated information, which led to the execution of Operation Dorian. In this Operation, a series of raids were carried out jointly by Customs and TRAFFIC International, on a number of premises in the UK. A number of parrots were found on the premises, and the Operation resulted in the conviction and imposition of penalties on four people, including an eight month prison sentence and a confiscation order for £29,500 under the Customs and Excise Management Act 1979, as well as a payment of £2,500 as the heaviest fine of the four.

As well as the threat imposed on exotic birds by smuggling as described above, the persecution of wild birds has also threatened native populations in the UK. This is especially so in the case of birds of prey, such as peregrine falcons *Falco peregrinus* and golden eagles *Aquila chrysaetos*.⁴⁴⁸ One of the most common offences is the stealing of eggs or chicks from their nests.⁴⁴⁹ Although some offenders are caught near nests,⁴⁵⁰ many of them are caught possessing,⁴⁵¹ selling, or offering to sell⁴⁵² the eggs or the birds hatched from stolen eggs or grown from the stolen chicks.⁴⁵³ Moreover, birds of prey are further persecuted in various ways as they are regarded

⁴⁴⁴ See Operation Dorian discussed below.

⁴⁴⁵ Wilkins, n 209 above, 42.

⁴⁴⁶ Ministers promised to tighten controls on “the much criticised import trade in wild birds” in 1992. “Government to Tighten Controls on Import of Wild Birds”, *Times*, 28 Feb. 1992.

⁴⁴⁷ Holden, n 260 above, 61.

⁴⁴⁸ *Times*, n 424 above.

⁴⁴⁹ See for instance; *Times*, n 399 above.

⁴⁵⁰ *R. v Canning*, n 325 above.

⁴⁵¹ *Kirkland v Robinson*, n 371 above. *Robinson v Everett* [1987] *Criminal Law Review*, 699.

⁴⁵² *Partridge v Crittenden* [1968] *All England Law Reports* 2, 421-425.

⁴⁵³ *R. v Canning*, n 325 above.



as a threat to livestock. They can be stolen from their nests or have their nests destroyed and many adults are shot, trapped or poisoned.⁴⁵⁴

Coordinated initiatives have been taken to tackle crime relating to wild birds, between various statutory and non-statutory agencies. In a Cheshire village in 1993, a team of birdwatchers set up a round-the-clock vigil to protect a peregrine's nest.⁴⁵⁵ This was a joint effort by the Police and the RSPB, as well as by ordinary citizens. In 1994, officers from ten police forces, in cooperation with the RSPB, conducted a series of raids on suspected illegal breeders, collectors, and traders.⁴⁵⁶ A number of traps and other equipment were found during this operation, as well as many birds of prey such as goshawks *Accipiter gentilis*, peregrine falcons *Falco peregrinus*, merlins *Falco columbais*, red kite *Milvus milvus*, etc. As a result of this series of raids, blood samples were taken from more than 30 birds, sent to Nottingham University, and the birds' parentage was determined.⁴⁵⁷

2.8.2. Traditional Medicine

Traditional East Asian medicines are one of the most commonly imported specimens of endangered species in the UK. Species used in them include species such as tiger, rhinoceros and bear, all of which are listed in CITES. The UK actively tackled problems involving traditional Chinese medicines containing endangered species. The Police carried out investigations into the materials used for such medicines, beginning in the early 1990s.⁴⁵⁸ Further, TRAFFIC revealed that in 50 per cent of the retail outlets visited by the enforcement agencies, products claiming to contain tiger bone, rhinoceros horn and bear bile were available. These initiatives enabled the UK to have the first prosecution in the world in 1995 concerning such medicinal products; The prosecution was a direct result of "Operation Charm", the series of joint raids by three police forces, Customs and the GWD in the same year.⁴⁵⁹ The operation gained publicity⁴⁶⁰ and it has led to more information on such products being passed on to the police.⁴⁶¹

As a direct result of this Operation, the world's first prosecution against the illegal sale of traditional Chinese medicines was brought to court. In London, nine

⁴⁵⁴ *Times*, n 424 above.

⁴⁵⁵ *Times*, 27 Jun. 1993, 4.

⁴⁵⁶ *Times*, n 424 above.

⁴⁵⁷ Nottingham University possesses reputable genetic fingerprinting facilities. See 2.7.4.

⁴⁵⁸ The first time that investigation concerning traditional East Asian medicine was mentioned in *Times* was on in 1993. "Illegal Trade in Organs of Endangered Asian Bears under Investigation", *Times*, 27 Jun. 1993.

⁴⁵⁹ Raids were conducted on pharmacies and stores in Manchester, London and Birmingham. "Tiger Medicine Seized", *Times*, 8 Feb. 1995.

⁴⁶⁰ Holden, n 260 above, 67. For more detailed discussions on Operation Charm, see 67-69.

⁴⁶¹ Another big seizure was in 1996. "Rhino Horns Worth £3 Million Seized in London", *Times*, 20 Aug. 1996. For this case, see 2.9.

offenders pleaded guilty, and two of them were fined £3,000 and £2,000.⁴⁶² The UK continued its efforts on suppress the sale of traditional Chinese medicines containing substances taken from endangered species, under Operation Charm and the subsequent Operation Oasis.

In October 2000, there was a seizure of bear bile and heart, however, illegal trade in Chinese Medicines using endangered species appears to be declining in the UK, according to a report by the WWF UK. “It may be that the trade is declining following a vigorous and continuing effort by police and HM customs to crack down on the sale of tiger bone and other products”.⁴⁶³ However, the WWF UK also fears that this may be an indication that Customs' priorities have shifted away from the wildlife trade.

2.8.3. Taxidermy

The largest seizure of exotic specimens in Britain took place in 1995 under Operation Indiana,⁴⁶⁴ at the premises of a taxidermist.⁴⁶⁵ This Operation, jointly conducted by Customs, the RSPB and TRAFFIC, discovered more than 500 species, with a commercial value of approximately £500,000. The offender ran an illegal business called “Identity Products”, from his home near Powys, importing and exporting specimens of endangered species mainly to two dealers in Texas⁴⁶⁶ and Oklahoma.⁴⁶⁷

This case came as a shock to many British conservationists and animal welfare groups. The conservation concern was that some of the species found were amongst the most seriously endangered.⁴⁶⁸ For example, one of the species discovered was the Philippine eagle *Pithecophaga jeffreyi*, and it was thought that only 50 pairs of this species survived in the wild. Another example was the Siberian tiger *Panthera tigris*, which has an estimated population in the wild of only 250.⁴⁶⁹ The animal welfare concern was that the offender had arrangements with dealers in the countries of origin of the species concerned and had animals killed to order. Also, the specimens found included many immature specimens such as a pickled baby chimpanzee, a baby elephant's head, and frozen jaguar cubs. The prosecutor for this case stated; “The damage done can't be expressed in financial terms”.⁴⁷⁰ Therefore

⁴⁶² “£5,000 Fines for Animal Portions”, *Times*, 7 Sep. 1995.

⁴⁶³ WWF, “Trade Towards Extinction?” (2002).

⁴⁶⁴ “Protected Species Seized in Raid on Taxidermist”, *Times*, 16 Aug. 1995.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ The business was called “The American Headhunter”. *Ibid.*

⁴⁶⁷ The business was called “Skulls Unlimited”. *Ibid.*

⁴⁶⁸ The species involved included 6 seriously endangered species; Phillipine monkey-eating eagles (only 50 pairs were thought to survive); the ring-tailed lemur; the Palawan peacock pheasant; the Humbolde penguin; and the blue-naped parrot. *Ibid.*

⁴⁶⁹ DETR, n 296 above.

⁴⁷⁰ n 464 above.

the offender was sentenced to a maximum imprisonment term of two years under COTES 1985.

The above case of the taxidermist indicates that offences are taken more seriously when they involve *dead animals*, or where animals are subjected to cruelty; some offenders have put forward arguments in court that specimens were not subject to cruelty, ill treatment, or killing. For instance, in a case involving peregrine falcons, the defendant argued that the birds were not ill-treated.⁴⁷¹ In *R. v Azadehdel*,⁴⁷² the appellant was sentenced to 12 months' imprisonment for various offences⁴⁷³ involving orchids in contravention of the EC Regulation, and the argument put forward by the appellant against the sentence was of that kind; the court stated;

As to the term of imprisonment, Mr Aston [on behalf of the appellant] says that although it is right that this country should be seen to adhere to and uphold the International Convention there is a great difference between those who deal in prohibited plants, the purpose of which is to keep the plants alive, propagate them and preserve the species, and those who deal in what must come from dead animals, such as ivory and rhino horn. We agree with that approach. . . . Therefore 12 months [imprisonment]. . . for offences of this type cannot be right because it leaves far too little scope for the sentencing of much more serious offences in breach of the Convention. We think that that is right too.⁴⁷⁴

The fact that offences are treated more seriously when it involves dead animals has two implications. One is related to a conservation concern. The other is a concern for animal welfare, one of the distinctive features in the UK wildlife conservation. The next section discusses the role an animal welfare organisation, the RSPCA, plays in wildlife conservation in the UK.

2.9. The involvement of the RSPCA in Wildlife Conservation

Although “conservation and welfare interests regularly find themselves in conflict”, according to Harrop,⁴⁷⁵ the very existence of many animal welfarists in the UK has

⁴⁷¹ *R. v Canning*, n 325 above.

⁴⁷² *R. v Azadehdel* [1989] 11 Cr. App. R. (S), 377.

⁴⁷³ Three offences; offering for sale restricted specimens, being knowingly concerned with the harbouring, keeping or concealing of or dealing with restricted goods and selling restricted specimens. *Ibid.*

⁴⁷⁴ The sentence was reduced to six months. *Ibid.*

⁴⁷⁵ S.R. Harrop, 'The Dynamics of Wild Animal Welfare Law' (1997) 13 *Journal of Environmental Law*, 2, 149-156. Harrop raises the examples of competition between minke whale and blue whale, and white headed duck and the ruddy duck, and points out that these are “dilemma” for welfarists “in the face of potential conservation-based calls”.

made certain contributions to the protection of wildlife too. This section examines the contribution of the RSPCA in relation to some of the major wildlife cases.⁴⁷⁶

2.9.1. The Rhino Horn Case

One of the most important wildlife cases in the UK was the illegal sale of rhino horns, in which the RSPCA played a primary role in the investigation.⁴⁷⁷ In April 1996, a former antique shop owner attempted to sell his stock of rhino horns, worth approximately £2.8 million, using a third party, as he was in prison. The third party contacted the London Stock Exchange, which in turn contacted the RSPCA.

Arrangements were made whereby an RSPCA undercover officer would act as a potential buyer. The officer kept in contact with the third party and another man for over a year. Due to the amount of money involved, the RSPCA decided to ask the Police to co-operate. The South East Regional Crime Squad agreed to work with the RSPCA officers. After numerous meetings with the suspects, in September 1996 the Police arrested the two people who were in contact with undercover officers of the RSPCA.

Four people were charged with attempting to sell rhino horns under COTES 1997.⁴⁷⁸ The owner of the horns was sentenced to 15 months concurrent with his life term. The judge ordered that the horns be confiscated.⁴⁷⁹ However, later that year, the Court of Appeal ruled that the 128 legitimately acquired rhino horns should not have been confiscated from the owner. He was able to auction at least 30 per cent of his collection as Regulation 338/97 allowed dealings in white rhino horn emanating from South Africa.⁴⁸⁰

2.9.2. The Northumberland Taxidermist Case

A taxidermist was found guilty of 169 breaches of the Wildlife and Countryside Act 1981 in 1994.⁴⁸¹ He had more than 300 exhibits and was charged for offences of; illegally possessing protected species; failing to keep necessary records; failing to mark exhibits with official tags; failing to inform the DoE about the sale of dead birds. The RSPCA conducted an undercover investigation, and birds and animals

⁴⁷⁶ Discussions below are based upon an interview conducted with Inspector Alan Fisher of the Special Operation Unit (SOU) of the RSPCA, unless otherwise cited. Alan Fisher, Inspector, SOU, RSPCA, interview by author, Horsham, 20 Apr. 1999.

⁴⁷⁷ "Preface Report", internal document, provided by Inspector Fisher. "Rhino Raid", *Times*, 20 Aug. 1996; and "Rhino Horns Worth Three Million Pounds Seized in London", *Times*, 4 Sep. 1996.

⁴⁷⁸ "Killer Led 2.8 Million Rhino Horn Plot from Prison Cell", *Times*, 12 Mar. 1998. "Rhino Sentence", *Times*, 28 Mar. 1998.

⁴⁷⁹ "Killer Persuaded Solicitor's Clerk to Help Sell Rhino Horns", *Times*, 18 Feb. 1998. *Ibid.*

⁴⁸⁰ Populations from South Africa were listed in Annex B of Regulation 338/97. Annex B, n 3 above.

⁴⁸¹ "Northumberland Taxidermist Found Guilty of 169 Breaches of Wildlife and Countryside Act", *Times*, 29 Jun. 1994.

were seized as a result of this investigation.⁴⁸² The RSPCA prosecuted the offender, and he was released on conditional discharge for two years and ordered to pay the RSPCA the £10,000 costs for the prosecution.

2.9.3. Inspectors and the Special Operation Unit

The RSPCA was the first animal welfare organisation in the world.⁴⁸³ It also is now the largest non-governmental law enforcement agency in the UK. It employs inspectors to check the condition of animals and prosecute perpetrators of cruelty. The enforcement task of the RSPCA are carried out by over 300 Inspectors. Uniformed Inspectors mainly work following calls from the public. In 1998, the RSPCA received a total of 1,558,131 phone calls. In addition to these uniformed inspectors, there are 12 Inspectors in the Special Operation Unit (hereafter SOU), which deals with organised, and often international crime involving animals. The fields they are involved in include dog fighting, cock fighting, the transport of live animals, smuggling, import and export, taxidermy, etc. Due to the seriousness of the crimes, these Inspectors receive training from the Police and the Army. Their task is a “mixture of gathering evidence and infiltration”, according to Inspector Fisher,⁴⁸⁴ and most of it involves covert operation.

In carrying out surveillance, the SOU often works with the Police, who may assist it, or may need its assistance. In the rhino horn case described above, for instance, as the scale of the operation was so large, Inspector Fisher asked the Police to accompany him in his meeting with the suspect.⁴⁸⁵ The SOU may also work with other governmental agencies such as DEFRA. The findings resulting from surveillance are forwarded to relevant organisations, such as the Police and DEFRA, depending upon the case. Such findings are often used as evidence in the court. The success rate for prosecutions resulting from the SOU’s surveillance is, according to Inspector Fisher, extremely high.⁴⁸⁶

2.9.4. The RSPCA and Wildlife Crime

The RSPCA is an non-statutory organisation with relatively ample human and financial resources. Unlike statutory agencies such as the Police and Customs, its priority is to promote animal welfare. In this sense, it is better positioned to achieve a higher success rate, as its efforts are concentrated on issues relating to animals. A question may be raised as to whether the conservation of endangered species

⁴⁸² The magistrate said, “A number of people are bound to wonder why this man was not sent to prison. None of these offences carry a prison sentence”. Ibid.

⁴⁸³ The Police were established two years after the RSPCA’s establishment. For discussions on the establishment of the RSPCA, see Chapter 4.

⁴⁸⁴ Inspector Fisher, n 476 above.

⁴⁸⁵ See 2.9.1. Inspector Fisher, *ibid.*

⁴⁸⁶ *Ibid.*

necessarily echoes with animal welfare principles, which ultimately concerns welfare of individual animals, rather than ecology. Nevertheless, many of wildlife crimes involve cruelty, as already mentioned.⁴⁸⁷ Inspector Fisher stated that the RSPCA took the initiative in the rhino horn case, as it believed that “somewhere in the line there was cruelty involved”, as the methods of collecting horns are cruel. It was to “prevent someone from benefiting from trade in wild animals, which would have suffered in the collection of horns”. It was felt that it was necessary to prove that even if horns are old, it is still not beneficial to sell rhino horns, as “the continuing sale of endangered species is going to affect wild populations”. “It is both for conservation and animal welfare”.⁴⁸⁸

2.10. Conclusion

Overall, the UK appreciates the conservation objectives of CITES, and CITES implementation and enforcement are incorporated into wildlife law enforcement in the UK. At EU level, Regulation 338/97 takes a distinct protective approach toward CITES, covering a wider scope of species and specimens than required by CITES. Its strict import restrictions reflect the EU’s efforts in taking responsibility as a major importer of wildlife with comparatively rich human and financial resources. EU implementation of CITES also reflects its efforts to base its decisions upon scientific data whenever possible.

At a national level, the Wildlife and Countryside Act 1981 compliments CITES implementation and enforcement, although recent developments hinting at its possible relaxation may seriously undermine the effectiveness of enforcement mechanisms in the future. The current enforcement mechanisms are relatively effective, although they are inevitably subject to limitations. One of the most significant characteristics of UK enforcement mechanisms is liaison between enforcement agencies, and the initiatives taken by DEFRA in facilitating these liaisons as the government authority responsible for environmental matters. PAW is undoubtedly an effective way of ensuring liaison between all those who are involved with wildlife issues.

Another significant point to be noted is the involvement of UK NGOs in wildlife law enforcement. Large NGOs such as the RSPB and the RSPCA have made a considerable contribution to the development of UK wildlife and animal welfare law enforcement, particularly because for statutory agencies such as the Police and Customs wildlife crime is not a top priority. On the other hand, NGOs can concentrate their efforts and resources on environmental or animal-related matters. It is further to be noted that the contribution made by NGOs in implementation and

⁴⁸⁷ See 2.4.10, and 2.8.3.

⁴⁸⁸ Inspector Fisher, n 476 above.

enforcement of wildlife law is fully appreciated by the Government, thereby creating strong co-operation between the two.

Chapter 3 CITES Implementation and Enforcement in

Japan

3.1. Introduction

This chapter examines the implementation and enforcement of CITES¹ in Japan. It will examine the legislation implementing CITES and consider how CITES is enforced in Japan. The examination will be carried out whilst highlighting contrasts with the UK situation where appropriate. The examination of enforcement mechanisms will be carried out in relation to other existing legislation that serves wildlife conservation purposes, in order to see how such existing legal mechanisms affect the operation of CITES enforcement. Again, contrasts with the UK's enforcement mechanisms will be highlighted.

The Chapter first considers the history of CITES implementation in Japan. The examination will be in chronological order, considering the historical background for; first, the delayed ratification of CITES by Japan; second the initial implementation mechanisms utilising trade laws; third the first internal control legislation created in 1987; and fourth, the current CITES-implementing legislation which superseded the 1987 law. Next, discussions of the current CITES-implementing legislation itself will be provided. The discussion includes the limitations of both the law itself and the enforcement mechanisms. Finally, three case studies are provided, in order to appreciate the limitations brought up during the preceding examination and also to see how existing legal mechanisms relating to conservation affect the efficiency of CITES enforcement.

3.2. Historical Background

3.2.1. Before Ratification

Although CITES was adopted in 1973, in response to the world's environmental movements which were beginning to have an increasing political significance,² it was not until 1980 that Japan ratified CITES. The ratification was the latest amongst the G7 countries, as shown in the table below.

¹ CITES, see 1.8.

² See 1.7.3.

| Country | Date of Ratification |
|---------|----------------------|
| USA | 01/07/1975 |
| Canada | 09/07/1975 |
| Germany | 07/01/1976 |
| UK | 31/10/1976 |
| France | 09/08/1978 |
| Italy | 31/12/1979 |
| Japan | 04/11/1980 |

Table 1: Date of ratification by G7 countries. Source: CITES Secretariat³

Although there are probably a number of reasons for this delay, Obara considers that the primary reason was that the Japanese Government needed time to consult with the relevant industries.⁴ There are many industries in Japan that utilise wildlife resources, including the traditional art industry as well as the pet industry and the leather industry. Ivories and tortoise shells, for instance, both derived from CITES species, have been utilised in traditional art products, and therefore have been protected by the Government.⁵ Facing international pressure to ratify CITES, the Government negotiated with the industries mentioned above⁶ and allowed them time to import relevant specimens before trade restrictions took place.⁷

Protection of the relevant industries by the Japanese Government had posed a serious threat to the conservation of world's wildlife. For instance, although musk deer *moschus moschiferus* were listed in Appendix I of CITES in 1973,⁸ this species continued to be openly imported by Japanese industries until 1980.⁹ The figures show that between 1973 and 82 approximately 55,000 musk deer were imported into Japan from Nepal, despite the fact that Nepal had banned the export of them since 1973.¹⁰ This posed a serious threat to populations of this endangered species, especially because musk can only be extracted from male deer, suggesting that the

³ The official website of CITES at; <http://www.cites.org/>, visited on 5 Sep. 2001.

⁴ H. Obara, 'Washington *Joyaku to Nippon: Yasei Seibutsu "Mitsuyunyu" Taikoku* (CITES and Japan: The Country of Illegal Importation of Wildlife)', (Jan 1988) 509 *Sekai (The World)*, 323. For the systematic protection of industries by the Japanese Government, see for instance: Chapter 4 of E.F. Vogel, *Japan as No. One: Lessons for America* (Tokyo: Tuttle-Mori Agency Inc., 1979).

⁵ See 2.2.

⁶ *The Proceedings of the Meeting of the Environment Committee*, the Lower House, 108th Diet Meeting, 22 May 1987.

⁷ Obara states; "Needless to say, relevant industries which regarded wild animals and plants only as economic resources had undoubtedly been preparing for what was going to happen later", which is the restriction on trade in some species required by CITES. Obara, n 4 above, 320.

⁸ It was utilised heavily for traditional East Asian medicines.

⁹ Obara, n 4 above, 321.

¹⁰ *Ibid.*

actual kill might be much higher than the reported figure.¹¹ Many other species were imported in vast quantities, in the anticipation of the commencement of trade restrictions.¹²

3.2.2. From Ratification to the First Internal Control Legislation

Pressures were being brought to bear against the Japanese Government to ratify CITES. For instance, the WWF Japan repeatedly asked the Government to ratify CITES, and this movement was supported by NGOs abroad.¹³ Whilst negotiating with the reluctant industries, the Government started preparing the legal mechanisms necessary for CITES implementation in order to ratify the Convention. Discussions were held between relevant governmental authorities, and it was decided that the import and export of CITES-related species would be regulated only by trade control. The existing trade control legislation, the Foreign Exchange Law 1949¹⁴ and the Tariff Law 1954¹⁵ were amended accordingly.

Subsequently, ratification took place, although there were at least two serious limitations in the prepared implementation mechanism. The first limitation was the large number of reservations entered by the Japanese Government. At the point of ratification, Japan had nine reservations,¹⁶ which later became 14 following the amendment to the CITES Appendices, in order to “give considerations to national relevant industries”, according to the Government.¹⁷ This had allowed “a vast amount of illegally exported specimens”¹⁸ to be imported into Japan legally, from a Japanese perspective.¹⁹ A typical example is lizards; between 1986 and August 87, Japan imported skins of Appendix I lizards from Bangladesh, and the total estimated number of lizards imported was approximately 730,000.²⁰ Bangladesh had

¹¹ It was estimated to be four times as much as the import at most. Ibid. Japan entered a reservation for musk deer after the ratification, therefore its import continued 'legally'.

¹² WWF Japan, *Niju-Nen Shi (The History of 20 Years)* (Tokyo: WWF Japan, 1994), 15. For discussions on the role played by NGOs at CITES COPs in lobbying, see; A. Ishihara, 'Washington Jōyaku deno NGO no Yakuwari (NGO's Role at CITES)' (Feb. 1997) *Kankyō (The Environment)*, 18-21.

¹³ Ibid. It organised a symposium in 1977 to which IUCN and the RSPB, as well as the US Fisheries and Wildlife Department attended.

¹⁴ Foreign Exchange and Foreign Trade Law 1949, Law No. 228.

¹⁵ Tariff Law 1954, Law No. 61.

¹⁶ Three species of marine turtles, three of lizards, one crocodile, and one musk deer. Research Office, Environment Committee, Lower House, *Zetsumetsu no Osore no Aru Yasei Dōshokubutsu no Jōto no Kisei Nado ni Kansuru Houritsuan Sankō Shiryou (Supplementary Material for the Bill for the Law for the Regulation of Internal Movement of Endangered Species of Wild Fauna and Flora)*, submitted for 108th Diet Meeting, Apr. 1987, 4.

¹⁷ Ibid. As five species of whales were added later, the number of species Japan entered reservations on became 14. Ibid. For criticisms, see; K. Kihara, 'Shizen Hogo Gyosei to Kokusaiteki Sekinin: Washington Jōyaku Kokunaihou no Sekou o Ki Ni (Nature Conservation Governance and International Responsibility: Marking the Enactment of CITES-Implementing Legislation)', (Feb 1988) 901 *Jurist*, 46-49.

¹⁸ Ibid, 48.

¹⁹ See the following paragraph.

²⁰ Obara, n 4 above.

prohibited the export of these lizards, however, once lizards were successfully smuggled out, they could 'legally' enter Japan, which imposed no regulations on the species it had entered a reservation for.

Secondly, the Government considered CITES as a trade-regulating measure rather than a conservation measure, as criticised by Isozaki.²¹ Referring to the decision to apply trade control legislation to implement CITES, Ms. Koyama, a former official of the Japanese Environment Agency (now the Ministry of the Environment) says; "This [was] the cause of misunderstanding that 'Japan [did] not have CITES-implementing legislation'".²² Clearly, the Japanese Government interpreted CITES to be a trade-regulating treaty, and in terms of a minimum obligation based on such an interpretation, Japan 'had' already 'implemented' CITES by regulating trade by border control.²³

However, CITES is not merely concerned with trade regulations. As seen in previous Chapters, its primary purpose is the conservation of endangered species.²⁴ In order to achieve this end, Article VIII requires Parties to take "appropriate measures".²⁵ Such measures include internal control, such as restrictions on possession or internal movement.²⁶ For instance, the Endangered Species Act 1976 in the UK provided an offence of the sale of illegally imported specimens.²⁷ Japan, on the other hand, implemented CITES without providing any internal control measures, and this turned out to be seriously undermining to the conservation objectives of the Convention.

Although the Japanese Government considered that CITES had been 'implemented' by border controls, the evidence shows that initially border controls were particularly ineffective. For instance, the figure below shows the number of live specimens 'abandoned'²⁸ at Customs between 1980 and 88. The number of abandoned specimens increased drastically in 1985. This does not indicate any increase in the imports, however. It was a result of the tightened border controls, which took place in 1985, in response to international pressure.²⁹ Therefore it is possible that prior to

²¹ H. Isozaki, 'Washington Jōyaku o Meguru Gimon: Yasei Seibutsu no Fusei Yunyu ha Naze Soshi Dekinai ka (Questions Surrounding CITES: Why Illegal Import of Wildlife Cannot Be Prevented)', (Nov 1989) *Kagaku Asahi: Monthly Journal of Science*, 35.

²² Maki Koyama to author, a fax correspondence, 21 May 1999.

²³ Japanese implementation was considered sufficient in 1997 by the CITES project which evaluated national laws of Parties. It should be noted, however, that by 1997, Japan had enacted legislation to control internal trade. *Ibid.* See; Res. 8.4, n 1 above.

²⁴ Preamble, n 1 above. See 1.7.4, 1.8.1 and 2.4.4.

²⁵ Art. VIII, *ibid.*

²⁶ Art. VIII(1)(a), *ibid.*

²⁷ Art. 4, Endangered Species Act 1976. For discussions on this Act, see 2.2.1.

²⁸ Those who import illegal specimens are advised to "abandon" them by Customs, under administrative guidance. For discussions on CITES enforcement by Customs, see 3.4.1.3.

²⁹ See 3.2.3.

1985, at least between 1,000 and 2,000 specimens were illegally imported annually because of inefficient border controls.

Other limitations in the enforcement mechanisms were as follows. First, Appendix II and III species could be imported with a certificate of origin, rather than an export permit produced by the exporting country, despite the fact that CITES requires an export permit for Appendix II species.³⁰ Secondly, there were as many as 222 importing points, which made border control extremely difficult. Thirdly, offences were rarely treated as a crime (See Table 2 below), with Customs dealing with them by administrative measures, rather than by legally binding provisions, a habit which still continues today.³¹

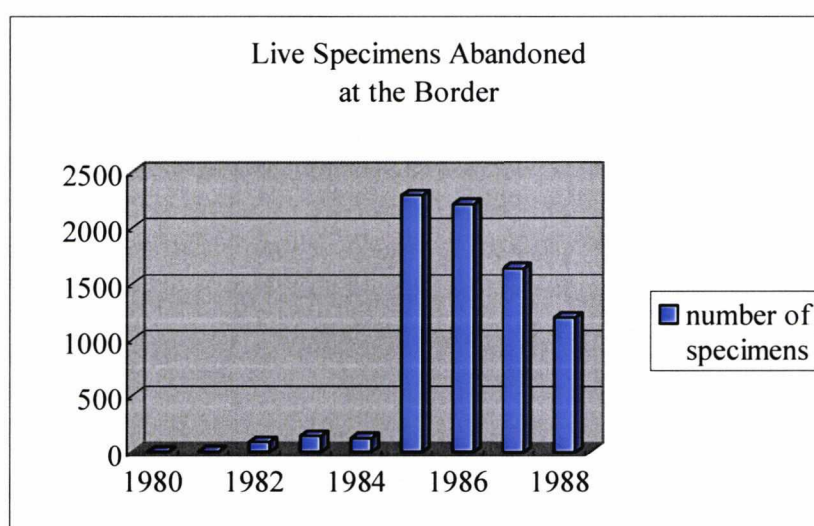


Figure 1: Number of live specimens abandoned at the border between 1980 and 1988 Source: Ministry of Economy, Trade and Industry³²

| Year | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 |
|----------------------------------|------|------|------|------|------|------|------|-------|
| Illegal Import | 6 | 66 | 148 | 173 | 205 | 671 | 777 | 1,105 |
| Notification/ Prosecution | 1 | 1 | 0 | 2 | 6 | 11 | 6 | 5 |

Table 2: Number of illegal imports and the procedures undertaken by Customs³³

³⁰ Art. IV(2), n 1 above. For contrast with the UK, see 2.3.2. Regulation 3626/82 required both import and export permits for species listed in CITES Appendices I and II.

³¹ See 3.4.1.3. For discussions on administrative measures in relation to environmental problems, see; T. Yonemaru, 'Golf Jou Kisei no "Oukyuu Shochi"' ('Temporary Measures' for the Regulation of the Development of Golf Fields) (1993) 467 *Hougaku Seminar (Law Seminar)*, 60-62.

³² Provided by the Ministry of Economy, Trade and Industry (METI).

³³ Ibid.

Due to ineffective controls, wildlife continued to be smuggled into Japan, and was openly traded internally. One of the most serious cases took place in 1983. In that year, 14 pinche marmosets³⁴ *Saguinus oedipus (geoffroyi)* were illegally imported and found to be for sale in Japan.³⁵ At the time, it was estimated that only 200 to 1000 pinche marmosets survived in wild, and only in Brazil, which prohibited the export of not only this species but also any wildlife.³⁶ The marmosets found in Japan were accompanied by a forged permit. Despite the seriousness of this incident, there was no legal basis for dealing with the marmosets, as the trade-related legislation only regulates trade at the point of entry. In the end, 12 of the 14 marmosets were returned to Brazil, by an unofficial arrangement made by a Member of the Diet.³⁷ This incident received high publicity and drew public attention to the seriousness of smuggling, which gave rise to the creation of new internal control legislation in 1987.

3.2.3. International Pressure and Some Improvements

Although the Japanese public was gradually becoming aware of the seriousness of the smuggling of CITES specimens to Japan, it was international pressure which really pushed the Government into creating the internal control law. Concerns and criticisms were expressed at CITES COPs and other relevant meetings. One of the most significant events in terms of the effect it had on the legislative change of Japanese CITES implementation was the CITES Party Seminar of Asian and Oceanic Regions, held in Kuala Lumpur, in 1984. In this Seminar, Japan was severely criticised for “violating” CITES provisions.³⁸ The decision was adopted, to request Japan to take appropriate measures in order to improve its enforcement of CITES immediately. Also in 1984, the president of WWF International, the Duke of Edinburgh of Great Britain, visited Japan and asked Prime Minister Yasuhiro Nakasone to tighten up CITES controls within the country.³⁹

Subsequently the Japanese Government made an effort to improve its CITES enforcement. The Liaison Committee was established in 1984, consisted of seven CITES-related Ministries and Agencies;⁴⁰ the Committee submitted four proposals, which were subsequently implemented. They were; (1) requirements for the

³⁴ Other common names are; cotton-headed tamarin; cotton-top marmoset; Liszt monkey; or cotton-top tamarin.

³⁵ “One of the triggers of the creation of national [CITES] implementing legislation was the fact that 14 marmosets were illegally imported . . .”. Kihara, n 17 above, 46.

³⁶ WWF Japan, n 12 above, 32.

³⁷ A Member of the Diet offered partial funding and asked the Ministry of International Trade and Industry, now the METI, to return the marmosets via co-operation with the WWF Japan. *The Proceedings of the Meeting of the Environment Committee*, Lower House, 123rd Diet Meeting, 21 Apr. 1992.

³⁸ Kihara, n 17 above, 6.

³⁹ WWF Japan, n 12 above.

⁴⁰ The Environment Agency; the MAFF; the Ministry of International Trade and Industry; the Ministry of Finance; the Ministry of Foreign Affairs; the Ministry of Health; and the Fisheries Agency.

submission of export permits⁴¹; (2) ensuring the validity of export permits, using diplomatic routes if necessary; and (3) strengthening checks at Customs, by co-operation between relevant Ministries and Agencies and reducing the points of entry (from 222 to 35 ports); (4) promoting the publicity of CITES.⁴² Furthermore, as a longer-term objective, the Committee proposed the reduction of reservations and the creation of national legislation to tighten up internal CITES controls.⁴³

Yet, these proposals did not put an end to international criticism, reservations were yet to be withdrawn and illegal trade was still suspected of continuing in Japan. At COP 6 in 1987,⁴⁴ Japan was subject to criticism again, although indirectly, for its practices involving reserved species. Decision 6.3 was adopted, which states that some Parties with reservations refused to take into the consideration Decision 4.25.⁴⁵ Decision 4.25, adopted at COP 4 in 1983, required Parties which entered reservations on Appendix I species to apply the provisions for Appendix II species in trading in reserved Appendix I species. However, the Ministry of International Trade and Industry (now the Ministry of Economy, Trade and Industry) of Japan considered that it was not 'illegal' not to implement the Decisions of CITES⁴⁶ and therefore continued to ignore Decision 4.25. The undermining effect of such inaction was illustrated by the example of lizards smuggled out of Bangladesh, as mentioned before.⁴⁷

3.2.4. The 1987 Law

Following a proposal made by the CITES Liaison Committee, or rather, pressures and criticisms from the international community, the Law Concerning the Regulation of Internal Trade of Endangered Species of Wild Fauna and Flora 1987 (The 1987 Law hereinafter) was created in Japan as a measure to strengthen CITES enforcement.⁴⁸ The 1987 Law regulates the internal movement of the specimens regulated by the Foreign Exchange Law 1949⁴⁹ and the Tariff Law 1954.⁵⁰ It prohibited internal trade⁵¹ and display⁵² of regulated Appendix I species only. A

⁴¹ Before this, the Japanese Government did not necessarily require an export permit for importation of Appendices II and III species. Instead, it allowed a certificate from a county of origin to be used instead.

⁴² The Research Office of the Environment Committee, n 16 above, 22-24.

⁴³ These proposals were presented at the 5th COP in the following year. Ibid, 24-25.

⁴⁴ COP 6 was held just a month after Japan passed the 1987 Law.

⁴⁵ Decs. 6.3 and 4.25, n 1 above.

⁴⁶ Obara, n 4 above, 319.

⁴⁷ See 3.2.2.

⁴⁸ Law Concerning the Regulation of Internal Trade of Endangered Species of Wild Fauna and Flora 1987, Law No. 58. For a case under this Law, see; 725 *Hanrei Times* (1990) 239-240.

⁴⁹ n 14 above.

⁵⁰ n 15 above.

⁵¹ Art. 3, n 48 above.

penalty was provided for.⁵³ The penalty for the most serious offence (illegal import and export and the use of forged permits) was a maximum imprisonment term of six months and a fine of 300,000 yen, approximately £1,500.⁵⁴ Furthermore, it provided for an inspection mechanism to ensure enforcement.⁵⁵

Although it was certainly a step forward in ensuring comprehensive CITES enforcement, the 1987 Law “came as disappointment” to conservationists.⁵⁶ Apart from the fact that the Law was rarely applied,⁵⁷ the Law itself was toothless, covering only a small range of species and specimens and lacking enforcement powers. The following paragraphs will discuss the limitations of the Law briefly, as many of these limitations remained in the legislation created in 1992 which superseded the 1987 Law, and a more detailed examination of them will be carried out later.⁵⁸

The first limitation of the 1987 Law relates to the scope of species and specimens covered. With regard to this point, the following three points should be noted; (1) species included were only Appendix I species⁵⁹; (2) amongst these Appendix I species, 36 of them were exempted, excluding the 12 reserved species;⁶⁰ and (3) parts and derivatives were not covered.⁶¹ These limitations exempted the majority of species and specimens which were actually traded in Japan. For instance, 98 per cent of the trade in 1985 was in Appendix II species, which means that internal control only applied to two per cent of the specimens which entered the country.

The exclusion of a significant number of species from internal regulation reflected the Government's pro-utilisation policy. It considered that Appendix II (and III) species should not be regulated internally, as those species are permitted to be traded by CITES. During discussions of the 1987 Law, a Member of the Diet stated; “International trade is permitted for species listed in Appendices II and III if accompanied by export permits from exporting countries. Therefore we have to

⁵² Art. 4, *ibid.*

⁵³ Arts. 16-19, *ibid.*

⁵⁴ Art. 16, *ibid.*

⁵⁵ Art. 11, *ibid.*

⁵⁶ Obara, n 4 above, 323.

⁵⁷ For instance, for the regulation of internal trade in imported species, the trade control legislation was applied. Also, the 1987 Law was based upon the trade control legislation, therefore, once specimens were cleared at Customs, internal movement could not be regulated unless clearance by Customs was withdrawn. H. Isozaki, 'A New Current of Wildlife Conservator: In Pursuit of Balancing "Sustainable Development" and "Presevation"' (Apr. 1992) *Weekly Economist*, 36.

⁵⁸ See 3.4.2.

⁵⁹ It only covered half of the species regulated by CITES. Enforcement Order for the Law Concerning the Regulation of Internal Trade of Endangered Species of Wild Fauna and Flora 1987, No. 375.

⁶⁰ Obara, n 4 above, 323.

⁶¹ Kihara, n 17 above, 48.

allow movements of these species in the country as well”.⁶² This was because the Government's priority was the protection of the relevant industries, rather than the conservation of wildlife. The Government wanted to make the scope of the regulated species and specimens as narrow as possible, so the impact of the 1987 Law on the industries would be at a minimum.⁶³ Furthermore, the enforcement measures provided in the 1987 Law were also very limited. It did not restrict the possession of illegally imported specimens,⁶⁴ nor did it provide for the forfeiture or return of such specimens.⁶⁵

3.2.5. The Japanese Perspective on Wildlife Conservation in the 1980s

Overall, the control provided by the 1987 Law was “insufficient”, according to Sakaguchi.⁶⁶ This was fundamentally because it lacked conservation perspectives. The implementation of CITES provisions was therefore “slow” and “passive”, according to scholars.⁶⁷ Indifference to wildlife conservation was by and large a general attitude of Japanese people. People were simply not aware of the concept of wildlife conservation. Obara considers that the concept was never fully understood in Japan in the same way as in many Western countries. “In Japan, wildlife conservation is not included in environmental conservation”.⁶⁸ “Wildlife conservation in Japan could even be regarded as caring for pets, let alone environmental conservation”.⁶⁹

Obara recalls a meeting with a government official and his comment on the killing of elephants in Zimbabwe, and the subsequent taking of ivories from the dead elephants; “You must be against this from your standpoint of animal loving and protection”.⁷⁰ He also recalls another meeting with Ministers who stated; “Japan must deal carefully with the world’s movement of animal loving and protection which is observed at CITES or Whaling Convention”.⁷¹ Obara states; “I was convinced by this comment that [governmental officials] would never understand the objectives of CITES”. Also, referring to the whaling issue, Obara states that

⁶² Mr. Koga, *The Proceeding of the Meeting*, n 6 above.

⁶³ The protection of industry by the Japanese Government is discussed later. See 3.2.5.

⁶⁴ Only trade and display were regulated. Arts. 3 and 4, n 48 above.

⁶⁵ Penalties included fines and imprisonment only.

⁶⁶ Y. Sakaguchi, *Chikyo Kankyo Hogo no Hou Senryaku (Legal Strategies for the Earth's Environmental Conservation)* (Tokyo: Aoki Shoten, 1992) 46.

⁶⁷ Kihara, n 17 above, 46, Obara, n 4 above, 318, and Isozaki, n 21 above, 34.

⁶⁸ Obara, *ibid*, 323.

⁶⁹ *Ibid*.

⁷⁰ *Ibid* 324. For detailed discussions on the term “animal loving and protection”, see 5.9.1.

⁷¹ *Ibid*, 324-325.

Japanese society was made to believe that the anti-whaling movement was “fanatical love for animals” and “bullying of Japan by America which has racial prejudices”.⁷²

Both animal welfare and wildlife conservation law in Japan developed in a similar vein. Japan faced severe international pressure to create animal welfare legislation in the early 1970s.⁷³ Although it did not understand the concept of animal welfare, it still created welfare legislation in 1972, simply due to international pressure. The 1987 Law underwent a similar process. Japan did not appreciate the conservation objectives of CITES, or fully understand the concept of wildlife conservation. Nevertheless, because of international criticism, it chose to create the Law, with the absolute minimum of measures required by CITES. It is possible that Japan perceived the criticisms on its CITES-implementation as similar to criticisms on issues relating to animal welfare in Japan, and interpreted wildlife conservation as an “animal loving and protection” movement.⁷⁴

There is another aspect that needs to be considered as an influencing factor on Japan's perspective on the international pressure imposed on it with regard to wildlife conservation. During the 1980s, Japan was facing *gaiatsu*, foreign pressure, for economic reasons, and such pressure was seen as “bullying” by many.⁷⁵ This phenomenon helped Japan nurture a nationalistic pride in Japanese traditions as well as economic success. These attitudes reflect general anti-Western feelings and Japanese nationalism discussed in Chapter 5.⁷⁶ For instance, the whaling issue is regarded by many as a diplomatic opportunity for Japan to demonstrate the influence it has on international politics.⁷⁷ From this point of view, although external pressure had succeeded in making the Government take the minimum possible practical steps towards implementation, it might have had an adverse effect in terms of changing Japanese people's views towards conservation or animal welfare.

3.3. Legislative Change

Although CITES was interpreted as a trade-regulating treaty by the Japanese Government rather than a conservation treaty, it was CITES that facilitated the

⁷² Ibid, 325.

⁷³ See 5.9, particularly 5.9.3.

⁷⁴ Obara, n 4 above, 324.

⁷⁵ Ibid, 325.

⁷⁶ For discussions on the relation between the Japanese nationalism and perception on 'Japanese' ecology, see 5.7.4 and 5.7.5.

⁷⁷ In 2000, the US threatened to impose sanction on Japan by utilising the Pelly Amendment due to the Japanese expansion of scientific whaling. The Japanese Government anticipated the application of the Pelly Amendment and still expanded the operation. “*Chousa Hoge ni 'Zetsumetsu Kiki' no Kujira Tsuika: Bei ga Mouhanpatsu* (‘Endangered’ Whales Added to the Scientific Whaling: The US Opposes Strongly”, *Asahi Shimbun*, 24 Aug. 2000.

awareness and understanding of wildlife conservation in Japan. The need was beginning to be felt to take appropriate measures towards the conservation of wildlife, even though the concept might not yet have been fully understood. The Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora (hereinafter the Species Conservation Law)⁷⁸ was created in 1992, both to implement CITES and to protect national species of wildlife. Before discussing the Law, the following paragraphs will consider the background leading to its creation, both at national and international level.

The creation of the Species Conservation Law in 1992 must be seen in relation to two international developments concerning wildlife conservation; the CITES 8th COP and the creation of the Biodiversity Convention. The CITES 8th COP was held in Kyoto, Japan, in March 1992, and it was for this COP that the CITES-implementing legislation was revised. Although the Species Conservation Law did not pass the Diet until April 1992, the political motivation to evade criticism by preparing this new law can be seen. The 8th COP was also a significant Conference for Japan, because Japan successfully promoted the idea of sustainable use of wildlife, together with African range states.⁷⁹ The other development, the Biodiversity Convention, adopted in June 1992,⁸⁰ was perhaps more significant in terms of comprehensive wildlife conservation in Japan. During the Diet discussions on the bill, it was described as follows; "Strictly speaking, this Law is not the national mechanism which implements obligations under the Biodiversity Convention, however, we have, in our mind, that the Law will help protect the biodiversity, which is the objective of the Convention, and that it aims to protect habitats for that purpose".⁸¹ The Environment Agency intended to start grappling with the conservation of biodiversity by enacting the Species Conservation Law.

On a national level, predominantly because of the influence CITES had on public awareness,⁸² gradual development of suitable conditions to prepare for systematic wildlife conservation had taken place. In 1986, the first governmental section that concentrated on wildlife issues, the Wildlife Protection Division was created within the Nature Conservation Bureau of the Environment Agency.⁸³ Also, data relating to a distribution of national species has been accumulated since 1973 by the Natural

⁷⁸ Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora 1992, Law No. 75.

⁷⁹ For discussions on the emphasis placed on sustainable use, see; N. Ishii, 'Yaseiseibutsu Hozen no Atarashii Chouryu to Washington Jouyaku (New Currents of the Wildlife Conservation and CITES)', (Feb. 1997) *Kankyuu (The Environment)*, 10-13.

⁸⁰ See 1.7.5.

⁸¹ Ito Suguru, *The Proceedings of the Meeting*, n 37 above.

⁸² See 1.5.

⁸³ Environment Agency, *Wildlife Conservation in Japan* (Tokyo: Environment Agency, 1997), 5.

Environment Conservation Research Programme.⁸⁴ The accumulation of such data has finally led to the delayed creation of Japan's Red Data Books in 1989 (for plants)⁸⁵ and in 1991 (for animals).⁸⁶

Following the creation of the Red Data Books, the Environment Agency consulted the Nature Conservation Committee,⁸⁷ which in return submitted a report consisting of recommendations for measures to be taken for the conservation of wildlife in Japan. Prior to the 1992 Law, Japan had enacted legislation which served wildlife conservation purposes, however, its primary objectives were not the conservation of wildlife or biodiversity. The Law Concerning the Protection and the Hunting of Birds and Mammals 1918⁸⁸, the Cultural Heritage Protection Law 1949,⁸⁹ the Natural Parks Law 1957⁹⁰, and the Natural Environment Preservation Law 1972⁹¹ all included measures which could be used to protect wildlife, but which fell short of systematic conservation measures.⁹² The creation of a new enactment was considered necessary. After negotiation with relevant Ministries and Agencies, the Species Conservation Law was passed in the Diet on 29 May 1992. The 1992 Law was thought to be “the first comprehensive, systematic wildlife conservation legislation” in Japan.⁹³

3.4. Japanese Implementation and Enforcement

Mechanisms

Before discussing the Species Conservation Law itself, an overall picture of CITES implementation in Japan needs to be provided. The Management Authority of

⁸⁴ Initiated by the Environment Agency. Prior to this Research Programme, there was no research regarding the distribution of wild fauna and flora. For details, see: M. Numata (ed), *Shizen Hogo Handbook (Nature Conservation Handbook)* (Tokyo: Asakura Shoten, 2000).

⁸⁵ Produced by the World Wildlife Fund and the Japan Nature Conservation Society.

⁸⁶ Produced by the Environment Agency. IUCN's first Red Data Book was produced as early as 1966. For discussions on the Japanese Red Data Book, see T. Nagaike and T. Nakai, 'Red Data Book' in Numata, n 84 above, 102-113. For discussions on the Red List, see for instance; Wildlife Protection Division, Nature Conservation Bureau, Environment Agency, '*Honyurui oyobi Chorui no Atarashii Red List no Kouhyou*' (Aug. 1998) *Kankyō (The Environment)*, 2-5.

⁸⁷ An advisory committee.

⁸⁸ The Law protects birds and mammals that are not designated as hunting species. It also provides for the establishment of reserves. Law Concerning the Protection and the Hunting of Birds and Mammals 1918, Law No. 32.

⁸⁹ Chapter 5 of the Law provides for protective measures for certain fauna and flora which are designated as natural monuments by the Law. Cultural Heritage Protection Law 1949, Law No. 214.

⁹⁰ Natural Park Law 1957, Law No. 161.

⁹¹ Natural Environment Preservation Law 1972, Law No. 85.

⁹² For detailed discussions on conservation measures under these legislation, see generally: Numata, n 84 above.

⁹³ Baba Noboru, *The Proceedings of the Meeting*, n 37 above.

CITES implementation in Japan is the Ministry of Economy, Trade and Industry (hereafter METI). The reason why METI was considered appropriate was partly because CITES was and still is to some extent considered to concern trade issues.⁹⁴ METI was also considered appropriate as Customs, which is part of METI, are one of the primary CITES enforcement actors.⁹⁵

This is in contrast to the UK Management Authority, which is the government authority responsible for environmental issues.⁹⁶ The Scientific Authority, which gives advice to the Management Authority on whether to issue such permits, is governmental in Japan; the Wildlife Protection Division of the Ministry of the Environment (for mammals) and the Fisheries Agency of the Ministry of Agriculture, Forestry and Fisheries (hereafter MAFF) (for marine species and plants).⁹⁷ With regard to internal control under the 1992 Law, the Ministry of the Environment is the responsible authority, however, actual enforcement is entrusted to the Police.⁹⁸

3.4.1. Border Control by Customs

3.4.1.1. Legislation

The Species Conservation Law is an internal control measure, and the border control of CITES-listed species is carried out by Customs, under the Tariff Law 1954 and the Foreign Exchange Law 1949.⁹⁹ Under Article 70 of the Tariff Law, valid licenses required by the Foreign Exchange Law are necessary in order to import CITES listed species.¹⁰⁰ Article 52 of the Foreign Exchange Law states that importation must be approved according to other relevant legislation, which, in this case, is CITES.¹⁰¹ Therefore, if an importer does not have valid permits for the specimens he wishes to import, Article 70 of the Tariff Law makes this an offence, and a penalty is

⁹⁴ See 3.2.2.

⁹⁵ For discussions on CITES enforcement by Customs, see 3.4.1.

⁹⁶ See 2.5.1.

⁹⁷ Research Committee on Wildlife Conservation Administration, Environment Agency, *Zetsumetsu no Osore no Aru Yasei Doushokubutsu Shu no Kokunai Torihiki Kanri: Zetsumetsu no Osore no Aru Yasei Doushokubutsu no Shu no Hozon ni Kansuru Houritsu Shousetsu (Control of Internal Movement of Endangered Species of Wild Fauna and Flora: Explanation on the Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora)* (Tokyo: Chuo Houki Shuppan Ltd., 1995), 132.

⁹⁸ For discussions on the internal controls, see 3.4.2.3 and 3.4.2.4. For the UK authorities, see 2.5.1.

⁹⁹ This section is based upon the following interviews, unless otherwise stated; Nakajima Eizo, the Divisional Manager, Control Division, Customs Clearance Department, Moji Customhouse, Kitakyushu-City, interview by author, 21 May 2001. Konagamitsu Masayuki, the Divisional Manager, Accounting Division of the Coordination Department, Moji Customhouse, interview by author, Kitakyushu-City, 21 May 2001. Customs officer, Fukuoka Airport Customs, interview by author, Fukuoka, 21 May 2001. The name of the interviewee is not stated due to the request of the interviewee.

¹⁰⁰ Art. 70, n 15 above.

¹⁰¹ Art. 52, n 14 above.

imposed.¹⁰² All CITES-listed specimens, including parts and derivatives such as traditional East Asian medicines,¹⁰³ are regulated by Customs, according to CITES regulations.

3.4.1.2. The Internal Structure of Customs

There are no officers who exclusively specialise in CITES-related matters within Customs in Japan.¹⁰⁴ However, there is at least one officer at each Customs location who is responsible for the import and export of CITES specimens. Officers who deal with CITES-related specimens do not necessarily have relevant backgrounds, and they tend to be replaced after one or two years, like other public servants in Japan.¹⁰⁵ This draws a sharp contrast with the situation in the UK.¹⁰⁶ There is no general training provided for Customs on a national level.¹⁰⁷ Each Customs provides its own general training for officers dealing with CITES-related specimens.

All of the Customs in Japan are closely networked with Central Customs, which distributes information it receives from each Customs to other relevant Customs. Networking with other organisations, whether governmental or non-governmental, does not exist,¹⁰⁸ however, except on the following occasions;¹⁰⁹ (1) Customs works with the Police if necessary when an offence takes place;¹¹⁰ and (2) Customs may ask specialists from zoos and botanical gardens for help in species identification. In addition, as in the UK, Customs maintains contact with the Ministry of the Environment in order to collate licenses. Furthermore, public awareness is promoted by leaflets placed at ports of entry to educate tourists.

3.4.1.3. Procedure for Dealing With Offences

When Customs officers encounter CITES-related specimens in Customs, the officer who is responsible for CITES matters is called in and conducts an inspection. The officer examines trade permits or certificates in order to see if they are valid under the Tariff Law.¹¹¹ An offence dealt with at Customs border control is therefore

¹⁰² For discussions on penalties under the Tariff Law, see 3.4.1.3.

¹⁰³ For internal control, only “easily recognisable” parts and derivatives are subject to regulations. This is because it was considered that the general public have less ability to recognise specimens than Customs officers.

¹⁰⁴ Mr. Nakajima, n 99 above.

¹⁰⁵ Mr. Konagamitsu, n 99 above.

¹⁰⁶ See 2.5.2.

¹⁰⁷ Mr. Nakajima, n 99 above.

¹⁰⁸ Contrast can also be drawn with the UK in terms of networking, where enforcement actors are liaised with by PAW. See 2.7.

¹⁰⁹ Customs officer, n 99 above.

¹¹⁰ For instance, Customs is not empowered to detain an offender whereas the Police is.

¹¹¹ Art. 70, n 15 above.

normally treated according to the Tariff Law.¹¹² When an illegal import is identified, first, whether the offence was intentional or not has to be judged by Customs. The procedure for a non-intentional offence is described below.¹¹³ Once Customs judges that the offence is intentional, it then begins an investigation and draws up an investigation paper. If the offence is considered less serious, and the offender admits the offence, a warning notification is given as an informal administrative measure. A penalty fee is then imposed also as an administrative measure (not the same as a warning notification), however, as it is not a criminal procedure, the amount of the penalty fee is not disclosed to the public. These rules are not specifically legislated for but are guidelines used within Customs.¹¹⁴ If the offence is serious and/or the offender does not admit the offence, legal proceedings will be started by Customs.

3.4.1.4. Seizure and Confiscation

Seizure and confiscation are only utilised when the offence is deemed serious, unlike the UK. When a non-intentional or an intentional but minor offence is identified at Customs, a Customs officer will advise the offender to abandon his/her property right to the relevant specimens, parts or derivatives. This is also an administrative measure, and almost all non-serious offences are dealt with in this way. For a serious offence, however, specimens are seized for investigation, and confiscation *may* be ordered by a court.¹¹⁵ Whether abandoned or seized, specimens then become the property of the country under the Tariff Law¹¹⁶, and they are either kept in Customs warehouses or shipped back to the exporting country.¹¹⁷ In the case of live specimens, they are subsequently donated to zoos, aquariums or botanical gardens.¹¹⁸ The disposal of live specimens is discussed further later.¹¹⁹

3.4.2. Summary of the Species Conservation Law

The following paragraphs will examine the contents and limitations of the Species Conservation Law where it relates to CITES implementation. The discussion will be

¹¹² Illegal importation may be prosecuted both under the Tariff Law and the Foreign Exchange Law.

¹¹³ See 3.4.1.4.

¹¹⁴ Customs officer, n 99 above. A warning notification is an administrative measure, and therefore is not treated as an official crime.

¹¹⁵ This makes a contrast with UK border controls. See 2.5.2.4. Article 118 of the Tariff Law provides for confiscation measures for certain goods, which, however, does not include CITES specimens. Art. 118, n 15 above.

¹¹⁶ Art. 134 (3), *ibid.*

¹¹⁷ Although the restoration of specimens to the country of origin is recommended by Article VIII of CITES, in practice, this option is rarely feasible. This point was mentioned earlier. See 2.5.2.5.

¹¹⁸ Although the Species Conservation Law provides for the return of live specimens to the country of origin at the cost of the offender, this provision has never been used. See 3.4.3.1.

¹¹⁹ See 3.4.2.7.

carried out firstly by looking at the legislation itself, and secondly by examining practical enforcement problems.

The Species Conservation Law regulates the internal movement of the relevant specimens and provides for enforcement measures. The primary enforcement actors are the Police. The Ministry of the Environment acts as a monitoring authority for internal movements of these species.¹²⁰ Apart from a few provisions,¹²¹ the CITES-related contents of the Species Conservation Law has “hardly changed” from the 1987 Law, according to Sakaguchi.¹²² Regulation was applied initially to whole specimens of Appendix I species only, although parts and derivatives were included in 1994.¹²³ Internal movement and display of these specimens without registration is regulated.¹²⁴ Legally imported species should be registered with the Ministry of the Environment in order for such restricted activities to be carried out legally.¹²⁵ On a basic level, the Species Conservation Law fulfils the minimum obligation of CITES, in requiring that specimens that can be registered are those imported legally under CITES.¹²⁶

The system of inspection was inherited from the 1987 Law,¹²⁷ and provisions for the return of illegally imported specimens to the country of origin were introduced.¹²⁸ Penalties for offences under this Law were also provided.¹²⁹ However, what was significantly different about the new legislation was that certain national species became subject to regulation similar to that which applies to CITES Appendix I species. They also became subject to import and export restrictions. Species that are considered endangered nationally are designated as national endangered species and receive various protective measures. Chapters 3 and 4 of the Species Conservation Law are devoted to those national species, providing provisions for habitat protection¹³⁰ and breeding programmes.¹³¹

¹²⁰ See 3.4.2.3.

¹²¹ Newly inserted provisions are discussed in the following paragraphs.

¹²² Sakaguchi, n 66 above, 47.

¹²³ Basic Policy for the Conservation of Rare Wild Fauna and Flora 1992, No. 24. Specimens to be regulated are defined in the Basic Policy.

¹²⁴ Arts. 12 and 17 respectively, n 78 above.

¹²⁵ Art. 20, *ibid.* For explanation of UK COTES, see 2.2.4.

¹²⁶ Article III of CITES lays down conditions for derogations regarding Appendix I species. Art. III, n 1 above.

¹²⁷ Art. 27, n 78 above.

¹²⁸ Art. 16, *ibid.*

¹²⁹ Chapter 6, *ibid.*

¹³⁰ Chapter 3, *ibid.*

¹³¹ Chapter 4, *ibid.*

The limitations of the Species Conservation Law, in comparison to the UK legislation, are as follows.¹³²

1. Appendix II and III species are not included.
2. Parts and derivatives which are subject to regulation are those that are “easily recognisable”.
3. The registration system operates largely on a voluntary basis and lacks an effective monitoring system.
4. Possession of illegally imported specimens is not regulated.
5. Confiscation measures are not provided.
6. There are no appropriate provisions to care for live specimens imported illegally.

The following paragraphs will examine these limitations closely.

3.4.2.1. Scope of Species

The exclusion, from internal control, of species from Appendices II and III seriously undermines the effectiveness of Japanese control of the wildlife trade, as Appendix I species number only 700 amongst 33,000 CITES listed species, and 98 per cent of imports to Japan are imports of either Appendix II or III species.¹³³ This means that 98 per cent of the specimens imported into Japan are regulated only by the border controls. Nevertheless, the Government chose not to include Appendix II species, in order to protect industry. During the Diet discussions, the Government's response to the question as to why Appendix II species were not included was because “democracy” has to be respected,¹³⁴ to cater for the needs of different people, including those of industry. It also stated; “It is doubtful whether it is appropriate to make an implementing legislation stricter than CITES”.¹³⁵

CITES does allow Appendix II species to be traded for commercial purposes as long as they are accompanied by an export permit.¹³⁶ However, particularly considering the lack of expertise and resources at Customs necessary for strict border control,¹³⁷ internal control is necessary, in order to ensure efficient trade control. The inclusion

¹³² For discussions on EC Regulation 338/97, see 2.4; and for COTES 1997, see: 2.2.4, 2.7.4 and 2.7.6.

¹³³ TRAFFIC Japan, *Washington Jouyaku Taishou Doushokubutsu no Torihiki Doukou ni Kansuru Chousa Kenkyu (Study on Trade in Animals and Plants Protected by CITES)* (Tokyo: TRAFFIC Japan, 1999), 110.

¹³⁴ The Proceedings of the Meeting of the Environment Committee, the Upper House, 123rd Diet Meeting, 27 May 1992.

¹³⁵ Ibid.

¹³⁶ Art. IV, n 1 above.

¹³⁷ See 3.4.1.

of Appendix II species was recommended in Supplementary Resolution by the Members of the Diet, in passing not only the 1992 Law, but also the 1987 Law.¹³⁸ Article XIV (1) of CITES allows Member States to take stricter measures than are provided for in CITES,¹³⁹ and EC Regulation 338/97 provides for such measures, being aware of its richer financial and human resources.¹⁴⁰ Under EC Regulation 338/97, the UK imposes extended internal control on other species not listed in CITES.¹⁴¹

3.4.2.2. Scope of Specimens

Parts and derivatives were not included under the scope of specimens until 1994. An amendment was made to the Species Conservation Law in 1994, as the inclusion of parts and derivatives under the scope of specimens was requested in the Supplementary Resolution submitted in passing the Law in 1992.¹⁴² Still, there remains a serious loophole in its scope. Parts and derivatives subject to internal regulation are those that are “easily recognisable”,¹⁴³ and they are specified in the Enforcement Order for the Species Conservation Law 1992.¹⁴⁴ The Enforcement Order, which is enacted by the Cabinet,¹⁴⁵ is accompanied by the Appendix specifying such parts of CITES specimens as fur, skin, horn, tusk, feather, hair, shell, flower, trunk, stalk, etc., and derivatives as those processed out of such parts.¹⁴⁶ Although it appears to contribute to the efficient enforcement of internal control, the specification exempts certain products which have high commercial values, such as traditional East Asian medicines.¹⁴⁷

Article I of CITES also uses the wording “easily recognisable” in the definition of parts and derivatives to be regulated.¹⁴⁸ The interpretation of this wording by the Japanese Government is as follows. In a Diet discussion on the 1994 amendment to the Species Conservation Law, the Environment Agency stated that specimens are

¹³⁸ *The Proceedings of the Meeting of the Special Environment Committee*, the Upper House, 108th Diet Meeting, 25 May 1987. Research Committee on Wildlife Conservation Administration, Environment Agency, n 97 above, 431.

¹³⁹ Art. XIV, n 1 above.

¹⁴⁰ This point was mentioned earlier. See 2.3.3.

¹⁴¹ See 2.4.6.

¹⁴² Supplementary Resolution, n 138 above.

¹⁴³ Environment Agency, n 97 above, 92.

¹⁴⁴ Appendix 4, Enforcement Order for the Law Concerning the Conservation of Endangered Species of Wild Fauna and Flora 1992, No. 17.

¹⁴⁵ See for instance; H. Abe, M. Shindou and S. Kawato, *Gaisetsu: Gendai Nihon no Seiji (Introduction to the Present Japanese Politics)* (Tokyo: University of Tokyo Press, 1990).

¹⁴⁶ Appendix 4, n 144 above.

¹⁴⁷ Currently, traditional medicines including tiger parts are the only derivatives subject to internal regulation. See 3.4.2.3.

¹⁴⁸ Art. I, n 1 above.

regulated by 'specialist' Customs officers at the country's border, and that once they enter the country, "as they are to be registered by the general public, they should be *easily recognisable by the general public*".¹⁴⁹ However, the identification of parts and derivatives does not necessarily always require expertise. For example, traditional East Asian medicines often come with obvious labels specifying the contents which are often CITES listed species. Nevertheless, despite the fact that Japan is one of the major importers of traditional East Asian medicines containing endangered species, these medicines are not regulated, except for those containing tiger parts.¹⁵⁰ EC Regulation 338/97 requires much stricter regulation and therefore the UK goes as far as regulating parts or derivatives of any other goods which "appear" to contain species protected by the Regulation.¹⁵¹

3.4.2.3. Registration Schemes

The registration scheme under the Species Conservation Law is the central scheme for internal control. Specimens, including parts and derivatives,¹⁵² cannot be internally traded or displayed unless they are registered with the Ministry of the Environment. There are two types of registration. The first is the registration scheme for Appendix I species, and this has been provided for since the 1987 Law. Article VII of CITES provides for derogations from trade prohibition for Appendix I species, if specimens were obtained before CITES came to be applied to the species, or if they are bred for commercial purposes.¹⁵³ In this instance, the relevant specimens of Appendix I¹⁵⁴ have to be registered with the Ministry of the Environment if the specimens are to be internally traded or displayed.¹⁵⁵ A registration form is provided by the Ministry of the Environment, if the application for registration is accepted, and the specimens must be accompanied by this form when internally traded or displayed. When ownership is transferred to another person, the person who became the new owner must notify the Ministry of the Environment of the transaction within 30 days.¹⁵⁶

The other type of registration scheme, the "pre-registration system", virtually exempts certain parts and derivatives from the abovementioned general registration

¹⁴⁹ *The Proceedings of the Meeting of the Environmental Committee*, the Lower House, 129th Diet Meeting, 7, June 1994.

¹⁵⁰ See 3.4.2.3 and the following paragraphs. For discussions on the problems relating to non-regulation of traditional medicines containing bear species, see 3.4.3.3.

¹⁵¹ Art. 2 (t), Regulation 338/97. See 2.4.5.

¹⁵² See 3.4.2.2.

¹⁵³ Art. VII (2) and (4), n 1 above.

¹⁵⁴ Art. 4 and Appendix 6, n 144 above.

¹⁵⁵ Art. 20, n 78 above.

¹⁵⁶ Art. 21, *ibid.*

scheme.¹⁵⁷ The pre-registration scheme was introduced by an amendment to the Species Conservation Law in 1994. The scheme is intended to make registration less complicated for specimens, parts and derivatives that are internally traded on a larger scale.¹⁵⁸ The scheme can be split into three parts according to the level of distribution: importers or dealers of raw materials; manufacturers; and retailers. The raw materials that are subject to this scheme are designated as “Raw Material Parts”¹⁵⁹ and the segmented materials are designated as “Specified Parts”,¹⁶⁰ and those parts are officially exempted from ordinary registration obligations.

“Raw Material Parts” are defined to be those “used as raw materials of products within the country”.¹⁶¹ They are specified in the Enforcement Order and include parts such as ivory and turtle shells.¹⁶² Dealers of these specified parts can pre-register details such as the species, import quantities, and expected exporter with the Ministry of the Environment, which provides for as many pre-registration forms as specified in the application form, before the import takes place.¹⁶³ The dealers must carry out a transaction for Raw Material Parts using a pre-registration form, and notify the Ministry of the Environment of details of the transaction every three months.¹⁶⁴

Manufacturers, or rather, primary producers, whose business is in dealing with “Special Parts” (segmented parts), are designated as “Specified Business Dealers of International Rare Species”.¹⁶⁵ Their obligations, which are non-binding, are (1) to register their business with METI (2) to keep records of their dealings where Special Parts are involved,¹⁶⁶ and (3) to produce a “management form” containing necessary information when transferring the relevant parts onto a third party to accompany it.¹⁶⁷ Manufacturers who deal with final products have to register with the Minister of the Environment or the METI Minister in order for the products to be authorised and granted a stamp of approval.¹⁶⁸ This system is also non-binding. The relevant Ministry refers to the “management form” to ensure that details correspond with those contained in the import permit of the relevant specimens. Finally, retailers are

¹⁵⁷ Arts. 12(1)(3), 20(2) and 33(2), n 78 above.

¹⁵⁸ Environment Agency, n 97 above, 160.

¹⁵⁹ Art. 20(2), n 78 above.

¹⁶⁰ Art. 33(2), (3) and (4), *ibid.*

¹⁶¹ Art. 12 (3), *ibid.*

¹⁶² Art. 2 (4), *ibid.* Art. 2(4) and Appendix 5, n 144 above.

¹⁶³ Art. 20(2), *ibid.*

¹⁶⁴ Art. 20(3)(2), *ibid.*

¹⁶⁵ Art. 33(2), *ibid.*

¹⁶⁶ Article 33 (2), *ibid.*

¹⁶⁷ Article 33 (6), *ibid.*

¹⁶⁸ Article 33 (7), *ibid.*

encouraged to choose products with a stamp of approval, although they are also free from any binding regulations. The stamp of approval, which is encouraged, but not compulsorily attached to final products dealt by retailers, is intended to be an incentive for consumers to choose legally approved products.¹⁶⁹

Two of the most serious loopholes in the registration schemes are reliance on the voluntary conduct of dealers and a lack of monitoring. Although sanctions are provided in Chapter 6 of the Species Conservation Law for the movement and display of the relevant specimens,¹⁷⁰ no sufficient monitoring system exists to ensure compliance. The ordinary registration scheme allows specimens to be traded, as long as the transaction is accompanied with the registration form and the receiver *notifies* the Ministry of the Environment or METI. In the pre-registration scheme, the way specimens are monitored is by referring to the aforementioned “management form” based upon the pre-registration form, in order to see if the details contained in the form correspond with the relevant import permit. However, the production of the management form is voluntary, and there are no binding provisions to ensure that illegally imported products will not be mixed with those that are legally produced. (These registrations are in practice conducted by the Japan Wildlife Research Centre, a foundation under the umbrella of the Ministry of the Environment. The Centre keeps the database of registration.¹⁷¹)

The only measure provided in the Species Conservation Law to monitor the registration schemes is on-spot inspection by the Government as provided for in Article 19.¹⁷² This inspection can also be carried out, in theory, by voluntary conservation promoting agents, as defined in Article 51.¹⁷³ However, the evidence suggests that these are not functioning adequately either. For instance, during a Diet discussion on the 1994 amendment which introduced the pre-registration scheme, it was pointed out that the ordinary registration scheme was not functioning properly because of the lack of monitoring. Dealers in rural areas were especially aware that the monitoring could not cover such areas.¹⁷⁴ Furthermore, the dealers who are to be

¹⁶⁹ *The Proceedings of the Meeting of the Environment Special Committee*, the Upper House, 129th Diet Meeting, 20, Jun. 1994.

¹⁷⁰ For instance, imprisonment of less than one year or a fine of less than a million yen (approximately £5,500) for violation of the Article 12 (prohibition of movement of the relevant specimens without registration) are included. Art. 58, n 78 above.

¹⁷¹ TRAFFIC Japan, “Materials for CITES 11th COP”, at: <http://www.twics.com/~trafficj/Hawskbill.htm>, visited on 1 Nov. 2001.

¹⁷² The Ministry of the Environment, the METI, and the MAFF are empowered to carry out such inspections. Art. 19, n 78 above.

¹⁷³ Their responsibilities are to carry out activities deemed necessary for the conservation of the protected species. Art. 51, *ibid*.

¹⁷⁴ *The Proceedings of the Meeting of the Environment Committee*, the Lower House, 129th Diet Meeting, 7 Jun. 1994. As for a more recent example, in 1999, CITES-listed species including orang-utan were found to be on sale in a pet shop in Osaka. Officers from the then Environment Agency inspected the site “following a repeated request from an NGO”. M. Sakamoto, Japan Wildlife Conservation Society, “The Reality of Japan’s Implementation and Enforcement of CITES” (2000), a report distributed at CITES COP 11. For discussions on this case, see 3.4.3.1.

inspected are notified in advance.¹⁷⁵ In 2001, inspections took place in March, August and September.¹⁷⁶

Another serious loophole in the registration scheme is the fact that certain types of dealer exist who are not regulated under the pre-registration system. It is only raw materials that are subject to compulsory regulation, and there are dealers of final products who fall between the regulative provisions. For instance, taking the example of tortoiseshell dealers, there are wholesalers between manufacturers and retailers who deal with only a certain type of final product, such as accessories and frames of glasses.¹⁷⁷ Since final products are recorded as for “home consumption” by their manufacturers, there is no way of knowing how many final products are produced or to whom they are traded.

CITES has no specific provisions as to how to implement internal controls. The UK has a system which allows the internal movement of protected species if certain conditions are met. The UK controls internal movements of Annex A and B species, which include all CITES Appendices I and II as well as III (partially) and other species.¹⁷⁸ Although sales, purchase and keeping for sale of Annexes A and B species are prohibited as well as other similar activities,¹⁷⁹ such activities may take place if the specimens in question meet the conditions required by Article 8 (3) of the EC Regulation.¹⁸⁰ If these conditions are met, DEFRA issues a certificate for such activities.¹⁸¹ There is no derogation for specific parts and derivatives under Regulation 338/97 as provided for in the Species Conservation Law, either. Inspection can be carried out by the Police as well as Wildlife Inspectors under Regulation 9 of COTES with much stronger enforcement powers,¹⁸² than exist under the Species Conservation Law, which has an obvious lack of enforcement powers and a lack of inspectors.¹⁸³

¹⁷⁵ Sakamoto Masayuki, Japan Wildlife Conservation Society, interview by author, Tokyo, 11 March 2002.

¹⁷⁶ *Ibid.*

¹⁷⁷ M. Sakamoto, Japan Wildlife Conservation Society, “Hawksbill Trade Revived? Analysis of the Management System of Domestic ‘Bekko’ Trade in Japan” (2000), a report distributed at CITES COP 11.

¹⁷⁸ Art. 3, n 151 above. Commercial activities involving Annexes A and B are restricted by Article 8 of the EC Regulation, and offences in violation of this Article are provided in Regulation 8 of COTES. See 2.4 and 2.5.

¹⁷⁹ It is an offence to purchase, offer to purchase, acquire for commercial purposes, display to the public for commercial purposes, use for commercial gain, sell, keep for sale, offer for sale or transport for sale under Regulation 8 (1). Reg. 8 (1), COTES.

¹⁸⁰ Such conditions cover those specified in CITES itself and Resolutions as well as others, and conditions provided by the Regulation are much stricter than CITES. Art. 8(3), n 151 above. See 2.4.7.

¹⁸¹ The requirements for such certificates have recently been relaxed in the EU. See 2.7.4.

¹⁸² Both the Police and Wildlife Inspectors are empowered to take a blood sample or tissue of the specimens, when accompanied by a veterinary surgeon and the welfare of live specimens is ensured. Reg. 9, above n 179 above. See 2.7.4.

¹⁸³ Art. 19, n 78 above.

3.4.2.4. Possession

The fourth limitation of the Species Conservation Law is the lack of restriction on the possession of specimens. Registration as described above is required only when movement or display of specimens takes place, and it is not illegal to simply possess the specimens even when they have been imported illegally. This is seriously undermining to the effectiveness of internal control, considering the popularity of wildlife products and exotic pets amongst Japanese people. The legal import of CITES specimens into Japan is the largest in the world per capita.¹⁸⁴ Regulation must be imposed on a personal level as well as on a market level.

In fact, Article VIII (1)(a) of CITES requires Member States to take appropriate measures in order to sanction against “trade” or “possession” of specimens “or both”.¹⁸⁵ However, because of the word “or”, Japan chose to fulfil a minimum obligation, by restricting only one of the two. The UK imposes restriction on the keeping of the specimen for sale under COTES. Also, the Wildlife and Countryside Act regulates the possession of certain birds, some of which are listed in CITES.¹⁸⁶

3.4.2.5. Confiscation

The fifth limitation of the Species Conservation Law is the lack of measures that enable confiscation. Although confiscation may be ordered by a court as part of border controls,¹⁸⁷ no such measure is provided under the Species Conservation Law. If the specimen was imported legally but was traded internally or displayed without valid registration, Article 58 of the Species Conservation Law provides for a penalty¹⁸⁸ but no confiscation measure. If the specimen was illegally imported, a penalty under the Foreign Exchange Law may be imposed.¹⁸⁹ Alternatively, penalties may be imposed under both the Foreign Exchange Law and the Species Conservation Law.¹⁹⁰ The confiscation measure may only be granted once the

¹⁸⁴ Thirty five thousand cases of legal import. Japan Wildlife Conservation Society, at: <http://www.jwcs.org/jwcs-katudo/CITES/citesmore.html>, visited on 11 Nov. 2001. Also see UNDP, UNEP, World Bank and World Resources Institute, *World Resources 2000-2001: People and Ecosystems: The Fraying Web of Life* (Washington, D.C.: World Resources Institute, 2002) 250-251.

¹⁸⁵ Art. VIII (1)(a), n 1 above.

¹⁸⁶ COTES restricts the possession only where specimens are kept for sales. Reg. 8, n 179 above. For discussions on restrictions on the possession of birds, see 2.2.4 and 2.7.4.

¹⁸⁷ As for border controls, people are advised to give up specimens in most cases, if the offence is considered not too serious. If the offence is considered serious and is prosecuted, confiscation may be ordered as an incidental penalty under Article 19 of the Criminal Law. If prosecution does not take place, there will be no confiscation. See 3.4.1.4. For comparison with the UK, see 2.2.4 and 2.5.2.4.

¹⁸⁸ A term of imprisonment of less than a year or fine of less than a million yen.

¹⁸⁹ Art. 52, n 14 above.

¹⁹⁰ WWF Japan, “*Seibutsu Tayousei Kokka Senryaku: Gutaisaku Teian* (National Strategy for the Protection of Biodiversity: Practical Suggestions)” (1999) at: <http://www.twics.com/~trafficj/orangutan2.htm>, visited on 15 Dec. 2000.

offender is convicted and is incidental to the penalty for the criminal offence under the Article 19 of the Criminal Law.

However, the normal procedure when an offence is identified on the internal market is as follows.¹⁹¹ The Police or Customs have to prove that the specimen in question was illegally imported. The specimen falls into the possession of Customs if the importer abandons property rights to the specimen. Customs also has the power to seize the specimen for investigation,¹⁹² although there is no immediate confiscation.¹⁹³ The specimen falls into the possession of the Police if it is seized for a criminal investigation. The importer may abandon his property rights during the legal procedure, and if not, confiscation *may* be ordered by the court. Either way, the burden of proof for illegal imports falls upon the enforcement agents, and this is particularly detrimental in the case of live specimens, as it is difficult to prove illegal importation¹⁹⁴ and the specimens may die before the offence is proven.

In the UK, Regulation 5 of COTES specifies the procedure for handling specimens when an offence takes place as follows. At the border, Customs is empowered to detain the specimen until proof of lawful import or export is furnished by the person in control of that specimen under the Customs and Excise Management Act 1979.¹⁹⁵ If proof cannot be furnished, the specimen is *liable* to forfeiture under the same Act. Under COTES, the burden of proof also falls upon *the offender*. Also, the court “*shall* order the forfeiture” of specimens if the person is convicted of committing an offence under COTES.¹⁹⁶ Therefore, in the UK, when an offence is identified, or even suspected, the specimen is immediately seized and confiscation is ordered.

3.4.2.6. Live specimens

The Species Conservation Law has no provisions that require live specimens to be suitably cared for. The only relevant provision is Article 7, which states;

Owners or possessors of individuals or their parts or products thereof of the endangered species of wild fauna and flora shall be conscious of the importance of conserving the endangered species of wild fauna and flora, and shall endeavour to properly treat the individuals etc.¹⁹⁷

¹⁹¹ Japan Wildlife Conservation Society, n 184 above; and WWF Japan, *ibid*.

¹⁹² This procedure by Customs was mentioned earlier. See 3.4.1.3 and 3.4.1.4.

¹⁹³ It has to be ordered by court. See 3.4.1.4.

¹⁹⁴ This is due to the difficulty in identifying the species. See; WWF Japan, n 190 above.

¹⁹⁵ s. 139, Customs and Excise Management Act 1979. Reg. 5, n 179 above.

¹⁹⁶ Reg. 11, *ibid*.

¹⁹⁷ Art. 7, n 78 above.

This provision is not provided exclusively for live specimens, and lacks a definition as to what 'proper treatment' consists of. It is also not a binding provision, and therefore, there are no sanctions provided should this provision be breached.

There are also no regulations ensuring the welfare of live specimens by enforcement agencies, and a system to deal with live specimens, as seen in the case of the UK, is non-existent.¹⁹⁸ Once the specimen is in the possession of Customs or the Police,¹⁹⁹ the procedure taken is as follows. When the specimen falls into the hands of Customs, METI looks for a zoo or an aquarium which will agree to accept it, through the Japanese Association of Zoological Gardens and Aquaria.²⁰⁰

There are a number of problems relating to the Government's dealings with live specimens. First of all, no appropriate subsidies are granted by the Government, despite the huge amount of live specimens illegally imported and subsequently abandoned.²⁰¹ A certain amount of money for costs, including food, is paid by METI to the Association of Zoological Gardens and Aquaria, which subsequently distributes it to individual zoos and aquariums.²⁰² In 1996, for instance, seven million yen (approximately £41,200) was granted.²⁰³ However, the number of specimens sent to zoos and aquariums during this year was 1,197,²⁰⁴ which means that the Ministry provided only 5,800 yen (approximately £34) towards the care of each specimen. Funding for maintenance costs and payments to staff are not provided. The number of live specimens confiscated has increased every year by approximately 300 specimens,²⁰⁵ and by March 1999, 1,436 animals of 86 species were cared for in 78 facilities.²⁰⁶ Secondly, zoos and aquariums are running out of the space.²⁰⁷

Finally, Customs do not have a facility to temporarily house living animals. This is the most urgent problem. At the moment, some Customs Collections have non-official contracts with local pet shops to temporarily house live specimens.²⁰⁸ The process of finding a suitable zoo sometimes stretches on for as long as a month or

¹⁹⁸ For discussions on the treatment of live specimens in the UK, see 2.4.10 and 2.5.2.5.

¹⁹⁹ Following the abovementioned procedure. See 3.4.2.5. The treatment of live specimens by Customs was mentioned briefly earlier. See 3.4.1.4. For discussions on the Japanese animal welfare legislation, see 5.9.

²⁰⁰ Japan Wildlife Conservation Society, n 174 above.

²⁰¹ See Table 2 above.

²⁰² Japan Wildlife Conservation Society, n 174 above.

²⁰³ WWF Japan, "*Fusei Torihiki ni yori Hogo Sareta Doushokubutsu no Kanri ni Kansuru Chousa Kenkyu* (Study on the Treatment of Animals and Plants Detained Due to Illegal Trade)" (1999), provided by TRAFFIC Japan.

²⁰⁴ *Ibid.*

²⁰⁵ "*Ikoku wa Tsuraiyo Mitsuyu Mitsuyu Doubutsu* (Hard to be in a Foreign Country: Illegally Imported Animals)", *Asahi Shimbun*, 23 Jun. 1999.

²⁰⁶ *Mainichi Shimbun*, 13 Jun. 1999.

²⁰⁷ Customs officer, n 99 above.

²⁰⁸ *Ibid.*

more.²⁰⁹ This could lead to the animal's death whilst it is kept at a pet shop which may not necessarily have appropriate facilities to care for the particular species. The number of live specimens that die whilst under the responsibility of Customs is generally high. For instance, Narita Airport has a memorial tower for dead animals, due to the vast number of animals that were dead on arrival or died whilst in Customs.²¹⁰

When the specimen is with the Police, the situation is even worse. There is no commission system as described above for Customs, and therefore no commission fee is granted by the Government.²¹¹ Amongst specimens seized by the Police on the internal market, only 44 specimens were accepted by the Association of Zoological Gardens and Aquaria between 1988 and 1995.²¹² The Police has to continue caring for a specimen if no facility is found. Similar problems are faced by the Police in handling abandoned domestic animals, although they can be transferred to a local authority, which usually has an animal centre to temporarily house animals.²¹³

The lack of a system to care for live specimens is in violation of CITES provisions provided to ensure the welfare of individual animals. Article VIII (3) requires Member States “properly [care] for” live specimens.²¹⁴ Although the Species Conservation Law provides Article 7, which follows the wording of CITES,²¹⁵ its implementation is nonexistent, as examined above. The treatment of live specimens is one of the repeated concerns at CITES COPs, as addressed in Resolution 9.11 and 10.7.²¹⁶ Resolution 10.7 asks that the welfare of individual specimens kept in captivity is ensured: “in preference to either being returned to the wild or destroyed, they must be afforded humane conditions and ensured proper care for their natural lives”.²¹⁷ However, the concept of animal welfare and ecological thinking based on biological knowledge are still being developed amongst Japanese citizens.

Further, there are few non-statutory organisations which can offer specialist help or financial or human resources in Japan, whereas in the UK, on the other hand, has an Animal Reception Centre at Heathrow Airport, as well as NGOs to assist the

²⁰⁹ Ibid.

²¹⁰ Ibid. For discussions on the tradition of memorial services for dead animals in Japan, see 5.10.6.

²¹¹ Japan Wildlife Conservation Society, n 174 above.

²¹² WWF Japan, n 203 above.

²¹³ Discussions on the legal and administrative situations involving domestic animals are provided later. See 5.9.4, and particularly 5.10.4.2.

²¹⁴ Art. VIII (3), n 1 above.

²¹⁵ See the beginning of this subsection. Art. 7, n 78 above.

²¹⁶ Resolution 10.7 was adopted, repealing Resolution 9.11, setting practical recommendations and guidelines for the disposal of live specimens. Resolution 10.7 suggests the following three options for the Management Authority to consider in dealing with the disposal of live specimens; 1) maintenance of the individuals in captivity; 2) returning the individuals in question to some form of life in the wild; and 3) euthanasia. In any case, the conservation and welfare purposes are encouraged to be ensured. For discussions, see 2.4.10 and 2.5.2.5.

²¹⁷ Res. 10.7, n 1 above.

Government.²¹⁸ Internally, rescue centres, specialist and humane societies, as well as devoted individuals linked with such societies exist. National animal welfare legislation as well as initiatives taken by welfare organisations contribute to the requirement of “humane conditions” and “proper care”.²¹⁹ Such specialist facilities and networks have been built in the UK from much earlier time than in Japan.²²⁰

In addition, Article 16 of the Species Conservation Law provides for the restoration of specimens to the country of the origin, however, this measure has never been used to this date.²²¹ The return of specimens to their original habitat is not always the best option.²²² In the past, there were a few occasions where Japanese citizens returned specimens without utilising this official measure,²²³ however, the Government has always chosen not to utilise this provision. The Japan Wildlife Conservation Society considers that the meaning of Article 16 is to clarify the Government's responsibilities in ensuring the recovery of shipping costs from the offender, as well as clarifying its responsibility for possible risks relating to such shipping, including the death of the specimens.²²⁴

3.4.3. Case Studies

In this section, three case studies are presented, in order to examine how the abovementioned limitations of the legislation and enforcement mechanisms affect CITES enforcement in Japan. The first case is an example of an illegal import and sale of primates, which shows the ineffectiveness of border and internal controls. The second case, involving internal control of the ivory market, highlights the legal loopholes in the registration schemes and the lack of enforcement measures relating to the schemes. The third case, trade in and conservation of bears in Japan offers an example of how existing wildlife conservation legislation influences effective enforcement of CITES.

3.4.3.1. The Illegal Import of Primates

On 24 May 1999, two people from a pet shop called “Umeda Wan-Wan (Bow-Bow) Land” in Osaka were arrested under an Osaka City bylaw for displaying for sale

²¹⁸ For general discussions on NGO's role in conservation in Japan, see; M. Hayakawa, 'Kankyou NGO no Yakuwari to Kadai (Environmental NGO's Role and Problems)' (1997) 48 *Jiyu to Seigi (Liberty and Justice)*, 108-119; and K. Matsushita, 'Global Environmental Issues and the Role of NGO: Looking Back on Five Years of the Japan Fund for Global Environment' (1998) 111 *Environmental Research Quarterly*, 71-78. See 2.5.2.5.

²¹⁹ Res. 10.7, n 1 above.

²²⁰ See 4.5.

²²¹ Art. 16, n 78 above.

²²² This point was considered earlier. See 2.5.2.5.

²²³ One of the recent cases is illegally imported orang-utans in 1999. See 3.4.3.1.

²²⁴ Japan Wildlife Conservation Society, n 174 above.

Appendix I primates.²²⁵ Subsequently, four orang-utan *Pongo pygmaeus* babies were discovered, and the two owners were re-arrested, this time under the Species Conservation Law.²²⁶ As the investigation continued, a Japanese resident of Indonesia was also arrested for illegally importing²²⁷ and selling the above primates to the pet shop.²²⁸ It became apparent that the following were involved in this series of illegal imports and movements; the pet shop owner, the shop manager, and three others who were asked to illegally import animals, including the resident of Indonesia.

One of the problems which was highlighted by this case was the lack of enforcement abilities and capacities of Customs at the border. The way the animals were smuggled was as follows.²²⁹ One of the smugglers hid two anaesthetised orang-utans at the bottom of a suitcase, under a pile of clothes and went through Customs at Kansai International Airport. A second smuggler went through both quarantine (primates were not subject to quarantine) and Customs by claiming that the orang-utans he was importing were “ordinary monkeys”. Some officers came to examine the specimens with an identification manual,²³⁰ and the specimens were cleared for import.

It has already been pointed out that Customs officers dealing with CITES specimens are not necessarily specialists in identifying animals,²³¹ and the limitation of the officers' ability to identify the species is illustrated by this case. Greater training and resources within Customs for species identification are vital for effective border control. The case also illustrates the lack of enforcement powers Customs officers have. If Customs were empowered to detain suspicious specimens, as in the UK, it would have been able to do so, whilst calling on specialist help.

There are several other problems to be noted, in relation to other national systems relating to animals. For instance, no quarantine was required for primates until January 2000. Prior to this, primates were freely imported with valid permits, and approximately 30 per cent were imported as a pets (70 per cent for experimental

²²⁵ The Osaka City Keeping of Dangerous Animals Bylaw. “*Mitsuyu? Orautan Kaeshite* (Illegal Import? Give Back Orang-Utans)”, *Asahi Shimbun*, 1 Jul. 1999. Also; “Orang-utan *Mitsuyu*: 2 *Youngisha Kiso* (Two Prosecuted for Smuggling of Orang-utans)”, *Asahi Shimbun*, 6 Jul. 1999. “Orang-utan *Mori e Kaesou* (Let's Return Orang-utans to the Forest)”, *Asahi Shimbun*, 6 Jul. 1999. “*Mitsubai Yougi Otoko o Taiho* (Man Arrested for Illegal Sale)”, *Asahi Shimbun*, 7 Jul. 1999. “*Mitsuyu* Orang-utan: *Gensankoku e Henkan Kankyouchou ga Kentou* (Smuggled Orang-Utans: Environment Agency Considers the Returning Them to the Country of the Origin)”, *Asahi Shimbun*, 15 Jul. 1999.

²²⁶ *Ibid.*

²²⁷ Under the Foreign Exchange Law. n 14 above.

²²⁸ Under the Species Conservation Law. n 78 above. “Indonesia no *Houjin ni Taihojou* (Order for Arrest for the Japanese in Indonesia)”, *Asahi Shimbun*, 5 Jul. 1999.

²²⁹ For details, see Japan Wildlife Conservation Society n 174 above.

²³⁰ Produced and distributed by CITES Secretariat. The relevant Collections of Customs all have this book.

²³¹ See 3.4.1.2.

use); In 1998, a total of 4,300 primates were imported in to Japan from 18 countries.²³² In contrast, the importation of primates as pets is banned in the UK and other European countries.

Another problem illustrated by this case is the lack of enforcement initiatives provided by relevant authorities to control the internal market. The Ministry of the Environment has a lack of monitoring powers and abilities to combat illegal imports.²³³ According to the Japan Wildlife Conservation Society, “In this case, an officer of the Environment Agency conducted an on-spot inspection in response to repeated requests from an NGO and gave [an administrative] guidance”.²³⁴ Despite such “guidance”, a further three specimens were imported after the visit, by the staff of the Environment Ministry, to the shop. Also, enforcement initiatives by the Police are needed. In this case, the arrest by the Police only took place as the result of an accident caused by one of the animals on sale in the shop.²³⁵ The arrest for illegal display and import was incidental, in other words.

The case clearly indicates that the inspection system, provided by the Species Conservation Law, is not implemented or enforced properly. There are at least two reasons for this. One is a lack of human resources. In order to conduct more regular, proactive inspections, more human resources should be made available. The Species Conservation Law provides for the appointment of over 70 Wildlife Conservation Promotion Officers, who are currently not involved with enforcement.²³⁶ Those officers should be made available for inspections, in the way Wildlife Inspectors are utilised within the UK.²³⁷

To alleviate the lack of human resources, it is also necessary to list appropriate places to inspect. The Government has not yet identified the places where illegally imported animals may be destined for, and the Ministry is unable to inspect the whole country systematically. The registration of pet shops (again, voluntary) only started following the introduction of the 1999 animal welfare legislation.²³⁸ As animal welfare matters largely fall into the hands of local authorities, co-operation with such authorities may also be an option. Regular on-the-spot inspections must be undertaken once the likely destinations of illegal imports are identified.

The other reason for the inefficiency of the inspection system is the lack of liaison between the statutory agencies, and also between statutory and non-statutory

²³² “Yasei no Saru Ken-eki e (Towards Import Restrictions of Wild Monkeys)”, *Asahi Shimbun*, 1 Nov. 1999.

²³³ The Ministry of the Environment, along with two other Ministries, is responsible for inspections. See 3.4.2.3.

²³⁴ Japan Wildlife Conservation Society, n 174 above.

²³⁵ A child was injured by one of the animals on display.

²³⁶ Art. 51, n 78 above.

²³⁷ For discussions, see 2.6.2.1 and 2.7.4.

²³⁸ For discussions on this legislation, see 5.9.4.

agencies. Currently there is no network between the enforcement agencies as is seen in the UK.²³⁹ The Ministry of the Environment should establish a closer network with the Police and Customs, and should utilise the results of inspections fully, so that enforcement agencies are aware of offences committed within the internal market.

3.4.3.2. Ivory

The African elephant *loxodonta africana* has been listed in Appendix I since 1989, however, as a result of a Proposal made in COP 10 in 1997, a one-off shipment of ivories to Japan from Botswana, Namibia and Zimbabwe was agreed to.²⁴⁰ In adopting this decision, CITES sent a delegation to Japan to examine its implementation and enforcement with regard to ivory, and pointed out that the following major points needed to be improved to provide efficient internal control.²⁴¹ First, it was pointed out that the management of the internal stocks of cut pieces²⁴² needed to be improved. For this, the database software used by the Japan Wildlife Research Centre needed to be improved in order to effectively monitor the stock. Secondly, it was also pointed out that regulation at the retail level was insufficient in separating legal and illegal goods. It was recommended that inspections were conducted more frequently. Furthermore, a new system to record cut pieces and waste properly was recommended.

In response to these suggestions, the Japanese Government took the following steps²⁴³;

1. Inclusion of the details required to be included in the management form and the record book produced by dealers of Special Parts. Previously, only the weight was recorded in the above two, and “features” of ivory pieces were added.
2. Improvement of the database used by the Japan Wildlife Research Centre. Previously, tusks were counted manually in order to find out the number of tusks held by each dealer, and this can now be done mechanically, at once. Also, information on cut pieces was entered into the database.
3. Inspection of 10 dealers to be conducted each month. The measures of inspection were strengthened.
4. Strengthening of the management of waste materials, by giving guidance to relevant dealers (of Special Parts) to keep records of the waste. Also guidance

²³⁹ See 2.7.

²⁴⁰ This point was mentioned earlier. See 1.8.2.

²⁴¹ The border control was considered to be sufficient.

²⁴² The management of whole tusks was considered to be sufficient.

²⁴³ Ministry of the Environment, *Press Release*, 25 Feb. 1997, at: <http://www.env.go.jp/press/press.php3?serial=330>, visited on 13 Nov. 2001.

was given to the Japan Wildlife Research Centre to compare the weight of raw materials and the total weight of cut pieces.

5. Strengthening of the guidance given to relevant retailers by the distribution of leaflets.

Ivory is designated as “Raw Materials” under the Species Conservation Law.²⁴⁴ It therefore requires pre-registration to be traded.²⁴⁵ Cut ivory pieces are “Special Parts”,²⁴⁶ which require obligations of business notification and the recording of dealings.²⁴⁷ Also, amongst dealers of final products, those dealing with ivory seals are subject to these obligations.²⁴⁸ This is because ivory seals traditionally have a high domestic demand.²⁴⁹

The loopholes of the pre-registration scheme were already mentioned as follows; (a) a lack of monitoring power by the Ministry of the Environment; (b) reliance on the voluntary will of dealers; (c) non-inclusion of certain dealers.²⁵⁰ None of the Government's new measures tackled the above loopholes effectively. The reality is that there are at least 11,500 dealers of Special Parts who notified their businesses to the Government, however, there are as many as 14,000 shops selling seals in the phone book.²⁵¹ The inspection of 10 dealers a month is clearly not going to have effective results bearing this mind.

According to a survey conducted by the Japan Wildlife Conservation Society between 1999 and 2000, at least seven out of 15 retailers of seals have not notified their business, and at least 11 have not kept records of their transactions.²⁵² All government measures, except inspection, still rely upon the presupposition that dealers will comply with the scheme, and in that sense, as long as the inspection system is ineffective, the problem will not be solved. For instance, measure (2) still does not clarify the distribution flow of the cut ivory pieces or seals, as dealers are not obliged to notify each transaction. There is no way of separating the legal from the illegal on the market. Measure (4) is also ineffective, as the record book is only

²⁴⁴ Appendix 5, n 144 above.

²⁴⁵ Under Article 20(2), n 78 above. See 3.4.2.3.

²⁴⁶ Appendix 5, n 144 above.

²⁴⁷ Under Article 33(2), n 78 above. See 3.4.2.3.

²⁴⁸ Most retailers are free from regulation under the pre-registration scheme.

²⁴⁹ Between the 1970s and 80s, the Japanese demand for ivory was the highest in the world, and most of this ivory was used to produce name seals. Ivories were gradually replaced with alternative materials following the 7th COP in 1989, however, there still exist constant and potential demands within the country. For details, see; M. Sakamoto, Japan Wildlife Conservation Society, “Effect of Resumption of International Trade on Japanese Ivory Market” (2000), a report distributed at CITES COP 11.

²⁵⁰ See 3.4.2.3.

²⁵¹ Japan Wildlife Conservation Society, n 249 above.

²⁵² *Ibid.* Sakamoto explains that the reason why they have not notified or kept record is because they are not fully aware of the pre-registration scheme. Information regarding the scheme is only distributed to the Association of Stamp Industry, and only 30% of the relevant dealers belong to the Association. *Ibid.*

checked on inspection, although measure (1) may have some effect if the system of stamp of approval, to be encouraged by measure (5), functions properly.²⁵³ However, the stamp of approval scheme is being taken advantage of by dealers, as the following paragraph discusses.

The stamp of approval scheme was introduced as an incentive, not as a binding rule.²⁵⁴ The scheme is intended to persuade retailers to choose products with the management form, which is mentioned in measure (1). However, the Committee of the National Seal Business Groups started to produce their own stamp of approval called the “Ivory Mark”. Its design is very similar to the Government's seal for the stamp of approval, and it is actively promoted as an 'official' stamp.²⁵⁵ “Ivory Mark” stamps are attached to products²⁵⁶ which were not granted the Government's stamp. Therefore, Government regulation by giving a stamp of approval has virtually no effect.

Finally, in relation to problem (c) above, dealers and retailers of final ivory products other than seals are still free from regulation. Accessories, carving, chopsticks, *netsuke* (the traditional craft of miniature carving), parts for traditional musical instruments, piano keys, as well as others, are such products. As good-quality ivory seals are produced from a core part of raw ivory, small pieces of raw ivory are not suitable for making seals out of.²⁵⁷ The one-off transshipment from three African countries contained many pieces of small raw ivory (about 40 per cent)²⁵⁸ and therefore they are more likely to be used for other products, possibly accessories, according to the Japan Wildlife Conservation Society.²⁵⁹

A close examination of the registration scheme involving ivory reveals the protective attitude of the Japanese Government towards the ivory industry. Regulation of the market is largely left to the industry itself. This system, however, can be questioned seriously. In Kobe, Japan in 2000 one of the largest ever seizures of ivory, since the ban on trade in it started, took place.²⁶⁰ It was revealed that one of the two offenders was a member of the committee of the national seal business groups. Had the seizure not taken place, a massive amount of illegally imported ivory would have been sold,

²⁵³ The stamp of approval is encouraged to be attached to final products under the pre-registration scheme. See 3.4.2.3.

²⁵⁴ See 3.4.2.3.

²⁵⁵ Both the Government and the Committee stamps can be viewed at; <http://www.ijnet.or.jp/hanko/news.htm>, visited on 26 Oct. 2001.

²⁵⁶ By the Association of Seal Business, which the Committee is related to. Sakamoto, n 249 above.

²⁵⁷ M. Sakamoto, Japan Wildlife Conservation Society, “Analysis of the Amended Management System of Domestic Ivory Trade in Japan”, (1999), at; <http://www.jwcs.org/jwcs-katudo/CITES/>, visited on 2 Nov. 2001.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ See for instance; Environmental Investigation Agency, *Back in Business: Elephant Poaching and the Ivory Black Markets of Asia* (2002).

very possibly, with the industry's own 'official' stamps. Despite the seriousness of this case, this offender was dealt with by summary proceedings, and was fined only 300,000 yen (approximately £1,660).²⁶¹

The lack of regulation of the market, as well as strict enforcement, as illustrated by the 2000 seizure case, has led to other attempts at illegal import on a large scale. In June 2002, a consignment of ivories was seized in Singapore, and it was reported to be destined for Japan. This is the largest seizure ever since the ban on trade in ivory was adopted, containing 532 elephant tusks and over 40,000 ivory seals, weighting six tonnes in total.²⁶² These seizures have posed the question as to whether ivory will be regulated effectively, should the resumption of trade in African elephants take place.²⁶³ Japan must tighten internal control as a major consumer state,²⁶⁴ and its regulative system needs major improvement.

3.4.3.3. Bears

A case study of the situations surrounding bears in Japan highlights two aspects of the regulations under the Species Conservation Law, as Japan has native bear species. Bear species are considered to be endangered worldwide. For instance, black bears *Ursus thibetanus* are listed in CITES Appendix I. Some populations of grizzly/brown bears *Ursus arctos* are listed in Appendix I, and the rest are listed in Appendix II. Japan has both native black and grizzly bears, and these native bears are exempted from the scope of the Species Conservation Law. This exemption leads to two obvious adverse effects in terms of conservation. First, a serious threat is posed to populations of those species in Japan, despite the fact that the black bear is listed in Appendix I of CITES.²⁶⁵ Secondly, a threat is also posed to other bear populations worldwide, as the exemption of native species undermines the internal control of bear specimens. The following paragraphs will discuss the above two points, examining national conservation measures and CITES internal control of black bears and grizzly bears. Discussion in relation to the first point above shall be provided first, with regard to: the hunting legislation which regulates the capture and killing of bears; the status of bears in Japan; and the demand for bear products in Japan, which also relates to the second point.

²⁶¹ The Japan Wildlife Conservation Society to the Environmental Investigation Agency, an email correspondence, 26 May 2000.

²⁶² Environmental Investigation Agency, n 260 above.

²⁶³ See 1.8.2.

²⁶⁴ The role of consumer states, such as Japan and the EU, in enforcing CITES was considered earlier. See 2.3.3.

²⁶⁵ The Biodiversity Convention stresses the importance of diversity within species, between species and ecosystems. See: 1.7.

The only regulations which apply to bears in Japan are under the Law Concerning the Protection and Hunting of Birds and Mammals (hereafter the Hunting Law).²⁶⁶ The Hunting Law provides for (1) the establishment and implementation of an action plan for the protection of birds and mammals, (2) the regulation of hunting, (3) the designation of reserves, and (4) the regulation of trade in protected species. Bears are designated as a huntable mammal and are hunted for two purposes, ordinary hunting and pest control, which are subject to separate regulatory systems.²⁶⁷

For ordinary hunting purposes, hunting can only be carried out in places other than restricted areas including the reserves²⁶⁸ during the hunting season by licensed hunters. Although certain hunting areas are designated, hunting is not confined to such areas. Animals other than those designated by the Minister of the Environment are prohibited from being hunted, and therefore bears are subject to legally-conducted hunting. Currently hunting can take place in 29 prefectures, out of the 46 that have populations of black bears²⁶⁹ and in the Hokkaido prefecture, the only habitat for grizzly bears, hunting is not prohibited, although certain types of traps are banned.²⁷⁰

Pest control could only take place previously when it was approved by the Minister of the Environment or Prefectural Governors. However, this rule was relaxed in 1999, the right of approval became commissionable and smaller local authorities can now make decisions in some areas.²⁷¹ There is no restriction as to types of hunting method for pest control.

Bears in Japan are hunted according to the above regulations, and this means that they are not considered as 'endangered', as those listed in the Species Conservation Law. However, their numbers have not been systematically counted. The estimates are between 8,400 and 12,600 for black bears and 2,000 for grizzly bears.²⁷² Some of the local populations of black bears²⁷³ are listed in Red Data Book as being

²⁶⁶ The Hunting Law was revised in 1999, in order to incorporate the concept of wildlife management for the first time. See; Research Office, Environment Committee, Lower House, *Choujuu Hogo Oyobi Shuryou ni Kansuru Houritsu no Ichibu o Kaiseisuru Houritsuan Inkaishi Shinsa Sankou Shiryou (Reference Materials for the Committee Examining the Partial Amendment to the Hunting Law)*, submitted for 145th Diet Meeting, Apr. 1999. For a brief discussion of the aspect of the wildlife management concept included by the amendment, see; K. Shouji, 'Jikan Toushin "Hito to Yasei Choujuu tonu Kyouzon o Hakaru tame Kinkyuu ni Kouzubeki Hogo Kanri Housaku"' (Natural Environment Committee's Report "Protection and Management Policy Urgently Needed to Ensure the Co-Existence between Humans and Wild Animals" (Mar. 1999) *Kankyou (The Environment)*, 37-38. For detailed discussions on the Hunting Law in general, see for instance, K. Yamamura, *Shizen Hogo no Hou to Senryaku (Law and Strategies for Nature Conservation)* (Tokyo: Yuhikaku, 2nd ed, 1994).

²⁶⁷ Arts. 1 and 12, n 88 above.

²⁶⁸ Resting hunt areas, designated parks under the Natural Park Law, precincts of temples and shrines, etc.

²⁶⁹ Art. 1 (4), n 88 above.

²⁷⁰ Ibid.

²⁷¹ See n 266 above.

²⁷² Japan Wildlife Research Centre, at; <http://www.jwrc.or.jp/>, visited on 30 Oct. 2001.

²⁷³ For black bears, there are nine population groups, six of which are listed as "endangered" in the Japanese Red Data Book.

endangered. The local population of Kyushu Island (the southern island) has already become extinct.

Furthermore, as the development of the countryside continues, encounters with bears are reported increasingly often, which leads to increased 'pest control'. Black bears, which used to inhabit all of western Japan including Kyushu, have lost their habitat as broadleaf trees were replaced by conifers due to afforestation. Subsequently, populations in western Japan decreased, so much so that the Ministry of the Environment has increased its subsidies three times for population research in three prefectures in western Japan. However, in contradiction to this, the hunting of black bears in northern Japan increased in 1999.²⁷⁴

Even considering the aforementioned simple details poses questions about the way bears are protected, or rather, not protected. There are many reasons for this. The concept of managing wildlife populations based upon scientific data has been introduced only since the 1999 amendment to the Hunting Law²⁷⁵ and the data relating to bear populations is still poor. There is also the problem of limited space shared between humans and animals. Bears appear a threat to local people, as the number of encounters increases. For instance, in the Yamaguchi prefecture, there were 94 reports of such encounters in 1999 by October, 100 in 1998, 60 in 1997, and approximately 30 in previous years.²⁷⁶ The figures show that there is increasingly less space to share between humans and bears. In the nearby Hiroshima prefecture, attacks leading to human injury by bears took place in three consecutive years.²⁷⁷

However, there is another reason bears are hunted in addition to the background mentioned above. Bears' gall bladder has been used for traditional medicine in Japan for hundreds of years and is still in high demand.²⁷⁸ It is thought to be an effective cure for stomach-ache, liver problems, cancer, and various other health problems.²⁷⁹ Gall bladders are sold in their original shape or in powder as raw materials, or contained in mass-produced medicinal products. The latter can be found in ordinary chemists. The price for one gram of raw material is over ten thousand yen (10,000 yen is approximately £58).²⁸⁰

²⁷⁴ In 1999, 623 black bears were hunted in nine prefectures in northern Japan for hunting and pest control reasons.

²⁷⁵ See n 266 above.

²⁷⁶ "Tsukinowaguma ni Atama Nayamasu (Destressed by Black Bears)", *Asahi Shimbun*, 3 Dec. 1999.

²⁷⁷ Ibid.

²⁷⁸ M. Sakamoto, Japan Wildlife Conservation Society, "Conservation of and Trade in Bears in Japan" (2000), a report distributed at CITES COP 11.

²⁷⁹ "Hogo Taikoku e no Hurdle: Washington Jouyaku Kyoto Kaigi (A Hurdle for a Conservation Country, CITES Kyoto COP 4)", *Asahi Shimbun*, 21, Feb. 1992. For discussions on traditional aspects of bear hunt and the use of gall bladders, see 5.3.5.

²⁸⁰ *Asahi Shimbun*, 25 Oct. 1999.

The demand for bears' gall bladder, which can fetch more than a million yen (approximately £5800) for a bear with a large bladder,²⁸¹ plays a large part in the hunting of bears under the name of pest control. The quality of the gall bladders is best in spring time, however, the hunting season under the Hunting Law is between November and February.²⁸² However, bears can be hunted or captured all year round if it is for pest control purposes. The 'spring hunt' of bears despite there being no reported bear incidents involving humans "has become habitual in certain areas", according to *Asahi Shimbun*.²⁸³ For instance, in the Akita prefecture, more than 70 black bears were hunted in 1998 in the 'spring hunt'.²⁸⁴ There are no binding provisions restricting the utilisation of carcasses, under the Hunting Law.²⁸⁵ Also, the demand for gall bladders encourages poaching. Certain trapping methods are banned, *unless* they are for pest control. Bears trapped by cage or by leghold trap produce large gall bladders, and the use of these otherwise banned traps has been discovered.²⁸⁶

The Hunting Law regulates the internal control of bear specimens, parts and derivatives if illegally captured.²⁸⁷ However, in practice, there is no regulatory system at all for the movement of national species, even if the bear has been illegally captured. The only relevant measure taken is notification by the Ministry of the Environment, requesting to keep a record of the distribution of bears captured after April 1993. The notification requests registered hunters and applicants for pest control to register the production of bear products with local Governors, who in turn grant a registration tag. Hunters and applicants are then requested to attach the tag to the relevant product. The products subject to this regulation are stuffed bear, rugs and trophies (the head only). The notification is not legally binding.

The demand for bears' gall bladders also poses a threat to bear species abroad. First of all, the demand encourages the illegal import of related specimens, and the number of illegal imports has increased (see Table below).

| Year | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|----------------|------|------|------|------|------|------|
| Illegal Import | 33 | 43 | 39 | 48 | 61 | 65 |

Table 3: Number of illegal imports of bear specimens, etc. to Japan Source: Japan Wildlife Conservation Society

²⁸¹ Ibid.

²⁸² Art. 1, n 88 above.

²⁸³ Ibid. K. Yoneda, 'Yasei Kuma no Kikiteki Joukyou (Critical Conditions of Wild Bears)' in ALIVE, *Newsletter* vol. 42, 2002, 7.

²⁸⁴ Ibid.

²⁸⁵ The Ministry of the Environment advises local authorities to report in advance the expected utilisation of animals hunted for a pest control.

²⁸⁶ C. Azumane, *SOS Tsukinowaguma (SOS, Black Bear)* (Iwate: Iwate Nippousha, 1993).

²⁸⁷ Art. 20, n 88 above.

Amongst the 65 cases in 1999, 61 of them involved traditional medicines containing bears' gall bladder.²⁸⁸ The amount of bear related smuggling is increasing, and the majority of it involves gall bladders.

Countries which legally export bears' gall bladders to Japan are; Canada, Russia, Hong Kong, China, North Korea, and India (and possibly Nepal).²⁸⁹ Prior to 1990, China was the major exporter,²⁹⁰ however, now it is Canada and Russia which are the major exporting countries.²⁹¹ Illegal trade in bear parts is an increasingly worrying problem, and Resolution 10.8 of CITES "Conservation of and trade in bears" urges both range and consumer countries to take immediate action to halt illegal trade.²⁹² The Resolution urges the Parties to take action by, for instance, "initiating or encouraging new national efforts in key producer and consumer countries to identify, target and eliminate illegal markets".²⁹³

However, eliminating illegal markets for bear gall bladders appears impossible, unless a drastic change takes place in terms of controlling the internal market. First of all, as already mentioned, because Japanese bears are exempt from the Species Conservation Law, gall bladders originating from Japanese bears are completely free from any legal restrictions. This subsequently makes it difficult to separate them from illegally imported gall bladders or products thereof. Secondly and more fundamentally, even with regard to imported bear gall bladders, they fall outside the scope of the Species Conservation Law. Parts and derivatives that are subject to internal regulation are; fur, skin, and products thereof.²⁹⁴ Gall bladders and products made from them, such as medicines, are not included. This means that the movement of bear gall bladders and relevant products, which have the highest demand in the internal market amongst bear products, are not regulated at all, whether produced from domestic or foreign species.

3.5. Comparisons and Conclusion

In conclusion, CITES is not enforced effectively in Japan. The Species Conservation Law itself is subject to loopholes, and further enforcement effort is necessary. The

²⁸⁸ Japan Wildlife Conservation Society, n 278 above. All of the above cases were dealt with by the administrative guidance of encouraging abandonment of property rights.

²⁸⁹ Between 1983 and 87, bear's gall bladders were categorised together with other specimens in Customs records, and it cannot be clarified whether Nepal exported them due to this.

²⁹⁰ China introduced a legislation prohibiting unauthorised capture of black bears, grizzly bears and Malay bears in 1990.

²⁹¹ In 1992, the Chinese grizzly bear population was uplisted to Appendix I, and all other unlisted grizzly bear populations were listed in Appendix II.

²⁹² Res. 10.8, n 1 above.

²⁹³ *Ibid.*

²⁹⁴ Art. 2 (2) and (3), and Appendix 4, n 144 above.

loopholes in the Species Conservation Law and ineffective enforcement of CITES-related laws are, as examined above, undermining to the conservation of wildlife, both nationally and internationally. To recapitulate, the loopholes examined are; the scope of species and specimens, the registration schemes, and a lack of: regulations for the possession, confiscation and forfeiture measures and appropriate measures to care for live specimens. The examination suggests that Japan is not exactly in violation of CITES in terms of the wording of the legislation, but that compared with the UK, another consumer state, its implementation and enforcement of CITES are far from satisfactory.

Comparison with the UK suggests at least the following shortcomings of Japanese CITES implementation and enforcement;

1. With regard to border control, the capacity of Customs to enforce CITES effectively is not enough. There is no specialist help or training available within Customs, whereas in the UK, the CITES Team and CWEOs act as specialist CITES officers.
2. With regard to internal control, the Species Conservation Law hardly provides satisfactory control.
3. Also, the enforcement mechanisms of the Species Conservation Law are far from established. The Ministry of the Environment, as a monitoring agency, does not have the ability or the resources to provide an effective monitoring system.
4. For both border and internal control, the Government relies too heavily upon voluntary compliance. Considering the value of the wildlife trade is second only to that of trade in drugs, offences should be treated as crimes with more appropriate, and severe penalties.
5. For both border and internal control, there is an apparent lack of communication between relevant agencies. Initiatives by the Ministry of the Environment are also lacking.
6. Both border and internal control suffer from an apparent lack of involvement by NGOs.
7. The example of bears' gall bladders shows that existing wildlife-related legislation could have a significant effect upon the effectiveness of CITES-related legislation. National situations are clearly reflected by policies relating to international wildlife conservation.
8. The previous non-existence of animal-related, particularly animal welfare legislation, in Japan hindered the development of legislation which could contribute to CITES enforcement.²⁹⁵

²⁹⁵ For discussions on the problems caused by the lack of the registration system prior to the enactment of animal welfare legislation in Japan, see 5.9.4.3.

These shortcomings reflect certain conservation attitudes of Japan. The Government takes a protective approach toward industries that utilise wildlife, and therefore the legislation has been developed with the idea of limiting restrictions on the relevant industries to a minimum in mind. Furthermore, high demand for the consumptive use of wildlife can be observed, and this is in contrast with the situation in the UK, where consumptive use may be considered 'cruel' from an animal welfare point of view. The next chapters will examine cultural background to explain the differences between UK and Japanese wildlife conservation.

Chapter 4 UK Cultural Factors

4.1. Introduction

This Chapter examines the cultural factors in the West that are considered to have led to the formation of 'exploitative' attitudes toward nature. Just as Japan is portrayed as having a 'nature-loving' tradition, Western tradition is portrayed to the contrary.¹ Scholars who consider Western attitudes as exploitative toward nature believe that such attitudes are based upon "a conception of nature as machine-like and fundamentally separate from humans, and open to control and manipulation", the roots of which are thought to be "spatially restricted to the West", explains Pepper.² This Chapter will first consider some of the cultural factors considered to have played a part in the development of such attitudes toward nature.

The Chapter also attempts to explain the difference between the image of Western tradition as being environmentally unsound and the findings of the previous Chapters in this thesis. The examination of UK and Japanese wildlife law in the previous Chapters suggests that the UK implements CITES more effectively than Japan, and plays a leading role in CITES. This Chapter, therefore, also considers some of the cultural factors thought to have developed UK 'ecological' attitudes toward nature and conservation.

Much debate exists over what the significant influences upon general Western attitudes toward nature have been, and agreement between scholars does not seem to exist. According to Northcott, "[a] number of environmental and ethical treatises tend to rely on a single explanatory variable, though the variable differs from author to author".³ Such authors argue for variables including "over-population", "the pursuit of progress", and "the modern scientific method" of socio-economic factors.⁴ Cultural factors such as "Christian doctrine", "Cartesian dualism", and "gender construction and patriarchy" are debated.⁵ However, the cause of environmental degradations are "complex and multifactorial".⁶ Therefore, although discussions in this Chapter will centre around religious and philosophical influences, it is not the author's intention to underestimate the influence of other factors.

¹ See 1.1.

² D. Pepper, *Modern Environmentalism* (London: Routledge, 1996) 124.

³ M.S. Northcott, *The Environment and Christian Ethics* (Cambridge: Cambridge University Press, 1996) 40.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid, 41.

The Chapter first introduces two of the most typical criticisms levelled against Christianity and rationalism, as presented by Lynn White Jr. and John Passmore.⁷ Introducing these arguments helps in understanding why Western cultural heritage is considered by many to be environmentally unsound. Subsequently, a closer examination of the development of attitudes toward nature will be presented. The examination aims to consider the influence of Christianity and rationalism upon Western attitudes toward nature. This will be carried out in chronological order, dividing the history into the medieval period, the Renaissance period, the modern period, and the post-modern period. Perceptions and attitudes toward animals in particular are closely examined. Also, the examination will attempt to focus on UK perceptions and attitudes, however, some discussion of continental influences will also be included.

4.2. Criticisms Against the Cultural Tradition in the West

4.2.1. Criticisms Against Christianity

Lynn White Jr.'s article 'The Historical Roots of Our Ecologic Crisis', published in the late 1960s, has now become "something of a classic".⁸ It had a significant impact on the environmental movement, helping to form part of the deep ecologists' attack upon the cultural traditions of Western society. It contains core ideas about cultural factors affecting Western 'exploitative' attitudes toward nature. White first starts his argument by saying that "all significant science is Western" in the world today,⁹ and secondly by stating that the West had been a leading figure in scientific and technological development even before the so-called Scientific Revolution of the 17th century. White criticises Western attitudes toward nature as being 'arrogant' as early as the 7th century.¹⁰

At the centre of White's argument is the belief that "[human] ecology is deeply conditioned by beliefs about our nature and destiny- that is, by religion", and in the case of Western society, the relevant religion is Christianity.¹¹ White's criticisms of Judaeo-Christian doctrine are two-fold; one is that it gives justification for

⁷ L. White Jr, 'The Historical Roots of Our Ecologic Crisis' in I.G. Barbour (ed), *Western Man and Environmental Ethics: Attitudes Toward Nature and Technology* (London: Addison-Wesley Publishing Company, 1973) 18-30. White's article first appeared in *Science*; (1967) *Science*, 1203-7. J. Passmore, *Man's Responsibility for Nature*, (London: Duckworth, 2nd ed, 1980).

⁸ White, *ibid.* Passmore, *ibid.*, 5.

⁹ White, *ibid.*, 21.

¹⁰ He cites the example of a then new ploughing system of using eight oxen instead of two, which emerged in the 7th century. The new ploughing method "attacked the land with such violence" and changed human's relationship with their land, as no single family owned eight oxen, and therefore the distribution of the land was based upon ploughing capacity. White, *ibid.*, 23.

¹¹ *Ibid.*, 24.

exploitative attitudes toward nature and the other is that it separates humans from nature.¹² His main attack is against the biblical story about the beginning of the world; God had created animals and man, who named the former, “thus establishing his dominance over them”.¹³ “God planned all this explicitly for man's benefit and rule: no item in the physical creation had any purpose save to serve man's purposes”.¹⁴ Hence Genesis has provided religious grounds for human exploitation of all creations other than man. White continues; “although man's body is made of clay, he is not simply part of nature: he is made in God's image”,¹⁵ thus separating humans from the rest of nature.

White admits that people now live in 'the post-Christian age', and that the forms of most people's thinking and language are no longer dominated by religious ideas. However, he also believes that the majority of people's way of thinking is “rooted in” Judaeo-Christian teleology,¹⁶ and that if the root cause of environmental degradation is a deep-seated religious form of thinking, the solution should also be religious. He raises the example of Zen Buddhism, which, he considers, “conceives of the man-nature relationship as very nearly the mirror image of the Christian view”,¹⁷ although doubting whether a Zen Buddhist approach would produce the same effects on a society with a different cultural heritage. Instead, he suggests Westerners turn to an alternative Christian view, as espoused by St. Francis. St. Francis is known for his compassion for and close relationship with animals, and “[his] view of nature and of man rested on a unique sort of pan-psychism of all things animate and inanimate”.¹⁸ To an extent, St. Francis's attitudes toward the rest of nature were similar to those of paganism, which had nature-protection aspects. White considers the elimination of paganism, more specifically its nature-protecting elements, a great loss.

White's argument is, for many, too simplistic or exaggerated¹⁹ and has been subject to severe criticism. The substance of such criticism is as follows; First of all, White exaggerates the extent to which religion influences ordinary people²⁰ and impacts

¹² Genesis, 9: 2-3.

¹³ White, n 7 above, 25.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid, 24.

¹⁷ Ibid, 28.

¹⁸ Ibid, 29.

¹⁹ Attfield considers that more environmentally sound attitudes can also be found in Christian teachings, and criticises views such as White's as “derived by such methods as the selective use of evidence and exaggeration of the significance of some of the evidence selected”. R. Attfield, 'Christian Attitudes to Nature', (1983) 44 *Journal of History of Ideas* 3, 369-386.

²⁰ K. Thomas, *Man and the Natural World: Changing Attitudes in England 1500-1800* (London: Penguin Books, 1983) 22-23.

upon contemporary attitudes;²¹ Similarly, he ignores other factors affecting attitudinal change, such as sociological, economic, and environmental factors;²² Thirdly his argument virtually ignores the “gentler”²³ attitudes found in Christian teachings, which developed into the concept of stewardship;²⁴ and finally, White overexaggerates the high ideals of Eastern religion.²⁵

Nevertheless, White's argument is a valuable source for the purposes of this study, in that it illustrates some of the mainstream criticisms of the influence Christianity has upon ‘exploitative’ attitudes toward nature in the West. Such criticisms make the points that: (1) A direct cause of environmental degradation is the development of modern science. (2) Modern science originated exclusively in the West. (3) The domineering and exploitative attitudes which led to the development of modern science are permeated by Christian teaching.²⁶ (4) Christian teaching preaches that humans are separate from the rest of nature, and that nature exists to serve human purposes. (5) Nature is not sacred in Christian teaching, which is why it fails to restrain humans from over-exploitation. (6) Some other religions, especially Eastern religions, in which nature receives more respect, do not have such exploitative attitudes and therefore are more environmentally sound.²⁷ (7) Finally, a solution for environmental problems should be sought by changing human perspectives toward nature, rather than by using science and technology, which is the fundamental point advocated by deep ecologists.²⁸

4.2.2. Criticisms Against Rationalism

Passmore's criticisms and defence of the cultural heritage of the West are less simplistic than White's arguments, and have many advocates.²⁹ Regarding the 'root' cause of current environmental destruction, Passmore's stance is as follows; “It is only as a result of Greek influence that Christian theology was led to think of nature

²¹ Pepper, n 2 above, 154.

²² L. W. Moncrief, 'The Cultural Basis for Our Environmental Crisis' (1970) 170 *Science*, 508-12. See also; Northcott, n 3 above.

²³ Attfield, n 19 above, 369.

²⁴ See: Passmore, n 7 above; Attfield, n 19 above; R. Doughty, 'Environmental Theology: Trends and Prospects in Christian Thought' (1981) 5 *Progress in Human Geography* 2, 234-248.

²⁵ Pepper, n 2 above, 154.

²⁶ Some consider that it is not necessarily Judaeo-Christianity. See: 4.2.2.

²⁷ Singer is of this view. He states; “[Outstanding] Western thinkers formulated and defended the attitudes to animals that we have inherited. I concentrate on the 'West' not because other cultures are inferior - the reverse is true, so far as attitudes to animals are concerned . . .”. P. Singer, *Animal Liberation*, (London: Pimlico, 2nd ed, 1998) 184. See also 191.

²⁸ For explanations regarding deep ecology, see; Pepper, n 2 above, 17-33.

²⁹ See; Singer, n 27 above, 186.

as nothing but a system of resources, man's relationships with which are in no respect subject to moral censure".³⁰

Passmore's argument is as follows. He stresses the significance of the concept of stewardship in Christian doctrine in contradiction to White. However, Passmore does admit that the Old Testament "certainly tells man that he is, or has the right to be, master of the earth and all it contains".³¹ However, in his opinion it was Greek philosophy, particularly Stoicism, that led Christians to develop this basic attitude into more exploitative attitudes. Passmore raises Aristotle as an example, and explains that Aristotle stated that plants are created for the sake of animals, and animals for men, prior to the emergence of Christianity.³² Once Christianity was introduced, the succeeding Stoics and patristic and mediaeval apologists stretched the Old Testament basis to mean that all creatures are designed to serve human purposes on the basis that only humans are rational.³³

The significance of rationality as the justification for human domination and exploitation of nature continued to be stressed by subsequent theologians and thinkers. Passmore identifies St. Augustine and St. Aquinas, the early Saints who infused Stoic elements into Christianity, as those who continued this tradition.³⁴ It is not, therefore, according to Passmore, Judaeo-Christianity but Christianity influenced by rationalism, which is 'arrogant'. At a much later stage, this tradition can be seen in the writings of Descartes, who stated that animals were machines.³⁵ In the same era as Descartes, Bacon, whose view of nature was also extremely mechanistic, aspired for the conquest of nature by science and equated scientific development with human progress, the philosophy on which modern scientific and technological development is based.³⁶

Passmore's interpretation of biblical teachings influenced by Stoicism is as follows; Nature exists as a resource rather than something to be contemplated with enjoyment; Humans have the right to use nature as they will; Nature is not sacred; Human relationships with nature are not governed by moral principles.³⁷ However, his interpretation of the Bible is subject to criticism, as biblical interpretation regarding the relationship between humans and nature varies enormously amongst

³⁰ Passmore, n 7 above, 27.

³¹ Ibid.

³² Ibid, 13.

³³ Ibid, 15.

³⁴ Ibid, 15.

³⁵ See 4.4.3.

³⁶ Ibid, 19-25.

³⁷ Ibid, 20.

scholars.³⁸ However, as with White's, Passmore's argument is another example of criticisms against Western cultural heritage, in forming 'exploitative' and 'arrogant' attitudes toward nature. The following sections will more closely examine Western cultural influences on attitudes toward nature.

4.3. Christianity and Greek Philosophy

Although White's argument contains some valid points, it is oversimplified. In considering the cultural influence of Western attitudes toward nature, one cannot ignore the significance of the Greek influence, as Passmore points out, as elements of Greek philosophy had been incorporated into Christian teachings in Europe at a very early stage. The following paragraphs will first examine more closely the basic, and most widely agreed Christian attitudes toward nature, and the relationship between God, humans and nature. Secondly, some of the cosmological views of the Ancient Greek philosophers whose influence is still considered significant at a later stage of history are also briefly discussed. Finally, the incorporation of Greek philosophy into Christian teachings is considered.

4.3.1. The Biblical Story of the Creation

The Old Testament sets down the Creation of the world as follows;

And God said, Let the earth bring forth the living creature after his kind, cattle and creeping thing, and beast of the earth after his kind: and it was so.

And God made the beast of the earth after his kind, and cattle after their kind, and every thing that creepeth upon the earth after his kind: and God saw that it was good.

And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the earth, and over every creeping thing that creepeth upon the earth.

So God created man in his own image, in the image of God created he him; male and female created he them.

And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it; and have

³⁸ For instance, Attfield considers that Passmore's claim that nature "exists primarily as a resource rather than as something to be contemplated with enjoyment" cannot be justified. Attfield, n 19 above, 373.

dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.³⁹

Then, after the flood, God reasserted humans' rights to dominion over all animals;

And God blessed Noah and his sons, and said unto them, Be fruitful, and multiply, and replenish the earth.

And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hands are they delivered.

Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things.⁴⁰

Various interpretations exist as to the biblical teaching of the relationship between humans and nature, as seen in the arguments by White and Passmore, and it is not within the scope of this study to be concerned with whether the Bible was to be interpreted in one particular way. However, generally, "there is no serious challenge to the overall view, laid down in Genesis, that the human species is the pinnacle of creation and has God's permission to kill and eat other animals".⁴¹ God "let [man] have dominion over" animals, and told them to "replenish" and "subdue" the earth.⁴² These are some of the expressions considered to imply human dominance over and exploitation of nature, as interpreted by White,⁴³ or a fundamental human right to its usage, as interpreted by Passmore.⁴⁴

On the other hand, many find Christian teaching preaches the reverse. Those of this opinion find Genesis provides for Adam's duty to attend to the Garden of Eden.⁴⁵ God made animals and "saw that it was good", therefore humans who have "dominion over" them are responsible for attending to them.⁴⁶ The concept of stewardship is explicitly stated in Proverbs 12:10; "A righteous man regardeth the life of his beast".⁴⁷ Although agreement may not be found as to whose sake the

³⁹ Genesis 1:24-28.

⁴⁰ Genesis 9:1-3

⁴¹ Singer, n 27 above, 188.

⁴² Genesis, n 39 above.

⁴³ See 4.2.1.

⁴⁴ See 4.2.2.

⁴⁵ Attfield, n 19 above.

⁴⁶ Genesis, n 39 above.

⁴⁷ Passmore, n 7 above, 8.

stewardship is for, animals', God's or humans',⁴⁸ it certainly lays the foundations for the conservation concept.

Indeed, the concept of stewardship “demands from man an active concern for the earth's fertility”.⁴⁹ This attitude of the West contrasts with, for instance, Buddhism, which “cannot uphold a self-consciously 'environmentalist' ethic”, because “[there] can be no Buddhist justification for the fight to preserve habitats and environments per se”, due to the lack of “any inbuilt meaning or purpose” in nature, according to Harris.⁵⁰ This active approach of the West in intervening in nature may also be founded upon the fact that nature is not considered sacred in Christian teaching, whilst in Japan, for instance, it was traditionally considered that nature has its own laws, which humans are not to intervene in.⁵¹ In fact, in the West, especially after the Reformation, nature was considered to have 'fallen' from its original, Eden-like status, and therefore deemed to require human intervention to return to this state.⁵²

To recapitulate at least the following points should be noted in considering Christian attitudes toward nature. First of all, God, humans and nature are considered to be separate.⁵³ Secondly, God existed first and both humans and nature are considered to be made by God.⁵⁴ Thirdly the hierarchical order of the three is: God, humans and nature. Fourthly the moral obligation of humans toward nature is ambiguous, and therefore the interpretation of this obligation and the relationship between the two has been largely left to contemporaries, with the resulting attitudes varying according to the differing interpretations.⁵⁵

4.3.2. Greek Philosophy

This subsection discusses the origins of rationalism, in order to ascertain its influence on Christianity, particularly in terms of views toward nature. The origins of rationalism can be traced back to the time of the ancient Greeks in the 6th century B.C.⁵⁶ Greek philosophy is considered to have emerged from a mixture of

⁴⁸ Ibid, 9.

⁴⁹ Ibid, 32.

⁵⁰ I. Harris, 'Attitudes to Nature' in P. Harvey (ed), *Buddhism* (London and New York: Continuum, 2001) 253. For discussions of Buddhist the perception of nature in Japan, see 5.3.3.

⁵¹ See 5.2.3 and 5.3.3 See, particularly, discussions on the concept of 'impermanence' in Japanese Buddhism in 5.3.3.

⁵² See 4.4.2.

⁵³ Compare this to Shinto and Buddhist perspectives of the world in Japan. In Shinto, there are no strict boundaries between god, humans and nature. See 5.2.3. In Buddhism, all living beings are considered to be interconnected. See 5.3.3.

⁵⁴ Compare this with the Shinto 'Creation' story discussed in 5.2.2.1.

⁵⁵ This point is discussed in the following paragraphs. See 4.4 and 4.5.

⁵⁶ Hinduism, Buddhism and Confucianism already existed then, for instance, however, Plato is considered to have left the first full body of work in 'philosophy'.

mythology, mysticism and mathematics.⁵⁷ Philosophers in ancient Greece developed non-mythological views of the cosmos, thereby providing a philosophical foundation for a more 'rational' and 'scientific' view of the world.⁵⁸

Greek thinkers made a significant contribution to the Western emphasis on rationalism and the development of science. Their contribution to the development of science is represented by the fact that 'Aristotle's science' remained predominant for the subsequent 1500 years, until it was criticised during the so-called Scientific Revolution.⁵⁹ Aristotle made scientific, empirical observations,⁶⁰ in almost every field of science. His arguments were so well-constructed that succeeding scholars were largely confined to his view of the world in developing science further, according to Butterfield.⁶¹

One of the most significant points to be noted in 'Aristotle's science' is that it was fundamentally based upon spiritual, not strictly 'scientific' ideas of final cause.⁶² Aristotle had a teleological view of the world and believed that there existed a 'final cause', as a principle for all things. This idea of the existence of a 'final cause' had become a central goal of subsequent scientific investigations, until it was largely disproved during the 'Scientific Revolution', from which modern science developed.⁶³

Aristotle also spent a "good deal of philosophy analysing the ways of reason and reasoning" in logic, categorising and interpretation, in dialectic and even in rhetoric.⁶⁴ Aristotle's contribution to rationalism is considered to be that he consolidated the importance of reason: Human reason is a significant quality of humans, a quality possessed exclusively by humans.⁶⁵

This emphasis upon human reason is considered to have formulated a view that separates humans from nature. Towards the end of the 4th century B.C., it was

⁵⁷ For discussions of the traditional Japanese worldview, which was based upon mythology and mysticism, see 5.2.

⁵⁸ For instance, Thales suggested that the world was surrounded by water and ultimately born of it. This is the very first naturalistic outlook of the cosmos, although still containing animistic elements. See; R.C. Solomon and K.M. Higgins, *A Short History of Philosophy* (Oxford: Oxford University Press, 1996).

⁵⁹ See 4.4.2 and 4.4.5. The 'Scientific Revolution' is commonly thought to have taken place between the 16th and 18th centuries, however, many scholars consider that it goes back further in the middle age. See for instance; H. Butterfield, *The Origins of Modern Science: 1300-1800* (London: G. Bell and Sons Ltd., 1957).

⁶⁰ Therefore, he denied Plato's metaphysical theory of Forms. For a brief discussion of Plato's theory of Forms, see the subsequent paragraph in this subsection.

⁶¹ Butterfield, n 59 above, 22.

⁶² See; *ibid.*

⁶³ *Ibid.* Also see 4.4.

⁶⁴ Solomon and Higgins, n 58 above, 56-58.

⁶⁵ See *ibid.* Also see; T. Hamaoka, 'Girishia Shisou ni Okeru Ningen to Doubutsu (Humans and Animals in Greek Thoughts)' in M. Tanimoto and N. Kamo (eds), *Kankyō Shisou o Manabu Hito no Tameni (For Those Studying Environmental Thoughts)* (Kyoto: Sekai Shiso Sha, 2nd ed, 1996) 60-75.

already agreed by many philosophers that humans were superior to animals, in that the former has intellectual abilities and forms societies.⁶⁶ Some identified the concept of 'justice' as a difference between humans and animals; Philosophers including Aristotle and Plato considered that animals live in a world with no order, whereas humans possess the quality of 'justice' which is essential to ordered society.⁶⁷ Those such as Plato and Aristotle held that humans are fundamentally different from other animals because they possess reason, a point stressed by the Stoics later.⁶⁸

The view that humans are superior to animals naturally led to the formation of anthropocentric attitudes, the same attitudes criticised by Passmore.⁶⁹ By the 4th century B.C., the arguments that animals exist for human utilisation had already emerged.⁷⁰ Aristotle's statement that plants exist for animals, and animals exist for humans, is considered a good illustration of early anthropocentric attitudes.⁷¹ Socrates' statement that gods had provided animals for humans is another example of this.⁷² The argument that human reason places humans on a higher level than animals and that animals therefore exist for human utilisation was typically endorsed by the Stoics later.⁷³ They emphasised the differences between and the hierarchical order of the two, although they did not necessarily justify the inhumane treatment of animals.⁷⁴

On the other hand, ancient Greek philosophy also had aspects that argued for the moral treatment of nature.⁷⁵ This strand of thought can be observed in Pythagoras, for example. Pythagoras believed in reincarnation, and argued that both humans and animals had souls and that they were interchangeable.⁷⁶ Many followers of Pythagoras were known to become vegetarian. Arguments for the moral treatment of nature which had a less religious basis were also formed.⁷⁷ In these arguments, the similarity between humans and animals was considered significant, and animals were regarded as sharing not only physical but also psychological qualities with humans.

⁶⁶ See *ibid.*, 65.

⁶⁷ *Ibid.*, 62-63. Such views are based upon the view that animals are incapable of forming societies. Compare this with Japanese views of animals. See 5.6.3 and 5.6.4.

⁶⁸ *Ibid.*, 63.

⁶⁹ See 4.2.2.

⁷⁰ Aristotle, *Politics*, trans. B. Jowett (N.Y.: Dover Publications, Inc., 2000). Hamaoka, n 65 above, 65.

⁷¹ Plato, *Apology of Socrates*, trans. M.C. Stokes (Warminster: Aris & Phillips, 1997). *Ibid.*, 66. For criticisms, see for instance; Singer, n 27 above, 188.

⁷² Hamaoka, *ibid.*

⁷³ *Ibid.*, 66.

⁷⁴ *Ibid.*, 67.

⁷⁵ For discussions of the relationship between Greek thought and the animal welfare concept, see; R.D. Ryder, *Animal Revolution: Changing Attitudes Towards Speciesism* (Oxford: Berg, 2000) 17-18.

⁷⁶ Hamaoka, n 65 above, 68-71.

⁷⁷ *Ibid.*

Despite the less anthropocentric train of thought in ancient Greek philosophy, it was the first, anthropocentric strand which remained predominant throughout history until around the 18th century.⁷⁸ The emphasis on human reason and rational thinking later became central to Western culture.⁷⁹ However, the less 'exploitative' attitude toward nature had always been present in Western society, and was advocated increasingly through the passage of time.⁸⁰ The significance of human reason, human's superiority to animals and animals' existence for humans, as stressed by the Stoics, were promoted by early Christian apologists, thereby incorporating Greek elements into Christian teaching.

Before considering the incorporation of anthropocentric elements into Christianity, the possible influence of Greek thought upon the Christian God should be noted. A foundation for the Christian God as a non-anthropomorphic being is considered to have been laid by Greek philosophers. Aristotle set the stage for a non-anthropomorphic God. Aristotle's idea of 'final cause', as opposed to the anthropomorphic 'irrational' Greek gods, draws an analogy to the Christian God. Another example is Plato's cosmology, which is similar to the Christian view of heaven and the earth.⁸¹ Plato considered that there were the World of Being, which consisted of the ideal 'Forms', and the World of Becoming, which consisted of things of this world. The Form can be understood as fixed logos underlying the everyday world.

4.3.3. The Incorporation of Rationalism into Christian Teaching

Greek philosophy had been integrated into Christianity at a very early stage. The early Judaeo-Christian saints were the main contributors to the incorporation of rationalism into Christianity. For instance, St. Paul, whose contribution to making Jewish law relevant to Christians is well known, was aware of certain Stoic ideas.⁸² St. Augustine, who is considered "a central father to the church in the West", contributed to integrating Christian doctrine with Platonic and Neoplatonic philosophy.⁸³ These renowned Saints, amongst others,⁸⁴ who contributed to the establishment of Christianity as a religion separate from Judaism, sought to introduce distinctive rational elements into Christianity.

⁷⁸ See 4.5.

⁷⁹ See 4.4.3.

⁸⁰ See 4.4.1 and 4.4.2. For discussions on the relation between Western traditions and environmental law, see: I. Cheyne, 'Law and Ethics in the Trade and Environment Debate: Tuna, Dolphins and Turtles' (2000) 12 *Journal of Environmental Law* 3, 293-316.

⁸¹ It should be noted, however, there exists a classic problem in separating Plato's and Socrates' views. For Plato's cosmology, see; Solomon and Higgins, n 58 above, 49.

⁸² Ibid, 119.

⁸³ Ibid, 122.

⁸⁴ Plotinus emphasised the religious currents in Plato's thought. He understood the Platonic Form of Good as the Christian God.

The incorporation of Greek philosophy continued in the next millennium, and it was reinforced by the movement of Scholasticism; a movement seen between the 11th and 14th century, which advocated the utilisation of human reason in order to contribute to religious experience. St. Anselm⁸⁵, Peter Abelard⁸⁶, Thomas Aquinas and others stressed the importance of using rational logic based on the Aristotelian style of argument in facilitating theological discussion.⁸⁷ The emphasis upon rationalism and human reason contributed to the development of anthropocentric attitudes in Christian thinking. For instance, St. Augustine states;

Christ himself shows that to refrain from the killing of animals and the destroying of plants is the height of superstition, for judging that there are no common rights between us and the beasts and trees, he sent the devils into a herd of swine and with a curse withered the tree on which he found no fruit. . . . Surely the swine had not sinned, nor had the tree.⁸⁸

Singer considers that St. Augustine interpreted a biblical episode to mean that Jesus was “trying to show [people] that [they] need not govern our behaviour toward animals by the moral rules that govern [their] behaviour toward humans”.⁸⁹

The development of anthropocentric attitudes in Christian teaching can also be observed in the views of Thomas Aquinas. He advocated the importance of rationality and is considered to have consolidated the foundations for the justification of human dominance and exploitation of nature.⁹⁰ Aquinas justifies the killing of animals due to their lack of reason as follows; “Savagery and brutality take their names from a likeness to wild beasts. For animals of this kind attack man that they may feed on his body, and not for some motive of justice, the consideration of which belongs to reason alone”.⁹¹ According to Aquinas, it was not a sin to kill animals as they are 'irrational'. Influenced by Aristotle, Aquinas stated;

There is no sin in using a thing for the purpose for which it is
Things, like plants which merely have life, are all alike for animals, and all animals are for man. Wherefore it is not unlawful

⁸⁵ Held an ontological view of the world endorsed by the existence of God.

⁸⁶ Insisted that the Greeks were already close to Christianity in their metaphysics.

⁸⁷ The style starting with questions, followed by arguments, and leading to conclusions.

⁸⁸ St. Augustine, *The Catholic and Manichaean Ways of Life*, trans. D.A. Gallagher and I.J. Gallagher (Boston: Catholic University Press, 1966) 102.

⁸⁹ *Ibid.* Singer, n 27 above, 192. See also: J. Passmore, *Man's Responsibility for Nature* (New York: Scribner's, 1974) 11.

⁹⁰ See for instance; Singer, n 27 above, 193.

⁹¹ St. T. Aquinas, *The Summa Theologica* I, II, Q159, art. 2.

if men use plants for the good of animals, and animals for the good of man, as the Philosopher states.⁹²

Aquinas is referring to Aristotle's statement that plants exist for animals, and animals for humans.⁹³ Although statements like those above cannot be interpreted too simplistically,⁹⁴ they are generally considered to be indications of Christian anthropocentrism based upon rationalism.

Therefore, it is not Christianity itself that is inherently anthropocentric or 'exploitative' toward nature. The influence of ancient Greek philosophy, particularly the stress upon human reason, should also be taken into consideration.⁹⁵ Christian teaching in relation to the relationship between humans and nature is ambiguous.⁹⁶ Ancient Greek philosophy also contained aspects that argued for the moral treatment of animals.⁹⁷ It is more appropriate to say that Christian and rational ideas were used to justify the human exploitation of nature, although they failed to restrain humans from doing so, as considered below.

4.4. The Development of Cultural Factors and 'Exploitative'

Attitudes Towards Nature

This section examines how the interpretation of the Christian perception of nature influenced by rationalism was reflected by people's attitudes toward nature. Although the 'official' attitude as advocated in many theologians was generally 'exploitative',⁹⁸ in reality, people's attitudes toward nature varied depending upon their social group and the particular period of history, as considered by Thomas.⁹⁹ In fact, the following paragraphs attempt to show that the 'official' attitudes propagated by religious leaders were to an extent a reaction against the reverse tendency of including animals in the circle of society during the medieval period. As stated earlier,¹⁰⁰ the examination of such attitudes will be carried out by dividing the history

⁹² Ibid, I, II, Q64, art. 1.

⁹³ This point was mentioned earlier. See 4.2.2.

⁹⁴ According to Singer, although he acknowledged that animals were sensible to pain, Aquinas considered that cruelty against animals was only wrong because of its influence upon humans in their treatment of others. Singer, n 27 above, 195.

⁹⁵ See 4.2.2.

⁹⁶ See 4.2.2 and 4.3.1.

⁹⁷ See 4.3.2.

⁹⁸ See 4.4.

⁹⁹ Thomas, n 20 above.

¹⁰⁰ See 4.1.

into the following periods; the medieval period, the period between the 16th and early 19th centuries, the latter 19th and early 20th centuries, and finally the 1960s and 1970s.

4.4.1. The Medieval Period

Before the Renaissance and the Reformation, society as a whole was primarily religious, with mysticism having a strong influence. During the medieval period, therefore, a more organic, holistic view of nature was still predominant.¹⁰¹ At the same time, the Christian and rational view of the world, separating humans from nature and placing the former above the latter, was also being developed further, consolidating the basis for more 'exploitative' attitudes towards nature. Therefore, the medieval period can be described as the time when two opposing traditions existed, although the organic, mystic view of nature declined towards the end of the period¹⁰² whereas the more 'exploitative' attitude became increasingly predominant, as a shift from religious to secular society gradually came about.

Although the leaders of the Church were more or less rationalist, the medieval worldview was far from rational. Alchemy and magic were considered as a means to understand nature which was regarded to contain signs and orders by God.¹⁰³ The natural world expressed God's emanation, and nature had a purpose and order given to it by God. Mills considers that nature was *not likened* to a book, it *was* a book.¹⁰⁴ Nature was to be read carefully, in order to see God's signs which would guide humans.

Indeed, magic was tolerated by the medieval Church itself and even utilised to encourage converts¹⁰⁵ although with caution and reason.¹⁰⁶ Although the Church did not claim the power to work miracles, it was happy to take credit where its members were seen to be capable of performing miracles. The Church also had no opposition to people attributing mystical powers to prayers. Supernatural powers were considered to be an important element for the Church itself to fight against the pagan tradition, and it stressed the superiority of prayers to charms. Simpler followers saw Christianity as a "new and more powerful magic".¹⁰⁷ Alchemy and magic enjoyed considerable popularity, with virtually no alternative social provisions for disease or

¹⁰¹ See for instance; Pepper, n 2 above, 124-135.

¹⁰² Astrology, magic and the occult declined from being mainstream ways of understanding nature in the early 1600s to being "cranky" by 1700. Pepper, n 2 above, 125.

¹⁰³ Pepper, n 2 above, 125.

¹⁰⁴ W. Mills, 'Metaphorical Vision: Changes in Western Attitudes to the Environment', (1982) 72 *Annals of the Association of American Geographers* 2, 237-253.

¹⁰⁵ K. Thomas, *Religion and the Decline of Magic* (London: Penguin Books, 1971) 28.

¹⁰⁶ The leaders of the Church compromised with "gross and superstitious" simple followers, "whenever it seemed in their interest to do so". *Ibid*, 56.

¹⁰⁷ *Ibid*, 27.

other problems.¹⁰⁸ The medieval church “thus appeared as a vast reservoir of magical power, capable of being deployed for a variety of secular purposes”.¹⁰⁹

On the other hand, contrary to the mystic worldview was the development of anthropocentric attitudes towards nature. The anthropocentric interpretation of Christian teaching, as presented by Thomas Aquinas,¹¹⁰ became increasingly popular during the medieval period, laying a foundation for the mechanistic view of nature that subsequently emerged.¹¹¹ Ryder considers that there were social reasons for this tendency; Invasions from the North and East and the collapse of the Roman empire made people feel that “human society was slipping back into a state of nature, and, in order to arrest this process it may be that they were further inclined to assert humankind's separateness from the beasts”.¹¹²

Therefore, medieval attitudes towards animals were ambivalent.¹¹³ On the one hand, people were conscious of the similarity between humans and animals and a tendency towards anthropomorphism was seen. On the other, cruel treatment of animals enjoyed great popularity, and the difference between humans and animals was consciously emphasised by rationalists, in an attempt to establish human uniqueness and dominion over nature. The following paragraphs will briefly consider such diverse attitudes.

First, the anthropomorphic view of animals owed to the physical space shared by humans and animals. It was common for farmers to sleep under the same roof as their livestock, in so-called 'long-houses', or combinations of house and byre.¹¹⁴ Animals lived in close proximity to humans in towns too. For example, pigs were a notorious nuisance for town dwellers for centuries.¹¹⁵ Sharing physical space with domestic animals naturally led people to consider them as individuals, and owners even to speak to them, who, “unlike Cartesian intellectuals, never thought them incapable of understanding”, according to Thomas.¹¹⁶

¹⁰⁸ For details, see; *ibid.*

¹⁰⁹ *Ibid.*, 51. However, “[many] later medieval theologians were strongly 'rationalist' in temperament, and preferred to stress the importance of human self-help”. *Ibid.*, 53.

¹¹⁰ See 4.3.3.

¹¹¹ See 4.4.3 and 4.4.5.

¹¹² Ryder, n 75 above, 28.

¹¹³ For detailed examinations, see: Thomas, n 20 above, Ryder, n 75 above, S. Brooman and D. Legge, *Law Relating to Animals* (London: Cavendish Publishing Ltd., 1997).

¹¹⁴ Such residences were usually separated by a low wall or cross passage, but shared an entrance and had internally accessible rooms. This type of residence became less common in the 16th and 17th century. Thomas, *ibid.*, 95.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, 96. Although sheep or pigs were not given names, cows usually were. Domestic animals were also dressed with bells, ribbons and other finery.

Anthropomorphication of animals was therefore a common feature of the medieval period. Although England has no record of the trial and execution of homicidal animals compared to its continental counterparts,¹¹⁷ domestic animals were often held as morally responsible and informal trials were frequently held.¹¹⁸ Human categories and values were projected upon the natural world, in order to use the behaviour of animals as a critique or reinforcement of the human order.¹¹⁹ Social orders and structures equivalent to those of humans were thought to be held by animals. The popularity of bestiaries and emblem books illustrates the anthropomorphism of this time.¹²⁰

Animals were part of human society, not only in a physical sense but also in a metaphysical sense. They were part of the human community, and they were seen not as machines but as living creatures with emotions and morals of their own. Animals were also believed to have souls: During the medieval period, the popular belief “in something very close to the transmigration of souls” was observed. “The souls of unbaptized children were vulgarly assigned a great number of animal resting-places: they became headless dogs in Devon, wild geese in Lincolnshire, ants in Cornwall, night-jars in Shropshire and Nidderdale. Fishermen sometimes regarded seagulls as the spirits of dead seamen”.¹²¹

On a popular level, therefore, people believed in animal souls, as had Greek philosophers such as Pythagoras.¹²² However, there existed a hierarchy, too. Ryder considers that within the shared community, the relationship between humans and animals was considered as that between “a peasant and his lord”, the “feeling of hierarchy”, “formalised in the popular philosophy of the Great Chain of Being”;¹²³ At the very top was God, under which came angels, man, animals, plants and minerals, respectively.

On the other hand, contrary to the close relationship with animals was an almost barbaric 'exploitative' attitude, illustrated by games and sports during the medieval period. In keeping with the Roman Empire's well known tradition of cruel customs involving animals,¹²⁴ hunting and fighting of wild or captive animals became a major form of entertainment, a phenomenon which became even more prevalent later.¹²⁵

¹¹⁷ For details of continental examples, see; Brooman and Legge, n 113 above, 34-38.

¹¹⁸ For instance, in the countryside dogs caught poaching or killing sheep were hanged in a 'grotesque' manner. Thomas, n 20 above, 97-98.

¹¹⁹ Ibid, 61.

¹²⁰ See: *ibid*, 64.

¹²¹ Ibid, 138.

¹²² See 4.3.2.

¹²³ Ryder, n 75 above, 35.

¹²⁴ Ibid, 18.

¹²⁵ See 4.4.4.

Cockfighting was a favourite sport for children in England as early as the 12th century.¹²⁶ Bull-baiting, which dates back to at least the 13th century, was believed to improve the quality of the meat. Therefore for many years, in England, butchers were required by law to have them baited before they were slaughtered.¹²⁷

Hunting constituted a major social event for the monarch, the nobility and their followers, and “produced a wealth of legislation”.¹²⁸ Indeed, management of wildlife began in the UK during the medieval period largely for hunting purposes. During this period, hunting was predominantly confined to edible species, and such 'resources' were protected by law; Wild fowl, their eggs and nests were protected.¹²⁹ Hares received seasonal protection.¹³⁰ Salmon, a major economic resource, received multiple protective measures such as the regulation of the size of cruives,¹³¹ set close times and seasons,¹³² prohibition of the taking at mills,¹³³ and the requirement for the removal of obstructions and traps.¹³⁴ Furthermore, the protection of habitats for hunted species also existed.¹³⁵ The direct control of hunting itself restricted hunting of particular species to particular classes of society.

In addition to the above anthropomorphic and 'exploitative' attitudes, a rational effort was also seen to attempt to deny the proximity between humans and animals. The boundary between the two was greatly emphasised during the medieval period. Contrary to popular belief in animal souls at the time, churchmen were concerned with denying that animals had souls. Perhaps one of the most distinctive features of efforts to separate the two was an almost obsessive prohibition against bestiality.¹³⁶ For instance, bestiality became a capital offence in 1534 whereas incest was not a secular crime until the 20th century.¹³⁷

¹²⁶ Ryder, n 75 above, 38.

¹²⁷ Ibid.

¹²⁸ C. Reid, *Nature Conservation Law* (Edinburgh: W. Green/Sweet & Maxwell, 1994) 3.

¹²⁹ Ibid. A.P.S. II 51 c.31 (1457).

¹³⁰ Ibid. A.P.S. I 576 (1400), II 52 c. 36 (1457).

¹³¹ Ibid. A.P.S. I 469 c.11 (1318), II 5 c.12 (1424), II 119 c.6 (1478).

¹³² Ibid. A.P.S. II 7 c.12 (1424), VII 655 c. 114 (1669).

¹³³ Ibid. A.P.S. II 96 c. 13 (1469), II 221 c.15 (1489).

¹³⁴ E.g. A.P.S. II 119 c.6 (1478), *ibid.*

¹³⁵ Reid, n 128 above, 3.

¹³⁶ “The strong taboos against homosexuality, bestiality, and transvestism that exist in many Western societies are the result of attempts to establish and defend strong ethnic, religious, or institutional boundaries”. C. Davies, 'Sexual Taboos and Social Boundaries' (1982) 87 *American Journal of Sociology* 5, 1032.

¹³⁷ Thomas, n 20 above, 39.

4.4.2. The Reformation and Social and Environmental Changes

The ambivalent attitudes toward nature in the medieval period gave way to more anthropocentric, domineering attitudes after the Renaissance. The Renaissance, which reached its height during the 16th century, revived the classic culture. This meant further emphasis upon rationalism based upon ancient Greek philosophy,¹³⁸ and the religious and mystic ideas of the medieval period were gradually replaced by rationalism, which reached its height during the Enlightenment in the 18th century.¹³⁹

Views of nature changed from a religious perspective. This change was caused by the Reformation, which emphasised the significance of 'the Fall'. It stressed that humans and nature had fallen from their original state in Eden. Northcott considers that Protestants "sought to remove any vestige of spiritual power in the natural world".¹⁴⁰ Nature was no longer a book.¹⁴¹ People were now persuaded to turn to the Bible and faith alone to receive God's grace. The medieval practices of using alchemy and magic in an attempt to unite with God were criticised by the Reformists, who stressed that the gap between God and human was absolute.¹⁴²

With the Reformation, nature lost its divine connotations. Instead, it came to be considered that nature required improvement by humans, and this gave justification for the modification of nature. Similarly, the idea that animals had souls and needed to be saved as well as humans was propagated by some early Protestant writers. Northcott considers that nature came to be seen "as a resource created entirely for human purposes",¹⁴³ a perception that represents the Christian 'exploitative' attitude toward nature criticised by White.¹⁴⁴ "This inward and redemptionist shift in Protestant theology produces a doctrine of creation far more instrumentalist and secular than that of the medievals".¹⁴⁵

The view of nature emphasised by the Reformation helped in facilitating the phenomenon of the new money economy and the agrarian developments that emerged in the latter medieval period. Demands for wealth and agricultural surpluses by the aristocracy, royalty, church and the country itself, among other social and environmental factors,¹⁴⁶ created commercial interest in agricultural

¹³⁸ See 4.3.2.

¹³⁹ See 4.4.3.

¹⁴⁰ See: Northcott, n 3 above, 53.

¹⁴¹ See 4.4.1.

¹⁴² For the Protestant attack on the Catholic rituals containing mystic elements, see: Chapter 3 of Thomas, n 105 above.

¹⁴³ *Ibid.*, 53.

¹⁴⁴ See 4.2.1.

¹⁴⁵ *Ibid.*

¹⁴⁶ Climate change and the new agricultural techniques are raised by Northcott. *Ibid.*, 49.

land.¹⁴⁷ Enclosure took place in the latter half of the 16th century, when powerful forces in the middle classes started enclosing common land to meet rising commercial interest in agricultural land.¹⁴⁸ Enclosure led to land being seen as a commodity. Capitalistic tendencies were also seen in the Church, which had acted traditionally as a restraining moral force, but now was also becoming a powerful land owner. It looked for theological justifications for its practice of usury and the economic gains it made from it, which were previously viewed with suspicion. The Reformation provided the justification that Protestant theologians were looking for,¹⁴⁹ with Protestant work ethics¹⁵⁰ based upon the concept of human sinfulness¹⁵¹ and the emphasis on the 'fallen' quality of nature. In effect, the Church itself became secular.

Indeed, after the 16th century, society became increasingly secular, and subsequent social, materialistic, and environmental changes as mentioned above are considered to have formed some of the historical roots of environmental degradation, in addition to the aforementioned religious and philosophical influences. Northcott argues that the loss of connection between humans and land caused by Enclosure is one of the fundamental causes of Western 'exploitative' attitudes towards nature; "Traditional relations of kinship and place, and the traditional natural law ethics of Christendom, which had formerly imposed moral constraints on the use of both land and labour, were subverted".¹⁵² These "moral constraints" were first removed by Protestant teachings after the Reformation, and secondly by rationalism, as discussed below.

4.4.3. Cartesian Thinking

Human uniqueness and ascendancy over nature were central to the Renaissance. Singer describes it as follows;

The central feature of Renaissance humanism is its insistence on the value and dignity of human beings, and on the central place of human beings in the universe. 'Man is the measure of all things', a

¹⁴⁷ Ibid.

¹⁴⁸ It took place during the reign of Elizabeth I (between 1558-1603). Solomon and Higgins, n 58 above, 159. Also see; R.L. Hopcroft, 'The Social Origins of Agrarian Change in Late Medieval England' (1994) 99 *American Journal of Sociology* 6, 1559-1595.

¹⁴⁹ For instance, Luther considered all callings, whether farmer or religious minister, were equal, and Calvin taught that usury was not wrong. Thomas Aquinas considered that although wealth was given to certain people by natural law, it was also by natural law that the poor could claim for properties of the rich to meet their needs. Ibid, 54.

¹⁵⁰ Max Weber considered the Protestant work ethic laid a foundation for mercantilism and capitalism. Ibid, 52.

¹⁵¹ This was stressed by Calvin, who extended Luther's stress on the 'fallen' status of humanity and nature. Calvin considered that human beings did not even deserve to be saved and that God chose to forgive *selected* ones. It is generally considered that because people could not know who was to be saved, they came to work harder to be saved.

¹⁵² Solomon and Higgins, n 58 above, 50.

phrase revived in Renaissance times from the ancient Greeks, is the theme of the period. Instead of a somewhat depressing concentration on original sin and the weakness of human beings in comparison to the infinite power of God, the Renaissance humanists emphasised the uniqueness of human beings, their free will, their potential, and their dignity; and they contrasted all this with the limited nature of the 'lower animals'.¹⁵³

The uniqueness of human beings was increasingly stressed in doctrines developed by Descartes.¹⁵⁴ Descartes considered that what was mathematical was real and what was real was mathematical.¹⁵⁵ To Descartes, not only animals but also human bodies were *machines*, which could be understood in terms of mathematics.¹⁵⁶ However, the very act of thinking, consciousness, proves human existence, and humans alone possessed that faculty.¹⁵⁷ Descartes identified human consciousness with immortal souls made by God, therefore attributing souls only to humans and leaving the rest of nature simply mechanistic. Cartesian dualism settled religious concerns with regard to the souls of humans and animals,¹⁵⁸ confirming the existing anthropocentric attitude: human superiority and uniqueness.

It is important to note that Descartes was only reinforcing a point which had always been present in the Western value system. The Stoic influence upon Christianity had been present for the past 1600 years.¹⁵⁹ In ancient Greece, Aristotle already differentiated human souls from animal souls, by virtue of human reason.¹⁶⁰ In the medieval period, Aquinas agreed with Aristotle that animals exist for men.¹⁶¹ However, in the midst of comparatively faster social and environmental changes,¹⁶² Descartes' consolidation of human superiority and the view of nature as merely material is now interpreted as a typical example of human exploitative attitudes toward nature.¹⁶³

¹⁵³ Singer, n 27 above, 198.

¹⁵⁴ Cartesian doctrines were initially formulated by the Spanish physician Gomez Pereira.

¹⁵⁵ The implication of this was that matter was nothing more than extension in space, which was infinite and full.

¹⁵⁶ Descartes, *Discourse on Method*, trans. L. Lafleur (New York: Mcmillan, 1960).

¹⁵⁷ See criticisms against this tradition of the West in 5.7.4.2.3.

¹⁵⁸ Early Protestants considered that animals also had souls. See the previous subsection. Many of the ancient Greek philosophers also considered that animals had souls. See 4.3.2.

¹⁵⁹ See 4.2.2 and 4.3.3.

¹⁶⁰ See 4.3.2.

¹⁶¹ See 4.3.2 and 4.3.3.

¹⁶² See 4.4.2.

¹⁶³ See for instance; Singer, n 27 above, 200-201.

Thomas considers that the Cartesian position was “the best possible rationalisation for the way man actually treated animals”.¹⁶⁴ He explains;

The alternative view had left room for human guilt by conceding that animals could and did suffer; and it aroused worries about the motives of a God who could allow beasts to undergo undeserved miseries on such a scale. Cartesianism, by contrast, absolved God from the charge of unjustly causing pain to innocent beasts by men, by permitting humans to ill-treat them; it also justified the ascendancy of men, by freeing them, as Descartes put it, from 'any suspicion of crime, however often they may eat or kill animals'.¹⁶⁵ By denying the immortality of beasts, it removed any lingering doubts about the human right to exploit the brute creation. For, as the Cartesian observed, if animals really had an immortal element, the liberties men took with them would be impossible to justify; and to concede that animals had sensation was to make human behaviour seem intolerably cruel. The suggestion that a beast could feel or possess an immaterial soul, commented John Locke, had also worried some men that they 'had rather thought fit to conclude all beasts perfect machines rather than allow their souls immortality'. Descartes' explicit aim had been to make men 'lords and possessors of nature'. It fitted in well with his intention that he should have portrayed other species as inert and lacking any spiritual dimension. In so doing he created an absolute break between man and the rest of nature, thus clearing the way very satisfactorily for the uninhibited exercise of human rule.¹⁶⁶

The 'exploitative' view of nature was inherited by Kant, who stated; “So far as animals are concerned, we have no direct duties. Animals are not self-conscious, and are there merely as a means to an end. That end is man”.¹⁶⁷

4.4.4. Human Treatment of and Attitudes Towards Animals

During Tudor and Stuart England, “breathtakingly anthropocentric” attitudes can be observed, according to Thomas.¹⁶⁸ As differences between humans and animals were stressed even further,¹⁶⁹ animals were now removed from the human

¹⁶⁴ Thomas, n 20 above, 34.

¹⁶⁵ See; Singer, n 27 above, 201.

¹⁶⁶ Thomas, n 20 above, 34.

¹⁶⁷ E. Kant, *Lecture on Ethics*, trans. L. Infield (New York: Harper Torch-books, 1963) 239-240. See also; Singer, n 27 above, 203.

¹⁶⁸ Thomas, n 20 above, 18.

¹⁶⁹ The point was being stressed during the medieval period. See 4.4.1.

community in a metaphysical sense, and this anthropocentrism can be observed by studying various examples. Scientific experiments on animals, meat consumption, and cruel sports such as hunting and baiting increased enormously. The next paragraphs will discuss examples of these.

One of the examples of people's 'exploitative' attitudes can be seen in contemporary meat consumption. There seem to have existed few real restraints against eating meat either in a religious or moral context. Although the Bible can be interpreted as implying that Adam and Eve and other animals in the Garden of Eden were vegetarians before the Fall,¹⁷⁰ God reassured Noah; "Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things".¹⁷¹ Only horse meat, Newman states, "has always been taboo in England" because the horse was "the sacred animal of the Angels and allied races".¹⁷² This is also because horses worked closely with humans. Moral arguments for vegetarianism along the same lines as Pythagorean philosophy, had little influence at least until the 19th century.¹⁷³

The increase in meat consumption was partly a result of replacing oxen with horses for draught use.¹⁷⁴ In the early modern period, the English were "heavy meat eaters", according to Newman.¹⁷⁵ They ate more meat than anywhere else in Europe apart from the Netherlands between the 16th to the 18th centuries, and roast beef became a national symbol of England.¹⁷⁶ "An Act of Phillip and Mary" stated that "there was a great shortage of dairy stock because farmers used their pastures for fattening animals for the butcher".¹⁷⁷ Although it was a relatively luxurious one, everyone's ideal meal was meat. It was recommended by doctors, as an essential part of the human diet and as valuable to health.¹⁷⁸

Blood sports also reflect people's attitudes towards nature at the time. It was previously mentioned that during the medieval period, hunting was primarily confined to edible species.¹⁷⁹ Non-edible animals began to be hunted, and fox hunting became established as early as the 16th century, and justified on the grounds

¹⁷⁰ Singer, n 27 above, 187.

¹⁷¹ Genesis 9:1-3. See also 4.3.1.

¹⁷² L.F. Newman, 'Some Notes on Foods and Dietetics in the Sixteenth and Seventeenth Centuries' (1946) 76 *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 1, 46. Other 'taboos' include the original tenth commandment; "Thou shalt not seethe a kid in its mother's milk", therefore making people refrain from adding milk to stock soups in certain districts. Newman, at 47.

¹⁷³ See 4.3.2 and 4.5.3.

¹⁷⁴ Thomas, n 20 above, 26.

¹⁷⁵ Newman, n 172 above, 45.

¹⁷⁶ Thomas, n 20 above, 26.

¹⁷⁷ Newman, n 172 above, 42.

¹⁷⁸ Ryder, n 75 above, 42.

¹⁷⁹ See 4.4.1.

that “the fox was the utmost villain”.¹⁸⁰ The decrease in game populations encouraged the establishment of game parks after the 15th century,¹⁸¹ a tradition that can be interpreted as the origin of wildlife management. As the confinement of nature increased, hunting became indistinguishable from baiting toward the end of the 16th century, according to Ryder.¹⁸² Baiting received royal support, and Queen Elizabeth even attempted to discourage the rising popularity of the theatre, which was taking over from bear-baiting as a form of popular entertainment.¹⁸³ In Tudor times bear-baiting reached the height of its popularity and herds of bears were maintained throughout England for this purpose.¹⁸⁴ Other sports considered to be ‘cruel’ nowadays, such as bull-baiting, cock-fighting and cock-throwing, also enjoyed great popularity in Tudor and Stuart England.

Finally the attitudes of contemporary people to animal experimentation can be examined. During the medieval period, vivisection was almost unknown, however, towards the end of the 17th century, “[anyone] could do it and almost everyone with intellectual pretensions did”.¹⁸⁵ Without the availability of anaesthetic, experiments carried out on live animals were of considerable cruelty, even to some contemporaries.¹⁸⁶ Although it is difficult to know how much influence Descartes’ statement that animals were machines and felt no pain¹⁸⁷ had on this practice, Descartes himself was aware of its moral implications.¹⁸⁸ Indeed, it was the French vivisectionists¹⁸⁹ who experimented on an enormous scale on live animals that caused abhorrence and opposition to this practice amongst the English.¹⁹⁰ After all, the extreme views of Descartes were received with suspicion in England, which may partially explain why the English created the world's first animal welfare law.¹⁹¹

4.4.5. Modern Science

Another important aspect of the period between the 17th and 18th century is the development of new science and scientific thinking. The ‘Scientific Revolution’ is

¹⁸⁰ Ryder, n 75 above, 38.

¹⁸¹ Ibid, 37.

¹⁸² Ibid, 40.

¹⁸³ Ibid, 40-41. Towards the end of Elizabeth's reign baiting was losing some of its popularity, however, this was not as a result of any organised opposition.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid, 51. For detailed explanation of vivisection during this period, see: Ibid, 51-54.

¹⁸⁶ As for the animal welfare movement, see 4.5.3.

¹⁸⁷ Some argue that Descartes admitted to the fact that animals were sensible later.

¹⁸⁸ Ryder, n 75 above, 54.

¹⁸⁹ Francois Megendie, Claude Bernard and Louis Pasteur.

¹⁹⁰ Ryder, n 75 above, 101. According to Ryder, it was those three who turned vivisection into an “everyday scientific practice”. Ryder, at 103.

¹⁹¹ For instance, Thomas More considered experiments on animals at the time as ‘murderous’.

generally considered to have lasted for approximately 150 years, from Copernicus in the mid-16th century to the early 18th century Newton. The development of 'modern' science, was based upon "objective" and "empirical" knowledge and "reductive" and "mechanistic" views of nature.¹⁹² Medieval cosmology was being challenged and "the new mentality", according to Whitehead, became increasingly predominant.¹⁹³ Whitehead states;

This new colouring of ways of thought had been proceeding slowly for many ages in the European peoples. At last it issued in the rapid development of science; and has thereby strengthened itself by its most obvious application. . . . It has altered the metaphysical presuppositions and imaginative contents of our minds;¹⁹⁴

This "new mentality", that valued "objective" knowledge and was based upon the "mechanistic" view of nature further increased 'exploitative' attitudes towards nature, which became increasingly apparent especially after the Industrial Revolution. Technological development combined with modern science made it possible to degrade the environment on an unprecedented level. Therefore, modern science is considered by many to be the historical root of environmental degradation, as argued by White, although it should be noted that evidence of environmental degradation in early human history has been pointed out.¹⁹⁵

Also as White submits, the association between Christianity and the development of modern science is often regarded as more than a coincidence.¹⁹⁶ Most fundamentally, it is argued that the Christian separation of humans from nature allowed Christians to be '*objective*' towards nature, thereby starting to observe and investigate it, when compared with other religions which do not separate the two.¹⁹⁷ Secondly, the medieval Christian worldview is considered to have facilitated an observational and investigative attitude toward nature. Despite its mystic worldview, the medieval emphasis on God's rationality and the cause-and-effect theory are

¹⁹² Pepper, n 2 above, 139, 144, 137, and 140, respectively.

¹⁹³ A.N. Whitehead, *Science and the Modern World* (Middlesex: Pelican Books, 1926) 12. However, Glacken considers that the medieval teleology, which advocates nature as a 'book', containing divine ordinance and purposes, had been kept alive as well, and it led to the Romantic movement. C. Glacken, *Traces of the Rhodian Shore* (Berkeley, California: University of California Press) 377.

¹⁹⁴ *Ibid.*

¹⁹⁵ For instance, Evans states that the brown bear was hunted for meat and fur, and went extinct in Great Britain around AD 900, beavers went extinct for the same reason in 1188. D. Evans, *A History of Nature Conservation in Britain*, (London: Routledge, 2nd ed, 1997) 15. For White's arguments, see 4.2.1. Passmore raises Descartes and Bacon, both key players in the 'Scientific Revolution', as representing anthropocentric, exploitative attitudes towards nature. See 4.2.2. Northcott considers the "application of the technological fruits of modern scientific method through industrialism" as one of the major causes of environmental destruction. For detailed discussions, see: Northcott, n 3 above, 57-70.

¹⁹⁶ *Ibid.*, 57. Whitehead is also of this view. Whitehead, n 193 above.

¹⁹⁷ See 5.7.4.1.

considered to be the foundations of modern science.¹⁹⁸ It is generally considered that the belief in the rational order of the universe and the predictability of nature's laws encouraged investigation of the regularities and underlying causative and motive structure of the natural order.¹⁹⁹

Although the origin of modern science is considered to lie in the medieval Christian view of the world and nature, it was after this view was altered that the development of modern science was facilitated. Nature as containing divine ordinance and purposes came to be regarded as 'fallen' and in need 'to be redeemed' following the Reformation, thereby providing justification for its modification.²⁰⁰ The displacement of divine implications from nature, combined with the anthropocentric attitudes seen in Descartes' views,²⁰¹ allowed humans to take more mechanistic, instrumentalist views towards nature. Nature came to be regarded as mere *matter* and natural *resources*, "awaiting the transformation of human agency and purposiveness",²⁰² thereby creating a perfect justification for human modification of it. At this point, an interventionist approach toward nature was founded.

Although the origin of modern science is associated with Christianity, modern science removed religious ideas from science. The separation of divine purposes and orders from nature was advocated by rationalists such as Descartes and Bacon.²⁰³ Another rationalist Kant is considered to have completed the separation of science and scientific rationality from morality and religion, redirecting all purposive and teleological activity in nature from God to humans.²⁰⁴ Society itself was now becoming increasingly secular, following the revival of ancient Greek philosophy during the Renaissance, although social beliefs were still fundamentally dominated by the Christian worldview.²⁰⁵ This emphasis on rationalism established the long-surviving principle that "*objective knowledge is 'true', and correct, while subjective knowledge is not*",²⁰⁶ part of the "mentality"²⁰⁷ of science which is still dominant to this date.²⁰⁸

¹⁹⁸ See; Glacken, n 193 above.

¹⁹⁹ Northcott, n 3 above, 57-58. There also exists an opinion that the experimental method is linked not with teleological views but with the idea that the world is governed by accident and contingency, as represented by nominalists. See; Northcott, n 3 above, 57.

²⁰⁰ See 4.4.2.

²⁰¹ See 4.4.3.

²⁰² Northcott, n 3 above, 59.

²⁰³ Glacken, n 193 above, 377

²⁰⁴ See Northcott, n 3 above, 57.

²⁰⁵ It can be seen, for instance, in the social upheaval after discoveries by Copernicus and Gallilei, which forced the change from medieval cosmology.

²⁰⁶ Pepper, n 2 above, 139. Italicised in the original.

²⁰⁷ Whitehead, n 193 above.

²⁰⁸ See Pepper, n 2 above, 124. See also discussions of Japanese primatology in 5.6.5 and Japanese ecology in 4.3.4.1.3.

The foundation for what 'science' connotes in today's world was also established: human progress. Bacon's ideas are often referred to in relation to this ideology;²⁰⁹ Bacon believed in an strictly *empirical* approach to science, and believed that by accumulating empirical knowledge science could develop further and further. This led to the concept of progress, which, to him, was the good of human society. As a consequence, many consider that the Baconian creed justified human exploitation of nature, which was considered as a mere 'machine', not only to achieve God's glorification but also for human progress. Coupled with the social and environmental changes that had continued since the medieval period,²¹⁰ 'objective' science became established with an unshakable status as a tool for progress and solution to various kinds of problems.²¹¹

Hence, the period between the 17th and 18th centuries can be identified as the time modern *scientific thinking* began.²¹² Pepper states;

This view of a professional scientist – objective, undogmatic, internationalist and committed to improving society's lot – can easily be equated with that of a humanist 'priest', replacing the established religious priesthood. He was working, it seemed, for a universal good, for the interests of science are universal. This was science's self-justification, and it was a powerful one, helping classical science to become the dominant ideology over the past 250 years. . . . Its success has been phenomenal. Its perspective has come to be equated with 'natural', 'normal' vision, and it has become the pursuit of most European intellectuals, in place of natural magic. Science has also become the arbiter of most environmental and many social issues: it is appealed to as a source of objective truth on which to base decisions.²¹³

Modern scientific thinking, in which science is "appealed to as a source of objective truth on which to base decisions", is not only a tool for the 'exploitation' of nature based upon the concept of human progress, but also the *utilitarian basis of current environmental conservation*. As considered in Chapter 1, currently the most widely accepted conservation concept is "wise management" based upon "scientific

²⁰⁹ For detailed discussions on Bacon's mechanistic views towards nature, see; D. Wall, *Green History: A Reader in Environmental Literature, Philosophy and Politics* (London: Routledge, 1994). Merchant also discusses Bacon's views from an eco-feministic point of view; C. Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (London: Wildwood House, 1992). Pestic discusses less 'exploitative' traits in Bacon's views; C. Pestic, 'Wrestling with Proteus: Francis Bacon and the 'Torture' of Nature' (1999) 90 *Journal of the History of Science in Society* 90, 81-94.

²¹⁰ See the last paragraph of this section.

²¹¹ The 'scientific' conservation approach, which Worster calls "imperialistic", as opposed to "arcadian", see: D. Worster, *Nature's Economy: A History of Ecological Ideas* (Cambridge: Cambridge University Press, 1985).

²¹² See 5.6.5 and 4.3.4.1.3.

²¹³ Pepper, n 2 above, 145-146.

evidence”.²¹⁴ On the other hand, this firm belief in scientific and rational thinking dismisses other forms of thought that fall outside the realm of science and rationalism as 'superstitious' or “irrational”, as criticised by the Prince of Wales during his talk on sustainable development in the Reith Lecture in 2000, in which he stressed the importance of the religious concept of stewardship.²¹⁵ The Prince's talk was criticised as scientific ignorance and “mysticism”.²¹⁶

Before advancing the discussion to the development of more 'ecological' attitudes, social and environmental changes that reflect and also had an influence upon people's attitudes should briefly be mentioned. The exploitation and modification of nature, as illustrated by the fur trade, mining, Enclosure, colonialism and mercantilism, took place on an increasingly large scale as the 20th century approached.²¹⁷ These social and environmental changes, the basis for materialism, influenced the religious and philosophical basis for treating nature, namely adjusting the latter to the former's benefit. 'Thought' is “important in legitimising [people's] treatment of [the environment] and in providing an explanation for their role within the overall structure”, according to Ponting.²¹⁸ Ponting considers that the relationship between man and nature, which many consider is formed by religion, has been taken over by economics, during the modern period.²¹⁹

4.5. The Development of Cultural Factors and 'Ecological'

Attitudes Toward Nature

This section will consider the 'ecological' attitudes toward nature arising from the Western tradition. It was considered earlier that Christian attitudes toward nature were originally ambivalent,²²⁰ and limited examination of the historical background shows that Christian doctrine, considerably influenced by ancient Greek philosophy and rationalism, was *interpreted* to mean human dominion over nature and human right to utilise nature. A few signs of less anthropocentric, or even 'ecological'

²¹⁴ See 1.7.

²¹⁵ The overarching theme of the lectures was “Respect for the Earth, Can Sustainable Development be Made to Work in the Real World?”, which can be found at; http://news.bbc.co.uk/1/hi/english/static/events/reith_2000/, visited on 1 June 2000.

²¹⁶ R. Tyler, “Britain's Prince Charles attacks science” at; <http://www.wsws.org/index.shtml>, 26 May 2000, visited on 15 Jun. 2000.

²¹⁷ See for instance; C.A. Ponting, *A Green History of the World* (London: Penguin Books Ltd., 1991); and I.G. Simmons, *Environmental History: A Concise Introduction* (Oxford: Blackwell Publishers, 1993).

²¹⁸ Ponting, *ibid*, 141.

²¹⁹ *Ibid*.

²²⁰ See 4.3.1.

attitudes in Christian teaching and rationalism were also observed.²²¹ However, these 'ecological' attitudes had remained in the minority, under the shadow of the more prominent anthropocentric attitudes.

The 'ecological' tradition began to gain support from an increasingly wider cross-section of society around the 18th and 19th centuries. There are many reasons for this tradition to have gained popularity. Social and environmental changes in this period stimulated long-standing, yet previously minor trends of 'ecological' attitudes. The concept of 'stewardship' in Christian doctrine, moral duty towards animals, the benevolent design of nature and other 'ecological' traditions of the West came to be highlighted, as a reaction against the 'exploitative' attitudes and lifestyles which were responsible for the deterioration of nature and the plight of animals.²²² On the other hand, it must be noted that religious ideas governed these new attitudes to a much lesser extent; Society became increasingly secular, and therefore, some of the movements were purely a reaction against the deterioration of nature and the plight of animals.

In a nutshell, current environmental movements may be divided into two major schools of thought. The anthropocentric, utilitarian approach is based upon scientific thinking and rational management.²²³ The non-anthropocentric approach, which includes various schools of thought such as ecocentrism, fundamentally seeks to change human perceptions of nature. Ecocentrics believe in the intrinsic value of ecosystems.²²⁴ There is also biocentrism, which advocates the intrinsic value of all living things.²²⁵ The animal liberation movement can also be included under the non-anthropocentric approach.²²⁶ There is considerable divergence of opinion within the same groups,²²⁷ and therefore it is impossible to place various sources of 'ecological' attitudes into simple categories.

However, for the convenience of this study, sources of anthropocentric, ecocentric and biocentric conservation approaches are categorised into scientific, Romantic and moral sources in the following discussions. Various scholars identify these

²²¹ The concept of stewardship can be observed in Christian teaching. Some ancient Greek philosophers considered a moral relationship existed between humans and animals. See 4.3.1 and 4.3.2.

²²² See 4.4.4.

²²³ See discussions on the origin of modern science above.

²²⁴ See 1.7. For discussions on the relation between ecocentrism and biocentrism and environmental law, see; D. Wilkinson, 'Using Environmental Ethics to Create Ecological Law' in J. Holder and D. McGillivray, *Locality and Identity: Environmental Issues in Law and Society* (Aldershot: Ashgate, 1999) 17-50. For deep ecology, see for instance; Elliot, R. (ed), *Environmental Ethics* (Oxford: Oxford University Press, 1995); A. Leopold, *A Sand Country Almanack* (New York: Oxford University Press, 1949); A. Naess, 'The Shallow and the Deep, Long-Range Ecology Movement: a Summary' (1973) 16 *Inquiry*, 95-100

²²⁵ T. Regan, *The Case for Animals Rights* (Berkeley: University of California Press, 1983).

²²⁶ Singer, n 27 above. For criticisms of the animal rights movement, see for instance; R. Scruton, *Animal Rights and Wrongs*, (London: Metro Books, 3rd ed, 2000).

²²⁷ For instance, within the utilitarian approach, there are more 'enlightened' ideas such as taking into consideration the interests of future generations. See 1.7.

categories as the sources of 'ecological' attitudes. Nash identifies the development of ecological studies, utilitarianism and the animal welfare and rights movement amongst other elements.²²⁸ Wall considers that the concepts of deep ecology and animal liberation, which originated from Romanticism and moral discussions of the human treatment of animals, are fundamental to "Green thinking".²²⁹

The following discussion attempts to identify the historical roots of these concepts. First, the development of natural history is considered as the scientific root of 'ecological' attitudes. Two different approaches to natural science, the Romantic and utilitarian, are considered. Secondly, the Romantic movement is examined, as an aesthetic root, and as the origin of deep ecology. The next section then discusses the animal welfare movement as the origin of the moral argument for the humane treatment of animals.

4.5.1. Natural History: The Scientific Root

One of the most significant developments with regard to ecological thought, particularly during the 18th and 19th centuries, was that of natural history. One of the reasons for the considerable development of natural history in this period is identified by Worster to be the change of views toward wild nature due to colonisation; Nature in exotic countries was fascinating to the eye of Europeans, and "the general mania among eighteenth-century British scientists" was collecting and cataloguing exotic species.²³⁰ Another reason for the rising interest in natural history, as pointed out by Grove, was a reaction against environmental deterioration largely due to industrialisation and changing lifestyles.²³¹ Although it developed initially from the popularity of species identification, often practiced by amateurs, the study of natural history soon became of interest to scientists, too.²³² Therefore, by 1800, according to Thomas, very different views towards plants and animals had emerged.²³³ Previously, classification of animals, for instance, was based upon an anthropocentric viewpoint. The Aristotelian tradition of classifying animals was according not only to anatomical structure, their habitat, and mode of production but also to utility. Therefore, the essential three categories for animal classification had been; "edible and inedible", "wild and tame" and "useful and useless".²³⁴ Compared to this anthropocentric, 'exploitative' view of nature, the new view of nature

²²⁸ R. Nash, *Rights of Nature* (Madison, Wisconsin: University of Wisconsin, 1990).

²²⁹ Wall, n 209 above.

²³⁰ Worster, n 211 above, 6.

²³¹ See; R. Grove, 'The Origins of Environmentalism' (1980) 345 *Nature* 3, 11-14.

²³² Thomas, n 20 above, 70.

²³³ *Ibid.*, 50. However, at a common level, "vulgar errors" were still seen.

²³⁴ *Ibid.*

developed a respect and appreciation for nature, whether from a Romantic or utilitarian point of view.

There were at least two different approaches to the study of natural history, the Romantic and utilitarian approaches, which later led to the emergence of the two different strands of modern environmentalism. The subsequent paragraphs will attempt to describe how these two approaches were influenced by Christianity and rationalism. The first type, the Romantic strand of natural history, is the revival of the holistic traditions of the medieval period. It inspired the Romantic movement, providing the scientific basis for attributing an intrinsic aesthetic value to nature. Romanticism became a source of ecological ideas varying from British countryside protection to ecocentrism.²³⁵ Gilbert White's *Natural History of Selbourne* published in 1789, contained descriptions of local plants and animals in Selbourne, Hampshire, as opposed to the then mainstream publications about exotic plants and animals. White was devoted to seeing "how many creatures the Selbourne parish contained and to understand how they were all united in an interrelated system".²³⁶

A cultural factor which influenced White was his Christian belief in the divine order and perfect design of nature. White's approach reveals the connection between Christianity and the development of science. Seeing the variety of creatures in a small village like Selbourne, White attributed this variety to God, the Creator. He was amazed by the interrelatedness between the creatures, which all seemed to be serving purposes for the ecosystem, which he also attributed to God. Although White's view also contained anthropocentric and utilitarian aspects based upon traditional Christian beliefs,²³⁷ it was the aspect of "arcadian harmony with nature" in his views which was stressed by later generations.²³⁸ White was also influenced by pagan literature, which was revived in the 18th century.²³⁹ Pagan literature, according to Worster, was about "a longing to re-establish an inner sense of harmony between man and nature".²⁴⁰ "The image of uncomplicated rural felicity, of a simple and natural people living under the watchful care of Providence and their pastor"²⁴¹ was the inspiration for Romantic ecologists like White. The idealisation of rural life was an attraction in the midst of industrialisation and agrarian changes, and the *Natural History of Selbourne* had a Romantic appeal.

²³⁵ Pepper considers that the Romantic movement "has strong and direct historical links into modern ecocentrism". Pepper, n 2 above, 189.

²³⁶ Worster, n 211 above, 7.

²³⁷ For instance, he considered that 'pests' should be destroyed for human and divine purposes.

²³⁸ See; Pepper, n 2 above, 170-172.

²³⁹ Worster, n 211 above, 10.

²⁴⁰ Ibid.

²⁴¹ Ibid.

The utilitarian approach to natural history originates from Linnaeus's approach to classification. Linnaeus established the classification of animals and plants by using Latin names. Linnaeus's approach, although still influenced by Christianity, was more strictly scientific compared to the Romantic approach of White's²⁴² and laid the foundation for what is now considered to be the 'scientific' (rational) approach toward natural history which was had been in "an era of anarchy".²⁴³ Linnaeus classified animals and plants into "neat rows of shelves and boxes", presuming that the natural world functions as a rational, mechanistic world, according to Worster.²⁴⁴

Linnaeus provided "the reconciliation between love of nature and pursuit of human ambitions, between religious belief and scientific rationalism, which many were searching".²⁴⁵ He believed in divine ordinance and the design of nature, a theme that had been revived.²⁴⁶ On the other hand, Linnaeus is considered to have believed in classical anthropocentrism: nature exists to serve human interests. Linnaeus's approach eventually gave birth to the utilitarian approach to nature conservation. Worster describes it as follows;

According to Linnaeus, man must vigorously pursue his assigned work of utilising his fellow species to his own advantage. This responsibility must extend to eliminating the undesirables and multiplying those that are useful to him, an operation 'which nature, left to herself, could scarcely effect'.²⁴⁷

This approach by Linnaeus, which can be considered as the natural-history origin of the "imperialistic" and "scientific" approaches to environmentalism,²⁴⁸ connotes the following religious and philosophical concepts. First, it connotes the concept of stewardship. Humans have "responsibility" to "[eliminate]" harmful creatures and "[multiply]" useful ones. Secondly, it can be identified with the approach of Baconian creed, advocating the use of human knowledge and powers, namely, science and technology, to improve nature according to *rational and scientific* ideas. It is this approach that is currently the most widely accepted by the international community as a common approach toward wildlife conservation, although the scope

²⁴² Thomas mentions that Linnaeus was not free from the old analogy between humans and animals, as his classification system included, for instance, the 'Vegetable Kingdom', which was divided into 'Tribes' and 'Nations'. Thomas, n 20 above.

²⁴³ Worster, n 211 above, 32. However, Linnaeus's classification was still simplistic by today's standards.

²⁴⁴ Ibid, 32.

²⁴⁵ Ibid, 33.

²⁴⁶ After the Reformation stress upon the concept of the 'Fall', the "benevolent design of nature" came to be stressed after the mid 17th century. Thomas, n 20 above, 1.

²⁴⁷ Worster, n 211 above, 36.

²⁴⁸ See Pepper, n 2 above, 170-172.

of the subjects to be protected has been stretched from merely 'useful' species to species, ecosystems and biodiversity.²⁴⁹

In addition to the above two naturalists, Darwin's evolutionary theory must also be noted as making a significant contribution to changing human perspectives about nature. Darwin's theory itself is ambiguous as to its ecological implications,²⁵⁰ but is directly influential on people's perceptions and attitudes towards nature. The major influence on Darwin's theory is considered to be Malthus's *Essay on the Principle of Population*, which is founded upon scientific and rational arguments, however, the influence of the Christian worldview has been argued.²⁵¹ Darwin's theory gave scientific grounds for the hierarchical order of man and 'lower' animals. It contributed to reinforcing the belief in human superiority and human progress. These ideas can be observed in social Darwinism, advocated by Herbert Spencer, which advocated the concept of "survival of the fittest", justifying human exploitation of not only animals but other human races.²⁵² On the other hand, Darwin's evolutionary theory also gave grounds for, regardless of Darwin's will,²⁵³ arguments for animal welfare, because of the interrelatedness of humans and other animals suggested in it.²⁵⁴

On the other hand, Darwin's evolutionary theory shook the Western belief that humans are fundamentally different from other animals. It particularly contradicts the Creation story. Darwin's assertion that human origins were unquestionably animal "undermined the traditional European view that . . . any resemblance to animal behaviour was coincidental and not intrinsic to the higher nature with which God had endowed the greatest of His creatures".²⁵⁵

4.5.2. Romanticism: The Aesthetic Root

The Romantic movement, which was a prominent phenomenon between the late 18th and 19th centuries, is identified as the origin of modern ecocentrism.²⁵⁶ The "romantic idealisation of nature, countryside and folk societies" were actively expressed in art and popular culture. The movement was therefore an artistic and intellectual one, seen in literature, paintings, music and drama, rather than a religious

²⁴⁹ See 1.7.

²⁵⁰ See Imanishi's criticisms against Darwin's theory in 5.7.2.

²⁵¹ See 5.7.2.

²⁵² See 5.7.2.

²⁵³ He was not an active supporter of the animal welfare movement.

²⁵⁴ For discussions on the animal welfare movement, see 4.5.3.

²⁵⁵ N.J. Saunders, *Animal Spirits* (London: McMillan, 1995) 14. Also see; Radford, *Animal Welfare Law in Britain* (Oxford: Oxford University Press, 2001) 15.

²⁵⁶ See for instance; Pepper, n 2 above, 188-205. For discussions about the ecocentric values recognised in international wildlife law, see 1.7. Also see; Wilkinson, n 224 above.

or political movement. Pepper considers that the Romantic movement was primarily a reaction against growing materialism and industrialism.²⁵⁷ Many of the Romantics, such as Byron and Shelley, belonged to old aristocratic families, which were being replaced by the new bourgeoisie, and therefore did not empathise with materialism or industrialism. Therefore, they separated themselves largely from political debate.

Two of the most significant characteristics of Romantic thought are the anti-dualism of humans and nature, and the intrinsic value of nature. Romantics considered nature to have an *aesthetic, spiritual value in its own right*, rather than as a resource or object for scientific studies, although Romantics like Thoreau engaged in the scientific examination of nature, inheriting the tradition of Gilbert White.²⁵⁸ Romanticism “was and is the antithesis of many things associated with classical science; for instance logical behaviour, order, central control, and the subject-object/human-nature separation”.²⁵⁹ As a whole, it was a reaction against rationalism, too. This is why ecocentrics oppose utilitarianism, which originated from rational, scientific views of nature.²⁶⁰

Some of the Romantics' and deep ecologists' interest in 'Eastern' religion is particularly pertinent for the purposes of this study.²⁶¹ Wall describes the general interest in Eastern religion as an ecological religion as follows;

A wide variety of spiritual traditions may be seen as ‘Green’, including Taoism, Sufism, Zen and (more doubtfully) the more traditional forms of Buddhism. In much Eastern mysticism we again find holism, respect for other species and occasionally a link with political movements.²⁶²

In this “mysticism”, Eastern religions are considered to provide a philosophical basis for 'Romantic', or “ecocentric” views of nature, in which humans are considered to be a part of nature, and nature is respected in its own right.²⁶³ This view of Eastern religion, as presented by Lynn White Jr.²⁶⁴ is advocated by most modern deep

²⁵⁷ Ibid, 189.

²⁵⁸ This shift to the respect of nature was part of the change in general perceptions of and attitudes towards 'wild' nature. Prior to the 18th century, uncultivated land was largely regarded as unsophisticated and frightening, however, many with different perceptions like the Romantics appeared, as illustrated by the preference of “English” gardens to French-style asymmetrical gardens.

²⁵⁹ Pepper, n 2 above, 190.

²⁶⁰ This point was mentioned in Chapter 1. See 1.7.1.

²⁶¹ For instance, William Blake was influenced by Eastern philosophy. Blake inspired Ginsberg, who helped create the Beat movement of the 1950s. See; Wall, n 209 above.

²⁶² Ibid, n 209 above, 6.

²⁶³ However, Buddhism is denied to have such prepositions by Harris. Harris, n 50 above. This point is discussed in relation to Japanese religions in 5.4.

²⁶⁴ See 4.2.1. See also; D. Wilkinson, n 224 above.

ecologists.²⁶⁵ For instance, Nash considers that Buddhism rejects anthropocentrism, providing for an ecocentric basis for environmental conservation.²⁶⁶

Another interesting aspect of Romanticism is its interest in the “folk societies of the past”.²⁶⁷ Marshall, for instance, although acknowledging the views which stress the hardship of hunter-gatherer life,²⁶⁸ considers such life as the “original affluent society”.²⁶⁹ Marshall questions the widely held notion of ‘affluent society’, in which materialistic gain is equated with happiness. Instead, Marshall suggests pursuing simpler, less materialistic lifestyles by reducing materialistic desire.²⁷⁰ These ‘idealistic’ ideas about rural or less developed lifestyles can be traced back to Gilbert White’s romantic views of his village Selbourne.²⁷¹ Indeed, there is a tendency in modern society to see rural or ‘primitive’ culture in general to be less exploitative and more environmentally sound.²⁷²

4.5.3. Animal Welfare

The last strand of the origins of ecological thinking to be presented is the animal welfare movement. In today’s scholarly discussions and political scenes, the issue of animal welfare is carefully treated as a separate issue from ecology. However, animal welfare has been identified as one of the sources of the modern conservation legislation by various scholars.²⁷³ Passmore states;

The principle that we ought not unnecessarily to cause animals to suffer does not carry us far, no doubt, as part of a case for preservation Its importance for us, however, is that first, *it represents a case in which Western men have come to believe that their dealings with nature can properly be subjected to moral approval or condemnation*; secondly, that it is a change which grew out of certain ‘seeds’ in Western thought - in particular, the humanitarian ‘seed’. The question now is whether we can construct a case for preservation by finding other such ‘seeds’,

²⁶⁵ See for instance; R. Nash, *Wilderness and the American Mind*, (New Haven: Yale University Press, 3rd ed, 1967).

²⁶⁶ Nash, n 228 above.

²⁶⁷ Pepper, n 2 above, 191.

²⁶⁸ Hunting and gathering economies are called ‘subsistence economy’, as they are considered to consume less energy and produce less per capita than any other mode of production.

²⁶⁹ S. Marshall, *Stone Age Economics* (Chicago: Aldine Atherton, 1972).

²⁷⁰ *Ibid.*

²⁷¹ See 4.5.1.

²⁷² For instance, see; P. Bunyard, ‘Gaia: Its Implications for Industrialised Society’ in P. Bunyard and E. Goldsmith (eds), *Gaia: The Thesis, the Mechanisms and the Implications* (Wadebridge, Cornwall: Wadebridge Ecological Centre, 1988) 217-233.

²⁷³ Reid, n 128 above, 5. See also; Nash, n 226 above.

without having to fall back on such certainly non-Western principles as that 'nature is sacred'.²⁷⁴

As seen in the previous Chapters, the tradition of animal welfare legislation and related enforcement mechanisms makes a significant contribution to the overall enforcement of wildlife legislation in the UK, and the concept of animal welfare appears to be one of the major differences between Japanese and UK wildlife conservation.²⁷⁵ This section examines the origin of the animal welfare movement. First, social conditions contributing to the movement will be examined, followed by the religious and philosophical foundations.

4.5.3.1. Social Conditions

There are several social conditions to be noted in considering the origin of the animal welfare movement. The first factor is cruel treatment of animals in general, particularly in the late 17th century. Fundamentally, the animal welfare movement was a reaction against the way animals were treated at around that time. As mentioned previously, 'sports' such as hunting, baiting and fighting enjoyed great popularity and the practice of animal experimentation during the early modern period was of incredible cruelty.²⁷⁶ However, anthropocentric attitudes were not representative of everyone. Thomas states; "The alternative view had left room for human guilt" and "it aroused worries about the motives of a God who could allow beasts to undergo undeserved miseries on such a scale".²⁷⁷ Around the 17th century signs of compassion towards 'lower creatures' were seen, as a reaction against cruelty.

The second factor involved in the development of the animal welfare movement was the growing interest in natural history and subsequent discoveries about the natural world. Again, colonisation played a part; Discovery of the great apes had a particularly significant impact upon people's perceptions of the place of humans in nature.²⁷⁸ Darwin's evolutionary theory also contributed to the scientific defence of the movement; "If, as he claimed, humans had evolved from apes, perhaps we had a moral obligation to treat related creatures with a little more 'humanity'", said Thomas Hardy, with regard to Darwin's theory.²⁷⁹

²⁷⁴ Passmore, n 7 above, 117.

²⁷⁵ See 2.4.10, 2.5.2.5 and 2.9 for discussions of UK animal welfare in relation to CITES implementation.

²⁷⁶ See 4.4.4.

²⁷⁷ Thomas, n 20 above, 34.

²⁷⁸ See; Thomas, n 20 above, 131.

²⁷⁹ T. Hardy, 'To the Secretary of the Humanitarian League' in F.E. Hardy, *The Later Years of Thomas Hardy* (London: Macmillan, 1930) 141-142.

The third factor was the increase in the keeping of domestic animals, particularly as pets. England has a long tradition of keeping domestic animals, and people lived in close proximity to animals during the medieval period.²⁸⁰ Towards the modern period, pet-keeping became fashionable amongst wealthy people. Horses and dogs were the nation's particular favourites, and the latter served as a symbol of social status.²⁸¹ Thomas considers that the implications of pet-keeping are social, psychological, commercial and, most significantly, intellectual. It served to raise awareness and knowledge about animals' physical and mental conditions. Pet-keeping also had an influence on ecological thinking; Concern for breeding and ancestry prepared a "natural, zoological way of thinking".²⁸²

4.5.3.2. Religious and Philosophical Foundations

Religious concepts provide a foundation for arguments for the moral treatment of animals. The sense of "guilt, unease and defensiveness" is a natural human psychological state when faced with the suffering of creatures,²⁸³ and these feelings were endorsed by religious concepts as follows. First of all, according to Christian doctrine, animals were creatures of God, who thought the creation of them was "good".²⁸⁴ Secondly, animals were not responsible for the original sin of Adam and Eve, and therefore had no reason to be punished, by being treated cruelly. Thirdly, the concept that humans have dominion over animals, which are "good" and therefore do not deserve to be punished, gives rise to the concept of stewardship.²⁸⁵ Humans are therefore morally responsible for their treatment of animals.²⁸⁶

This alternative interpretation of the *Bible*, which had been kept alive throughout history, was advocated by theologian Humphry Primatt in the 18th century at the start of the animal welfare movement.²⁸⁷ Contemporary theologians like Andrew Linzey go even further to state that animals have an intrinsic value given by God.²⁸⁸ This view was in the minority until the present, and the most predominant factor of theological arguments for the humane treatment of animals was its effect on the way humans treat each other. In addition, the Puritan belief in animal souls may also be

²⁸⁰ See 4.4.1.

²⁸¹ Certain species were confined to a particular class of society.

²⁸² Thomas, n 20 above, 133.

²⁸³ Ryder, n 75 above, 7. Ryder considers that this sense of guilt is suppressed by the over exaggeration of the necessity and importance of exploitation.

²⁸⁴ See 4.3.1.

²⁸⁵ See 4.3.1.

²⁸⁶ One of the most relevant figures in the Christian tradition is St. Francis. See 4.2.1.

²⁸⁷ For details, see; Brooman and Legge, n 113 above, 4-5.

²⁸⁸ Rev. A. Linzey, 'Animals and Moral Theology' in D. Paterson and R. Ryder, (eds), *Animal Rights: A Symposium* (Sussex: Centaur Press, 1979) 34-42.

significant, considering that animal welfare today enjoys more support in Puritan countries.

However, as the animal welfare movement blossomed in the early modern period, which was a more secular society, many discussions tend to be based upon rationalism. The ancient Greeks “[paved] the way for philosophical discussion in this area for centuries to come”,²⁸⁹ although never agreeing on a coherent view of humanity’s relationship with animals.²⁹⁰ Yet, the ancient Greeks had detailed discussions about animals, pointing out the similarities as well as the differences between humans and animals. For instance, the first writing on the topic since Roman times, Montaigne's *Of Cruelties*, published in the 16th century, quoted Pythagoras and Plutarch.²⁹¹

Discussions on welfare issues today are predominantly based upon secular arguments. These arguments can be primarily divided into two major arguments: utilitarian arguments and arguments concerning nature’s inherent value.²⁹² The utilitarian argument, founded by Jeremy Bentham in the 18th century and revived and consolidated in the 1970s by philosophers including Singer, is based upon cost-benefit calculation.²⁹³ The suffering of all sentient beings, including animals, should be reduced to a minimum in order to increase the overall, collective happiness. Therefore, the utilitarian stress is upon minimising 'suffering'. Inherent value arguments, advocated by the modern philosopher Regan, hold that animals, as well as humans, possess inherent value, and are therefore eligible to equal rights to be treated respectfully.²⁹⁴

4.5.3.3. Early Animal Welfare Law

Legislation to protect animals from inhumane treatment first appeared in the early 19th century. The movement was initiated by the upper class of society, which had more knowledge of and interest in domestic animals.²⁹⁵ Prior to the creation of the first animal welfare legislation, under the so-called 'Black Act' of 1723, it was a capital offence to destroy the property of others, including animals.²⁹⁶ With emerging concern about cruelty from the late 18th century onwards, a need was felt to

²⁸⁹ Brooman and Legge, n 113 above, 6.

²⁹⁰ See 4.3.2.

²⁹¹ Pythagoras's view was mentioned earlier. See 4.3.2. For Plutarch's view, see; Brooman and Legge, n 113 above, 7.

²⁹² However, the whole movement had been seen or interpreted deliberately as an “animal rights movement” in Japan. It is considered to be 'irrational' and 'emotional'. See 5.9 and 5.10.

²⁹³ See; Singer, n 27 above.

²⁹⁴ Regan, n 225 above.

²⁹⁵ See 4.5.3.1.

²⁹⁶ As for the property status of animals, see; Brooman and Legge, n 113 above, 50-55. There were some convictions made under this law against acts of cruelty, but the focus was on the property rights of owners.

enact a legislation specifically to protect animals, and bull-baiting was first thought to be a 'soft' target.²⁹⁷

After several failures,²⁹⁸ in 1822, Lord Erskine and Richard Martin MP,²⁹⁹ succeeded in passing the first cruelty law in the world, "An Act to Prevent the Cruel and Improper Treatment of Cattle".³⁰⁰ An offence for owners was added in 1849, when the Cruelty to Animals Act was enacted.³⁰¹ The first prosecution under the 1822 Act was brought by Martin himself, however, the Act proved to be difficult to enforce, and failed to ban bull-baiting.³⁰² It was not until 1835 that bull-baiting as well as cock- and dog-fighting was banned by an amendment. With this amendment, fighting or baiting of bears, cock-fighting, baiting or fighting of badgers or other animals became unlawful. Although there was persistent resistance, as represented by the example of Stamford shows where the Home Secretary had to intervene to stop bull-fighting,³⁰³ an official end was finally put to the infamous baiting of bulls and certain other animals.³⁰⁴

The second welfare law, the Cruelty to Animals Act 1876 came into existence to control unregulated vivisection.³⁰⁵ The Act was the result of the first organised animal welfare movement. The RSPCA had already been established in the 1820s, and it had tried to prosecute several vivisectionists since 1874 but had failed to succeed.³⁰⁶ Then, one of the first anti-vivisectionists, Frances Cobbe, started the movement to create the Act.³⁰⁷ What is significant is that the movement received the support of Queen Victoria, which gave the animal welfare movement credibility and gave it a 'noble' image.

The Bill was met with opposition from scientists. The Bill was read in the Lords and the opposition in the Commons was weakened by the influence of such scientists as

²⁹⁷ Ryder, n 75 above, 77.

²⁹⁸ The first bill was opposed because it was considered to deprive the working-class of their pleasure.

²⁹⁹ See: Brooman and Legge, n 113 above, 42-43.

³⁰⁰ The 1822 Act made it an offence to "beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep or other cattle". Both a fine and imprisonment were provided for. The Act, however, still preserved the property right of owners of animals, therefore only allowing the prosecution of servants, *not the owners* of animals. For discussions of the Act, See; Radford, n 255 above, 35-38.

³⁰¹ The Cruelty to Animals Act 1849.

³⁰² Ryder, n 75 above, 83. Also see: Brooman, and Legge, n 113 above, 41-44.

³⁰³ Bull-baiting had an incredible significance in Stamford, and therefore attempts were made to defy the law as well as the enforcers. With the Home Secretary's intervention in 1838, bull-baiting finally stopped. For details, see; Ryder n 75 above, 84-85.

³⁰⁴ The ban on cockfighting and dog-fighting encouraged rat-fighting, until the latter was banned by the Protection of Animals Act 1911. *Ibid*, 95. Cockfighting, dog-fighting and badger-baiting are recently showing signs of increase.

³⁰⁵ See 4.4.4.

³⁰⁶ The main problem in prosecutions was that an experiment had to be proved completely 'unnecessary'. Brooman and Legge, n 113 above, 124.

³⁰⁷ The RSPCA "dithered" "[when] it came to decisive action". Ryder, n 75 above, 108.

Huxley.³⁰⁸ The resulting Cruelty to Animals Act 1876 “allowed nearly all those restrictions to be annulled by means of special certificates issued to experiments by the Home Office”.³⁰⁹ The enforcement of the Act was exercised relatively well by the first two Home Secretaries, although prosecutions proved difficult.³¹⁰ Moreover, the ethos of the period allowed scientists to control the Act. The Association for the Advancement of Medicine by Research, formed in 1882, overtook the administrative control of the Act from that year onwards. This shows the beginning of the long-lasting conflict between anti-vivisectionists and scientists that is still seen today.³¹¹

4.5.3.4. The Protection of Birds and Wild Animals During the 19th Century

The persecution of birds was the subject of major concern in the 19th century.³¹² Birds were shot for sports, food, and particularly fashion, with the growing feather trade between 1880s and 1890s. The only legislation protecting birds which was passed in Parliament during the 19th century was the Sea Bird Protection Act 1869, but the Act failed to stop mass persecution.³¹³ This growing concern led to the creation of the RSPB in 1889, which later played an important role in facilitating the protection of birds in the UK. Wild animals received no legal protection, and various types of hunting were kept alive.³¹⁴

4.5.3.5. Animal Welfare in the 19th Century

When viewed in a wider historical context, it was in Victorian times when the concept of animal welfare became consolidated. At least two points should be noted here. First, it was partly a reaction to the declining power of religion and morality, rapidly being replaced by the emerging social and political power of science.³¹⁵ Ryder describes a controversy over vivisection in terms of “a battle between the old and the new elites”³¹⁶: between the aristocracy and the Church, and the upstarts of science, although he stresses the importance of the role played by people's genuine compassion towards animals.

³⁰⁸ The Government appointed a Royal Commission for Enquiry, which included members of the RSPCA as well as scientists such as T. H. Huxley. Ryder, *ibid.*, 109-110. Brooman, and Legge, n 113 above, 126.

³⁰⁹ Ryder, n 75 above, 112.

³¹⁰ The Victoria Street Society prosecuted a professor for experimenting without a licence, however, the prosecution failed as the professor claimed that it was carried out by a licensee. *Ibid.*, 116.

³¹¹ *Ibid.*

³¹² For details, see: *Ibid.*, 116-117.

³¹³ See; M. Radford, 'When Will the Laws Protecting Domestic Animals Be Applied to Wildlife?' in J. Boswall and R. Lee (eds), *Economics, Ethics and the Environment* (London: Cavendish Publishing Ltd., 2002), 46.

³¹⁴ Ryder, n 75 above, 119. The Humanitarian League was founded to oppose such hunting traditions in 1891. Radford considers that “mammals were ignored” in terms of legal protection. Radford, *ibid.*, above, 46.

³¹⁵ See 4.4.5.

³¹⁶ Ryder, n 75 above, 113.

Secondly, the animal welfare movement was given the advantage of having a noble, fashionable image, especially in the first half of the 19th century. The concept was associated with the Crown and aristocrats, especially because of Queen Victoria's keen support.³¹⁷ The RSPCA, which secured the Queen's support in its early stages,³¹⁸ continued to be headed and supported by the influential, wealthy upper class until the 20th century.³¹⁹ Although such endorsements by the upper class sometimes had an adverse effect, for instance, by preventing the Society from opposing 'noble' sports, it certainly played an important role in promoting the image of the animal welfare movement, especially when the entire society of the time was so upward-looking. The RSPCA "had certainly played a part in promoting legal changes" around this time.³²⁰

4.5.3.6. Animal Welfare in the 20th Century

Since the end of the 19th century, animal welfare was vigorously promoted, resulting in the establishment of numerous new societies, and several pieces of legislation giving protection to animals. Such legislation includes: the Cruelty to Wild Animals in Captivity Act,³²¹ the 1904 ban of the pole trap, the 1908 protection of stray dogs, the 1908 legislation to stop the hooking of birds, the 1910 restriction of the transportation of horses. These developments led towards the creation of the Protection of Animals Act 1911, which continues to be the primary animal welfare legislation in the UK to this day.

The 1911 Act finally gave protection to any animal, by defining 'animal' as 'any bird, beast, reptile or fish' although it excludes animals used for experiments,³²² animals as "food for mankind"³²³ and any captive animal targeted for hunting and coursing.³²⁴ The Act creates an offence for cruel treatment generally, including omission of any adequate act, as well as specifying fighting or baiting, poisoning, inhumane

³¹⁷ For instance, the Queen's private secretary wrote to the president of the RSPCA in 1874, expressing the Queen's concern over animal experiments. *Ibid.*, 107.

³¹⁸ The RSPCA secured her patronage in 1835 before she became Queen, and the royal prefix in 1840 after she became Queen. *Ibid.*, 95.

³¹⁹ Especially after Queen's involvement, the society's president and vice-president tended to be titled until the 20th century, when it gradually lost support from the upper-classes. For discussions, see; *ibid.*, 96; and Radford, n 255 above, 40-48.

³²⁰ *Ibid.*, 97.

³²¹ The Act was to protect performing animals in zoos and circuses. It outlawed the abusing, infuriating and teasing of captive animals. For background details, see: *ibid.*, 133; and Brooman, and Legge, n 113 above, 268-272.

³²² ss. 2 (3), the Protection of Animals Act 1911 (as amended).

³²³ ss. 2 (3)(a), *ibid.*

³²⁴ ss. 2 (3)(b), *ibid.*

operation, and tethering under certain conditions.³²⁵ Nevertheless, the 1911 Act “marks the contemporary legal attitudes to animals”.³²⁶

The forty years up to 1914 were “the most vigorous period in the [animal welfare] movement's history until then”.³²⁷ One of the most vigorous fights for the welfare of animals was the fight against blood sports, as the popularity of big-game and trophy hunting increased, following the trend of colonisation. Henry Salt, a significant intellectual contributor to the welfare movement and also a Romantic,³²⁸ founded the anti-sport Humanitarian Leagues in 1891, and protested against the hunting of half-tame 'carted' deer and the hunting of hares with beagles.³²⁹

Another continuing fight was against vivisection, which began to receive support from a broader part of society. A fierce battle over the 'brown dog'³³⁰ possibly led to the second Royal Commission on Vivisection to get the Home Office to admit the long-existing interdependence between the Office and the Association for the Advancement of Medicine by Research. Various anti-vivisection societies such as the National Anti-Vivisection Society, a successor to the Victoria Street Society, the British Union for the Abolition of Vivisection, founded in 1898, and the Animal Defence and Anti-Vivisection Society, founded in 1906 contributed to the promotion of the anti-vivisection movement.

As a feature of this period, at least the following should be noted. First, although the movement was increasingly widespread, it was not yet appreciated by the British working class, which tended to see it as a “preoccupation of the sentimental rich”.³³¹ Secondly, because of the prominence of women figures in the movement, it came to be seen as a campaign by women. Thirdly, the movement was considered rather *irrational*.

The two World Wars shifted people's attention more towards concern for the human species. The animal welfare movement stagnated, and apart from a few achievements in terms of legislation,³³² it was generally considered a step-back compared to the previous period.³³³ Reflecting the image held in the preceding

³²⁵ ss. (1), *ibid*.

³²⁶ Brooman, and Legge, n 113 above, 50.

³²⁷ Ryder, n 75 above, 121.

³²⁸ Salt was influenced by Thoreau's philosophy of being one with nature. For details, see: *Ibid*, 121-124.

³²⁹ A legal ban on hunting was considered but was not realised, for political reasons.

³³⁰ The International Anti-Vivisection Council erected a bronze statue of a dog in Battersea Park, in memory of animals that died during experiments.

³³¹ *Ibid*, 141.

³³² The ban on the use of leghold gin trap in Britain was achieved in 1958 by an amendment to the Pests Act 1954.

³³³ For instance, the RSPCA concentrated its effort upon unwanted animals, destroying thousands each year. Its link with royalty was gradually lost, and aristocrats who supported the society were taken over by the middle-classes.

period, that is, 'irrational', 'sentimental' or 'feminine', those who were engaged in the movement were extremely cautious of appearing so, therefore they restricted their activities.³³⁴

The animal welfare movement was revived in the 1960s. The social background of the 1960s, with increasing attention paid to an 'alternative' lifestyle, facilitated the revitalisation;

Since the 1960s the pace of the change in outlook towards other species has accelerated and a powerful moral concern has emerged for the well-being of the other individual sentients of our planet. To an extent this arose in the context of the still maligned 'hippy' culture of that decade which placed a new value on compassion and allowing others to 'do their own thing'. The return-to-nature element of this 'Flower Power' philosophy helped to blur the dividing line between human and nonhuman, implying that *all* sentients should be respected.³³⁵

Intellectual contributions during the 1960s and 1970s, particularly by professional philosophers strengthened the arguments for animal welfare, and the argument for rights for animals flourished.³³⁶ Since the 1970s, particularly after the publication of Peter Singer's *Animal Liberation* in 1976, animal welfare has obtained greater recognition and the UK has a comparatively advanced animal welfare legislation.³³⁷

4.5.4. Modern 'Ecology'

The development of ecological studies and various movements deriving from the aforementioned 'ecological' concerns led to the emergence of various ecological organisations, which promoted the development of ecological legislation in the UK.³³⁸ For instance, the legislation protecting birds is one of the distinct characteristics of the UK wildlife law. Since the enactment of the Wild Birds Protection Act 1904, which was a result of welfare and environmental concerns for the exploitation of birds at the time, organisations such as the RSPB and the British Ornithology Trust continued their efforts to improve the protection of birds,

³³⁴ For discussions on the relationship between the development of human rights and animal welfare movement, see Radford, n 255 above. Publications by Thomas Payne, Mary Wollstonecraft and Hermann Daggett and Thomas Taylor are considered to be particularly significant.

³³⁵ Ryder, n 75 above, 3.

³³⁶ Some of the first were Ruth Harrison's book *Animal Machines*, and Brigid Brophy's article in the *Sunday Times*, entitled 'The Rights of Animals' in 1965. Contribution from intellectuals continued.

³³⁷ See for instance; RSPCA, *Principal UK Animal Welfare Legislation: A Summary* (Horsham: RSPCA, 1999).

³³⁸ For detailed discussions of the history of the UK environmental movement and legislation, see Evans, n 195 above. For discussions on environmental law and ethics, see; Alder, J. and Wilkinson, D, *Environmental Law and Ethics* (Basingstoke: Macmillan, 1996).

providing scientific basis for the need for their conservation.³³⁹ In keeping with this tradition of bird protection, the Wildlife and Countryside Act 1981 gives many of the birds in the UK stricter protection than it does to others.³⁴⁰ Seals also became subject to protection in the early 20th century, under the Grey Seals (Protection) Act 1914, and approximately 60 per cent of the world's grey seals inhabit in the UK.

Another example is the legislation protecting badgers, which illustrates welfare concerns for wildlife as well as romantic interests of local groups. Badgers “made the news” when discussions began to control their population out of fears for bovine tuberculosis in the early 1970s.³⁴¹ The long-existing sport of badger digging came under public scrutiny, and the Badgers Act 1973 was enacted. Although the 1973 Act failed to protect badgers adequately, concerns about this 'cruel' sport remained and badgers became protected from all unlicensed disturbance in 1992.³⁴² Evans considers that “sentiment” of local groups achieved this success.³⁴³ All wild animals are now under the protection of the Wild Mammals Protection Act 1996, which regulates cruelty to wild animals.³⁴⁴

The Romantics' interests in rural beauty and lifestyle have also been inherited by various groups. The Council for the Preservation of Rural England, established in 1926, has lobbied for access to countryside. It campaigned for the establishment of national parks, not primarily for conservation purposes but for recreational purposes. The National Parks and Countryside Act 1949, however, contained not only recreational but also conservation elements.³⁴⁵ For its creation, Nature Conservancy was set up, as the first statutory conservation organisation, which carried out the scientific studies necessary for conservation in protected areas. This tradition has now been inherited by the CRoW 2000.³⁴⁶

4.6. Conclusion

Whether the Western tradition inherently nourished 'exploitative' or 'ecological' attitudes toward nature cannot be ascertained. It is more appropriate to say that it contains both elements, and these opposing elements have existed throughout Western history. It is therefore not constructive to criticise a particular tradition as

³³⁹ The British Ornithology Trust was set up in 1933. The Protection of Birds Act 1954 was “a very powerful piece of legislation at this time”. See *ibid*, 93.

³⁴⁰ See 2.8.1.

³⁴¹ Evans, n 195 above.

³⁴² The Badgers Act 1992.

³⁴³ Evans, n 195 above.

³⁴⁴ Wild Mammals Protection Act 1996. For discussions, see; Radford, n 313 above.

³⁴⁵ The National Parks and Countryside Act 1949.

³⁴⁶ Countryside and Rights of Way Act 2000.

'inherently' 'exploitative' towards nature, as exploitation of nature can also be observed in other cultures, and is more likely to be a universal tendency of modern human society. However, the source of current environmental protection, Western ecological thought, is also based upon self-criticism of its own conduct. It is founded upon thorough discussions and examinations of why and how environmental destruction on a large scale took place.

Different approaches toward environmental conservation originated from the West; The so-called deep ecology movement, which unites humans and nature together and accords an intrinsic value to nature, can be traced back to Gilbert White's romantic approach to natural history and Romanticism. Although this school of thought generally 'opposes' rationalism, it is a reaction against it, and therefore is premised upon rationalism. It is fully aware and critical of human tendencies for dominant, exploitative attitudes toward nature, endorsed by rational argument. In other words, the movement's arguments, are within the remit of the Western tradition and therefore fundamentally differ from alternative ecological philosophies proposed by deep ecologists such as Eastern religions.

Animal welfare, on the other hand, is recognised as a predominantly Western mode of thought in general. It is endorsed by the Christian concept of stewardship and rational arguments relating to the capacities of suffering and pain. To a large extent, it is also a counterargument to Christian 'human exploitation' of nature, rationalists' mechanistic views of nature and their treatment of nature accordingly. The consideration of human treatment of animals is, however, based upon a dualistic view of nature and human dominion over it and the accompanying responsibility toward animals that this implies.

The utilitarian conservation approach is based upon the concept of stewardship and *rational* management of 'resources' firmly *according to science*. It represents most 'exploitative' attitudes criticised by deep ecologists. Fundamentally, it believes in human dominion over nature, human rights to utilise nature, human progress by such utilisation, and the belief in science to achieve this end. Although less anthropocentric utilitarian arguments are gaining more support as seen in the development of international wildlife law, the utilitarian approach is fundamentally anthropocentric and dominated by Western rationalism and belief in science.

However, it is this most anthropocentric approach that is currently most widely accepted by the international community as a common approach to nature conservation. Although the utilitarian approach is deeply rooted in Western tradition, it is the only approach that is recognised as the best possible approach. Compared to the wide acceptance of the utilitarian approach, the animal welfare concept has secured a place in international law but its extent is limited. As seen in Chapter 3, for instance, the concept was almost unknown until very recently in Japan, and is still not fully understood. However, in the UK, it is an important

component of 'ecological' ideas. Further compared with the utilitarian approach, ecocentric ideas have gained support from the international community, to a limited extent. The implementation of ecocentric ideas remains difficult as the concept fundamentally opposes anthropocentric utilitarianism. Furthermore, ecocentric ideas are not fully understood by, for instance, the Japanese, and are sometimes confused with 'alternative' religions or philosophies that are fundamentally different from such Western-originated ideas, as seen in the next Chapter.

Chapter 5 Japanese Cultural Factors

5.1. Introduction

*Thus the communal cult was the pivot upon which the traditions and life of the people moved, wherein gods or spirits, animals and trees, even rocks and streams, were believed to be in living communion with men.*¹

“The commonly held view that the Japanese have a 'love of nature' has been developed and repeated literally for centuries by both Japanese and observers of Japan”, according to Kalland and Asquith.² This school of thought generally believes that a basic characteristic of Japanese culture is “a love of nature”, and that the Japanese consider themselves “a part of nature” and have “the art of living in harmony with nature”.³

Often referred to by scholars from this school of thought as an embodiment of nature loving are various types of Japanese art, such as painting, poetry,⁴ tea ceremony, etc. The Japanese 'love of nature' and 'art of living in harmony with nature' have been attributed to religious and aesthetic factors, which have “close relations” to each other, according to Kalland and Asquith.⁵

Further, “[conservation] of natural resources, or their sustainable use, has often been regarded as a characteristic of many traditional Asian cultures”, due to cultural factors such as “[self]-imposed restrictions on resource use, demarcation of sanctuaries, . . . classification of certain animals as sacred (said to be parts of environmentally conscious religions)”, according to Kalland and Persoon.⁶ One example of this in modern Japan is a prohibition of hunting within pristine of Shinto

¹ M. Anesaki, *History of Japanese Religion: With Special Reference to the Social and Moral Life of the Nation* (London and New York: Kegan Paul International, 1995) 22.

² A. Kalland and P.J. Asquith, 'Japanese Perceptions of Nature: Ideals and Illusions' in A. Kalland and P.J. Asquith (eds), *Japanese Images of Nature: Cultural Pictures* (Surrey: Curzon Press, 1997) 1. For instance, see the quote from D.T. Suzuki shown at the beginning of 1.1.

³ M. Watanabe, 'The Conception of Nature in Japanese Culture', (1974) 183 *Science*, 280.

⁴ See 5.3.3.

⁵ Kalland and Asquith, n 2 above, 2. The relationship between Japanese aestheticism and Japanese religions and how this is reflected in Japanese poetry is discussed in 5.3.3. For general relationship between Japanese religion and art, see for instance; M. Anesaki, *Art, Life and Nature in Japan* (Rutland, Vermont: Charles E. Tuttle Co., 1932) 10. Shinto and Buddhist views of the relationship between humans and nature are provided in 5.2.3 and 5.3.3.

⁶ A. Kalland, and G. Persoon, 'An Anthropological Perspective on Environmental Movements' in A. Kalland and G. Persoon (eds), *Environmental Movements in Asia* (Surrey: Curzon Press, 1998) 1.

shrines and Buddhist temples, as well as graveyards, under the Hunting Law discussed earlier.⁷

On the other hand, it has also been pointed out that 'nature' as expressed in Japanese art, connotes aesthetic or emotional values but no ecological or ecosystem values. Kalland and Asquith state that the way the Japanese traditionally appreciate 'nature' is in a limited, confined, man-made context as typically expressed by *bonsai* trees.⁸ Kellert points out that the Japanese show a strong preference to "the dominance of nature in situations involving considerable aesthetic and emotional appeal"⁹ and he criticises the Japanese lack of ecological considerations. The concept of ecology or ecosystems is relatively unfamiliar to the Japanese.¹⁰ For instance, Nakamura points that the Japanese traditionally did not keep livestock, which led to the lack of a notion about wildlife population control.¹¹

Another criticism made with regard to Japanese wildlife conservation is a lack of moral consideration. Kellert finds that moral or ethical consideration is lacking in Japanese wildlife conservation approaches.¹² The concept of animal welfare is still new to the Japanese, and discussions on moral or ethical aspects of wildlife conservation from an animal welfare point of view are scarce in Japan,¹³ although conservation in general is thought to be important, and "fashionable" even, according to Laurent and Ono.¹⁴

This Chapter therefore examines three cultural factors that are considered to influence the Japanese attitude towards nature and conservation; religion, ecology and animal welfare, in order to ascertain whether these factors provide a basis for

⁷ For discussions of the Hunting Law, see 3.4.3.3. For discussions of how shrines and temples provided for protected habitats for wildlife, and how they are incorporated into modern nature conservation movement, see; K. Akiyama and K. Sugiyama, 'Wagakuni ni okeru Shizen Kankyo Fukugen no Ayumi ni Miru Jinjarin no Zousei (Plantation of Shrine Trees in the Development of the Environmental Restriction in Our Country)' (1999) 7 *Journal of Japan Biotope Association*. For relevant discussions, see 5.7.5.

⁸ Kalland and Asquith, n 2 above, 6. *Bonsai* trees are miniature trees in a small pot, made to grow in a controlled shape by the use of wires and scissors.

⁹ S.R. Kellert, 'Japanese Perceptions of Wildlife', (1991) 5 *Conservation Biology*, 297-398. For Kellert's earlier research on the topic, see S.R. Kellert, S. R. 'Attitudes, Knowledge, and Behaviour towards Wildlife among the Industrial Superpowers: United States, Japan, and Germany', (1993) 49 *Journal of Social Issues*1, 53-69.

¹⁰ See 5.5.

¹¹ T. Nakamura, *Nihon Doubutsu Minzokushi (Ethnographical Stories of Animals in Japan)* (Tokyo: Kaimeisha, 1987) 196-199.

¹² Kellert, n 9 above.

¹³ See 5.9. Also see 2.9 and 4.5.3 for comparison with the UK.

¹⁴ E.L. Laurent and K. Ono, 'The Firefly and the Trout: Recent Shifts Regarding the Relationship Between People and Other animals in Japanese Culture', (1999) 12 *Anthrozoos* 3, 150. A survey by the government also shows that Japanese people generally have a high interest in environmental issues, in comparison with other countries. National Institute of Science and Technology, Ministry of Education and Science, *Kagaku Gijutsu ni Kansuru Ishiki Chousa: 2001 Nen 2-3 Gatsu Chousa (The 2001 Survey of Public Attitudes Toward and Understanding of Science & Technology in Japan)*, Aug. 2001.

'conservation'.¹⁵ According to many scholars who support the view of the 'Japanese love of nature', Japanese religions and culture appear to provide a contrast to the anthropocentric elements of Western traditions, thereby projecting an 'ecological' image.¹⁶ However, the findings in Chapters 2 and 3 suggest otherwise. It is the UK which is more in line with international conservation effort, not Japan. The Chapter attempts to explain this discrepancy in a cultural context by examining the aforementioned three factors.

The Chapter first considers the influence of religions on Japanese perceptions and attitudes towards nature. The Shinto and Buddhist worldview is considered, for comparison with that of Christianity. The Chapter then examines ecology in Japan, in order to see how religious influences are incorporated into the Japanese approach to ecology. A comparison will be made between 'ecology' as currently accepted internationally, and the 'Japanese' ecology. Finally, animal welfare in Japan is examined, as Chapter 2 has shown that the concept of animal welfare and welfare organisations play a significant role in UK wildlife conservation.¹⁷ The findings of Chapter 3 suggests that such concepts appear to be rare in Japan.¹⁸ The Chapter then concludes that cultural traditions do not automatically provide an 'ecological' foundation for conservation, and that these traditions have influenced Japanese attitudes toward wildlife conservation.

5.2. Shinto

5.2.1. Introduction

This section considers the influence that Shinto had on the Japanese view of nature.¹⁹ The examination of Shinto is aimed at identifying "a strong reverence for nature"²⁰ in this religion, in order to contrast it with criticisms of the Christian view of nature.²¹ The section first provides a brief theoretical explanation of Shinto, including its definition, the subject areas to be discussed, and the extent to which it is still present in Japan. Following on from this, the Shinto equivalent of the story of 'Creation', as described in Genesis, is provided. This will mainly refer to Japan's first written source the *Kojiki*, which contains Shinto myths and legends. Subsequently the nature

¹⁵ For discussion on the concepts of wildlife conservation as currently accepted internationally, see 1.7. For discussion on how wildlife conservation developed in the UK, see 4.5.

¹⁶ As mentioned in the preceding paragraphs. Also see 1.1 and 5.7.5.

¹⁷ See 2.4.10, 2.5.2.5 and 2.9.

¹⁸ See 3.2.5, 3.4.2.7 and 3.4.3.1.

¹⁹ The concept of what is called 'nature' now in English is considered by many not to have existed in Japan traditionally. Kalland and Asquith, n 2 above, 7-10.

²⁰ J. Stewart-Smith, *In the Shadow of Fujisan: Japan and Its Wildlife* (London: Viking, 1987) 33.

²¹ See 4.2.1.

of Shinto 'deities', or *kami*,²² and the relationship between *kami*, humans and nature is considered, in order to explore Shinto perceptions and attitudes towards nature.

Before discussing Shinto perspectives of nature, the usage of the term “Shinto” must be clarified. However, this presents a problem. Bocking states; “[Almost] everything in traditional Japanese religion, indeed almost everything in Japan, has at one time or another been claimed as part of Shinto”.²³ It is very difficult to separate Shinto elements from the rest of the Japanese culture, and scholars appear to disagree on what is to be called “Shinto”. In general terms, “Features of polytheism, emperor cult, fertility cult, or nature worship” are embodied in Shinto.²⁴ Unlike many other established religions, and like many other native, so-called 'primitive' religions, it has no founder, no official scriptures, and no fixed system of ethics or doctrines, which makes its definition difficult.²⁵ Anesaki describes it as “fundamentally not so much a religious system as a complex of ancient beliefs and observances”.²⁶

Although “in broad terms no-one seriously disputes that 'Shinto' is, alongside Buddhism, one of Japan's two most significant spiritual-ecclesiastical traditions”, it “lacks definition”, according to Bocking.²⁷ There are two opposing schools of thought with regard to the definition of Shinto. On the one hand, there exists a group which considers that “Shinto” is “established”, treating it as the indigenous religion of Japan which has continued since the ancient times, centring around the imperial institution.²⁸ Scholars of this opinion may give certain categorisations to different strands of Shinto, such as “folklore Shinto”, “imperial Shinto” or “State Shinto”.²⁹

On the other hand, the opinion exists that considers Shinto has no substance, and is only a ghost of the past. A landmark article by Kuroda suggests that what is conceptualised as Shinto in modern times is only an invention of the Meiji Government, moreover Shinto was never recognised as an independent religion before the Meiji modernisation.³⁰ He even speculates that Shinto in its earliest stages

²² The definition and nature of *kami* is discussed in 5.2.2.2.

²³ B. Bocking, *The Oracles of the Three Shrines: Windows on Japanese Religion* (Surrey: Curzon Press, 2001) 2.

²⁴ J.M. Kitagawa, *On Understanding Japanese Religion* (Princeton: Princeton University Press, 1987) 139.

²⁵ *Ibid.*

²⁶ Anesaki, n 1 above, 20.

²⁷ Bocking, n 23 above, 2. See also; K. Ueda, 'Shinto' in N. Tamaru and D. Reid (eds), *Religion in Japanese Culture* (Tokyo, New York and London: Kodansha International, 1996) 25-42.

²⁸ See for instance; J. Breen and M. Teeuwen, 'Introduction' in J. Breen and M. Teeuwen (eds), *Shinto in History: the Ways of Kami* (Honolulu: University of Hawai'i Press, 2000) 4-5.

²⁹ One example of such categorisation might be: “imperial Shinto”, which concerns the ritual practice of the imperial court; “folk Shinto”, the continuation of the localised worship of deities since ancient times; “sect Shinto”, which contains organised groups, and “State Shinto”, Shinto patronised and utilised by the militaristic Meiji government from 1868 to 1945. J.L. Huffman (ed), *Modern Japan: An Encyclopedia of History, Culture, and Nationalism* (New York and London: Garland Publishing, Inc., 1998) 233-235. For other categorisations, see for instance; Bocking, n 23 above, 5; and Ueda, n 27 above.

³⁰ T. Kuroda, 'Shinto in the History of Japanese Religion', (1981) 7 *Journal of Japanese Studies* 1, 1-21. See: Huffman, n 29 above, 234-235.

was actually a form of Taoism, as the Japanese characters used for Shinto imply.³¹ Kuroda's opinion was widely welcomed, however, it was viewed with caution by those who took more of a middle ground between the 'establishment' school and Kuroda.³²

Indeed, as Bocking points out, "Shinto definitely exists", as shown by the existence of numerous Shinto shrines in Japan.³³ Throughout its history, Shinto underwent changes and modification, especially under the influence of introduced religions, including Buddhism,³⁴ Taoism and even Christianity.³⁵ On the other hand, it is also true that the Shinto tradition has in turn had a significant influence upon the introduced religions, and is deeply intertwined with other religions.³⁶ In addition, Japanese culture and religions themselves have been significantly influenced by the Continent, mainly China.

Therefore, with the awareness of the limitations and assumptions, for the purpose of this study, the term "Shinto" will be used rather loosely, to include all that contains an element of what is generally considered Shinto in today's Japan. The purpose of this study is to examine 'Japanese' perceptions and attitudes towards nature, and therefore whether they are under the influence of strictly Shinto or Buddhism will not be considered a priority.³⁷

As the areas considered to be covered by Shinto are so vast, the subject of the examination must also be clarified. The primary focus is the foundational element of Shinto, which ethnologist Sakurai calls a "primitive nature religion".³⁸ The description of folklore belief by Sakurai should present a helpful example of the general, overall picture of Shinto, although it is to be noted that his view is only one amongst many. Sakurai sees folklore belief³⁹ as consisting of three layers in vertical

³¹ Kuroda, n 30 above. See also; Kitagawa, n 24 above, 139; and Anesaki, n 1 above, 20. For the influence Taoism had on Shinto, see: T. Barrett, 'Shinto and Taoism in early Japan', in Breen and Teeuwen, n 28 above, 13-31.

³² Breen and Teeuwen, n 28 above.

³³ Bocking, n 23 above, 2.

³⁴ The relation between Buddhism and Shinto and the interconnectedness between the two is discussed in 5.3.1 and 5.3.3.

³⁵ For discussions of the development of Shinto under the influence of introduced religions and thoughts, see; N. Inoue, 'Perspectives Toward Understanding the Concept of *Kami*' and M. Ito, 'Evolution of the Concept of *Kami*' in N. Inoue (ed), *Kami*, trans. N. Havens (Tokyo: Institute for Japanese Culture and Classics, Kokugakuin University, 2000) 1-19 and 20-41.

³⁶ For discussions of how both Shinto and Buddhist influence can be observed in people's attitudes towards animals, see 5.3.4 and 5.3.5.

³⁷ See for instance, Bocking's analysis of Toba's work in Bocking, n 23 above.

³⁸ T. Sakurai, '*Souron* (General Remarks)' in T. Sakurai (ed), *Shinko (Religious Beliefs)* (Tokyo: Yuseido-Shuppan Ltd., 1979) 1-4.

³⁹ Sakurai considers that there exists an area in folklore belief where it is impossible to distinguish between established religions and native beliefs. *Ibid.*

order, each of which is built on the foundation of the layer below.⁴⁰ The foundational element of Shinto, “primitive nature religion”, is at the bottom. Sakurai considers that there are two strands in this basic layer; one the worship of natural objects themselves (represented by *kami* of mountain, water, ocean, trees, stone, etc.) and the other to believe in the existence of spirits or divinity, caused by feelings of awe towards natural phenomena (i.e. rain, fire, wind, thunder, etc.).⁴¹ Sakurai also notes that these two strands are 'two sides of one coin', meaning that people were not necessarily aware of the difference between the two.⁴² The second layer is the worship of ancestors or deceased clan heads, which developed into the third layer of belief in regional *kami*. On top of these three layers are introduced religions, such as Buddhism.⁴³ What the following discussions are concerned with is the first layer, and the term “Shinto” will be used to primarily include what is called “primitive nature religion” by Sakurai.

How widespread is Shinto in today's Japan? Shinto itself is still very much present in today's Japan.

Shinto has its own priesthood, rites, ancient and modern places of worship, festivals and sacred calendars and is comprised of nearly a hundred thousand recognised shrines. These together are visited by anything up to eighty per cent of the population on special occasions such as New Year and by significant numbers of people on many other occasions.⁴⁴

It does not mean that the “eighty per cent of the population” that visit Shinto shrines are necessarily 'Shintoist'. This population is also quite likely to overlap with those who visit Buddhist temples.⁴⁵ However, in any case, the Shinto tradition is definitely seen in contemporary Japan.

Furthermore, on a spiritual level, although the way a “primitive nature religion” sounds may give the impression of it being ancient and no longer present, it is certainly *not a thing of a past*. These ancient beliefs “have always existed latently”.⁴⁶ Observers of Japan agree that worldviews and beliefs held since early

⁴⁰ Sakurai does not use the term 'Shinto' in his descriptions. Ibid.

⁴¹ Ibid.

⁴² Ibid. For more detailed discussions on these two strands, see discussions on 'animism' and 'manaism' in 5.2.2.2.

⁴³ Anesaki holds the similar view; Anesaki, n 1 above, 19.

⁴⁴ Bocking, n 23 above, 2.

⁴⁵ Not necessarily practicing Buddhists.

⁴⁶ Sakurai, n 38 above, 11.

times are still present in Japan.⁴⁷ Particularly the so-called nature-worship tradition can be readily observed by anyone who visits Japan, whether such practices are conscious or non-conscious. In most shrines, for instance, there are *goshinboku*, sacred trees, wrapped with a rope with white paper ribbons on it.⁴⁸ On mountains, one is likely to find shrines or *torii*, Shinto gates.⁴⁹ Stuart-Smith states, “All Japanese people inherit a strong reverence for nature”.⁵⁰

5.2.2. The Shinto Worldview

In the following paragraphs, the Shinto worldview is examined, as a comparison to the Christian worldview.⁵¹ It first considers the Shinto equivalent of the 'Creation' story. It then considers the nature of *kami*, including discussions on the definition of *kami*. By considering the nature of Shinto *kami*, the relation between *kami* and humans, and between *kami* and nature is considered. Finally, discussions on the human perception of nature in Shinto belief are provided, in relation to the overall worldview of Shinto. The human perception of animals under Shinto is considered in particular.

5.2.2.1. The Shinto Story of the 'Creation'

In prehistoric times, various forms of “primitive nature religion” existed, including shamanism, which is still alive in today's Japan.⁵² However, to find the equivalent to the story of 'Creation', historians are confined to turning to the first written sources of Shinto in the 8th century; Compiled in 712 and 720 A.D., the *Kojiki* (Records of Ancient Matters) and *Nihonshoki* or *Nihongi* (Chronicles of Japan)⁵³ contain stories about when Japan was inhabited by numerous *kami*, who are described as having human form. The books are filled with ancient myths, legends and poems as well as historical events. One of the primary objectives of the compilation of these books was to stress that the imperial families were descendants of Amaterasu *kami*, to establish the nation.⁵⁴ However, they are valuable sources which give an insight into

⁴⁷ Kitagawa, n 24 above, 43. See also: Anesaki, n 1 above; Kalland and P.J. Asquith, n 2 above; G. A. Kato, *A Historical Study of the Religious Development of Shinto*, trans. S. Hanayama (Tokyo: Japan Society for the Promotion of Science, 1973); R. S. Ellwood and R. Pilgrim, *Japanese Religion* (New Jersey: Prince-Hall Inc., 1985).

⁴⁸ White animals were given a special status for this reason.

⁴⁹ Shrines and *torii* are also visible in the middle of cities, many of them surviving the development of areas. For an example of Inari shrines, see 5.2.3.

⁵⁰ Stewart-Smith, n 20 above, 33.

⁵¹ For discussions of the Christian worldview as seen in the Bible, see 4.3.1.

⁵² Sakurai, n 38 above.

⁵³ For translations, see: *The Kojiki: Records of Ancient Matters*, trans. B.H. Chamberlain (Rutland, Vermont and Tokyo: Charles E. Tuttle Company, 2000); *Nihongi: Chronicles from the Earliest Times to A.D. 697* (2 vols), trans. W.G. Aston (London: Kegan, Paul, Trench, Trübner, 1896 and 1956).

⁵⁴ Furthermore, it has not been completely agreed between historians as to who compiled them or for what purpose. See: Kitagawa, n 24 above.

the ancient worldview. Of the two books,⁵⁵ the *Kojiki* gives more details on the legends of *kami* and is concerned with “naïve Shinto”,⁵⁶ and the following examinations will be based upon the *Kojiki*.

The examination of the 'Creation' story in Shinto suggests that the 'Creation' process in Shinto belief varies considerably from that of the Bible.⁵⁷ The first point to be noted is that there exists no 'Creator' in the Shinto version of the beginning of the world. The *Kojiki* 'Creation' story begins with the appearance of *kami*, who “became” from a pre-existing substance in the high plain of heaven.⁵⁸ The appearance of the first *kami* is translated as “born” in the translated text, however, in the original text, the word “that became” is used, as the translator himself acknowledges.⁵⁹ In other words, the *Kojiki* 'Creation' is not a 'Creation' story, as it lacks a 'Creator' of all existence.

Secondly, although the individual islands of Japan were 'created' by two *kami*, it was not as a result of careful design. After the emergence of many celestial *kami*, two of them, Izanagi (His Augustness' the Male-Who-Invites) and Izanami (Her Augustness the Female-Who-Invites), were commanded by the other *kami* to “make, consolidate, and give birth to this drifting land”, and were given a heavenly jewelled spear as a tool.⁶⁰ The creation of the first island of Japan is described as follows;

So the two Deities, standing upon the Floating Bridge of Heaven, pushed down the jewelled spear and stirred with it, whereupon, when they had stirred the brine till it went curdlecurdle, and drew [the spear] up, the brine that dripped down from the end of the spear was piled up and became an island.⁶¹

It therefore appears that 'Creation' was not a perfect “design”.⁶² Neither was the land permeated by 'divine ordinance'.⁶³ Interestingly, the expression used in the *Kojiki* to describe the subsequent creation of the other islands of Japan is 'gave birth to'.

⁵⁵ The same stories contained in the two books are sometimes inconsistent.

⁵⁶ 'Publisher's Foreword' in *The Kojiki*, n 53 above. The *Nihongi* is generally considered to be under a heavier influence of Chinese literature and culture, although Ueyama criticises this analysis. S. Ueyama, *Kami Gami no Taikai: Shinsou Bunka no Shikutsu (The System of Kami: Exploration of Depth Culture)* (Tokyo: Chuo Koron Sha, 1972) 44.

⁵⁷ Genesis, I, 1-10. See 4.3.1.

⁵⁸ Ellwood and Pilgrim, n 47 above, 22.

⁵⁹ See *The Kojiki*, n 53 above, 15.

⁶⁰ *Ibid*, 19.

⁶¹ *Ibid*.

⁶² For Christian views of nature, see 4.3.1 and 4.4.1.

⁶³ *Ibid*.

Thirdly, there is no mention of the creation of particular natural objects,⁶⁴ such as mountains and trees in the *Kojiki*. Instead, Izanagi and Izanami “gave birth to” *kami* of natural objects.⁶⁵ The Deity Prince-of-Long-Wind” (the deity of wind), “Deity Stem-Elder” (the deity of trees), the “Deity Great-Mountain-Possessor” (deity of mountains), the “Deity Thatch-Moor-Princess” (the deity of moor), and the “Fire-Burning-Swift-Male-Deity” (the deity of fire), are some of many.

Finally, there is no mention of the creation of human beings. As already mentioned, it was promulgated that human beings, namely the imperial families and aristocrats, were descendants of the sun goddess Amaterasu, the most superior of all *kami*. Amaterasu's grandson was sent down to the earth to rule over the land, and he was said to be an ancestor of the then thriving Nakatomi priest clan.⁶⁶ The relationship between *kami* and humans is better explained by examining the nature of *kami*, as provided in the following paragraphs.

5.2.2.2. The Nature of *Kami*

This subsection considers the nature of Shinto *kami*, as described in the *Kojiki*, and from other materials relating to Shinto. This is because firstly, the *Kojiki* is not as widely read or influential compared to the Bible, as it does not provide moral or ethical values. Secondly, it only contains *part* of Shinto beliefs and does not encompass the various other meanings of *kami*. For these reasons, although the stories in the *Kojiki* provide a straightforward, useful comparison with the Christian 'Creation' story, the nature of *kami* should be examined in a wider context.

A striking difference between God in the Bible and *kami* in the *Kojiki* are *kami*'s lack of absolute power, and their human-like nature, as well as their appearance in animals and plants. With regard to first two points, in the *Kojiki*, *kami* frequently move between the three plains of heaven, earth and the underworld.⁶⁷ They are not necessarily immortal, and can turn to a harmful, or even evil existence. A myth tells that after giving birth to the deity of fire, Izanami died and descended to the underworld.⁶⁸ Izanagi followed to retrieve her, and yet fled when he saw his wife covered with maggots. Izanami, infuriated by Izanagi's reaction, swore revenge, and therefore turned into a harmful *kami*.

In fact, no considerable difference seems to exist between these personalised *kami* and ordinary humans. In one of the stories, the *Kojiki* refers to deities as “an old man and an old woman”, although immediately afterwards it becomes apparent that they

⁶⁴ See: Genesis, 1:11 and 20-21.

⁶⁵ See *The Kojiki*, n 53 above, 28-29.

⁶⁶ Kitagawa, n 24 above, 144.

⁶⁷ An example is provided in the next paragraph.

⁶⁸ *The Kojiki*, n 53 above, 38-41.

are deities.⁶⁹ Therefore Haven's suggestion that *kami* in the *Kojiki* are more or less identified as "ancient men and women ('lords and kings of ancient times') who were enshrined due to their superb achievements" is useful insight.⁷⁰

Regarding *kami*'s appearance in animals and plants, the *Kojiki* stories contain many animals and plants appearing as *kami*. For instance, whilst fleeing from the underworld, Izanami threw three peaches at his pursuers.⁷¹ Thereafter, he "announced to the peaches" they should help *kami* on earth, and gave them the "designation of Their Augustness's Great-Divine-Fruit".⁷² Snakes often appear as terrifying *kami*, which are a threat to personalised *kami*. Susanowo, the son of Izanagi, fought and killed the "eight-forked serpent".⁷³

It is now appropriate to discuss the term *kami*, which has previously been translated for the convenience of discussions as "deity". In fact, by examining the concept of *kami*, the worldview of Shinto can also be explored. Again, like Shinto itself, the definition of *kami* appears highly controversial and problematic.⁷⁴ The most commonly used definition, or translation in English, is "god", "divinity", "deity" or "the sacred".⁷⁵ However, Havens considers that such terms are used "on the interpretation of universal human religious experience (primarily within Western scholarship)",⁷⁶ and stresses the importance of considering the term from a Japanese perspective.

Therefore, what is the concept of *kami* from the Japanese perspective? Havens presents a quote by Motoori Norinaga (1730-1801), one of the most distinguished scholars of Shinto in the Edo period (1600-1867), as "the one which best expresses the subjective quality of the experience"; Motoori, in his the *Kojiki-den* describes *kami* in the *Kojiki* as follows;⁷⁷

The *kami* of the age of *kami* (*jindai*) were also mostly men of that time, and since all the people of that age were *kami*, it is called the "age of *kami*". Of those things which were not men, for example, lightning was known as a "sounding *kami*" (*narukami*), and the

⁶⁹ Ibid, 71.

⁷⁰ N. Havens, 'Immanent Legitimation: Reflections on the Kami Concept' in Inoue, n 35 above, 230.

⁷¹ *The Kojiki*, n 53 above, 40.

⁷² Ibid.

⁷³ Ibid, 71-72. Another example is a hare; "The White Hare of Inaba", now a commonly-used Japanese expression for red skin, was given deity status, by following the instruction of a *kami* it restored its fur. Ibid, 82.

⁷⁴ See for instance, Inoue, n 35 above, 2-4.

⁷⁵ Havens, n 70 above, 227.

⁷⁶ Ibid.

⁷⁷ Translation cited in Havens, n 70 above, 234-235. For *Kojiki-den*, see N. Motoori, *Kojiki-den, Book 1*, trans. A. Wehmeyer (Ithaca: Cornell University East Asia Programme, 1997).

“sound of *kami*” (*kaminari*),⁷⁸ so also the dragon and tree spirits, and foxes, since they were uncommonly mysterious, were called *kami*...

Motoori explains the overall concept of *kami* as follows;

I do not yet well understand the meaning of the word *kami* (and all the old explanations are wrong), but in general, the word *kami* refers to, first of all, the various *kami* of heaven in earth spoken of in the classics, and the spirits [*mitama*] enshrined in their shrines, and it goes without saying that it also refers to people,⁷⁹ and even birds and beasts and grass and trees, ocean and mountains - and *anything else which has superior and extraordinary power, provoking awe*. Here, “superb” means not only superior in nobility and goodness, but also awe-inspiring things of great evil and weirdness, anything which provokes a high degree of wonder.

...

There were also many occasions on which mountains and oceans were called *kami*; this does not mean that a spirit [*mitama*] indwelling the mountain was called *kami*, but that the mountain itself, or the ocean itself, was *kami*, and this, too, because of their superbly awe-inspiring quality.

In this way, *kami* are of manifold varieties, some noble and some base, some strong and some weak, some good and some evil, each being immediately in accord with its own mind and behaviour.⁸⁰

Therefore, according to Motoori, anything “which has superior and extraordinary power, provoking awe” can be *kami*, and it is not because a “spirit” is within them, but because they themselves are *kami*. This, as Havens points out, means that the term *kami* “did not refer to beings of a metaphysically distinct category”. Unlike the Western dualism of body and spirit, the Shinto worldview does not separate the physical and metaphysical world, a worldview which may best be described as ‘this-worldly’. A similar view is given by Kitagawa, who says that the Japanese people “took it for granted that the natural world was the original world”, and “did not look

⁷⁸ A thunder.

⁷⁹ Motoori explains people referred to as *kami* as follows: “Of people, those called *kami* of course include the most exalted lineage of emperors, who are called “distant *kami*” since they are so far removed from the ordinary person, and worthy of reverence. Then there are the human *kami*, who existed long ago and also at present; a certain number of human *kami* exist in each province, village, and house, each in accord with his or her station”. Motoori, n 77 above. This strand is what Sakurai categorised as ancestor worship. See 5.2.1.

⁸⁰ Havens, n 70 above, 234-235. Italicised by the author.

for another order of meaning behind the phenomenal, natural world”.⁸¹ It is to be noted, however, that the above interpretation of the relation between nature and *kami* can be further categorised into what is called “manaism”, according to Sasaki.⁸² In manaism, nature and *kami* are identical. Another interpretation is “animism”, which considers that spirits reside within natural objects or phenomena.⁸³ In reality, the two interpretations of *kami* both exist, as described by Sakurai earlier,⁸⁴ and people might well not have been aware of the difference, as pointed out by Sasaki.⁸⁵ In both interpretations, the natural world is the religious world, and nature was revered, which is why the Shinto perception of nature is said to be ecologically sound.

5.2.3. *Kami*, Humans and Nature

The above description of the concept of *kami* by Motoori explains the proximity and even identification between *kami* and nature. In Shinto tradition, many animals are considered to be a *kami*, and with the introduction of Buddhism, they also came to be regarded as embodying *kami*.⁸⁶ This proximity between *kami* and animals in Japan can be readily observed in a number of shrines that consider particular animals as messengers of their enshrined *kami*.⁸⁷ Taking examples of well-known shrines, the Kasuga Shrine in Nara has numerous deer living in the area surrounding it. This is because deer are considered to be the messengers of the *kami* enshrined there.⁸⁸ Other animals treated in a similar way include; monkeys, turtles, etc.

However, as animals were also *kami*, or messengers of *kami*, they were considered to be capable of turning into a harmful *kami*. Later, with the introduction of Buddhism, they came to be considered as capable of inflicting *tatari*, or curses, if they were killed by humans. The concept of *tatari* is important in considering Japanese people's attitudes toward animals.⁸⁹ The concept can be illustrated by the example of the fox; They are one of the animals most commonly considered as messengers of *kami*, or, even *kami* themselves, and feature in shrines called *Inari* shrines.⁹⁰ *Inari*

⁸¹ Kitagawa, n 24 above, 44.

⁸² K. Sasaki, *Kami to Hotoke to Nihon Jin: Shukyo Jinbui Gaku no Koso (Kami, Buddha and Japanese People: Design of Religious Anthropology)* (Tokyo: Yoshikawa Kobun Kan, 1996), 87-88.

⁸³ Ibid.

⁸⁴ See Sakurai's categorisation of Japanese religions provided in 5.2.1.

⁸⁵ Sasaki, n 82 above.

⁸⁶ See; Nakamura, n 11 above, 196.

⁸⁷ See generally; Y. Okada, *Jinja (Shrines)* (Tokyo: Tokyo Do Shuppan, 1977).

⁸⁸ Ibid, 40. Itsukushima Shrine, designated as a World Heritage Site, also treats its herds of deer as sacred. Hie Taisha in Shiga, which is both a Shinto shrine and a Buddhist temple, considers monkeys as sacred.

⁸⁹ See 5.3.5 and 5.10.6.

⁹⁰ Ibid, 41. For explanations of *kami* enshrined in Inari Taisha, see: T. Matsumae, 'Inari Myojin no Genzo (The Original Figure of Inari Shrines)' in T. Matsumae (ed), *Inari Myojin (Inari Shrines)* (Tokyo: Chikuma Shobo, 1988), 1-40.

shrines originally enshrined agricultural *kami*,⁹¹ but later foxes came to be seen as having power in other areas.⁹²

The fear of *tatari* still survives in modern Japan; For instance, foxes are considered to play the role of guardian spirit to particular lands.⁹³ In his study in the late 1980s, Miyata found that *Inari* shrines that were destroyed or ignored following the change of landowners were recreated in the new owners' homes in Tokyo.⁹⁴ This, he believes, is because people were afraid that 'bad fortune' might fall upon them if they ignored *Inari* shrines.

The fear of *tatari* may have served to prevent the mass destruction of animals.

The number of foxes grows Therefore they appeared near village houses and caused trouble such as killing pigeons. Naturally humans took a measure of revenge. . . . people smoked foxes out of their dens, . . . caught them and batted them to death. However, foxes are quick to impose their curse. The curse is put upon not only the one who put smoke in the den but also his entire family.⁹⁵

In a way, the fear of the *tatari* of a fox made people hesitant to kill them. However, this did not necessarily stop people from destroying the environment, or in some cases, giving people reasons for destroying it. For instance, wolves were traditionally considered as *kami* or messengers of mountain *kami* and were respected by people, particularly because they preyed on pests.⁹⁶ However, according to Takahashi, once they began to be a nuisance to people, particularly after the outbreak of rabies in the 18th century, a good and evil side were attributed to wolves.⁹⁷ Regarded as evil *kami*, the destruction of wolves on a massive scale was justified, and they became extinct in the early 20th century.⁹⁸

Another characteristic of the Shinto view of animals is that animals had proximity with humans, too. Bestiality is often observed in Shinto and folklore stories.⁹⁹ The

⁹¹ Ibid, 10.

⁹² "It [was] not rare to leave *abura-age* [fried tofu]", which is considered to be a fox's favourite, "near fox dens" to pay respect. Y. Ito, '*Inari Myojin to Kitsune* (Inari Shrines and Foxes)' in Matsumae, n 90 above, 74.

⁹³ For detailed discussions on people's perceptions of foxes in folklore beliefs, see N. Miyata, '*Inari to Minshu Seikatsu* (Inari and People's Lives)' in Matsumae, n 90 above, 115-140.

⁹⁴ Ibid, 127.

⁹⁵ Ito, n 92 above, 140.

⁹⁶ See H. Kaneko, et. al., *Nihonshi no Naka no Doubutsu (Animals in the Japanese History)* (Tokyo: Tokyo-Do-Shuppan, 1992) 22.

⁹⁷ K. Takahashi, *Tono Monogatari Ko (Considering Japanese Folk Tales)* (Tokyo: Soju Sha, 1976), 62.

⁹⁸ The official year of the extinction in 1905. Kaneko, n 96 above.

⁹⁹ For the Western attitude toward bestiality, see 4.4.1.

Kojiki contains several stories of marriage between human girls and animals.¹⁰⁰ *Tono Monogatari*, compiled by Yanagita Kunio, the first ethnographer of Japan, contains similar stories.¹⁰¹ This proximity between humans and animals has continued throughout Japan's history, and with the introduction of Buddhism animals came to be regarded as having the potential to be reborn as humans, or vice-versa, and the ability to take human form,¹⁰² whilst possessing proximity with *kami*.

Finally, animals played a major feature in the Shinto worldview and rituals. Their symbolic meaning is illustrated by the fact that the colour white in animals was considered supernatural and the appearance of white animals was considered to symbolise good fortune.¹⁰³ This is because the colour white symbolises purity in Shinto tradition. The offering of animals or plants is also an important part in Shinto rites. For instance, in many of the Shinto rites, wild boar and deer were offered to *kami*, although details of rituals vary regionally.¹⁰⁴

To recapitulate, the relationship between *kami* and animals, and humans and animals can be summarised as follows. First, there is no strict division between *kami* and animals or between *kami* and humans. Secondly, the relationship between humans and animals is based upon them having an equal status, or sometimes ordinary humans having a lower status, with certain animals possessing stronger powers. Such animals were considered the messengers of *kami* or even *kami* themselves, and they had the potential to turn into harmful *kami*.

5.3. Buddhism

5.3.1. Introduction

Buddhism¹⁰⁵ was introduced to Japan via China and Korea.¹⁰⁶ Shinto has had a significant influence on Buddhism, and the two religions are deeply intertwined in Japan, as discussed in this subsection. The subsection first provides a brief

¹⁰⁰ *The Kojiki*, n 53 above.

¹⁰¹ There is a story about a human girl who "fell in love" and married a horse. The story continues as follows: after the father found out, he chopped off the horse's head. The girl, deeply saddened by the death of the horse, went up to the heavenly world, riding on its head. Because of this incident, *kami* called *oshira-sama* "became". K. Yanagita, *Tono Monogatari (Japanese Folk Tales)*, *Yama no Jinsei (Life of Mountain)* (Tokyo: Iwanami Bunko, 2000) 46. The title translation for *Tono Monogatari* follows the English translation by Mayer; K. Yanagita, *Japanese Folk Tales*, trans. F.H. Mayer (Tokyo: Tokyo News Service, 1954).

¹⁰² This point is discussed later. See 5.3.3.

¹⁰³ Kaneko, n 96 above, 10.

¹⁰⁴ Similar rituals are carried out in traditional hunting. See 5.3.5.

¹⁰⁵ This section is based upon: Ellwood and Pilgrim, n 47 above; R. Gethin, *The Foundations of Buddhism* (Oxford: Oxford University Press, 1998); Kitagawa, n 24 above; and S.D.B. Picken, *Buddhism, Japan's Cultural Identity* (Tokyo: Kodansha, 1982).

¹⁰⁶ For introductory discussions of Buddhism, see; Picken, *ibid*.

introduction to Buddhism, followed by a description of how it was accepted into Japan. Considering how Buddhism was transformed before and after it reached Japan gives an insight into some of the important characteristics of Japanese Buddhism. The section then considers the worldview of Japanese Buddhism, including the relationship between humans and animals and views on life and death.

Buddhism had already been significantly transformed by the Chinese, before it reached Japan, as the 'tolerant' Buddhism adapted itself to Chinese culture.¹⁰⁷ Picken describes Chinese Buddhism as founded on "it's own anthropocentric philosophy whose basic premises were at odds with those of [earlier] Buddhism".¹⁰⁸ The most distinctive example of Buddhist transformation in China was its incorporation of ancestor-worshipping culture, which is deeply rooted in China as well as Japan.¹⁰⁹

When Buddhism reached Japan, people did not make a conscious decision to 'convert'. Ancient and early medieval Japan was strongly associated with the Continent, enthusiastically absorbing the latter's advanced civilisation. Therefore, Buddhism was welcomed just as other forms of Chinese culture such as art and literature were, rather than as a religion. Picken describes the Japanese acceptance of Buddhism as follows;

The Japanese did not become converted to Buddhism as one race, nor, on the whole, did individual Japanese make a conscious decision to become Buddhist. The acceptance of Buddhism involved a slow transformation of culture, with the Buddhist ideas that had been transplanted onto Japanese soil being allowed to bear their own type of fruit in the fullness of time.¹¹⁰

Therefore Buddhism sat on Shinto foundation,¹¹¹ and was perceived within a Shinto framework. Buddha was initially regarded as a "foreign *kami*", according to Kubota.¹¹² Naturally, people were confused and worried, and the introduction of Buddhism was the subject of political debate.¹¹³ People first considered Buddha a harmful *kami*, attributing the cause of epidemic disease to him.¹¹⁴ However, at the

¹⁰⁷ See; Kitagawa, n 24 above, 206-207.

¹⁰⁸ Picken, n 105 above, 12.

¹⁰⁹ Ibid, 11-12. See discussions of the Japanese view of life and death provided in 5.3.3.

¹¹⁰ Ibid, 21.

¹¹¹ See Sakurai's categorisation of the Japanese religions provided in 5.2.1.

¹¹² This paragraph is based upon N. Kubota, *Nihon Tashin-Kyo No Fudo (Polytheistic Climate of Japan)* (Tokyo: PHP Shinsho, 1997) 73.

¹¹³ See *ibid*.

¹¹⁴ The official year that Buddhism is said to have landed in Japan is 522 A.D. At the time the Emperor Kinmei started worshipping a statue of Buddha, an epidemic disease broke out in Japan.

end of the 6th century, when Buddhism gained the official support of the Imperial Court,¹¹⁵ it began to permeate Japanese culture.¹¹⁶

Buddhism was propagated, as something that provides for practical rather than philosophical gain.¹¹⁷ What the imperial family and people looked for in Buddhism was benefit and protection, whether public or personal.¹¹⁸ For most people, Buddhist deities were there to protect them from illness and disasters or to bring personal benefit, like their native *kami*.¹¹⁹ In terms of people's beliefs and perceptions, careful separation between Buddhism and Shinto and folklore traditions was never made.¹²⁰

During the history of Buddhism in Japan, sect Buddhism also developed, and Buddhism became institutionalised to a certain extent, although the emphasis on benefit and protection continued. There are twelve major sects of Buddhism which developed in Japan.¹²¹ These include two influential sects; Shingon and Tendai, which are esoteric Buddhist sects. Merged with Shinto, these sects created a "distinctive type of mountain religion" called Shugendo.¹²² The other sects include Zen, Jodo, Jodo-Shin and Nichiren.¹²³

5.3.2. The Buddhist Worldview: Basic Principles of Buddhism

In essence, the Buddhist outlook of the world is expressed in the Four Noble Truths;

All existence involves suffering.¹²⁴

The cause of suffering is desire, because desire leads to rebirth.

The cessation of suffering can only be achieved through the cessation of desire.

¹¹⁵ This was largely due to enthusiastic support by Shotoku Taishi (574-622), prince Regent to his aunt the Empress Suiko.

¹¹⁶ Shitenno-ji in Osaka and Horyuji in Nara were the most famous of the forty temples plus built by the early 7th century.

¹¹⁷ For discussions, see 5.3.3.

¹¹⁸ In the Nara period (711-793), sutras were chanted by the imperial line in order to seek for the collective protection of the state.

¹¹⁹ Mahayana Buddhism believes in bodhisattva, an intermediary 'communicator of truth' who delays his entry into nirvana in order to assist unenlightened human beings. Therefore, in China and Japan, there are numerous bodhisattva.

¹²⁰ There are a number of places which act both as a temple and a shrine in Japan. During the Meiji modernisation, the militaristic Government attempted to separate Buddhism and Shinto, in an attempt to establish State Shinto. See 5.2.1.

¹²¹ Picken, n 105 above, 25.

¹²² Picken, n 105 above, 25. See discussions of hunting in 5.3.5.

¹²³ Of these four sects, Jodo-Shin has the highest number of followers now in Japan. K. Sasaki (ed), *Gendai to Bukkyo: Gendai Nihonjin no Seishin Kouzou to Bukkyo (The Present World and Buddhism: Psychological Structure of the Modern Japanese and Buddhism)* (Tokyo: Shunju Sha, 1991).

¹²⁴ This is subject to different interpretations.

The way of the Eightfold Path ends desire.¹²⁵

Two important foundational ideas that underlie the above worldview are rebirth and *karma*. *Karma* is “the inexorable moral law that dictates our fate in the cycle of birth and rebirth”, according to Picken.¹²⁶ A better rebirth may be expected by an accumulation of 'good karma', whereas accumulated 'bad karma' is not forgiven, it can only be expiated by rebirth.¹²⁷ Following the Eightfold Path and living according to Buddhist rules are considered to release one from the chain of rebirth.¹²⁸

One of the reasons why Buddhist teaching is generally considered to provide for a philosophical basis to live in harmony with nature¹²⁹ is seen in one of the rules of the Eightfold Path, for example; “to avoid harming living things and to relieve suffering”.¹³⁰ Buddhists are also encouraged to develop attitudes of benevolence and compassion towards all beings.¹³¹ The appreciation of these Buddhist principles has been expressed by many scholars, most notably, by White, as considered in Chapter 4.¹³² Whether Buddhist principles provide a basis for nature conservation is considered in the subsequent subsections.

5.3.3. Characteristics of Buddhism in Japan

One of the most significant characteristics of Japanese Buddhism is its liaison with nature, a characteristic reinforced by Shinto's influence. Kalland and Asquith state; “[The] intimate relationship between man, *kami* and nature, which was the core of the ancient religious ethos in Japan, had a profound influence on Japanese Buddhism as well”.¹³³ Shinto's animistic view of life and the Buddhist concept that all beings possess Buddhahood are not difficult to connect, according to Sasaki.¹³⁴

¹²⁵ Translation cited in Picken, n 105 above, 9.

¹²⁶ Ibid.

¹²⁷ This point is discussed further. See 5.3.3 and 5.3.5.

¹²⁸ The rules of the Eightfold Path are: “1. Right outlook: to know the Four Noble Truths. 2. Right resolve: to overcome illusions caused by belief in an individual self. 3. Right speech: to refrain from untruth and frivolity. 4. Right Conduct: to avoid harming living beings and to relieve suffering. 5. Right livelihood: to have an occupation in keeping with Buddhist precepts. 6. Right effort: to show determination to reach salvation. 7. Right mindfulness: to realise the dangers of discontents that arise from various physical and mental states. 8. Right concentration: to be free from distractions and illusions and to be alert and reflective”. The Eightfold Path, translation cited in Picken, n 105 above, 10.

¹²⁹ See 1.1.

¹³⁰ The Eightfold Path, n 128 above.

¹³¹ Ibid.

¹³² For discussions of White's criticisms of Christianity and appreciation of Buddhism as an alternative philosophical basis for environmental conservation, see 4.2.1.

¹³³ Kalland and Asquith, n 2 above, 2.

¹³⁴ Sasaki, n 123 above, 34.

The incorporation of “nature's rhythms and characteristics” into Buddhist principles and practices¹³⁵ can be observed in many examples. For instance, Yamada points out that Kukai, the founder of Shingon,¹³⁶ considered nature as an “embodiment of mystic Buddhahood”.¹³⁷ Tendai also teaches that Buddhahood is embodied in everything, as Tendai “does not consider the natural world as an inorganic world, merely consisting of matter”.¹³⁸ Both Shingon and Tendai are the source of Shugendo, which is considered to show strong links between Japanese religion and nature.¹³⁹ In Shugendo, ascetic esoteric practitioners are considered to obtain 'mystic' power from the natural world.¹⁴⁰ The sacred world in Shugendo is mountains.¹⁴¹

There is also a view of nature seen from a perspective of time, according to Yamada.¹⁴² The other way of viewing nature is endorsed by the concept of *mujo*, or impermanence.¹⁴³ Yamada explains that *mujo* is the concept holding that all things and phenomena constantly change, disappear and reappear.¹⁴⁴ Therefore, the word is often used to describe the 'perishability' of human life as well as lives of other forms of living things. In fact, the 'perishability' of natural beings and phenomena is often equated with that of human life, and from this perspective, humans are indeed part of nature, both destined for the same end. This is why many consider that the Japanese regard nature as a companion or themselves as part of nature.¹⁴⁵

Therefore, the concept of *mujo* also endorses the Japanese view of life and death. As every existence repeats birth and death, the “impossibility of the fixation of existence” is accepted by Japanese people.¹⁴⁶ The concept of *mujo* has created a view of the “limitless cycle of life and death”,¹⁴⁷ under the influence of not only Buddhist but also Shinto tradition. Furthermore, in Japanese Buddhist tradition, the dead attain immediate Buddhahood, and stay close to those who survive until direct

¹³⁵ Ibid, 56.

¹³⁶ See 5.3.1.

¹³⁷ S. Yamada, 'Bukkyo no Shizenkan to Nihonteki Mujo (Buddhist View of Nature and Japanese Impermanence)' in T. Mezaki (ed), *Mujo to Bi: Nihonteki Biishiki no Shinri to Ronri (Impermanence and Beauty: Psychology and Theory of Japanese Aestheticism)* (Tokyo: Shunju Sha, 1986), 60.

¹³⁸ Ibid, 71. Compare this with the mechanistic view of nature in the West, discussed in 4.4.3 and 4.4.5.

¹³⁹ See for instance; Kalland and Asquith n 2 above. See 5.3.1.

¹⁴⁰ S. Yamauchi and S. Kamata, 'Zenshu Kei to Gense Riyaku (Zen Sects and Secular Benefit)' in Nihon Bukkyo Kenkyukai, *Nihon Shukyo no Gense Riyaku (Secular Benefit of the Japanese Religions)* (Tokyo: Okura Shuppan Co. Ltd., 1970) 150-176.

¹⁴¹ Yamauchi and Kamata use the word “supernatural” instead of 'mystic'. Ibid.

¹⁴² Yamada, n 137 above, 73.

¹⁴³ Yamada states that the concept of *mujo* is closely related to the Buddhist view of nature. Ibid.

¹⁴⁴ Ibid, 85.

¹⁴⁵ See for instance, Suzuki's statements quoted at the beginning of 1.1.

¹⁴⁶ Yamada, n 137 above, 75.

¹⁴⁷ Kubota, n 112 above, 211.

connection with them is lost.¹⁴⁸ The idea of the dead staying close to those they leave behind is a Shinto one. The importance of Buddhism as a mediator between the living and the dead derives from this perspective.¹⁴⁹

In the above view of life and death, therefore, death does not necessarily symbolise the termination, or extinction of existence. Further, 'perishability' based on the concept of *mujo* is considered to be aesthetical, and features in many Japanese poems as well as other types of art.¹⁵⁰ Keene states; "The Japanese were perhaps the first to discover the special pleasure of impermanence . . .".¹⁵¹ Keene considers that *mujo* is recognised as a "necessary condition of beauty" in Japan.¹⁵²

Then, what is the relationship between humans and animals in Japanese Buddhist tradition? It is often said that the Japanese are benevolent and compassionate towards animals because they believe that humans may be reborn as animals.¹⁵³ A typical example of this is the *Nihon Reiiki*, a collection of Buddhist stories compiled in the middle ages.¹⁵⁴ It contains a number of stories that tell how killing or inflicting suffering on animals brings about 'unwholesome' results, or a 'bad karma'. In these stories, 'unwholesome' results were brought because people "fished with nets",¹⁵⁵ "stripped a skin off a rabbit",¹⁵⁶ "put a heavy load on a horse's back",¹⁵⁷ or "often boiled and ate birds' eggs".¹⁵⁸ One of the stories tells that a horse is one's own mother and father, reborn into it.¹⁵⁹ Therefore, these stories teach benevolence and compassion towards all living beings. However, they also acknowledge the "difference" between humans and animals.¹⁶⁰ In many stories, life as an animal is portrayed as an unhappy or undesirable one. There were those who stole, were

¹⁴⁸ See; Sasaki, n 123; I. Suzuki, 'Bohimeji kara Mita Gendaijin no Shiseikan to Bukkyo (Buddhism and Modern People's Perspectives of Life and Death Observed from Writings on Gravestones) in Nihon Bukkyo Gakkai (ed), *Bukkyo ni Okeru Nichijo Seikatsu (Ordinary Lives in Buddhism)* (Kyoto, Heirakuji Shoten, 1998) 99-112;

¹⁴⁹ See *ibid.*

¹⁵⁰ Yamada gives many examples of Japanese poems that contain verse about the impermanence and perishability of human and natural life. Yamada, n 137 above, 73-75. The frequent appearance of nature in Japanese poems is one of the reasons why the Japanese are considered to have the high appreciation of nature. See 1.1.

¹⁵¹ D. Keene, 'Japanese Aesthetics' in N.G. Hume (ed), *Japanese Aesthetics and Culture* (N.Y.: State University of New York, 1995), 39.

¹⁵² *Ibid.*, 39.

¹⁵³ See the following discussions of the stories contained in *Nihon Reiiki*.

¹⁵⁴ *Nihon Reiiki*, trans. T. Harada and M. Takahashi (Tokyo: Heibonsha, 1967).

¹⁵⁵ *Nihon Reiiki*, n 154 above, 30-31.

¹⁵⁶ *Ibid.*, 37.

¹⁵⁷ *Ibid.*, 44-45.

¹⁵⁸ *Ibid.*, 93-94.

¹⁵⁹ *Ibid.*, 44-45.

¹⁶⁰ *Ibid.*, 93-93.

greedy, or disturbed religious practices and were reincarnated as a cow, a snake, or a monkey, owing to the 'bad karma' created by these actions.¹⁶¹

Although the close connection, or sometimes the identification with nature, as well as the fear of 'bad karma' created by harming animals, did have an influence on people's attitudes towards them,¹⁶² another significant characteristic of Japanese Buddhism is its emphasis on benefit and protection.¹⁶³ This has led to the simplification and the relaxation of Buddhist laws.¹⁶⁴ The simplification of Buddhist laws can be seen in the fact that the principle of attaining Buddhahood has been transformed so it is considered attainable in one lifetime, or at least immediately after death. Also, Buddhist laws have been relaxed so that they could meet the "changing needs of the times", according to Picken.¹⁶⁵ The paradox between Buddhist teachings, Shinto tradition and the relaxation of Buddhist laws is best illustrated by people's attitudes toward eating meat discussed in the subsequent paragraphs.

5.3.4. People's Attitudes Toward Animals 1: Meat-Eating

In Buddhism, it is generally desirable to be a vegetarian,¹⁶⁶ and this was acknowledged in Japan. After beef was first served to the Meiji Emperor's dinner table in 1872, a group of esoteric ascetics broke into the Imperial Court in protest.¹⁶⁷ The story illustrates the common belief that meat was never eaten in Japan before modernisation, and that the habit of eating meat is considered to be a Western influence. However, this is not the case. Yoshida describes the ambivalent attitude of Japanese people towards meat as follows;

Japanese people are said to have traditionally avoided eating meat following Buddhist law, and to have started eating beef finally after the Meiji modernisation. However, this belief is wrong. They have been eating meat since early times. Yet they did not admit to the delicacy of meat. They have had a strange reservation about eating meat, and therefore, have tried to suppress the desire or made up excuses when eating meat. Such reservation was because of religious and political circumstances

¹⁶¹ Ibid, 28-30, 42-44, 92-93, 137-138, 149, and 201-203.

¹⁶² See 5.3.4.

¹⁶³ It was mentioned earlier that this emphasis was already seen when Buddhism was imported. See 5.3.1.

¹⁶⁴ Picken, n 105 above, 26.

¹⁶⁵ Ibid.

¹⁶⁶ Eating meat "gradually became prohibited" whilst early Buddhism developed into Mahayana Buddhism. M. Shimoda, *Āranyaka ni Arawareta Bukkyōsha no Sugata: Rinriteki Jiseigata to Jujutsuteki Tousuigata* (A Conflict in *Āranyaka* between Ecstasy and Enstasy) in *Nihon Bukkyō Gakkai*, n 148 above, 1-13.

¹⁶⁷ N. Harada, *Reikishi no Naka no Kome to Niku (Rice and Meat in the History)* (Tokyo: Heibonsha, 1983) 17-18.

surrounding the Japanese people, but anyway, the relation between beef and the Japanese was never straightforward.¹⁶⁸

As the Japanese traditionally did not raise cattle for meat, they ate the meat of wild birds and animals, as well as fish and other types of seafood. Whale meat was eaten without hesitation,¹⁶⁹ as whales were considered to be fish. As killing animals was contradictory to Buddhist principles, in 676 A.D. an Imperial proclamation was issued.¹⁷⁰ The proclamation prohibited certain methods of fishing and hunting,¹⁷¹ as well as eating the meat of cows, horses, dogs, monkeys and chickens. In spirit, it was a sign of Buddhist compassion towards animals that were in close proximity with humans.¹⁷²

The proclamation, however, did not in practice prevent people from eating the types of meat which they were already eating at the time.¹⁷³ Similar types of orders were restated by subsequent rulers, governments, shrines and temples right up to modern times. Although their existence has given the impression that the Japanese were traditionally vegetarians, this was not necessarily the case.¹⁷⁴ One of the most famous is the feudal ruler Tokugawa Tsunayoshi's order of benevolence towards living things,¹⁷⁵ in 1687, which was so extreme that people still refer to this order today in describing extreme animal welfare measures.¹⁷⁶ In fact, the current animal welfare legislation in Japan that is discussed later is equated with this order by those who oppose the concept.

Despite the lack of effectiveness of the proclamation, people¹⁷⁷ gradually grew to despise eating the meat of animals. This was due to the influence of Shinto tradition,

¹⁶⁸ T. Yoshida, *Gyuniku to Nihon-Jin (Beef and the Japanese)* (Tokyo: Shadan Hojin Nousan Gyoson Bunka Kyokai, 1992), 8.

¹⁶⁹ I. Suto, *Yama no Hyoteki (A Target in Mountains)* (Tokyo: Miraisha, 1991), 227.

¹⁷⁰ Emperor Temmu issued the first proclamation.

¹⁷¹ The story in the *Nihon Reiki* describing the negative effects brought about by fishing was mentioned earlier. See 5.3.3.

¹⁷² Cows and horses worked for humans in rice cultivation. Dogs and chickens lived close to humans. Monkeys have always been considered to be similar to humans. See 5.6.4.

¹⁷³ The kind of animals that were most frequently eaten were: deer, wild boars, rabbits, ducks and certain mountain birds. Scholars also consider that this proclamation had political connotations, as well as religious ones. Yoshida, n 168 above, 12. Harada, n 167 above, 78-80.

¹⁷⁴ *Monoimi Rei* issued by temples and shrines specified the period of time necessary to compensate eating fish, poultry or meat. See Suto, n 169 above, 224-225.

¹⁷⁵ Another religious practice that is considered to be based upon 'benevolence' is *hojoe*, an event to release captive live animals, including birds and fish into wild, to pile up good *karma*. This had a contrary effect both in terms of Buddhist practice and conservation as many animals died whilst kept in captivity. Harada, *ibid.* 82. *Nihon Reiki* also contains stories in which releasing animals from captivity brought a good fortune to the releaser. *Nihon Reiki*, n 154 above.

¹⁷⁶ Dogs were especially well protected, and they were treated better than people in general under this order. See *ibid.* 226-228.

¹⁷⁷ Aristocrats were the first to frown upon the eating of animal meat.

in which death, birth and blood are the three elements embodying Impurity.¹⁷⁸ The tradition of regarding death, birth and blood as impure still continues today; One is not supposed to attend any Shinto ritual after encountering death.¹⁷⁹ The concept of impurity created negative 'feelings' toward the habit of eating meat.

Still, meat-eating took place as meat was considered to have medicinal effects. It was allowed when it was for the purpose of 'taking medicine'. Yoshida considers, however, that this was only an excuse to eat meat without feeling guilty.¹⁸⁰ One way guilt about eating meat was alleviated was by calling the meat of wild boar the "mountain whale",¹⁸¹ and whale meat was eaten without hesitation, as whales were considered to be fish. Meat was eaten despite the psychological constraints governed by the Shinto influence and the philosophical constraints governed by the Buddhist influence.¹⁸²

5.3.5. People's Attitudes Toward Animals 2: Hunting

Another example of people's perceptions of animals is illustrated by traditional hunting, which involved rules and taboos based upon religious beliefs. This type of hunting still continues today although on a much smaller scale.¹⁸³ Hunting was carried out either as pest control or to obtain commodities such as skin, meat, or medicine from animals.¹⁸⁴ There are few hunters in Japan, and in traditional society, this was partly because the mountains were considered as 'another' world, full of dangerous *kami* and spirits, and also partly because people "wanted to avoid killing" animals, under the Buddhist influence.¹⁸⁵ Characteristics, rules and methods of

¹⁷⁸ Kato, n 47 above.

¹⁷⁹ For 30 days in the case of the death of a person: for 5 days if for the death of an animal: for three days if animal meat, except for poultry, was eaten. Ibid. For further discussions on people's view of death of animals, see 5.10.7.

¹⁸⁰ Yoshida, n 168 above, 18.

¹⁸¹ Suto, n 169 above, 227. The renaming of meat can also be observed in the West (i.e. beef).

¹⁸² For example, people feared being cursed by foxes. See 5.2.3.

¹⁸³ Hunters can be divided into three types depending upon what they hunt for: (1) birds: (2) small mammals such as foxes, racoons and badgers: (3) large mammals such as wild boars, deer and bears. Hunters who hunt for the first and the third types of game always use trained dogs, and for small mammals, various types of traps are used. Hunters normally hunt independently, except for those who hunt deer and wild boars. T. Chiba, *Shuryo Densho Kenkyu (Study of Hunting Tradition)* (Tokyo: Kazama Shobo, 1985) 48-49.

¹⁸⁴ Bear's gall bladder is still a sought after material for traditional medicine. See 3.4.3.3. Also see the following discussions in this subsection.

¹⁸⁵ Suto, n 169 above, 167. The desire to avoid killing animals, according to Suto, is still present, as not all farmers carry out pest control themselves. Suto, at 169.

hunting vary greatly depending upon the region and only a very limited number of people are allowed to hunt in many regions.¹⁸⁶

Hunters in Japan were traditionally regarded as a different group of people. Suto describes traditional hunting in Japan as follows;

There was a hesitation to eat animal meat, however, hunting of animals by hunters has always been permitted. The possession of guns has also been allowed. This means that hunters were officially allowed to carry out *sessho* [the Buddhist term for killing] However, seen from Buddhist perspectives, it is difficult to understand why those hunters, who were also Japanese, were allowed to carry out *sessho* without contradicting Buddha's teachings.¹⁸⁷

Suto then states that the Japanese have traditionally regarded hunters as “special” people.¹⁸⁸

Although they were permitted to carry out *sessho*, the examination of the way in which the hunting was carried out suggests that there was a considerable amount of fear and guilt within the hunters themselves, as well as a respect for the mountains, based upon Shinto and the Buddhist worldview. There were many taboos in traditional hunting, predominantly based upon the fear of angering mountain *kami*,¹⁸⁹ and these taboos included strict exclusion of women from entering the mountain to hunt.¹⁹⁰ Also, various rituals were carried out, and the “strictest ritual” was carried out during the hunting of bears.¹⁹¹ This was because bears were considered to be capable of inflicting a fearful *tatari*.¹⁹² In the Kyushu region, it was believed that if one killed a bear, its *tatari* would be inflicted upon seven generations of that family.¹⁹³ Bears were still hunted, however, primarily for gall bladders.¹⁹⁴

¹⁸⁶ This has made the collection of comprehensive data very difficult. Suto states that there are less than a handful of systematic studies on the relationship between wildlife and Japanese people from an anthropological point of view. Ibid, 118. Chiba, who compiled a series of comprehensive books on traditional hunting in Japan, points out the difficulties he faced throughout the research due to the lack of any written sources and reluctance or rejection towards his enquiries by hunters in eastern Japan. T. Chiba, *Shuryo Densho Kenkyu Hoihen (Study of Hunting Tradition, Additional Version)* (Tokyo: Kazama Shobo, 1990) 43.

¹⁸⁷ Suto, *ibid*, 235.

¹⁸⁸ Ibid.

¹⁸⁹ It was already mentioned that mountains were considered to be the sacred world in esoteric sects of Buddhism and Shugendo. See 5.3.3.

¹⁹⁰ Women, in Shinto tradition, are also generally excluded from many places because of their connection with birth and blood, two of the three elements of impurity. The relation between those three elements and the concept of impurity was mentioned earlier. See 5.3.4.

¹⁹¹ T. Chiba, *Zoku Shuryo Densho Kenkyu (Study of Hunting Tradition II)* (Tokyo: Kazama Shobo, 3rd ed, 1985), 12.

¹⁹² Ibid.

¹⁹³ Kaneko, et. al, n 96 above, 39.

In order to avoid *tatari* as described above, hunters built memorial towers for dead animals, and a number of these towers exist in Japan.¹⁹⁵ There were also a number of other types of ritual carried out for similar purposes. Suto explains that in certain villages in Miyazaki, hunters chanted a Shinto phrase for a special hunt,¹⁹⁶ the meaning of which is; “[The] reason why animals, fish and birds are caught by humans is that it was because it was their *karma*, and they will not survive long even released into wild. Not only that, they will die savagely and will not be able to attain Buddhahood.¹⁹⁷ However, by being eaten by humans, animals will be conjoined and fused with humans, and will be able to attain Buddhahood when those humans die and attain Buddhahood”.¹⁹⁸

The above rituals reflect the Japanese view of life and death; Chiba states that the Japanese have a particular perspective on life and death, which made it difficult for them to have a sense of guilt about having wars.¹⁹⁹ In the “limitless cycle of life and death” in the Japanese perception,²⁰⁰ it is doubtful whether guilt was felt against '(temporarily) terminating' life, rather fear of being cursed. In fact, Chiba considers that hunters “do not consider *sessho* itself as evil”, although they wish to avoid the “anger and *tatari*” of hunted animals.²⁰¹

5.4. Contradictions

The attitudes toward meat eating and hunting examined above may appear contradictory to both Shinto and Buddhist traditions. The above examination of the Shinto worldview suggests that there are certain elements in Shinto tradition that can be considered 'ecocentric'.²⁰² The relationship between humans and nature from a Shinto perspective is of an equal status, or nature is sometimes even given a 'higher' status. The 'intrinsic value'²⁰³ of nature can certainly be observed in Shinto tradition. Buddhism also provides a basis for compassion towards other living beings,

¹⁹⁴ See 3.4.3.3.

¹⁹⁵ For more detailed discussions of memorial services and towers for dead animals in present Japan, see 5.10.6.

¹⁹⁶ Carried out during the new year celebration period. For this hunt, at least one person per household joined the hunters.

¹⁹⁷ It was mentioned that one of the characteristics of Japanese Buddhism is that it is generally considered that people automatically attain Buddhahood after death. See 5.3.3.

¹⁹⁸ Suto, n 169 above, 259. See also; Chiba, n 183 above, 178-180.

¹⁹⁹ Chiba, n 186 above, 21.

²⁰⁰ Kubota, n 112 above, 211. This expression was mentioned earlier. See 5.3.3.

²⁰¹ Chiba, n 191 above, 12.

²⁰² See 1.7.1. See for instance; S. Odin, 'The Japanese Concept of Nature in Relation to the Environmental Ethics and Conservation Aesthetics of Aldo Leopold' (1991) 13 *Environmental Ethics*, 345-60.

²⁰³ See 1.7.1 and 1.7.4.

endorsed by the concept of interconnectedness between human and natural life. It can certainly provide a less 'anthropocentric' approach towards nature conservation.

However, Shinto and Buddhism both have aspects that explain the contradiction found above. In fact, the attitudes considered above are “not contradictory” to Shinto tradition, according to Nakamura.²⁰⁴ Nakamura raises the example of animals sacrificed to *kami* in Shinto rituals, as mentioned above.²⁰⁵ Animals were killed for Shinto rituals, and Nakamura considers that this killing of animals whilst maintaining reverence toward them at the same time is not contradictory because animals sometimes posed a threat to humans. This aspect can also be explained by the example of foxes and wolves considered above as animal *kami* with dual natures.²⁰⁶

Furthermore, one aspect of killing animals, ironically, also includes an appreciation or respect for nature's wonder itself. Precisely because animals connoted not only aesthetic but also religious values in Japan, they were considered as an appropriate gift for *kami*,²⁰⁷ and sought after by humans, leading to consumptive use of wildlife. For example, bear's gall bladder has been believed to work miracles for various types of medical condition, and this is traditionally because bears had a special, 'high' status amongst animals.²⁰⁸ The fact that people considered that animals were *kami* means that they saw some animals as being closer to *kami* than most people. By 'fusing with' animals' power, whether in the form of medicine or accessories, people sought their religious powers, and this is one of the reasons for the popularity of the *consumptive use* of animals, unlike the UK.²⁰⁹

Buddhist teachings also do not necessarily coincide with current concepts of nature conservation.²¹⁰ First, the compassion and benevolence encouraged by Buddhist teachings are directed toward individual animals, and not to species or ecosystems as a whole.²¹¹ This can provide a basis for animal welfare principles, but not conservation principles. Secondly and more importantly, in Buddhism, animal life is considered to be a less desirable form of life, compared to a human life.²¹² This perception was observed in both stories in the *Nihon Reiiki* and a traditional hunting

²⁰⁴ Nakamura, n 11 above.

²⁰⁵ Heads of deer or wild boar were presented to *kami* in many areas, and still are in some. Kato, n 47 above.

²⁰⁶ The examples were mentioned in 5.2.3.

²⁰⁷ This point was mentioned earlier. See 5.2.3.

²⁰⁸ This point was mentioned in the previous subsection.

²⁰⁹ For discussions of the demand for and the control of traditional medicines including bear's gall bladder, see 3.4.3.3.

²¹⁰ For discussions on the current concepts of nature conservation, see 1.7.5 and 1.7.6.

²¹¹ Schmithausen is in this opinion. L. Schmithausen, *Buddhism and Nature* (Tokyo: International Institute for Buddhist Studies, 1991), 32-33.

²¹² Again, Schmithausen is in this opinion. *Ibid.*

ritual.²¹³ From Buddhist perspectives, for an animal to die and be reborn may be desirable for those animals themselves.²¹⁴

Furthermore, the Japanese view of life and death, under the Buddhist influence, has also contributed to reducing a sense of guilt, or fear against environmental destruction. This is seen by the role played by memorial services for dead animals, as seen amongst hunters.²¹⁵ It allowed people to turn to religious solutions in order to solve the practical problems of wildlife being threatened. In addition, the Buddhist belief in rebirth allowed people to believe, without any 'rational' or 'scientific' reason, that the 'cycle of life' is 'limitless' for all beings. This is another reason why consumptive use of animals is not frowned upon to such an extent in Japan, although people may not necessarily be aware of the connection between the two.²¹⁶ The lack of the animal welfare concept in Japan is also one of the reasons for a tendency toward consumptive use.²¹⁷

5.5. 'Japanese' Ecology

Unlike the West, where the currently dominant ideas of ecology, including science and ecological thought and movement originated,²¹⁸ developed and had influence on other parts of the world, the picture of science and ecological thought is more complicated and unclear in Japan. Modern science was only imported into Japan in the mid 19th century, before which time religious beliefs had a role that is now played by 'scientific solutions'. Oyadomari states that majority of people in Japan “grasped nature's laws from their everyday experiences, transformed such laws into religious beliefs, and practiced such beliefs through tradition”.²¹⁹ She further adds that amongst these traditional practices, there was 'wisdom' that may be equated with the concept of ecological management.²²⁰ Kalland and Persoon state that environmental campaign, as part of ecology, “cannot be understood in terms of environmental

²¹³ See 5.3.3.

²¹⁴ See the following discussions of hunting in 5.3.5.

²¹⁵ Memorial services for dead animals are further discussed in 5.10.6.

²¹⁶ See 2.9.4.

²¹⁷ Discussed later. See 5.9 and 5.10.

²¹⁸ See 1.7 and Chapter 4.

²¹⁹ M. Oyadomari, 'Nihon no Shizen Hogo Undou no Nigensei (Dualism of Japanese Nature Conservation Movement)' in M. Kurosaka (ed), *Nihon no Hito to Kankyou tonno Tsunagari (Japanese People and Their Relationship With the Environment)* (Tokyo: Shin-Shisakusha, 1989) 37. Also see; Kalland and Persoon, n 6 above.

²²⁰ Ibid.

issues alone".²²¹ Further, having had a history where tradition replaced 'science', 'science' in today's Japan is not free from cultural influences.²²²

There is no systematic documentation with regard to ecology, which incorporates the relationship between science and traditional 'ecological' thought in Japan equivalent to that of the UK. In the West, documentation exists as to how science emerged from rationalist thinking founded upon theology,²²³ and how ecological thoughts were facilitated by the development of science, and partly as a reaction to it as seen in the Romantic movement.²²⁴ The picture in the UK is of course not simple either, but at least there is a continuous strand of thought and movement developing throughout its history. What ecology is in the UK is therefore systematically documented to a certain degree, as examined in the previous chapter.

On the other hand, the Japanese picture of ecology is comprised of a mixture of the imported and the existing, and therefore an attempt to draw the picture of Japanese ecology is limited. With a lack of systematic documentation, relevant materials were searched to draw the picture of 'Japanese' ecology. During this process, it was discovered that one particular person was repeatedly referred to in discussions on 'Japanese' ecology, or on the 'Japanese' way of viewing nature. The name of Imanishi Kinji appears widely in philosophy²²⁵, anthropology²²⁶, religion²²⁷, ecology²²⁸, and science²²⁹, when 'Japaneseness' is being discussed in relation to ecology.

Imanishi was an ecologist, primatologist, anthropologist, sociologist, explorer, philosopher and writer, and he was "a towering figure in post-war Japan, where he instilled great national pride as a thinker and scientist".²³⁰ Imanishi's theories and attitudes may be extreme examples, as he parted with established science and tended

²²¹ Kalland and Persoon, n 6 above, 2.

²²² See 5.6. Also see 5.7.5. For general discussions on the development of ecological thought in Japan, see; M. Numata, *Shizen Hogo to Iu Shisou (Thought Called Nature Conservation)* (Tokyo: Iwanami Shoten, 2001).

²²³ See 4.2 and 4.4.5.

²²⁴ See 4.5.

²²⁵ S. Ueyama, *Nihon no Shiso: Dochaku to Ouka no Keifu (Japanese Ideas: Genealogy of Native and Western Ideas)* (Tokyo: The Simul Press, Inc, 1971). R. Minamoto, 'Nihonjin no Shizenkan (Japanese View of Nature)' in *Shizen to Cosmos (Nature and the Cosmos)* (Tokyo: Iwanami Shinsho, 1985) 348-374. H. Kawakatsu, 'Imanishi's View of the World' (Mar./Apr. 1999) *Journal of Japanese Trade and Industry*.

²²⁶ K. Tsurumi, 'Animism, Shamanism to Boryoku no Yori Sukunai Kagaku (Animism, Shamanism and Less Violent Science)' in *Ecology to Kirisutokyou (Ecology and Christianity)* (Tokyo: Shinkyo-Shuppan-Sha, 1999).

²²⁷ Tsurumi, *ibid.* Minamoto, n 225 above, 1.

²²⁸ Tsurumi, *ibid.* Minamoto, *ibid.*

²²⁹ A. Shibatani, *Watashi Ni Totte Kagaku Toha Nanika (What Science Means to Me)* (Tokyo: Asahi Shinbunsha, 1982). P.J. Asquith, 'Japanese Science and Western Hegemonies: Primatology and the Limits Set to Questions' in L. Nader (ed), *Naked Science: Anthropological Inquiry into Boundaries, Power and Knowledge* (New York and London: Routledge, 1996) 239-255.

²³⁰ F.B.M. De Waal, *The Ape And The Sushi Master: Cultural Reflections By A Primatologist* (London: Allen Lane, the Penguin Press, 2001) 88.

to be more intuitive later in his life. Many scientists dismissed his ideas. In that sense, his 'science' does not represent modern mainstream science in Japan, however, because of its extremity, the examination of Imanishi's approach may offer a clearer explanation as to how traditional and cultural influences are reflected on science and ecology in Japan. Therefore, due to the limited resources available, an examination of Imanishi's theories, approaches, philosophies and attitudes toward nature will be examined, in order to make the best assumption of how cultural factors are reflected on ecology in Japan.

Further, Imanishi's popularity amongst the public may provide clues that help to understand the contradiction between the Japanese people's image as 'nature-lovers' and Japan's conservation practices. His popularity reflects Japanese pride in, and effort to, propagate this image. Imanishi's approach is referred to by many as providing a 'Japanese' way of solving ecological problems. One hypothesis is that such 'pride' might have distracted the Japanese from fully contemplating and taking responsibility for their environmentally-destructive conduct, in the belief that their tradition is nature-friendly. Although cultural and religious influences should not be overestimated, this section will attempt to highlight such influences.

Imanishi Kinji's influence on Japanese ecology can be examined from two different angles; One is in primatology, by which Japanese views of the relationship between humans and animals can be examined. As early as the 1950s, Imanishi proposed the existence of 'culture' in primates, and this led to a sociological and cultural approach to primatology. Considering that animal behaviour was thought to be explained primarily by instinct and for reproductive advantage, Imanishi's approach was novel, whilst reflecting the Japanese way of viewing nature, as discussed below.

The other area where Imanishi's influence is considered significant is his evolutionary theory, by which Japanese views of nature in comparison to the Western view can be examined. In the late 1960s, Imanishi proposed an evolutionary theory which he and others claimed to be a counterpart to Darwinian theory. To examine whether Imanishi's arguments were scientifically valid or invalid is not in the scope of this study, however, his influence on 'Japanese' science and ecology provides an insight into understanding the Japanese perspective on those subjects.

5.6. Japanese Primatology

5.6.1. Introduction

The following paragraphs will discuss (1) the history of Japanese primatology, (2) characteristics of Japanese primatology and (3) cultural influences on Japanese

primatology, making comparison to Western primatology. First, the history of Japanese primatology is considered in order to examine how primatology in Japan developed independently from Western primatology to allow 'Japanese' characteristics to be developed. Secondly, characteristics of Japanese primatology are examined in order to ascertain; how Japanese methodology reflects its assumptions of 'culture' and society in primates. Thirdly, cultural factors of Japanese primatology will be examined in order to identify differences in cultural traditions between Japan and the West that affect their approaches, and Japanese and Western attitudes towards nature, particularly their perceptions of animals and the relationship between man and animals.

5.6.2. The Historical Background of Primatology

The modern study of primate behaviour -involving continuous, long-term observations of known individuals- began in 1948, when Imanishi Kinji and Jun'ichiro Itani began to observe free-ranging Japanese macaques at a number of sites in Japan. In the years that followed they were joined by several other investigators, and in 1956 they formed the Japan Monkey Centre.²³¹

As Seyfarth and Cheney state above, long-term observation and individual identification of animals are standard methods in the study of large mammals today. However, this was not the case about 50 years ago. These methods, as stated above, were initiated and developed in Japan, independently from the Western trend, which, with a few exceptions,²³² was shorter-term observation without individual identification.

Imanishi Kinji and his students began the first study of wild animals in Japan in the 1940s. Their study on Japanese macaques *macaca fuscata* began with a troop in Koshima Island in Kyushu (southern Japan). Because they live in forested areas they were "extremely shy" of researchers, and it was "very difficult to catch even a glimpse of them".²³³ In 1952, however, the researchers of the Primates Research Group at Kyoto University²³⁴ "provisionised", that is, provided food for, the monkeys living in forests in Koshima Island, successfully luring them into an open

²³¹ R.M. Seyfarth and D.L. Cheney, 'Forward' to T. Matsuzawa (ed), *Primate Origins of Human Cognition and Behaviour* (Tokyo: Springer-Verlag, 2001).

²³² For instance, Jane Goodall is one of such exceptions. However, Goodall's work was not recognised in the West until much later.

²³³ D. Miyadi, 'Social Life of Japanese Monkeys', (1964) 143 *Science*, 783. Japanese macaques inhabit forested areas throughout Japan except for Hokkaido (the northern island) and the islands south of Yakushima, off Kyushu.

²³⁴ Headed by Imanishi.

area. The provisioning was soon applied to other troops throughout the country,²³⁵ and a research became more systematic. Various relevant institutes and publications were established.²³⁶ Two journals *Primates* and *Monkey* soon began to be published. Although *Monkey* is a Japanese language journal, *Primates* came to be published in English from the third issue onwards.²³⁷

In the West, before 1920, studies of primates concentrated on anatomy, taxonomy, and comparative psychology,²³⁸ until the naturalistic study of primates was initiated by Carpenter. Although the naturalistic study was adopted and later improved upon by Imanishi and his students,²³⁹ views held by Western and Japanese primatologists toward primates' behaviour were fundamentally different. For Western primatologists, reproductive features were the key to understand primates' behaviour.²⁴⁰ On the other hand, Japanese researchers were interested in the social and cultural implications of primates' social behaviour, as discussed below.

5.6.3. Characteristics of Japanese Primatology

5.6.3.1. Methodology

The unique method adopted by Japanese primatologists, the provisioning, has been subject to criticism from Western scientists, who were concerned that the provisioning might make primate behaviour unnatural.²⁴¹ However, this enabled long-term observation and individual identification,²⁴² and Sugiyama Yukimaru describes the reason for this;

²³⁵ By 1961, more than twenty troops had been provisioned throughout the country.

²³⁶ Kyoto University produced the bulk of primate behaviour research in following centres which developed between 1962 and 1985; the Laboratory of Human Evolution Studies (formerly the Primates Research Group), the Primate Research Institute (PRI), the Centre for African Area Studies, and the Koshima field laboratory. Also, in 1956, the Inuyama Monkey Centre was founded as a private facility.

²³⁷ The research was not confined to Japanese macaques.

²³⁸ For more discussions of the history of Western primatology, see: Asquith, n 229 above.

²³⁹ K. Imanishi, 'Social Organisation of Subhuman Primates in Their Natural Habitat' (1960) 1 *Current Anthropology* 5-6, 393.

²⁴⁰ Zuckerman's *The Social Life of Monkeys and Apes* was considered a milestone in primatology, and his incorrect focus on sexual attraction became dominant in the West.

²⁴¹ Subsection 5.6.3 is based upon; P. Asquith, 'Reichouruigaku no Yukue (Future of Primatology)' in Kawakita, J. (ed), *Imanishi Kinji: Sono Hito To Shiso (Kinji Imanishi: Person and Thought)* (Tokyo: Pelican-Sha, 1989), 380-402; Asquith, n 229 above; P.J. Asquith, 'Anthropomorphism and the Japanese and Western Traditions in Primatology' in J.G. Else and P.C. Lee (eds), *Primate Ontogeny, Cognition and Social Behaviour* (Cambridge, Cambridge University Press, 1986) 61-69; De Waal, n 230 above; S. Hirata, K. Watanabe and M. Kawai, 'Sweet-Potato Washing' Revisited' in Matsuzawa, n 231 above, 487-508; Imanishi, n 239 above; M. Kawai, 'Newly-Acquired Pre-Cultural Behaviour of the Natural Troop of Japanese Monkeys on Koshima Islet', (1965) 6 *Primates* 2; S. Kawamura, 'Nihon Zaru ni Okeru Rui Culture (Sub-Culture of Japanese Macaques)' in S. Kawamura and J. Itani (eds), *Saru (Monkey): Shakaigakuteki Kenkyu (Sociological Studies)* (Tokyo: Chuo Koron Sha, 1965) 237-289; Miyadi, n 233 above.

²⁴² The reason why this method was necessary is discussed in the following paragraphs.

After the [provisioning] was accomplished, we found that the social behaviour, social status, and other characteristics of Japanese monkeys as well as their physical structure are different by monkeys [*sic*].²⁴³ Then we tried to identify them individually without marking them.

...

Fifteen years is not a short period in which to study the society of Japanese monkeys which reach maturity when four or five years of age. In 1953, the population of the Koshima troop was 22 and the identification of all animals could be done. Today, we have come to recognise the lineage of most families of this troop. How far does the kinship tie influence their behaviour, personality, and social life in their natural conditions?²⁴⁴

Japanese primatologists aimed to document each individual's kinship, friendships, rivalries, and rank position, some of which were not even considered to exist by Western primatologists.²⁴⁵ In fact, Japanese primatologists had certain "assumption",²⁴⁶ that primates had 'culture' and society. They considered that individuals behaved for the good of society, not for the increased survival of the species, as believed in the West. The following paragraphs will discuss their assumptions.

5.6.3.2. 'Culture' and Society

One of the assumptions held by Japanese primatologists was the existence of 'culture' in primates. However, whether primates have 'culture' is still debated today, particularly in the West. It is not in the scope of this study to be concerned with the definition of "culture", therefore, the term is used in a general way, as De Waal²⁴⁷ describes;

The question of whether animals have culture is a bit like asking whether chickens can fly. Compared with an albatross or falcon, perhaps not, but chickens do have wings, they do flap them, and they can get up in the trees. Similarly, viewed from the cultural

²⁴³ Meaning "by each monkey".

²⁴⁴ Y. Sugiyama, 'Short History of the Ecological and Sociological Studies on Non-Human Primates in Japan', (1965) 6 *Primates*, 458-459. Sugiyama later discovered the relation between infanticide and a male reproductive strategy in langur monkey.

²⁴⁵ Western primatologists initially refused the idea of kinship amongst primates.

²⁴⁶ See 5.6.4. See de Waal, n 230 above, 189.

²⁴⁷ The author of one of the most influential books on recent primatology, *Chimpanzee Politics*. De Wall, however, did not mention about Japanese findings in *Chimpanzee Politics*.

heights achieved by the human race in art, cuisine, science, and politics, other animals seem to be nowhere in sight. But what if we change perspective, and don't measure them by our standards? This is what Imanishi Kinji, a Japanese anthropologist, proposed in the early 1950s. . . . Imanishi suggested that culture - defined as the non-genetic transmission of habits - was entirely possible, and even likely, for animals other than humans.²⁴⁸

The abovementioned definition of 'culture' as the “non-genetic transmission of habits”, was first proposed by Imanishi in an article published in 1952:

Evolutionist: “First of all, I think it's good to start with a commonplace topic. Well, people say, animals live only by instinct, while humans have culture”.

Layman: “. . . Instinct is inherited through a genetic channel, while culture is transmitted through nongenetic [*sic*] channel. Culture is acquired through learning and teaching so that the model and pedagogy are necessary. Therefore, a group life is inevitably required for the establishment of a culture . . .”.

Layman: “. . . How is it in monkeys? . . .”.

Monkey: “We live in a perpetual social group. . . . but it is not made clear yet how much of our behaviour is determined by instinct and how much is determined by culture . . .”.²⁴⁹

It was widely believed then, and still is to a lesser degree, that “animals live only by instinct, while humans have culture”, as Imanishi states above. Imanishi was convinced that 'monkeys' had 'culture' even before he collected enough 'scientific evidence' to prove this, although uncertain of the degree of 'culture' in animal societies.²⁵⁰

The assumption that primates have 'culture' has been proven, to an extent,²⁵¹ by the “sweet-potato washing” of the troop on Koshima Island.²⁵² Their sweet-potato washing is now famous worldwide, but it was first observed in 1953, when one juvenile female started washing sweet potatoes before eating them. The way this

²⁴⁸ F.B.M. De Waal, 'Cultural Primatology Comes of Age' in *Chimpanzee Cultures Online*, at <http://chimp.st-and.ac.uk/cultures/deWaal.htm>, visited on 10 Aug. 2001.

²⁴⁹ K. Imanishi, 'The Evolution of Human Nature' in K. Imanishi (ed), *Ningen* (Tokyo: Mainishi-Shimbunsha, 1952) 36-94. English translation as found in Hirata, et.al, n 241 above, 448.

²⁵⁰ Imanishi's article was written only four years after he started studying Japanese macaques.

²⁵¹ As for Western scepticism about the sweet-potato washing of the troop on Koshima Island, see: De Waal, n 230 above, 204-211.

²⁵² For instance, see: Hirata, et.al., n 241 above.

habit spread within the troop indicated the complex structure of the troop's society. It spread from her mother and her playmates to a few older females, but not in non-dominant males, who had little contact with females. Although none of the individuals who acquired the habit then is alive today and sweet potatoes are rarely provisioned to them, the troop of Koshima Island still washes potatoes,²⁵³ the habit not seen amongst any other troops of Japanese macaques. This led Japanese primatologists to conclude that different habits exist amongst different troops of the same species, and some habits are “sub-cultures”.²⁵⁴

Another important assumption which underlined the approach taken by Japanese primatologists is the theory of “species society”, which Imanishi called “specia”.²⁵⁵ To summarise the concept,²⁵⁶ every species has its own society which includes every individual member of the species. This concept of “species society” was applied to primatology; Japanese primatologists had a firm assumption that primates do have a society, a complex one, coupled with the assumption of the existence of 'culture' in such society.²⁵⁷ This assumption of primates' society led them to a number of significant discoveries in primatology. For instance, it was Japanese primatologists²⁵⁸ who “cracked the puzzle” of chimpanzee society, which was long thought to be “haphazard combinations” of individuals by Western primatologists.²⁵⁹ Another example is the first discovery and suggestion of the relation between infanticide and a male reproductive strategy.²⁶⁰ Meanwhile, Japanese data was gradually found to be accurate. Their detailed records of individuals and their genealogical lineage were used by Western primatologists. By the 1960s, the method of individual identification and food provisioning was also adopted by Western primatologists.

5.6.4. The Difference between Japanese and Western Primatology

Before the approach gained widespread acceptability since the later 1950s, Japanese methodology and its underlying assumptions were met with Western scepticism,

²⁵³ It is now thought that they have acquired the taste for salted potatoes with sea water.

²⁵⁴ Kawamura, n 241 above. Further, in order to see whether such behaviours are “innate” or “encultured”, Japanese primatologists observed behaviours of different troops or the process of new habit formation. See also; Miyadi, n 233 above, 785.

²⁵⁵ See K. Imanishi, *Seibutsu no Sekai Hoka (The World of Living Things; and Others)*, (Tokyo: Chuou Kouron Shinsha, 1940). Also see; K. Imanishi, 'Seibutsu no Seikai e no Kaiki (Return to The World of Living Things)' in K. Imanishi, *Shizengaku no Tenkai (Development of the Study of Nature)* (Tokyo: Kodansha, 1987) 82-107.

²⁵⁶ The concept of “species society” will be fully discussed in the section on the evolutionary theory. See 5.7.

²⁵⁷ See for instance; K. Imanishi, 'Ningen Kazoku no Kigen (The Origins of Human Family)' in Kawamura and Itani, n 241 above, 3-46.

²⁵⁸ See; Asquith, n 241 above, 68.

²⁵⁹ Japanese primatologists proved that chimpanzees live in large communities, the membership of which is stable especially for males. De Waal, n 230 above, 188-189.

²⁶⁰ Ibid, 185.

which reflects cultural difference in attitudes toward animals.²⁶¹ Particularly found problematic was the way the Japanese presented their findings.²⁶²

The first characteristic of Japanese primatology that was found unacceptable by Western primatologists was anthropomorphism. Yet, considering that Japanese primatologists acknowledged the existence of 'culture' and a complex society amongst Japanese macaques, it is hardly surprising that their expressions were anthropomorphic. Although anthropomorphism was avoided as much as possible in the West, Japanese primatologists had no hesitation in using anthropomorphic expressions to describe primates' behaviour. For instance, Miyadi studied the vocalisation of Japanese macaques as a means of communication and describes his findings as follows;

The six kinds of vocalisation may be classified in two major groups, the calls and the [cries] Unlike the calls, the [cries] are usually accompanied by strong emotions - by anger or sorrow on social contact with other individuals - and their function is to adjust the social relationship. Unlike the humans, however, monkeys cannot say to their companions such things as "This tastes good" or "You should try this". But patient study of the monkeys' language is of great importance for understanding the origin and evolution of our own language.²⁶³

Anthropomorphic expressions, attributing emotions and consciousness to non-human animals, were met by severe criticism from Western primatologists. They considered that such "inferential, subjective" and "anthropomorphic" expressions were considered to "[violate]" the "requirements of objectivity and accuracy", to their eye.²⁶⁴ Another reason why Japanese reports failed to attract serious attention was their 'lack of theories'. In the previous paragraphs, the word "assumption" was used to describe what Japanese primatologists intended to reveal about primate society. What they assumed was not quite developed enough to be called a theory, and this is considered to be one of the characteristics of the Japanese way of approaching a subject and presenting reports in general.²⁶⁵

What is to be noted, however, is that Japanese primatologists are aware of the problem, and that they have developed the way of presentation that they consider to be acceptable to the West. Later, anthropomorphic expressions became less

²⁶¹ Japanese findings were virtually unknown until the late 1950s, although Carpenter, the founder of the naturalistic survey of primates, was greatly interested and supportive.

²⁶² This point was briefly mentioned earlier. See 5.6.3.2.

²⁶³ Miyadi, n 233 above, 784.

²⁶⁴ C.R. Carpenter, 'Comments' to K. Imanishi, 'Social Organisation of Subhuman Primates in Their Natural Habitat' (1960) 1 *Current Anthropology* 5-6, 393-407.

²⁶⁵ This point is discussed later.

prevalent in their reports. By the 1980s Western and Japanese primatology came close together, and now both refer to each other freely. Still, Asquith states that some Japanese knowledge remains confined to Japanese-language journals in the fear of it being refuted or mocked in the West.²⁶⁶ In other words, Japanese primatologists have learnt how to present themselves in order to be accepted by their Western colleagues.²⁶⁷

The Japanese approach to primatology reflects traditional Japanese perceptions of nature, as considered earlier.²⁶⁸ The idea that primates have a society and 'culture' is based on the view that animals have emotions and consciousness. For instance, whether animals have “*kokoro*” or not was not even discussed by Japanese primatologists, as it was taken granted for in Japan.²⁶⁹ The word “*kokoro*” has several connotations. Its general translation is 'mind' or 'heart', but it is also associated with soul, feeling and emotion. Rationality does not play a part in this expression. Since Japanese primatologists 'took it for granted' that animals have *kokoro*, it was natural for them to use expressions such as “anger” or “sorrow”²⁷⁰ in describing their behaviour. These expressions were hardly considered 'anthropomorphic', as *kokoro* is not a human monopoly in Japan, whilst whether animals have feelings or emotions is still a topic for debate in the West.²⁷¹ Ultimately, Western primatologists drew a sharp line between humans and animals and were reluctant to attribute qualities like *kokoro* to primates. Their interest was limited to “how the behaviour maximises reproductive advantage and social structure in terms of adaptation to the environment,” according to Asquith.²⁷² Asquith considers that this approach to primatology was further reinforced in the West by the idea of socio-biology, which stressed the significance of the idea of individual fitness.²⁷³

The achievements by Japanese primatologists reflect the influence of Japan's cultural tradition, together with the fact that the particular species of monkeys is indigenous to Japan. The primatologist Matsuzawa states;

²⁶⁶ Asquith, n 241 above, 255. Masao Kawai's *kyokan* (sympathetic) method used in primate observation is one example.

²⁶⁷ The same happened in scientific reports about experiments using animals. Japanese scientists are gradually becoming aware that their paper will not be accepted if the experiment does not satisfy Western animal welfare standard. See Y. Ueno, 'Doubutsu Fukushi Kara Mita Doubutsu Jikken no Shouraijou (Future Image of Animal Experiment from an Animal Welfare Perspective)', (1999) 51 *Seibutsu Kagaku (Bio-Science)*, 175-180.

²⁶⁸ See 5.2.3, 5.3.3, 5.3.4 and 5.3.5.

²⁶⁹ Asquith, 'Reichougaku no Yukue', n 229 above, 380-402. Asquith also mentions, elsewhere, about soul being attributed to animals in Japan. Asquith, n 229 above, 66.

²⁷⁰ See quote from Miyadi in 5.6.3.2.

²⁷¹ See 4.5.3.

²⁷² Asquith, n 241 above, 65.

²⁷³ See discussions on the evolutionary theories in 5.7.2. E.O. Wilson, *Sociobiology: The New Synthesis* (Cambridge, Massachusetts: Harvard University Press, 1975).

In Japan, monkeys are one of the favourite characters of folklore and fairy tales. . . . Japanese have long been fond of monkeys and, based on their own direct experience, have intuitively understood the close relationship between humans and nonhuman primates. This special affection of ordinary people towards monkeys in general seems to have supported the development of primatology in this country.²⁷⁴

'Monkeys' were considered as a mountainous *kami*, a messenger of *kami*,²⁷⁵ and this traditional view is still present in today's Japan;²⁷⁶ *Asahi Shimbun* reported that hunters in Tokyo are reluctant to kill monkeys for pest control, saying; "*Tatari* will be inflicted".²⁷⁷ This anthropomorphic view of *kami* and animals has allowed Japanese primatologists to assign 'culture' and society to primates, ideas which were found to be difficult to accept in the West. Primates attained a special status in the West, too, but only in the sense that primates may give clues to understanding human uniqueness.²⁷⁸

5.7. Imanishi Kinji's Evolutionary Theory and "Study of Nature"

5.7.1. Introduction

This section will examine the ecological approach taken by Imanishi Kinji. Imanishi's Evolutionary Theory was widely supported by the general public, despite criticism from the scientific community. As described before, Imanishi "instilled great national pride as a thinker and scientist",²⁷⁹ and the reasons for this will be examined.

²⁷⁴ T. Matsuzawa, 'Preface' to T. Matsuzawa (ed), *Primate Origins of Human Cognition and Behavior*, (Tokyo: Springer-Verlag, 2001).

²⁷⁵ 'Monkeys' are considered to be a messenger of *kami* enshrined in the Hie Shrine. See 5.2.3.

²⁷⁶ See also Ohnuki-Tierney's view; E. Ohnuki-Tierney, *The Monkey As Mirror: Symbolic Transformations In Japanese History And Ritual* (Princeton: Princeton University Press, 1990).

²⁷⁷ "Tonai no Yama ni 400 Piki: Engai 3600 Man-Yen (400 Monkeys in Mountains in Tokyo: Damage 36 Million Yen)", *Asahi Shimbun*, 14 Apr. 1998. Chiba also states that especially in Western and Southern Japan, killing 'monkeys' was to be strictly avoided for similar reasons. Chiba, n 183 above, 157 For discussions on *tatari*, see 5.2.3 and 5.3.5.

²⁷⁸ P.J. Asquith, 'Of Monkeys and Men: Cultural Views in Japan and the West' in R. Corbey, and B. Theunissen, (eds), *Ape, Man, Apeman: Changing Views Since 1600* (Holland, Department of Prehistory, Leiden University, 1995) 309-318.

²⁷⁹ De Waal, n 230 above, 88. See 5.5.

The following paragraphs will first examine Imanishi's Evolutionary Theory and his underlying philosophies and attitudes toward nature.²⁸⁰ This is to consider how Imanishi's approach differs from the Western approach, and whether Imanishi's approach reflects Japanese cultural influences. This part contains a limited comparison between his theory and Darwinism. As it is not in the scope of this study to examine the scientific validity of either theory, what is presented is based upon a general understanding of both theories, and the main focus of the examination will be upon cultural implications, rather than scientific ones.

Secondly criticisms and appraisals of Imanishi's approach are provided, in order to consider the effect they had on what many Japanese considered 'Japanese' ecology should be, or how they wanted it to be. Those who value Imanishi's approach generally say that his approach suits Japanese people because it is based upon Japan's own cultural foundations, such as Shinto and the Buddhist view of nature. Those who criticise his approach for cultural reasons generally believe that its underlying philosophies and ideas are too nationalistic and can be misleading. Both arguments will be considered.

5.7.2. The Difference Between Imanishi's Theory and Darwinism

Before discussing each theory, what Imanishi himself considered to be the difference between his theory and Darwinism is first presented;

. . . I must introduce Darwin's evolutionary theory first. Whether survival of the fittest or natural selection, the content is the same. The fittest survives because of natural selection, and in ideas contained in this theory of Darwin's, the world of competition for survival²⁸¹ is hidden. This is a grand theme which should be scrutinised as a tradition of Western society. The ideas were not discovered by Darwin, the idea of competition for survival is inherited in Western society as a tradition. . . . However, although this may sound strange, Imanishi's Evolutionary Theory dislikes such competition for the survival. Imanishi's Evolutionary Theory is founded upon the confidence that the evolution can be explained without using the idea of competition. You may call it peaceful co-existence, and it is the evolutionary theory which is founded upon my "theory of segregation". Segregation means that living things, especially those of different species, have their

²⁸⁰ See 5.5.

²⁸¹ Although Darwin himself used the word "struggle for survival" instead of "competition for survival", generally the word "competition" is used in Japanese to describe the concept.

own territories without intruding each other's. That is how the way of co-existence is made.²⁸²

As stated above, Imanishi considers that Darwin's evolutionary theory centres around the idea of “competition” and “natural selection”.²⁸³ It reflects, Imanishi believes, the Western tradition of competitiveness and a harsh view of nature. On the other hand, Imanishi's theory centres around the idea of co-existence and society of living things. It infers a connection with the common belief of the Japanese 'love of nature'.²⁸⁴ The following paragraphs will discuss and compare Darwinism and Imanishi's Evolutionary Theory.

5.7.2.1. Darwinism

As what Imanishi criticises is “Darwinism” including Darwin's evolutionary theory,²⁸⁵ the two will not be separated too carefully in this study, and “Darwinism” will be the object of comparison.²⁸⁶ However, the term “Darwinism” is not defined so rigidly²⁸⁷ and therefore, in the following discussion, the definition of the term follows Shibatani's general description as follows;²⁸⁸ Darwinism is considered in general to be Darwin's evolutionary theory combined with ideas such as genetics and mutation.²⁸⁹ Neo-Darwinism²⁹⁰ explains individual variability leading to evolution by mutation. The study of evolution today is closely drawn together with the fields of genetics and molecular biology.²⁹¹ Social Darwinism,²⁹² which applied the concept of the struggle for survival in the development of society, may also be included in Darwinism. Based upon the above definition, the paragraphs below will discuss Darwinism.

²⁸² K. Imanishi, 'Shinkaron no Genjou (The Present Situations of the Evolutionary Theory)' in Imanishi, n 255 above, 199.

²⁸³ Imanishi saw a strong tie between Darwinism and Social Darwinism, and considered that although the idea of survival of the fittest was originally not Darwin's, Darwin was later influenced by the ideas of Social Darwinism. See the next subsection.

²⁸⁴ See 1.1 and 5.1.

²⁸⁵ See 5.7.3.

²⁸⁶ Shibatani explains what he considers is strictly Darwin's theory include “the existence of evolution, competition for the survival, natural selection as a mechanism of evolution, and . . . diversity of life and increase in the density within habitats”. Shibatani, n 229 above, 93.

²⁸⁷ Shibatani states that what Darwinism means or contains almost depends upon “the intention of those who discuss it”. Ibid.

²⁸⁸ Ibid, 97.

²⁸⁹ The ideas of genetics are not included in Darwin's theory.

²⁹⁰ Neo-Darwinism explains the origin of species by competition for survival and natural selection based upon it.

²⁹¹ At: <http://landow.stg.brown.edu/victorian/darwin/>, visited on Oct. 1st, 2001.

²⁹² Proposed by Spencer. Darwin himself was inclined toward Social Darwinism later in his life. Therefore, it is the general understanding that when Darwin's theory is considered scientifically, his earliest work, *The Origin of Species*, should be considered, and not his later works.

The basic theory of Darwinism is described in the following statement by Darwin himself;

As many more individuals of each species are born that can possibly survive, and as consequently there is a frequently recurring struggle for existence, it follows that any being, if it vary in any manner profitable to itself, under the complex and sometimes varying conditions of life, will have a better chance of survival and thus be naturally selected. From the strong principle of inheritance, any selected variety will tend to propagate its new and modified form.²⁹³

Darwinism's basic stance is as follows; (1) Life evolves; (2) Individuals struggle for survival as the environment they share offers limited resources; (3) Individuals with variations adaptable to the environment are more likely to survive, and therefore offspring of those increase their number and eventually form a new species; (4) Such variation causing the evolution is a mutation,²⁹⁴ as opposed to normal variation seen between individuals of the same species; (5) There is no cause for such variation, it is random; (6) Evolution requires a long period of time, and the change is gradual. The significant points to be noted in Darwinian theory in relation to the following discussion are the concepts of *individual* variation, *struggle* for survival and natural *selection*. These are the targets of Imanishi's attack on Darwinism.

5.7.2.2. Imanishi's Theory

Imanishi's theory explains evolution by habitat segregation and the "species society".²⁹⁵ To Imanishi, evolution is a process in which "species societies" segregate their habitats. The "species society" has been briefly introduced earlier. Unlike Darwinism that places importance on *competition* and difference between *individuals*, Imanishi's evolutionary theory holds that *no competition* exists because different species segregate their habitats, and there is no major variation amongst individuals of the same "species society".²⁹⁶ A new species emerges when *species change*, and the change occurs to all individuals of the same species at once, suddenly.

Imanishi explains the concept of the "species society" as follows;²⁹⁷ All individuals of the same species, although they may be spread all over the globe, are members of

²⁹³ 'Introduction', C. Darwin, *On the Origin of Species* (London: Ward Lock & Co., 1911).

²⁹⁴ This is what Neo-Darwinism suggests.

²⁹⁵ See 5.6.3.2.

²⁹⁶ See for instance; Imanishi, *Shizengaku no Tenkai*, n 255 above; Imanishi, *Seibutsu no Sekai*, n 255 above, K. Imanishi, *Shizengaku no Teishou (Suggestion of the Study of Nature)* (Tokyo: Kodansha, 1984).

²⁹⁷ Ibid.

one particular “species society”. As long as they are members of the “species society” they all possess physical features and habits required to be that species. The “species society” independently controls the habitat of its members, a policy that is inherited by society members. Numerous “species societies” segregate their habitats, as controlled by this policy. That is how habitat segregation occurs, and Imanishi reasons that evolution is the process in which the society of ancestral living thing multiplies into various descendant “species societies” by segregating more and more habitats.

The abovementioned concept of the “species society” segregating habitats can be understood better by looking at the picture of “whole nature” suggested by Imanishi.²⁹⁸ Imanishi's picture of nature is based upon a macro view. He reasons that there exists “the whole society of living things” comprised of numerous “species societies”. Just as the “species society” has independent control over its individual members, “the whole society of living things” has a control over “species societies”, and as long as the latter remains stable as a whole, which species go extinct or are born is irrelevant. “Species societies”, under such control, fulfil their determined roles, which is to serve the whole society.

Imanishi did not give an explanation as to the mechanisms by which different “species societies” came to segregate their habitats until later in his life.²⁹⁹ That is the point where his arguments diverted from established science, toward more philosophical and intuitive tendencies. This point will be discussed after a brief examination of the difference between Darwinism and Imanishi's theory, as provided below.

5.7.3. Characteristics and Cultural Implications

The difference between Darwinian theory and Imanishi's theory can be discussed from two perspectives: scientific and cultural. The discussions will focus upon cultural implications. However, before proceeding to discuss them, the following points should be noted with regard to the scientific problems surrounding Imanishi's evolutionary theory;³⁰⁰

²⁹⁸ Ibid.

²⁹⁹ See 5.7.4.2.2.

³⁰⁰ For instance, Niwa explains the difference between the two theories as follows; First, Imanishi's early theory includes internally-existing causes for evolution, whereas Darwinian theory holds that a mutation or variation is random, not causal. Secondly, whereas Darwinian theory holds that the evolution is a gradual process, Imanishi considered that it is a radical process. Thirdly, as opposed the idea of competition between individuals, Imanishi considered that living things complement each other, fulfilling their roles in the whole society of living things. F. Niwa, 'Imanishi Kinji no “Shinka-Ron” ni Tsuite (On Imanishi's Evolutionary Theory)' in J. Kawakita, (ed), *Imanishi Kinji: Sono Hito To Shiso (Kinji Imanishi: Person and Thought)* (Tokyo: Pelican-Sha, 1985) 333-363.

First, many point out that Imanishi's understanding of *Darwin's* theory was inadequate.³⁰¹ Although some point out that the former shares many basic elements with the latter,³⁰² Imanishi himself did not and would not admit such a similarity.³⁰³ What Imanishi criticises as Darwin's theory was not necessarily originally Darwin's but what was later added to and categorised into Darwinism. Therefore, the ambiguous nature of what is considered as Darwinism and Darwin's theory must be noted.³⁰⁴

Secondly, Imanishi's theory is criticised for not providing scientifically-satisfying answers to some of the questions relating to evolutionary mechanisms.³⁰⁵ For instance, Kawata dismisses Imanishi's explanation of evolution using the concepts of habitat segregation and the "species society" as follows; "Imanishi's concept of 'species' . . . does not apply to real living things".³⁰⁶ Also, as to 'how habitat segregation occurs', Imanishi remained silent, until he turned to explanations that fall outside the realm of established science.³⁰⁷ What is important to note with respect to this point is that Darwinian evolutionary theory, too, is yet to be scientifically proven. There is also an opinion that evolution is history, and history cannot be verified first hand.³⁰⁸

Although Imanishi's theory is questioned by many scientists, his cultural influence can hardly be questioned, considering his contribution to and influence on ecology in Japan as a socio-primatologist. Kawata states that Imanishi's theory "has had a considerably significant influence" on the public and it was "not because of its theoretical validity but because of its social influence".³⁰⁹ Kishi describes this phenomenon as follows;

Imanishi's Evolutionary Theory is considered to be Japan's original evolutionary theory which stands against Darwin's evolutionary theory, has many "Imanishi fans" amongst non-

³⁰¹ See for instance, Shibatani, n 229 above; M. Kawata, *Shinka Ron No Mikata (How to Understand the Evolutionary Theory)* (Tokyo: Kinokuniya-Shoten, 1989); and Niwa, *ibid*.

³⁰² According to Shibatani, Darwin also seems to have had an idea of habitat segregation. *Ibid*. Niwa points out that Darwin, by introducing the idea of the struggle for survival, also brought into the idea of considering natural mechanisms in terms of living things versus living things, rather than living thing versus the environment. Niwa reasons that this viewpoint is similar to Imanishi's, which also considers natural mechanisms on the level of "species society". *Ibid*.

³⁰³ See Imanishi's statement provided at the beginning of 5.7.2, highlighting the difference between his and Darwinian theories.

³⁰⁴ See 5.7.2.1.

³⁰⁵ For instance, see: Y. Kishi, 'Imanishi *Shinkaron* to Darwin *Shinkaron* (Imanishi's Evolutionary Theory and Darwin's Evolutionary Theory)' in Kawakita, n 300 above, 323-332.

³⁰⁶ Kawata, n 301 above, 219.

³⁰⁷ See 5.7.4.2.1.

³⁰⁸ Philosopher Karl Popper was of this opinion.

³⁰⁹ Kawata, n 301 above, 219.

specialists, and is very popular in the publishing world. For instance, one of Imanishi's publications *What Is Evolution* (1974) was accompanied by an advertising phrase as follows; "Imanishi's Evolutionary Theory is one of the greatest theories of this century that supersedes orthodox evolutionary theory". However, contrary to the expectation of Imanishi fans, evaluations of his theory by biologists are not as glamorous".³¹⁰

Indeed, Imanishi's publication was enormously popular amongst the public and such "fans" were, as Kishi points out, "non-specialists", that is, non-scientists. In fact, he was awarded the prestigious Japanese prize of the Order of Cultural Merit in 1979 for his contributions to natural science.³¹¹ Imanishi had something to offer to 'Japanese' pride. Minamoto states;

. . . further, criticising the arrogant pride that man is a conqueror of nature, Imanishi stresses the continuity between man and nature, and proposed a unique evolutionary theory based upon "habitat segregation" from the animistic perspectives of nature and God. Imanishi's contribution is a natural result of Japanese culture, and I am proud of it as a Japanese of the same generation.³¹²

Minamoto's statement reflects the image of Christian 'exploitative' attitudes toward nature.³¹³ Minamoto's comment further reflects the image of Japan as a 'nature-loving' country, and also the connection between Imanishi's theory and this image as admitted by Imanishi himself. The following paragraphs will further consider the relation between Imanishi's approach and 'Japaneseness', and also Japanese pride.

5.7.4. 'Japaneseness'

In this section, first, Imanishi's own comparison of the images of Western and Japanese traditions will be considered. Secondly, what is thought to be 'Japanese' about Imanishi's evolutionary theory and its underlying philosophy will be considered. The examination can be conducted from three angles; Imanishi's own opinions and positive, and negative evaluations of his approach by others. In this part, Imanishi's later theories will be more fully examined.

³¹⁰ Kishi, n 305 above, 323.

³¹¹ Kawakatsu, n 225 above.

³¹² Minamoto, n 225 above, 372.

³¹³ See Imanishi's statement quoted at the beginning of 5.7.2.1.

5.7.4.1. Imanishi's Criticisms of Western Tradition

Imanishi is critical of traditional Western views of nature, particularly Christian and Cartesian views, as a significant influence on Darwinian theory and on the modern approach to natural science in general.³¹⁴ Of the two, Imanishi considers religious backgrounds to be particularly significant in considering the difference in his (or Japanese) and Western approaches to science. For instance, one of the concepts Imanishi disagrees about with Darwinian theory is its “selectionism”,³¹⁵ as reflected in the concept of natural selection, and he considers it is heavily influenced by the Christian view of the world, connoting competitiveness between individuals, harshness in the view toward nature and human superiority to and dominion over nature. His argument is as follows.

Imanishi considers: The idea of natural selection was present in Darwin's mind before Darwin carried out experiments of artificial selection.³¹⁶ What led Darwin to the idea of natural selection was the theological influences present at the time. It was thought that God, the superpower, created all living things, and the diversity of living things was also God's will. That is, God *selected* existing species. Darwin's theory, although denying such “divine selection”, is still based upon “*selectionism*”, and is not free from the Christian tradition. This is why Darwinism has not been challenged as vigorously as it should be in Western society, Imanishi states.

There is another aspect to the idea of natural selection from the perspective of religious influence, Imanishi continues.³¹⁷ Western scientists agree with the concept of natural selection because they perceive nature as being 'harsh' and as a consequence, only the fittest is selected. Imanishi attributes this perception of nature to the geographical characteristics of where Christianity originated. “. . . Christianity originated in a harsh environment near desert areas, and that harshness is reflected in its doctrine. After it was established as a religion, it spread [to different areas], overcoming the difference of the environments, yet still containing that strict doctrine”, says Imanishi.³¹⁸

Further, Imanishi is critical of Christian separation of humans from nature and human dominion over nature. In Imanishi's view, Western attitudes toward nature are reflected in its approach to natural science;

³¹⁴ See Chapter 4.

³¹⁵ K. Imanishi, 'Shinkaron no Roots (The Roots of the Evolutionary Theory)' in K. Imanishi, (ed), *Shizengaku no Teishou*, n 296 above, 39-54.

³¹⁶ *Ibid.* Imanishi's opinion is based upon the fact that Wallace reached the same conclusion without even carrying out experiments.

³¹⁷ *Ibid.*

³¹⁸ K. Imanishi, K, 'Shizen Mondou (Questions and Answers on Nature)' in Imanishi, *Shizengaku no Teishou*, n 296 above, 23. Compare this with Imanishi's view of nature as 'Mother' nature in 5.7.4.2.2.

In the West evolution is considered in a hierarchical order, step by step, and at the bottom of this hierarchy the least evolved is placed. . . . Heckel created more than 20 steps, placed humans at the top, apes below humans, and less developed primates below apes What comes above humans is God. God is the tradition of the West.

...

. . . Westerners consider that God comes at the top, humans below God, and other living things below humans.

...

This hierarchy is very strict. Humans cannot become God however hard they try. This God is a monotheic god. Similarly living things cannot become humans, however hard they try. That perspective is none of my business, however, what I have tried to stress, since I started studying evolutionary theory, is the independent subjectivity, or creativity of living things. However, if I mentioned such an idea to Westerners it would certainly be immediately dismissed. A very strict rule or thought that such independent subjectivity or creativity cannot be attributed to living things, apart from humans, is their tradition.³¹⁹

Imanishi continues, now proceeding to criticise rationalism as the origin of modern science which is too micro-based and “objective”,³²⁰ that the rational view of nature “devalued” animals; “Then, there came Descartes, claiming that ‘I think, therefore I am’, elevating man, devaluing other living things. Natural science today still does not acknowledge living things as living things and tries to treat them as things”.³²¹

Having criticised Western tradition as reflected in its approach toward natural science, Imanishi contrasts his theory with Darwinian theory, emphasising the fundamental difference in approach between the two. In his article '*Shinkaron no Roots* (The Roots of the Evolutionary Theory)', Imanishi compares Darwinism's “selectionism”³²² to “anti-selectionism” in his own theory.³²³ His reasoning is as follows; “Species societies” change “when they change”,³²⁴ but the change is under

³¹⁹ Imanishi, n 282 above. For detailed discussions of “independent subjectivity”, see 5.7.4.2.1.

³²⁰ K. Imanishi, '*Shizen o Dou Miruka* (How to View Nature)' in Imanishi, n 296 above, 28.

³²¹ This point is discussed later. Imanishi, n 315 above, 53.

³²² Imanishi's criticisms on “selectionism” were considered earlier. See 5.7.4.1.

³²³ Imanishi, n 315 above, 39-54.

³²⁴ Imanishi says that this is one of the hardest points for other scientists to accept about his theory.

the control of the “whole society of living things”.³²⁵ As long as the “species society” fulfils its role in the “whole society of living things” and keeps the balance of the latter, the change itself is independent of other factors. Similarly, as long as the balance of “species societies” is maintained, which individuals survive is of no significance, and “those with luck” survive.³²⁶ Therefore, his evolutionary theory does not 'select' 'individuals'.

This theory, Imanishi states, is based upon his 'Oriental' view of nature. He raises Buddhism, Shinto, and animism as being indirectly influential to his perception of nature, which subsequently gave birth to his evolutionary theory; “[Having] such fantastically grand embracing power, nature may be equated to Buddha”.³²⁷ “Also, this theory of society may be strongly influenced by my tendency toward polytheism”.³²⁸ The next paragraphs will consider the Japaneseness of Imanishi's approach by considering his view of nature found in the “Study of Nature”.

5.7.4.2. The “Study of Nature”

In '*Shizengaku no Teishou* (The Proposal of the Study of Nature)',³²⁹ Imanishi announces his parting with natural science and proposes to establish what he has pursued all his life as an independent area of study; *shizengaku*, the “Study of Nature”. He considers that *shizengaku* does not fit into any of the established scientific subjects, whether natural science, sociology or anthropology. Throughout his life, Imanishi undertook the study of insects, ecology, primatology, sociology, anthropology, etc, whilst fully enjoying being in nature as a mountaineer and explorer. “. . . I have always pursued whole nature, rather than partial nature as represented in so-and-so studies”.³³⁰ The study of evolutionary theory, too, is included in the study of nature, says Imanishi.

Then, what is the nature Imanishi wishes to study? The “whole society of living things”³³¹ only includes the 'world of *living things*'. “Whole nature” includes many other elements, and it is beyond possible examination using existing methods of study; “At school, you are not taught that there exists whole nature other than partial nature. What taught me that there exists whole nature was mountains and exploration”.³³² By proposing *shizengaku*, Imanishi suggests looking at nature as

³²⁵ The concept of the “whole society of living things” was mentioned earlier. See the third paragraph in 5.7.2.1.

³²⁶ Imanishi, n 315 above, 44.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Imanishi, n 296 above. The influences of religion on Imanishi's theory are discussed further later. See 5.7.4.2.2.

³³⁰ Ibid, 83.

³³¹ See 5.7.2.1.

³³² Imanishi, n 296 above, 69.

“whole nature”³³³ in order to improve the fractionised perception of nature today. In order to do so, Imanishi considers “[the] intuitive and subconscious world needs to be incorporated into the study of nature”.³³⁴

The concepts of “intuition” and “self consciousness” are also key concepts in understanding Imanishi's idea of “whole nature”, and they are present in the idea of the “proto-identity”,³³⁵ the concept used to explain habitat segregation, as discussed below. With this idea, his study of nature is complete, at least for himself. The following paragraphs will discuss the concepts of intuition and the non-conscious nature of living things, in the context of proto-identity and evolutionary theory.

5.7.4.2.1. Intuition and Consciousness

Imanishi later argued that habitat segregation occurs because organisms of the same species recognise each other by their innate mechanism of what he calls “proto-identity”.³³⁶ “Proto-identity is a function that enables individuals with no significant variations to recognise each other as the same”.³³⁷ Such individuals are of the same species, as Imanishi considers that there is no significant variety amongst individuals of the same species. The word “proto” comes from the idea that this identification ability is innate to living things.

As it is innate to all living things, proto-identity does not require living things to be 'conscious'. Even before Imanishi established the idea firmly, he states; “. . . this self-identification exists in every individual. It exists even in individual living things which are said to be not conscious”.³³⁸ Therefore, “there is no need to use the word 'consciousness' and 'identity' should be satisfying” to explain the 'independent subjectivity' of living things.³³⁹ The idea of proto-identity completes Imanishi's evolutionary theory; it is the mechanism which enables individuals to recognise others of the same species, which enables the “species society” to exist and segregate habitats.

Using the idea of proto-identity to explain habitat segregation, Imanishi attempts to have others attribute 'subjectivity' to living things; “[An] insect has to decide which

³³³ Ibid.

³³⁴ Ibid, 84.

³³⁵ K. Imanishi, 'Proto-Identity *Ron* (The Theory of Proto-Identity)' in Imanishi, *Shizengaku no Tenaki*, n 255 above, 162-179.

³³⁶ Imanishi's idea of proto-identity was born from the observation of mayfly larvae in his early days.

³³⁷ Ibid, 163. Imanishi continues that simply having the same physical features and functions does not bring out mutual identification. Also, if the mutual identification or interaction between individuals is not accepted, it is impossible to discuss society or the sociological nature of living things. Therefore, he considers that the idea of proto-identity is significant in discussing his evolutionary theory, which is based upon the concept of the “species society”. Ibid, 164.

³³⁸ Imanishi, n 318 above, 25.

³³⁹ Ibid.

way to take if the road divides into two. Insects may not have self-consciousness like we do, but we have to acknowledge that there exists subjectivity in them”.³⁴⁰ Returning to the subject of “intuition” and “consciousness”, proto-identity lies in non-conscious yet subjective areas, which enables living things to act as they should. Therefore, Imanishi considers, it can be equated to intuition. “I have always thought the reason why living things which are not supposed to be conscious could act without making mistakes is because they are led by intuition. Intuition does not belong to the world of self-consciousness, it is a phenomenon that appears between these two worlds [of self-consciousness and non-self-consciousness] . . .”.³⁴¹ This is why Imanishi encourages valuing intuition within ourselves and also within other living things, in order to understand the world of living things.

Another important concept in Imanishi's *shizengaku* is “site-consciousness”.³⁴² Imanishi considers that a self is included in an environment where it is, and self-consciousness and site-consciousness are complete when both are present. For instance, when a baby recognises the self coincides with it recognising its mother. When the baby is conscious of its mother, that is, its environment, its self consciousness is also born at the same time. “For living things, the place and the self are interconnected” and “general ecologists separate” the two.³⁴³ Therefore, because human beings share their place (the environment) with other living things, humans should be able to understand how animals feel according to the concept of site consciousness.³⁴⁴ “From sharing the place, an empathy (*kyou-kan*) is born next. What is important is it is a feeling (*kan*) and that feeling is the feeling mentioned in 'I feel, therefore I am’”.³⁴⁵

Imanishi obviously considers his approach as a counterpoint to the 'Western tradition', and it is partly a reaction against Western predominance in natural science. Imanishi compares his idea of proto-identity with the Cartesian tradition³⁴⁶ that deprives animals of “*kokoro*”.³⁴⁷ He states;

. . . Descartes' theme of “I think, therefore I am” places great respect on human consciousness. That way of thought accidentally matches Western society and is widely spread.

³⁴⁰ Ibid, 24.

³⁴¹ Ibid, 27.

³⁴² K. Imanishi, 'Ba no Kyouyuu kara Kyoukan e (From Sharing the Place to Empathy)' in Imanishi, *Shizengaku no Tenkai*, n 255 above, 150-161.

³⁴³ Ibid, 153.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ For discussions of Descartes' view of animals, see 4.4.3.

³⁴⁷ Ibid, 151. The term “*kokoro*” was mentioned earlier. See 5.6.4. See Imanishi's criticisms of the Cartesian view of animals quoted in the last paragraph in 5.7.4.2.

However, as a consequence, animals, birds and beasts, are considered not to think in the same way as humans, and are said not to have *kokoro*. The status of animals has become very low. One of my ultimate wishes is to save this situation.³⁴⁸

Imanishi is also aware that Western rationalism does not allow room for Imanishi's approach by valuing “*kokoro*” in animals, which is why he tries to explain the evolution theory with the concept of proto-identity and site-consciousness;

I am not presupposing something substantial such as *kokoro* or mind in living things. If I did, I would inevitably receive a good beating by those who accuse me for acknowledging mind in plants. I am only presupposing the function of mutual identification [in living things].³⁴⁹

He is aware that precisely because of these 'alternative' concepts in his theory it would not be accepted by the Western, or international scientific community. That is why he parted with established science and proposed *shizengaku*.

5.7.4.2.2. 'Japaneseness'

Now it is appropriate to discuss more comprehensively the relationship between Japanese cultural influence and Imanishi's approach, as acknowledged by Imanishi himself. 'Japanese' characteristics can be considered both from religious and philosophical perspectives. As a starting point, his holistic approach towards nature is to be noted. As he points out himself, his way of viewing nature is macro-based. He considered it impossible to study 'whole nature' and therefore decided to study the “world of living things”. In considering the latter, Imanishi suggests understanding it as a society, comprised of societies of species, which are ultimately comprised of individuals. This way of viewing nature as a whole has been present in Japan since ancient times, says Imanishi.³⁵⁰ He states;

There are two ways of viewing nature here. One of them, the natural scientific way, views and treats nature by separating [and dividing]. Then the other . . . never separates [or divides] nature, it grasps nature as a whole. The two are completely opposite ways of dealing with nature.

From historical perspectives, there has always been a characteristic way of viewing nature, in the direction of grasping it

³⁴⁸ Imanishi, n 354 above, 151.

³⁴⁹ Imanishi, n 335 above, 164.

³⁵⁰ Imanishi, n 320 above, 31.

as a whole. For instance, there is a mountain called Miwa-yama in Nara. . . . our ancestors built a shrine gate in the mountain and worshipped the mountain itself as [*kami*], Miwa-no-ogami.³⁵¹

As well as the Shinto influence described above, the Buddhist influence can also be observed by Imanishi's expression of "benevolent" "Mother" nature.³⁵² According to Imanishi, nature is "all-embracing" like Buddhism itself, and not harsh.³⁵³ Imanishi, agreeing with the psychologist Kawai, further stresses the importance of "Mother" nature; "People over there [(in the West)] think according to paternal principles and Japanese people according to maternal principles".³⁵⁴ Nature does not reject those who are unfit, and all beings maintain the balance of nature together in harmony, a concept reflected in his "anti-selectionism".³⁵⁵ His ideas of the society of whole living things is also indirectly influenced by the Japanese animistic view of nature,³⁵⁶ in which co-existence, co-operation and peace between living things are observed, according to Imanishi.

5.7.4.2.3. Imanishi and 'Western' Science

Imanishi's perception of nature, which he claims as having 'Japanese' origins, connotes many elements that fall outside the realm of established, 'Western' science. What is noteworthy is that Imanishi himself believed that his approach would not be accepted by the West. For example, in an attempt to 'elevate' the status of animals, he uses the concept of "proto-identity", instead of *kokoro* in living things, as he knew he "would inevitably receive a good beating by those who accuse me for acknowledging mind in plants".³⁵⁷ Here, he means 'rational' scientists by "those who accuse" him. The fear of not being understood, or being criticised by Western scientists was also seen amongst other Japanese primatologists.³⁵⁸ Imanishi, however, then decided to part with established science. Speaking of the roots of his and Darwinian evolutionary theories, Imanishi says; "Even though the roots have been explored, [Darwinian and Imanishi's theories] . . . cannot compromise with each other. . . . Two non-compromising evolutionary theories, I think, can simply segregate the East and the West".³⁵⁹

³⁵¹ Ibid.

³⁵² Ibid, 45.

³⁵³ Ibid. This view of nature reflects the Buddhist tradition of considering humans as simply another component of nature. See 5.3.3.

³⁵⁴ Hayao Kawai is one of the most prominent psychologists in Japan today. The source is not clarified in Imanishi's article. Ibid, 46.

³⁵⁵ See 5.7.4.1.

³⁵⁶ This point was mentioned earlier. See 5.7.4.1.

³⁵⁷ See 4.3.4.1.1.

³⁵⁸ See 5.6.4.

³⁵⁹ Imanishi, n 315 above, 53-54.

The abovementioned attitude is Imanishi's reaction to the image of what Asquith calls "Western hegemonies" in the field of science. Imanishi is fundamentally against the micro-based approach of examining nature, separating fundamentally interrelated objects and phenomenon.³⁶⁰ As Imanishi repeatedly stresses, 'whole nature' cannot be understood with such small-scale methods, and he is "happy that [he was] born in an academic colony [of the West] where the root of tradition is not deep."³⁶¹ Imanishi continues; "That is, because the root of tradition is not deep, I could build my '*shizengaku*', free from the [Western] tradition" which limits possibilities outside the realm of established science.³⁶²

5.7.4.3. Conclusion of Imanishi's Images

To recapitulate, Imanishi's images of Western and Japanese approaches to evolutionary theory and nature are as follows. As for the image of the Western approach, Imanishi considers that: (1) Darwinian evolutionary theory, based upon the ideas of competition, natural selection and the survival of the fittest, is based upon a perception of nature influenced by the West's monotheic tradition; (2) This tradition is to separate God, man and nature and a vertical hierarchy exists; (3) This tradition also regards nature as 'harsh' in which living things have to struggle for survival; (4) Rationalism, particularly Cartesian thinking, has further separated man and animals and devalued the status of animals, by stressing the importance of reason and mind; (5) These religious and philosophical traditions gave birth to modern methods of scientific examination in which objects are observed and considered on a micro-basis, separately from each other.

As for the image of the 'Japaneseness' of his approach, Imanishi considers that: (1) Imanishi's evolutionary theory, founded upon the ideas of the "species society" and habitat segregation, is based upon a perception of nature influenced by Shinto and Buddhism; (2) The religious tradition of Japan is to view nature as all-embracing, mother-like, interrelated and balanced, and to view animals as having *kokoro*, or at least independent subjectivity; (3) This tradition is deeply rooted in Imanishi's perception of nature as represented in his *shizengaku*, which suggests grasping 'whole nature', rather than 'partial nature' as in established science; (4) Imanishi's *shizengaku*, including his evolutionary theory, is acceptable to many Japanese, but not to most Westerners.

³⁶⁰ Although the concept of ecology, in which the interaction between living things and their habitats is considered, is still not quite holistic enough for Imanishi. The ultimate difference between Imanishi's *shizengaku* and ecology is the separation, for instance, of "living things" and their "habitats", as Imanishi considers the environment (habitat) includes living things which inhabit there.

³⁶¹ K. Imanishi, "Imanishi *Shizengaku*" *ni Tsuite* (On "Imanishi's Study of Nature") in Imanishi, n 296 above, 17.

³⁶² *Ibid.*

5.7.5. 'Japaneseness' and Nationalism

There exist both positive and negative evaluations of Imanishi's approach. Discussions will be carried out in respective order. One of the examples of a positive evaluation is the view that Imanishi's approach is the way forward for an alternative conservation approach. It is considered to provide for a less anthropocentric, or even ecocentric, and holistic and animistic view of nature. It is also considered to reflect the approach taken by traditional Japanese naturalists. The following discussions attempt to show that Imanishi's approach was supported as part of nationalism in Japan.

For instance, Tsurumi explains that Imanishi's approach therefore provides for "less-violent³⁶³ science and technology"³⁶⁴ as it is based upon an animistic belief that everything on earth co-exists on equal terms.³⁶⁵ Imanishi "gave content" to "a vague expression of 'soul' in animism", that is, intuition.³⁶⁶ Intuition allows "species societies" to recognise similarities and differences, and "species societies" feel more empathy towards those that are similar. Imanishi's stress on the importance of such empathy is regarded as the "study which urges human efforts toward the preservation of the global environment as a place of co-existence".³⁶⁷

Imanishi is also equated with other traditional, renowned scholars of nature in Japan, and proximity with them appears to make Imanishi's theory even more appealing. Minakata Kumasugu and Yanagita Kunio are people's favourite "Japanese naturalists", and Imanishi is considered to have inherited their "tradition".³⁶⁸ They both played a significant role in efforts to protect the traditional Japanese view of nature, and therefore are considered amongst the first ecologists in Japan. In 1906, Imperial Ordinance was issued, ordering the amalgamation of shrines all over Japan, destroying many shrines, as well as the social structure based around natural villages.³⁶⁹ Shrines protected the surrounding natural environment by Shinto taboos³⁷⁰ and therefore their destruction also meant the destruction of the

³⁶³ Tsurumi uses the word "less" instead of "non" because "humans must admit that they cannot continue their lives without eating, hurting, or developing other living things". K. Tsurumi, 'Animism, Shamanism to Boryoku no Yori Sukunai Kagaku (Animism, Shamanism and Less Violent Science)' in *Ecology to Kirisuto-Kyo (Ecology and Christianity)* (Tokyo: Shinkyō Shuppansha, 1993) 61. Also see; Tsurumi, K., *Social Price of Pollution in Japan and the Role of Folk Beliefs*, Research Paper, Institute of International Relations Series A-30 (Tokyo: Sophia University, n.d.).

³⁶⁴ Ibid.

³⁶⁵ See 5.3.2.

³⁶⁶ Tsurumi, n 363 above, 72.

³⁶⁷ Ibid, 73.

³⁶⁸ Ueyama, n 225 above, 204. Yanagita Kunio was mentioned earlier. See 5.2.3.

³⁶⁹ This was to establish State Shinto. See 5.2.1. The Ordinance was also coupled with merging of villages, reforming natural villages into administrative villages. Shrines were destroyed because it was issued that there would only be one shrine in each administrative village. See for instance; H. Aramata and E. Tamaki, *Minakata Kumasugu no Zufu (Compilation of Stories on Minakata Kumasugu)*(Tokyo: Seikyusha, 1991).

³⁷⁰ For instance, many of the forests or individual trees were considered sacred and therefore were protected. For taboos and fears of curse in Shinto tradition, see 5.2.3 and 5.3.3.

surrounding environment, against which Yanagita and Minakata protested. For instance, Minakata, as a bioscientist, stressed the importance of shrines in protecting rare species.³⁷¹ He also warned that cutting trees in shrine precincts would mean allowing a living thing that survived for millions of years to go extinct. Tsurumi considers that both Yanagita and Minakata considered that animistic views and taboos “should be cherished and reactivated”.³⁷² Imanishi's stress on Japanese religious views of nature is considered to belong to the same school of thought.³⁷³

Imanishi's approach is also endorsed by fundamentally and uniquely Japanese concepts. It is considered that Nishida Kitaro's (1870-1945) philosophy is reflected in Imanishi's approach. Takeuchi describes Nishida's philosophy as follows; “. . . [Nishida's] philosophy is 'philosophy' in a true sense as in the Western tradition, yet at the same time deeply rooted in the Oriental tradition of thought. He . . . re-discovered the meaning of the Orient's unique principles of thought that cannot be found amongst Western thought, and attempted to give philosophical and theoretical grounds to such principles”.³⁷⁴ Nishida's 'philosophy of the Orient', strongly influenced by Zen Buddhism, is comprised of elements such as “pure experience”, “intuition”, and “subjective consciousness”. As those are the words employed by Imanishi in explaining his *shizengaku*, Imanishi's approach is, according to Ueyama, strongly influenced by Nishida's philosophy, and therefore, has strong Japanese and Oriental characteristics.³⁷⁵

Appraisal of Imanishi's approach for simply providing a strong Japanese characteristic also brought out an opposing reaction; The most commonly debated negative aspect of Imanishi's approach is that it is too nationalistic. One example of this is a connection between Imanishi's and Nishida's theories. Nishida's philosophy is associated with fascism propagated by the Government during the war because of its alleged 'Oriental uniqueness'. Imanishi's philosophy contains “a kind of nationalism”, although it has been argued that “it is wrong to associate it with fascism immediately”.³⁷⁶

Coupled with such nationalistic tendencies are Imanishi's anti-Western tendencies. Imanishi often emphasises the difference between Japan and the West, highlighting the virtues of Japanese culture.³⁷⁷ “. . . Imanishi, by placing habitat segregation as

³⁷¹ T. Kamata, 'Minakata Kumasugu to *Jinja Goushi Hantai Undou* (Minakata Kumasugu and Campaigns against Amalgamation of Shrines) in Aramata and Tamaki, n 369370 above, 116-117.

³⁷² Tsurumi, n 363 above, 8.

³⁷³ Tsurumi, n 364 above.

³⁷⁴ Y. Takeuchi, 'Nishida Kitaro' in T. Suzuki, (ed), *Kindai Nihon No Tetsugaku-Sha (Modern Japanese Philosophers)* (Tokyo: Hokuju Shuppan, 1990) 175.

³⁷⁵ However, Ueyama is aware that Imanishi himself denies that he has studied Nishida's philosophy properly, and directs attention also to the “tradition of Japanese naturalists” such as Kaibara Ekiken, Minakata Kumasugu, and Yanagita Kunio. Ueyama, n 225 above.

³⁷⁶ Ueyama, n 225 above, 197.

³⁷⁷ See 5.7.4.1 and 5.7.4.2.3.

the opposite to struggle for survival and natural selection, and therefore placing native thought against Western thought, established a flag of a kind of nationalism in thought”, according to Shibatani.³⁷⁸ Imanishi's theory and approach are thought to coincide with the time when Japan's technology and economy sparkled, and the image of “great Japan” and the “incompetent West” was put forward by Japanese people.³⁷⁹ The tendency of Japan to “make [itself] international” instead of “being internationalised” was a concern to this strand of critics, and devaluing the West and other cultures and civilisations was considered an “anti-foreign” attitude.³⁸⁰

The nationalistic tendency of Imanishi's approach is further highlighted by criticism of the scientific validity of his theory.³⁸¹ Imanishi's argument that the West was competitive and Japan was co-operative has been criticised as a “fiction”,³⁸² and some consider his evolutionary theory as non-systematic; The lack of arguments put forward in the form of systematic theories is criticised as “characteristic of Japanese thought”.³⁸³ Criticisms of Imanishi's approach also came from Western critics; Halstead stated that Imanishi's approach provided a “dreamy” image of Japan for people to escape to.³⁸⁴

Although Halstead's argument above lacks substantial evidence and is unconvincing, as many counter-argue,³⁸⁵ it raises the question of whether Imanishi's approach is over-praised because it stimulates Japanese pride. Whether Imanishi's approach is too nationalistic is subject to interpretation, however his criticism of the Western tradition, and belief that his 'Japanese' approach would not be understood by the West, encompass aspects of the *nihonjin-ron*, commentary on the Japanese.

The *nihonjin-ron* has a large body of literature relating to it.³⁸⁶ One of the aspects of Imanishi's approach in the light of *nihonjin-ron* is his emphasis on cultural tradition. Wolferen speculates that Japanese people love discussing 'Japanese culture', and tend to use 'culture' even in situations where accountability is required.³⁸⁷ This emphasis

³⁷⁸ Shibatani, n 229 above, 106.

³⁷⁹ Ibid, 107.

³⁸⁰ Ibid, 107.

³⁸¹ Kawata, n 301 above, 212-226.

³⁸² Ibid, 21-22.

³⁸³ Ibid.

³⁸⁴ B. Halstead, 'Anti-Darwinian Theory in Japan' in (1985) 317 *Nature*, 587-589.

³⁸⁵ Counter-arguments are provided as follows: Shibatani (1986) *Nature* 320:492, Sinclair (1986) *Nature* 320:580, Millar (1986) *Nature* 321: 475, Nakahara (1986) *Nature* 321: 475.

³⁸⁶ The major works include; T. Doi, *The Anatomy of Dependence*, trans. J. Bester (Tokyo, New York and San Francisco, Kodansha International Ltd., 1971); C. Nakane, *Japanese Society*, (Middlesex: Penguin Books Ltd., 2nd ed, 1973); R. Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture* (Cambridge: Riverside Press, 1946); E.F. Vogel, *Japan as No. One: Lessons for America* (Tokyo: Tuttle-Mori Agency, Inc. 1979).

³⁸⁷ K. V. Wolferen, *Why Can't the Japanese Love Japan?*, trans. S. Ohara (Tokyo: Mainichi Shimbunsha, 1998) 53.

on 'Japanese culture' naturally leads to the attitude that those living outside Japan would not truly understand Japanese culture. Tanikawa, discussing Yanagita Kunio's achievement,³⁸⁸ states;

Yanagita's ethnographical studies are often said to be the only unique Japanese study that can be exported abroad. . . . However, I doubt that foreign people, especially Europeans and Americans would understand Yanagita's study so readily. It's because Europe is dominated by Christian thoughts completely. . . . It's because it is not allowed [in the West] to treat humans and animals at the same level.³⁸⁹

The above statement by Tanikawa clearly reflects Imanishi's emphasis on the difference between Japanese and Western culture.

Another aspect of Imanishi's approach to be noted in relation to the *nihonjin-ron* are the elements of his theory that are incompatible with established science. There are various works highlighting the difference between the Japanese and Westerners in the field of science and scientific writing.³⁹⁰ Motokawa criticises scientific writing by Japanese scientists as follows; It “does not boil down to a few powerful rules, presented in a sequence connected by a loose imagery rather than a clear logic”.³⁹¹ Others agree with this criticism, Asquith states;

[In] terms of language and presentation of findings in English-language journals or at international conferences, Japanese scientists may seem atheoretical, uncommitted, or even illogical.

. . .

Scientific reports written in Japanese do not typically state conclusions. Instead, they try to describe one fact from various points of view. . . . Why do Japanese scientists not state a firm conclusion? It would, they say, close their world.³⁹²

Indeed, by not “[closing] their world”, Japanese primatologists made a significant contribution to the study of primates.³⁹³ However, the lack of a theoretical

³⁸⁸ See 5.2.3 and the earlier paragraph in this subsection.

³⁸⁹ K. Tanikawa and N. Miyata, '*Minzokugaku no Yukue: Minzokugaku no Shourai ni Yanagita o Ikasu Michi ha Nanika* (The Future of Ethnography: How to Utilise the Tradition of Yanagita in the Future of Ethnography)' in S. Goto, et. al., *Yanagita Kunio* (Tokyo: Kawade Shobo Shinsha, 1992) 172-187.

³⁹⁰ See for instance; M. Watanabe, *The Japanese and Modern Science* (Tokyo: Iwanami, 1976).

³⁹¹ T. Motokawa, 'Sushi Science and Hamburger Science' (1989) 32 *Perspectives in Biology and Medicine* 4, 489-504.

³⁹² Asquith, n 241 above, 255. See also; De Waal, n 230 above, 185.

³⁹³ See 5.6.3.

framework does not agree with the culture of Western, or international scientific society, in which “theory testing” is given a “high status”.³⁹⁴ The reasons for the lack of theory in Japanese scientific writings or “disappointing scientific output”³⁹⁵ in Japan have been discussed by many scholars, and linguistic, religious and psychological factors have been pointed out as reasons for this shortcoming.³⁹⁶

This school of thought stresses that Japan has a different cultural tradition, which makes it harder for the Japanese to have 'scientific', rational' thinking. For example, Tsunoda's *Nihonjin no Nou (Japanese People's Brain)* gave a scientific basis for this argument.³⁹⁷ Tsunoda analyses his experiments and concludes that the Japanese are “instinctive” rather than “rational”, and are “more sensitive toward the sound of nature than Westerners”.³⁹⁸ He also raises the example of Japanese primatology in order to explain how the Japanese could contribute to the arena of science, although it was initially considered incompatible with established natural science.³⁹⁹

5.8. Conclusion and 'Japanese' Conservation

Can pride in Imanishi's achievements and the accompanying Japanese cultural elements really be justified? The examination of Japan's current status in wildlife conservation does not suggest so. Although it may be appealing, Imanishi's approach does not necessarily provide concrete grounds for “less-violent science and technology” or an alternative conservation approach. For instance, although Imanishi's approach to primatology has had academic success,⁴⁰⁰ it did not bring about a drastic change in the conservation policy relating to Japanese macaques.⁴⁰¹ Imanishi stresses the existence of *kokoro* with animals, and tries to 'elevate' their

³⁹⁴ De Waal, n 230 above, 185.

³⁹⁵ S. Coleman, *Japanese Science: From the Inside* (London: Routledge, 1999) 175.

³⁹⁶ This point is discussed later. See Asquith, n 241 above.

³⁹⁷ Tsunoda conducted scientific experiments to prove that Japanese people have a particular way of processing sounds compared with the rest of the world. T. Tsunoda, *Nihonjin no Nou: Nou no Hataraki to Touzai no Bunka (Japanese People's Brain: Brain Functions and Culture of the East and the West)* (Tokyo: Daishukan Shoten, 1978).

³⁹⁸ Ibid, 19-21.

³⁹⁹ Ibid, 363.

⁴⁰⁰ See 5.6.

⁴⁰¹ See; Y. Uchida (ed), *Ima 'Yasei Seibutsu' ga Abunai* (Tokyo: Gakken Kenkyusha, 1992), 76-85. A number of Japanese macaques were caught by professionals for pest control under the Hunting Law, and were subsequently sold to research institutes. “Mukyoka Shiiku no Saru Koumyuu (Purchase of Japanese Macaques Kept without Permit)”, *Asahi Shimbun*, 24 Dec. 2000; and “Jikkenyou Saru Ihou Hokaku ka (Japanese Macaques Kept for Experiment: Illegally Captured?)”, *Asahi Shimbun*, 25 Dec. 2000. Further, Inuyama Monkey Centre, which was established to contribute to the development of primatology, was reported to have sold its macaques to research institutes, due to having an excess in the number of macaques. “Doubutsuen no Saru 160 Piki, Jikkenyou ni (160 Monkeys to Be Sold for Experiment)”, *Asahi Shimbun*, 27 May 1998. See n 236.

status, and yet this idea failed to improve legislation relating to animal protection or welfare in Japan.⁴⁰²

In fact, Imanishi himself is critical of contemporary ecological movements;

. . . in newspapers, I often see words like nature conservation or environmental conservation, but these are talked of from the rationalistic perspective of the West. On the contrary, for instance, precincts of shrines and temples are clean, there is no empty juice cans or paper rubbish. Of course there is someone who cleans those precincts, however, when ordinary people visit there to pray, they have the thought that one should not pollute such places like sacred or divine areas. . . . people who live on the mountain . . . feel that nature should be looked after carefully. . . . I don't think it has a great effect if one simply tells [others] to protect nature based on a rational principle without correcting the fundamental cause [of destruction of nature].⁴⁰³

In the above comment, Imanishi appears to consider Japanese religious tradition as providing respect toward nature, which naturally brings about appropriate attitudes of nature conservation.

Part of the reason why Imanishi's theory attracted support was because it was 'Japanese', and contained Japanese religious elements, which were considered to be 'ecological'. At the same time, this was also a reaction against Western criticism of Japan. For instance, negative attitudes towards such criticism can be found in the attitudes of conservationists themselves in Japan. Stewart-Smith states;

The [Japanese] people were . . . heartened and not a little amazed to hear that conservation is far from satisfactory in Europe and America. Many of them had assumed that countries which so easily criticise Japan's protection of wildlife had got their own houses in order. Strong criticism and action from foreigners has sometimes ruined the progress that the Japanese have carefully but gradually made. In response to this some refuse to have anything to do with international conservationists. Many Japanese people still assert that westerners . . . will never understand them nor appreciate their way of working.⁴⁰⁴

⁴⁰² See 5.9.

⁴⁰³ Imanishi, n 322 above, 33-34.

⁴⁰⁴ Stewart-Smith, n 20 above, 198-200. There are offices of international conservation NGOs in Japan, many of which rely on assistance from their international colleagues.

Imanishi's approach to ecology may be considered as a "Japanese' way of working".⁴⁰⁵

However, confidence in the 'Japanese' way of ecology, as represented by Imanishi's view, is premised upon the belief that Japanese cultural tradition is inherently 'ecological'. Yet, earlier considerations show that Japanese religious factors do not automatically provide for 'ecological' philosophical foundations.⁴⁰⁶ Although Shinto and Buddhism *can* provide 'ecological' foundations for Japan, simple belief in them without practical discussion as to their actual application can, unfortunately, be utilised to nourish attitudes that are too nationalistic and do not contribute to constructive debates.

Further, Imanishi's approach also questions what is accepted as scientific and rational argument by the West. His attitudes toward 'Western' science and his declaration of parting from it reflect the Japanese sentiment that ideas that fall outside the realm of the West would not be accepted internationally. Some consider that the inferiority felt by Japanese scientists is due to the difference in traditions, particularly in religious views of nature, although others consider that such "philosophical apologists" should reconsider their perspectives,⁴⁰⁷ as Japan is a modern, industrialised country, which should have 'modern' views of nature. Coleman states; "Philosophical apologists for Japanese uniqueness might be better off arguing the reverse, that basic science in Japan has weak philosophical roots because its advocates never had to sharpen their arguments in fights with theologians, as , in the West".⁴⁰⁸

The Japanese are also fully aware of what is acceptable in the West, and international society. With regard to CITES-related issues, Japan's stress on the concept of sustainable development in its arguments is one such example. Part of the problem relating to 'Japanese' ecology may be the lack of a "common recognition" of nature conservation⁴⁰⁹ that includes cultural factors other than Western ones.

Nevertheless, recently, there have been signs of 'Japanese' conservation movements in Japan.⁴¹⁰ Since the mid 1990s, environmental concerns have increasingly been noted, and efforts of various environmental groups in Japan have achieved a certain degree of success. Although these groups are far less well equipped with human and

⁴⁰⁵ Ibid.

⁴⁰⁶ See 5.4.

⁴⁰⁷ Coleman, n 395 above, 175-178.

⁴⁰⁸ Ibid.

⁴⁰⁹ Mizuno, K, '*Jouhouka Sareru Shizen* (Nature Informationalised)' in Kurosaka, n 219 above, 95-204. Mizuno considers that Japanese people's perception of nature will follow that of the West.

⁴¹⁰ For recent discussions of Japanese environmentalism, see; W.P. Precher, *An Investigation of Japan's Relationship to Nature and Environment* (N.Y.: The Edwin Mellen Press, 2000). Note, however, that he considers that Japan's environmental degradation is due to the influence of the Western-style industrialisation.

financial resources compared to Western organisations, and still lack of widespread support, their achievements show that there is a way forward for the 'Japanese' conservation approach.

One example is the variety of lawsuits filed since the mid 1995, in which the “rights of nature” have been advocated. The first was in 1995, when a group of people filed a lawsuit against a local government, which allowed a development plan in an area of rich environment in Amami, a tropical island off Kyushu (southern island).⁴¹¹ The area in question is a habitat for some of the species protected under the Cultural Heritage Protection Law 1950,⁴¹² including Amami rabbit *pentalagus funessi*, a species only found in Japan. The plaintiffs included the animals themselves, although none of them, including the human plaintiffs, were regarded as having standing in the court and the case was dismissed.⁴¹³ However, the case attracted a great deal of public attention to the cause of environmental protection.

These lawsuits follow the American ecocentric tradition, started by *Sierra Club v. Morton*.⁴¹⁴ In *Sierra Club v Morton*, Mr. Justice Douglas in the US Supreme Court acknowledged that; “Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation”.⁴¹⁵ Stone's *Should Trees Have Standing?* was written in support of this case,⁴¹⁶ which is now considered to be one of the most famous books advocating ecocentrism. The Japanese lawsuits, however, are not entirely imitations of the American style. The primary force in Japanese cases is mainly local people and groups, and the destruction of the area surrounding their own communities has stimulated the 'sentiments' of local people.⁴¹⁷ Japanese cultural traditions in relation to nature are also recognised in some cases. In the ongoing lawsuit against the construction of a tunnel through Mt. Takao, the “religious” and “historical” value of Mt. Takao are advocated by the plaintiffs as well as the

⁴¹¹ For discussions of the legal and ethical implications of a series of lawsuits advocating “rights of nature”, see; N. Kato, *Kankyō to Rinri (The Environment and Ethics)* (Tokyo, Yuhikaku, 1998). For discussions of the legal constraints in this type of lawsuit, see; T. Hatakeyama, 'Darega Saiban o Okoseruka (Who Has Standing?)' (1995) 491 *Hougaku Seminar (Law Seminar)*, 72-75.

⁴¹² Chap. 5, The Cultural Heritage Protection Law 1950, Law No. 214.

⁴¹³ The Court of Appeal agreed with the High Court which dismissed the case for the lack of the standing. For the script of the judgement of the High Court, see; <http://www.member.nifty.ne.jp/sizenokenri/AM010122h.html>, visited on 15 Oct. 2002.

⁴¹⁴ *Sierra Club v. Morton* [1972] in C. Stone, *Should Trees Have Standing?: Toward Legal Rights for Natural Objects* (California: William Kaufmann, Inc., 1974) 73. An environmental organisation Sierra Club filed a lawsuit against a development plan in the protected area in 1972. The standing of Sierra Club was accepted.

⁴¹⁵ *Ibid.*

⁴¹⁶ C. Stone, 'Should Trees Have Standing?: Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*.

⁴¹⁷ See Kalland and Persoon, n 6 above.

biological value of it.⁴¹⁸ Mt. Takao's significance as a centre for local Shinto belief and rituals and Shugendo practices is set down in the petition.⁴¹⁹

Another example of the 'Japanese' approach toward conservation is the *satoyama* movement. *Satoyama*, or a 'tamed' mountain, has traditionally provided resources for people in the surrounding villages, whilst it was regarded as a 'sacred' place.⁴²⁰ *Satoyama* is a so-called secondary, 'tamed' nature, which includes the surrounding rice fields, but it is increasingly realised that it has played a vital role in balancing the local ecosystem.⁴²¹ The disappearance of once common species in Japan is considered to be largely due to the decline of agriculture and forestry and a change in lifestyles, which changed the condition of *satoyama*.⁴²² The protection of *satoyama* is encouraged by the Government and included in the Ministry of Environment's Basic Plan for environmental protection, and there are over 1,000 local groups involved with the *satoyama* movement in Japan.⁴²³ The *satoyama* movement attempts to revive the "cultural" and "spiritual" value of nature, sentiments for traditional local landscapes and once common species, and the connection between people and their land, which have been "excluded" from conservation arguments as "vague sentimental arguments".⁴²⁴ These examples show that Japanese religious elements can provide a conservation basis, by appealing to people's sentiments toward traditional lifestyles and views of nature, which is how the ecological movement began in the UK.⁴²⁵

5.9. Animal Welfare in Japan

5.9.1. Introduction

One of the main differences between Japan and the UK in relation to cultural tradition influencing conservation attitudes is the issue of animal welfare.⁴²⁶ The

⁴¹⁸ In this case, over 1,000 people, six environmental groups, and several protected species inhabiting the area, as well as Mt. Takao itself and the remains of the castle are plaintiffs. See: <http://homepage2.nifty.com/takao-san/index.html>, visited 15 Oct. 2002.

⁴¹⁹ Ibid.

⁴²⁰ See 5.2 and 5.3.

⁴²¹ See *Satoyama Kenkyukai Newsletter*, vol. 1, (Jul. 1992).

⁴²² H. Tabata, '*Satoyama Riyou de Shizen no Hozen o* (Protect Nature by Using *Satoyama*)' (1999) 40 *Zuisou Shinrin*, 9-11.

⁴²³ For a list of those groups, see the official website of the Ministry of the Environment at: <http://www.env.go.jp/nature/index.html>, visited on 15 Oct. 2002.

⁴²⁴ K. Osumi and K. Fukamachi, '*Satoyama o Kangaeru Tame no Memo* (A Memo for the Consideration of *Satoyama*)' (2001) 707 *Ringyou Gijutsu*, 12-15. See also; H. Isozaki, '*Seibutsu Shu ga Kieteiku* (Species Are Going Extinct)' (1995) 491 *Hougaku Seminar (Law Seminar)*, 67.

⁴²⁵ See Chapter 4. Kalland and Persoon consider that environmental campaigns in Asia "tend to have a local focus". Kalland and Persoon, n 6 above, 2.

⁴²⁶ See Chapters 2 and 3, particularly 2.4.10, 2.5.2.5, 2.9 and 3.4.2.7.

section attempts to describe the approach towards animal welfare in Japan, by examining relevant legislation, including its historical background, implementation and enforcement. The section also attempts to establish the connection between current situations and cultural factors which affect people's attitudes towards relevant issues.

First of all, examination of the first Japanese animal welfare legislation enacted in 1973 will be carried out. The legislation in question is called the Law Concerning the Protection and Control of Animals 1973.⁴²⁷ The examination will highlight the ineffectiveness and complete lack of enforcement of the Law which led to its revision in 1999. Secondly the amended Law Concerning the Protection and the Control of Animals,⁴²⁸ which came into force in December 2000 is examined. Both examinations will consider the background of the legislation, considering situations concerning animal welfare in Japan over the last few decades, as well as the effectiveness and limitation of the Laws.

The section then examines how the policies under the aforementioned Laws have been implemented. As a basis for examination, a case study of Kitakyushu City Council in the Fukuoka Prefecture will be presented. Unlike in the UK where many animal welfare policies are initiated and supported by large NGOs,⁴²⁹ in Japan, the main actors in implementation are local authorities. As the welfare of humans is their priority for local authorities, not the welfare of animals, difficulties and problems arise. The difficulties and problems in reconciling these different responsibilities will be considered.

The last subsection will make an attempt to consider whether animal welfare policy is influenced by cultural factors. In this part, people's attitudes towards animals in present day Japan are considered, in relation to the traditional views of animals. The examples of memorial services for dead animals and people who are engaged in occupations dealing with dead animals are considered. The discussion will attempt to establish that people's attitudes toward animals are still influenced by cultural tradition.

Before commencing the discussion, the term "animal welfare" as used in Japan must be clarified. In the UK, the most common understanding of the term is that it is a concept whereby humans are responsible for minimising unnecessary pain and suffering inflicted on animals.⁴³⁰ The UK engaged in extensive philosophical discussion on issues concerning the relation between humans and animals.⁴³¹ On the

⁴²⁷ Law Concerning the Protection and Control of Animals, 1973, Law No. 105.

⁴²⁸ Ibid.

⁴²⁹ See 4.5.3 and 2.9.

⁴³⁰ See 5.3.2.

⁴³¹ See 4.5.3.6

other hand, in Japan, the term “animal welfare” is rarely used to express policies and legislation which are supposedly aimed at achieving that goal. Instead, the term “*doubutsu-aigo*” is most commonly used, the literal translation of which is “animal (*doubutsu*) loving and protection (*aigo*)”. Relevant policies and legislation are often called “*aigo* policies” or “*aigo* legislation”.⁴³² However, the concepts of “*aigo*” and “welfare” are fundamentally different; The term “welfare” is largely based upon philosophy, indicating responsibilities of humans towards animals, whereas “*aigo*” is based fundamentally upon feelings such as 'love' and 'care', as represented in the word. Therefore, in the following discussions, the term “*doubutsu-aigo*” or “*aigo*” will be applied to describe Japanese situations, instead of “animal welfare” or “welfare”.

5.9.2. Before the 1973 Law

The creation of the Law Concerning the Protection and Control of Animals 1973 (the 1973 Law hereinafter) was highly controversial.⁴³³ It was also a notoriously ineffective law. In a way, at the time the Law came into existence, Japan was not 'ready' for animal welfare policies. The law was predominantly a result of international pressure, a process that is seen in the creation of other laws relating to the environment or animals.⁴³⁴ The following paragraphs explain how the 1973 Law came into existence.

Prior to the 1973 Law, there was no modern animal welfare legislation.⁴³⁵ The existing major laws concerning domestic pet animals were; the Law Concerning the Prevention of Rabies 1950 (The Rabies Law);⁴³⁶ and the Law Concerning the Protection and the Hunting of Birds and Mammals 1934 (The Hunting Law).⁴³⁷ There was also the Criminal Law (For Less Serious Offences) 1948 which prohibited cruelty towards cattle.⁴³⁸ For the *protection* of animals, the Hunting Law was the only existing relevant legislation, although it predominantly concerned wild birds and mammals. Possibilities were first explored as to whether stray dogs and cats should be covered by this Law.

The trigger for the creation of the 1973 Law was the revision of the Prevention of Rabies Law in 1954.⁴³⁹ The Rabies Law had to be revised in order to tackle the

⁴³² For instance, the 1999 Law is called the *Aigo* Law for short. See 5.9.4.2.

⁴³³ The Proceedings of the Meeting of the Upper House, 71st Diet Meeting, 26 Sep. 1973.

⁴³⁴ For instance, Law Concerning the Protection of Endangered Species of Wild Fauna and Flora 1992, Law No. 75. See Chapter 3.

⁴³⁵ Prior to modernisation, various orders were issued prohibiting eating meat, and some of the orders included ways of treating animals. This point was mentioned earlier. See 5.3.4.

⁴³⁶ Prevention of Rabies Law 1950, Law No. 247.

⁴³⁷ Law Concerning the Hunting and the Protection of Birds and Mammals 1934, Law No. 32

⁴³⁸ Criminal Law (For Less Serious Offences) 1948, Law No. 39.

⁴³⁹ n 436 above.

existing problems of rabies.⁴⁴⁰ Amongst several revised provisions of the Rabies Prevention Law, the following two revisions had an influence on the development of the 1973 Law; (1) In order to decrease the number of stray dogs local authorities⁴⁴¹ must receive and keep unwanted dogs and are responsible for subsequent disposal of those animals. ('Disposal' includes re-homing, giving away for experimental use and destruction of animals.)⁴⁴²; (2) Governors and Mayors of designated cities are empowered to allow local authorities to leave out poison where necessary.⁴⁴³

The first provision concerning local authorities' responsibilities with regard to dogs was later incorporated into the 1973 Law, and still exists today.⁴⁴⁴ The second revision had a more direct impact on the creation of the 1973 Law. In 1954, even prior to the revision of the Rabies Law, three dogs owned by two Americans were accidentally killed in Tokyo by poisoned food.⁴⁴⁵ The death of the dogs induced massive international criticism and pressure on Japan to create an animal welfare legislation.⁴⁴⁶ The incident was published in *New York Times* later in that year,⁴⁴⁷ as well as other English newspapers published in Japan. Various animal welfare organisations including the RSPCA of the UK and the US Society for the Prevention of Cruelty to Animals forwarded complaints to the Japanese Government.

However, problems caused by stray dogs were still relatively serious in Japan at the time.⁴⁴⁸ Therefore, despite international criticisms and pressure, the practice of poisoning was legalised by the revision of the Rabies Law, although under the condition that poisoning should only be conducted when it was urgent and unavoidable and there were no other alternatives.⁴⁴⁹ The Government merely promised that it would make sure that the practice would be implemented "with the

⁴⁴⁰ There have been no cases of rabies in Japan since 1959.

⁴⁴¹ The Law requires local authorities to appoint officers of rabies prevention. Art. 3 (1), n 436 above. These officers of local authorities are qualified veterinarians.

⁴⁴² This provision was incorporated into and repealed by the Law Concerning the Protection and the Control of Animals 1973.

⁴⁴³ Art. 18 (2), n 436 above.

⁴⁴⁴ Local authorities are also required to capture stray dogs under the Rabies Law. Art. 6, *ibid*.

⁴⁴⁵ This was because the practice of leaving out poisoned food had been carried out by local authorities even before the revision, simply due to the lack of any relevant regulations.

⁴⁴⁶ This also owes to the fact that one of the owners was the wife of the head of the New York Times Japan office.

⁴⁴⁷ *New York Times*, 30 Mar. 1954.

⁴⁴⁸ According to *Mainichi Shimbun* article, for example, even during the late 1960s, attacks by stray dogs were becoming increasingly frequent; a rabies prevention officer in the Fukuoka Prefecture had to resort to illegal options and shot and poisoned stray dogs in order to prevent further incidents. The officer killed as many as thirty dogs a day. K. Fukuoka, 'Petto no Yukue (The Future of Pets)', Part I, No. 4, *Mainichi Newspaper*, 13 Oct. 2000.

⁴⁴⁹ *The Proceedings of the Meeting, the Upper House, 19th Diet Meeting*, 22 Apr. 1954.

utmost care”⁴⁵⁰, meaning only that local authorities would publicise forthcoming poisoning to local citizens.⁴⁵¹

At this time, it was still too early for the Japanese to create a welfare or *aigo* law, and at least the following three reasons can be noted. First, Japan was still at the stage of being concerned with its international image as being *cruel to humans*, because of its notorious treatment of wartime prisoners. For instance, during the Diet meetings in the 1950s and 60s, concern was repeatedly expressed that Western countries like the UK and the US might regard Japan as 'cruel' and 'vulgar' because of the Japanese treatment of animals.⁴⁵² Therefore, its international image concerning human treatment was Japan's main concern, not promoting the welfare of animals.

Secondly, the concept of 'cruelty' was not fully understood, or, at least, not understood in the same way as in the West, and what the Government was concerned with was Japan's image. In Japan, being cruel was understood to mean being *violent*, and Japan found it difficult to grasp what cruelty to animals meant in Western countries. For instance, in 1951, the wife of the British Ambassador saw Japanese children feeding live fish to an elephant kept on the roof of a department store in Tokyo, and told a member of the Diet that it was “cruel”.⁴⁵³ The department store, surprised by such condemnation, quickly disposed of the elephant. It was explained during the Diet Meeting that the Ambassador's wife was concerned that such maltreatment of animals would be an indication of Japan being in favour of war. Whether it *was* cruel to feed live fish to an elephant was never even discussed.

Finally, another element which made appropriate understanding of the cruelty concept difficult was the concept of “*doubutsu-aigo*”. “*Doubutsu-aigo*” to this date replaces the word animal welfare, without the two having been compared philosophically. *Doubutsu-aigo* is an ambiguous concept, the definition of which has never been the issue of concern, yet is still widely used to describe the 'Japanese' way of treating animals. The Minister of Foreign Affairs in the 1969 Dietary Meeting stated;

The Japanese are definitely not inferior to other countries in terms of *doubutsu-aigo*, which is embedded in our national emotions. It is a great pity that issues concerning [cruelty to animals] are

⁴⁵⁰ Ibid.

⁴⁵¹ Art. 18, n 436 above.

⁴⁵² For instance, it was mentioned, during a Diet discussion, that Mrs. McArthur wished Japan to make efforts on animal welfare issues so that other countries would not have to worry about possible violence by the Japanese again. n 449 above.

⁴⁵³ Lady Gascoin had been asking for the creation of animal welfare legislation in Japan. *The Proceedings of the Meeting of the Legal Affairs Committee*, the Upper House, 10th Diet Meeting, 29 Mar. 1951.

widely publicised in Britain, the country which has the most intimate friendship with Japan⁴⁵⁴

At least two points should be noted here; It is obviously implied by the above comment that Japanese are *inherently 'kind' to animals*, because of the Shinto and Buddhist views of nature.⁴⁵⁵ It is also automatically assumed that the concept of animal welfare was the same as that of *doubutsu-aigo*. Therefore, it was presumed that there was a 'misunderstanding' as to Japan's practices concerning animals, because '*doubutsu-aigo*' was the inherent nature of the Japanese.

At the same time, some began to realise that certain practices imposed on animals in Japan were considered 'cruel' in some Western countries. Hence, initiated by the West, modern '*doubutsu-aigo*' movements were also present, although they were of hardly any political significance. One of the earliest *aigo* organisations in Japan was the Japanese Society for the Prevention of Cruelty to Animals (JSPCA), initiated and headed by the wife of Director General McArthur of the US Occupation Force. The JSPCA had started drafting a new welfare bill in 1949,⁴⁵⁶ the contents of which are discussed below.

5.9.3. Movements Toward the Creation of the Law

Although the movement to create the *aigo* legislation in Japan started around 1950, it was not until 1973 when the bill was finally passed in the National Diet. There are at least three reasons for this delay; First, opposition was expressed by people who feared that Japan's 'traditions' might be compromised; Secondly, the Government was not certain which departments should be responsible for the implementation of such law; Finally, problems caused by stray animals, mainly dogs, presented far too serious a problem to spare consideration for animals. The first and the second points are discussed in the next subsection. As for the third point, problems caused by stray animals, as well as frictions between pet owners and those who did not have pets, urged the Government to facilitate the *control* of animals, rather than *doubutsu-aigo*. This was because the Government's concern relating to maltreatment of animals was merely a concern about international criticism.⁴⁵⁷

The acceptance of the bill was achieved by a combination of national and international efforts. At a national level, the draft bill initiated by the JSPCA⁴⁵⁸

⁴⁵⁴ *The Proceedings of the Meeting of the Foreign Affairs Committee*, the Upper House, 61st Diet Meeting, 8 May 1969.

⁴⁵⁵ Particularly the Buddhist view of animals regarding them as one's parents reborn into animals. See 5.3.3.

⁴⁵⁶ See the history of the Japan Animal Welfare Society (JAWS) (which diverted from JSPCA in 1955) at JAWS homepage: <http://www.corcocu.co.jp/JAWS/history.html>, visited on 26 Jun. 2001.

⁴⁵⁷ See 5.9.3.

⁴⁵⁸ See 5.9.3.

gained support from other organisations and a few politicians. These few politicians kept bringing up the discussion of the bill in the Diet throughout 1950s and 60s. At an international level, criticism from the West intensified during these two decades. Pressure was imposed not only by individuals and charities but also by governments. The Japanese Minister of Foreign Affairs was questioned about animal policies in Japan by the UK Ministry of Commerce during his trip to the UK.⁴⁵⁹

Finally pressure from Western Governments including the UK Government forced the Japanese Government to create the Law, because Japan wanted to be acknowledged as a civilised country.⁴⁶⁰ By the late 1960s, Japan had achieved an economic miracle, and it was officially entering the circle of industrialised countries. During the Committee Meeting of Foreign Affairs in 1969 one of the Dietary Members suggested that not having appropriate *aigo* policies and legislation might be regarded as a sign of being cruel in the business world, in which Japan was now successful.⁴⁶¹

5.9.4. The 1973 Law

The bill was finally passed in the Diet as a private member's bill. However, it was enacted with numerous limitations and became a sleeping law due to the lack of enforcement and implementation of the Law. The following paragraphs will provide discussions on the Law, considering its limitations, followed by an explanation as to why implementation and enforcement failed.

5.9.4.1. Objectives and Summary of the Law

The objective of the Law was to protect human interests, not the welfare of animals. Article 1 of the 1973 Law states;

This Law aims at promoting spirits to protect and love animals, in order to contribute to the healthy development of *respect for life*, *companionship* and *peace* by providing provisions concerning the prevention of cruelty to animals and the proper treatment of animals, as well as other matters concerning the protection of animals. The Law also aims at preventing disruptions on human life, safety and properties caused by animals by providing provisions concerning the keeping of animals.⁴⁶²

⁴⁵⁹ n 454 above.

⁴⁶⁰ As well as its infamous poisoning practices and lack of welfare legislation, Japan was also criticised for lack of animal control in general, as it was importing and exporting dogs without having them kept in quarantine.

⁴⁶¹ n 454 above.

⁴⁶² Art. 1, n 427 above. Italicised by author.

The above objective reflects the Japanese view of nature; it includes “respect for life”, “companionship”, and “peace”, which are generally considered to be in line with Shinto and Buddhist traditions.⁴⁶³ However, contrary to such less anthropocentric concepts included in the Law, it is fundamentally anthropocentric. Article 1 explicitly defines the objective of the Law as to ensure human interests, by promoting *doubutsu-aigo* and by controlling animals. In order to achieve the above objectives, the provisions can be divided into four categories; (1) prevention of cruelty and proper treatment of animals; (2) responsibilities of owners and others who are engaged in professions dealing with animals; (3) local authorities’ responsibilities concerning domestic animals; (4) penalties for cruelty to and abandonment of animals.⁴⁶⁴

5.9.4.2. Limitations of the Law

One of the limitations of the 1973 Law is the scope of animals included in it. It was limited to pet animals, predominantly dogs and cats, and by 1973, the Law was already addressed as the “Pet Law”.⁴⁶⁵ It was initially intended to include all domestic animals with a few exceptions such as farm animals and animals utilised in experimentation. However, as the objective of the Law was to promote and protect *human interests*, the animals which were to be protected by the Law were limited to ones which had effects on the “healthy development”⁴⁶⁶ of *human nature*. Animals which were to be covered by the 1973 Law were; (1) Cows, horses, pigs, sheep, goats, dogs, cats, house rabbits, chickens, house pigeons and ducks; and (2) other mammals and birds kept by humans.⁴⁶⁷

However, of those protected animals, certain kind of animals were exempted. Animals used for experiments were one example. The first two provisions of Article 11⁴⁶⁸ provides non-binding provisions concerning the treatment of animals, such as the minimum utilisation of animals in experiments, adoption of humane methods, and euthanasia where appropriate.⁴⁶⁹ Countries like the UK and then West Germany condemned Japan for the lack of legally-binding provisions.⁴⁷⁰ However, the

⁴⁶³ See 5.2.3, 5.3.2, 5.3.3 and 5.4.

⁴⁶⁴ Other points raised by the Government were; Designation of a national week of animal welfare every year; Prime Minister’s power to lay out standards and details concerning the treatment of animals; and the establishment of a Committee within the Prime Minister’s Office.

⁴⁶⁵ *The Proceedings of the Meeting of the Cabinet Committee*, Upper House, the 71st Diet Meeting, 26, September 1973.

⁴⁶⁶ Art. 1, 427 above.

⁴⁶⁷ Art. 13 (2), *ibid*.

⁴⁶⁸ The third provision concerns the Prime Minister’s power to set standards regarding animal experimentation. Art. 11 (3), *ibid*.

⁴⁶⁹ Art. 11, *ibid*.

⁴⁷⁰ The UK threatened Japan by suggesting it was going to stop exporting small mammals and farm animals to Japan. *The Proceedings of the Meeting of the Budget Subcommittee*, the Lower House, 71st Diet Meeting, 27 Feb. 1973.

Government was reluctant to lay down binding regulations. 'Culture' was used as an excuse; "[Our] country's *traditions* and situations might not allow us to create such strict regulations" as those of the UK or West Germany.⁴⁷¹ Although farm animals were meant to be included, they were also exempt from protection in practice. Therefore, the animals protected by the Law were limited primarily to cats and dogs. Yet, from an animal welfare perspective, they were hardly protected either, as will be discussed in the next paragraphs.

5.9.4.3. Implementation and Enforcement

Local authorities' responsibilities under the 1973 Law had already been put into practice under the Rabies Law, long before the enactment of the 1973 Law.⁴⁷² The difference now was that cats were added to the category of animals to be received and disposed of by local authorities. Apart from such control of animals, the implementation of the animal welfare side of the Law proved to be "virtually non-existent", says the former RSPCA Chief Superintendent Frank Milner, who is now a council member of the Japan Animal Welfare Society.⁴⁷³ The following paragraphs will attempt to address three main categories of problem relating to implementation and enforcement.

First, insufficient regulation with regard to the treatment of animals should be noted. There were no legal regulations on people's actions with regard to cruelty to and abandonment of animals.⁴⁷⁴ People were free from any restriction to buy, sell, give away, and breed animals. For instance, any kind of animal could be freely sold by anybody. As well as wild animals and birds, exotic or dangerous animals kept by humans were also freely exchanged.

The lack of regulation of people's activities relating to animals was detrimental to the animals from at least two perspectives; First, it was detrimental from conservation perspectives. The failure to regulate human activities relating to animals meant that prior to the Species Conservation Law 1992 no internal control whatsoever existed for exotic animals.⁴⁷⁵ This is a significant point, as Japan was known to have imported millions of exotic animals. The number of such animals, however, was not identified, until a series of accidents was caused by some of these animals.⁴⁷⁶ For

⁴⁷¹ *The Proceedings of the Meeting of the Budget Subcommittee*, the Lower House, 71st Diet Meeting, 26 Feb. 1973. Italicised by the author.

⁴⁷² See 5.9.2.

⁴⁷³ Frank Milner, letter correspondence to author, 4 May 1999.

⁴⁷⁴ A certain degree of regulation was added by the 1999 amendment. See 5.9.6.2.

⁴⁷⁵ For discussions on the Species Conservation Law and Japanese CITES implementation, see Chapter 3.

⁴⁷⁶ There were a total of 103 accidents in 5 years caused by animals during the mid 1970s. *The Proceedings of the Meeting of the Local Administration Committee*, the Lower House, 84th Diet Meeting, 15 Jun. 1978.

instance, before Japan ratified CITES in 1980, there were at least 1138⁴⁷⁷ “dangerous animals”, being kept in Japan which included lions, tigers and bears.⁴⁷⁸ These animals were freely kept by exotic pet enthusiasts (The number excludes animals kept in zoos).⁴⁷⁹ Clearly, exotic animals that were not considered 'dangerous' are excluded from this number. Many animals were kept by individuals without sufficient knowledge of how to care for them, and therefore were often subsequently found abandoned.

The lack of regulation of human activities relating to animals was also detrimental to animals from an animal welfare perspective. The most notable example is that of the Siberian Husky. Although they are not suited to the climate of Japan except for the northern areas because of their heavy coat, they were very highly sought after as a pet particularly between the late 1980s and early 90s. This phenomenon was caused by a then popular Japanese comic about a Siberian Husky.⁴⁸⁰ Huskies were sold at a high price, only to be found abandoned or taken to the kennels of local authorities as owners discovered that they had grown too large to handle, or that they needed too much exercise. The increased popularity for particular animals because of the media or other influences had been frequently observed in Japan, often leading to undesirable results from a welfare point of view.

Another factor relating to enforcement was insufficient penalties. The penalty fine was only a maximum of 30,000 yen (approximately £160) with no imprisonment provision or subsequent ban on keeping animals.⁴⁸¹ Although the penalty was to be imposed when “a person was cruel to or abandoned a protected animal”⁴⁸² it was hardly ever applied. For instance, in 1998, just before the new legislation came into force, a dog breeder was discovered to have kept 99 dogs in extremely poor condition.⁴⁸³ The dogs were found with serious skin or other general diseases or injuries. Although it was a serious offence under the 1973 Law, the breeder was not prosecuted. Instead, he was given administrative guidance by the local authority.

Why was the Law rarely applied? Ueno states; “[The 1973 Law] cannot be described as functioning in practice, and [people] hardly receive any regulations with regard to their treatment of animals”.⁴⁸⁴ The reason for this relates to the final point of the limitations. Nowhere in the law, was the definition of 'cruelty' and 'proper

⁴⁷⁷ Of those 1138, as many as 232 were kept by individuals, as opposed to the rest kept by drive-in restaurants and hotels as tourist attractions.

⁴⁷⁸ Ibid. Amongst these “dangerous animals”, only bears are native to Japan.

⁴⁷⁹ Ibid.

⁴⁸⁰ The title of the comic series is *Doubutsu No Oishasan* (Animal Doctor), published by Hakusensha, Tokyo.

⁴⁸¹ Art. 13, n 427 above.

⁴⁸² Art. 13 (1), *ibid.*

⁴⁸³ “*Inu 99-hiki Gyuuzume* (99 Dogs Packed in One Place)”, *Asahi Shimbun*, 27 Oct. 1998.

⁴⁸⁴ There were only three cases in 1997 where the 1973 Law was applied. Ueno, n 267 above, 176.

treatment' provided, and therefore, it was not clear when the Law could be applied. This made enforcement almost impossible. Also, although the aim of the Law was to promote the spirit of '*doubutsu-aigo*', no definition thereof was given either. Without clarifying what '*doubutsu-aigo*' meant and included, there was no index to determine proper treatment. The Government, however, left it ambiguous, it was satisfied with merely appeasing international criticism. The Cabinet stated that the passing of the Law in the Diet "[could] not be helped".⁴⁸⁵

Confusion over the animal welfare concept and a lack of enthusiasm were seen in the Government's response to the idea of the 1973 Law from the beginning. The concept of animal welfare did not fit into any of the departments of the Government. It was not certain under which Ministry's jurisdiction the Law should be placed, therefore causing a delay in the submission of the bill to the Diet meeting.⁴⁸⁶ In the end, it was decided that the Prime Minister's Office should be the appropriate department, simply because no other department was considered appropriate. This naturally resulted in a lack of enthusiasm by the Prime Minister's Office.⁴⁸⁷ It was legislation supported by only a few Members of the Diet, and the Government did not really consider that it was *its* responsibility.

Also, famous Japanese *tatewari-gyosei*, the vertically-divided administrative system, did not allow networking between the relevant departments which was necessary for effective implementation and enforcement.⁴⁸⁸ For the Prime Minister's Office to implement the Law, co-operation from other departments was necessary. The Ministry of Home Affairs,⁴⁸⁹ the Ministry of Health and Welfare, MAFF, the Ministry of International Trade and Industry,⁴⁹⁰ the Environment Agency, the Central Police Agency, and the Ministry of Finance were all involved in one way or another in its implementation or enforcement. However, networking was not achieved. For example, although local authorities are the main actor in dealing with animals protected by the Law, the Ministry of Home Affairs, under whose jurisdiction local authorities are placed, was not responsible for animal welfare policies. Such policies were separated and the responsibility solely of the Prime Minister's Office, which

⁴⁸⁵ *The Proceedings of the Meeting of the Budget Committee*, the Lower House, 84th Diet Meeting, 7 Aug. 1978.

⁴⁸⁶ The other problem in putting the bill through was ensuring government subsidies to local authorities for the costs concerned dealing with unwanted and stray animals. See the comment made by Kato Shizue in *The Proceedings of the Meeting of the Cabinet Committee*, the Lower House, 71st Diet Meeting, 19 Jul. 1973.

⁴⁸⁷ *The Proceedings of the Meeting of the Committee of Local Affairs*, the Lower House, 84th Diet Meeting, 15 Jun. 1978.

⁴⁸⁸ For Japanese politics, see for instance: M.R. Bradley and S.C. Flanagan, *Politics in Japan*, (Canada: Little, Brown and Company Ltd., 1984); Q. Zhao, *Japanese Policymaking* (Oxford: Oxford Press, 1998); and H. Abe, M. Shindou and S. Kawato, *Gaisetsu Gendai Nihon no Seiji (Introduction to the Modern Japanese Politics)* (Tokyo: Tokyo Daigaku Shuppan, 1990).

⁴⁸⁹ The Ministry of Home Affairs is the department which is responsible for matters concerning local authorities, which by the 1973 Law had duties to deal with stray dogs and cats.

⁴⁹⁰ With regard to matters concerning importation and exportation of animals.

means that the Ministry of Home Affairs had little interest in ensuring animal welfare in guiding local authorities which dealt with animals in practice.

5.9.5. Traditions

'Traditions of Japan' were raised by the Government as important to consider during the discussions of the 1973 Law in the Diet. However, what such "traditions and situations" consist of was never clarified, just like the concept of '*doubutsu-aigo*' was never explained or identified. In this section, an attempt will be made to explore such "traditions and situations", as a part of the examination of Japanese attitudes towards animals. The examples raised during the Diet discussions, animal fighting and the *shamisen* industry, are discussed below.

5.9.5.1. Animal Fighting

One of the major topics of the Dietary discussions on the bill was whether bull fighting and dog fighting would be prohibited by the new legislation.⁴⁹¹ Concern and opposition was expressed by individuals and organisations. As a result, neither type of fighting came under the restrictions of the 1973 Law. Japanese bull fighting was not considered as violent as that of other countries because no killing takes place.⁴⁹² It involves two bulls pushing each other with their horns and the loser would simply be pushed outside the circle. Therefore, it was decided that it was not 'cruel', as there would be "no blood" involved.⁴⁹³ As for dog fighting, it was decided that it would not be 'cruel' as it is "an event to prove loyalty of dogs to humans".⁴⁹⁴ It was suggested that it might be considered illegal if dogs were forced to fight 'despite their will', or if a fight was forced to continue after the winner was decided.

During the discussions about animal fighting, the word "tradition" was repeatedly used to justify the activity; the fighting should be allowed to continue as it was Japanese "tradition". There was no careful or valid consideration as to whether various fights were cruel. For example, although the dogs used for fights, mainly *Tosa* dogs, are large heavy dogs, they are not naturally aggressive.⁴⁹⁵ Therefore, it is not their *will* to fight, but they are trained to fight with other dogs. However, whether it is their 'will' was not even questioned.⁴⁹⁶

⁴⁹¹ *The Proceedings of the Cabinet Committee Meeting*, the Lower House, 71st Diet Meeting, 19 Jul. 1973.

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.* A comparison to Mexican-style bull fighting, in which one or both bulls die.

⁴⁹⁴ *Ibid.*

⁴⁹⁵ Mastiffs in general are "not a naturally aggressive breed". N.J. Saunders, *Animal Spirits* (London: Macmillan, 1995).

⁴⁹⁶ For instance, compare it with UK attitudes towards fox-hunting.

Therefore, no debate took place, to examine the definition of cruelty or the concept of *doubutsu-aigo*. Still, it is possible that the word “tradition” may be used by the Japanese in tackling criticism from the West, as seen over the whaling argument. It can also be associated with the Japanese-love-nature theory. It may indicate the Japanese tend not to discuss matters logically and scientifically but instead tend to wrap arguments with such ambiguous words as tradition.

5.9.5.2. *Shamisen*

Another 'tradition' considered was the *shamisen* industry. A *shamisen* is a three-stringed Japanese banjo, which is made of cat or dog skins, depending upon the kind of *shamisen*.⁴⁹⁷ In response to the 1973 Law, concerns were expressed with regard to the future availability of animal skins.⁴⁹⁸ The association of the *shamisen* industry was free to capture stray cats (and dogs when requested by a local authority) prior to the 1973 Law, in order to utilise the skin. Responding to the industry's concern, the Government assured them that the cats (and dogs) would continue to be supplied by local authorities.⁴⁹⁹ It was ensured by the Government that *shamisen*, “the basic of Japanese traditional art”, would be protected.⁵⁰⁰

There was another reason other than “tradition” behind the Government's support for the *shamisen* industry. A large part of the *shamisen* industry consists of *burakumin*, the people who had been traditionally discriminated against during feudal times.⁵⁰¹ The capture of dogs, which is commissioned by local authorities to private industry, has also traditionally been carried out predominantly by descendants of *burakumin*. Concern was also expressed as to ensuring jobs for them,⁵⁰² because *burakumin* people are still subject to discrimination in today's Japan, and their occupational opportunities are often limited to the family business.

The 1973 The Law turned out to be toothless, from an animal welfare perspective. The implementation and enforcement of the welfare provisions were non-existent,⁵⁰³ and only the control aspect of the Law was implemented. The lack of implementation and enforcement was due to cultural, as well as legal and administrative reasons. For the 1973 Law, the fundamental factor was cultural. The concept of cruelty or welfare was never fully understood. The proper understanding

⁴⁹⁷ *Tsugaru-Jamisen (Shamisen)* is made of dog skin.

⁴⁹⁸ *The Proceedings of the Meeting of the Cabinet Committee*, the Lower House, 72th Diet Meeting, 7 Mar. 1974.

⁴⁹⁹ *Ibid.* In 1997, two men were questioned by the Police for capturing cats in an attempt to sell them to the *shamisen* industry. Concern was expressed about the professional cat hunting for *shamisen* and experimental use. “*Nekosogi Tsukamaru Tokoro Datta (Almost Captured)!!*”, *Asahi Shimbun*, 30 Apr. 1997.

⁵⁰⁰ *Ibid.*

⁵⁰¹ For discussions of *burakumin* people, see 5.10.7.

⁵⁰² *Ibid.*

⁵⁰³ See n 473 above.

of the concept was left ambiguous under the name of *doubutsu-aigo*, which was presumed to be “embedded in [Japanese] national emotions”.⁵⁰⁴

5.9.6. The 1999 Revision

5.9.6.1. Background

The problems concerning animals, accumulated between 1973 and 99, were many. One of the fundamental reasons for the revision of the law was a change in the awareness of the relationship between humans and animals. First of all, more and more people came to keep animals as pets, especially elderly people. As the proportion of elderly people increased and more were living on their own, the meaning of pets to these people became more significant. Secondly it was appreciated that close examination of attitudes of small children towards animals was necessary. People began to acknowledge the connection between cruelty to animals⁵⁰⁵ and cruelty or violence to humans.

As more people came to recognise animals' place and contribution to modern human society, the need was felt to revise the 1973 Law, which many people realised was a failure. Two of the direct problems which facilitated the revision were problems of exotic pets and increasing cruelty cases. With regard to the first, as the number of people who kept pets increased, exotic pets escaping into the wild became a serious conservation problem.⁵⁰⁶ These animals were disturbing local ecosystems, and with the rise of environmental awareness in Japan, it was decided that control should be tightened in terms of registering animals outside the control of other legislation such as the Species Conservation Law.

The second factor, the increasing cases of cruelty to or violence against animals, was also becoming a serious problem. People were especially concerned when cruelty involved young people. Amongst these, one had a direct effect on the revision; In 1997, a male student aged 15 committed a series of murders of small children in Kobe, western Japan. He placed the head of one of his victims in front of a school, leaving a mysterious letter. As it was a shocking, media-attracting case, a series of heated debates took place on the education of children. In media reports, it was highlighted that he had been torturing the neighbourhood cats to death before he proceeded on to murdering children, and this has “raised the awareness of politicians”, says Yamaguchi Chizuko of Japan Animal Welfare Society.⁵⁰⁷ This

⁵⁰⁴ *The Proceedings of the Meeting*, n 454 above. See 5.9.2.

⁵⁰⁵ As discussed before, the term 'cruelty' was also understood slightly differently, as almost meaning 'violence'.

⁵⁰⁶ It was suggested that a more comprehensive legislation to regulate both wild and domestic animals may be necessary in the Environment Committee; *The Proceedings of the Meeting of the Environment Committee*, the Lower House, 145th Diet Meeting, 8 Jun. 1999.

⁵⁰⁷ Yamaguchi Chizuko, JAWS, interview by author, 12 Mar. 2002, Tokyo.

event made people in Japan aware of the link between cruelty to animals and cruelty to humans, which has long been identified in the US or the UK.⁵⁰⁸

Subsequently, the revision of the 1973 Law was supported by a considerable number of Members of the Diet. The revision bill was presented as a private members' bill,⁵⁰⁹ and with a minor revision⁵¹⁰ it was quickly approved in the Diet.⁵¹¹ Naturally after the horrific 1997 murder along with other cruelty cases,⁵¹² the revised law re-emphasised its welfare aspect (the control aspect has always received a fair amount of attention). The responsible governmental department has changed from the Prime Minister's Office to the Ministry of the Environment. Most significantly, the wording of the title of the Law was changed, and included the word "*aigo*", the "loving and the protection", as opposed to the mere "protection" in the previous version of the law. The revised Law is called the *Aigo* Law in short.

5.9.6.2. Summary of the *Aigo* Law

There are three major improvements led to by the revision. Firstly, the *Aigo* Law imposes a certain level of regulation on people who deal with animals for commercial purposes. Secondly it gives much more power to governors and local authorities to ensure both *aigo* and control provisions are complied with. Thirdly, it defines cruelty acts more specifically (i.e. kill or injure) and provides for heavier penalties for such acts.

The major provisions of the revised Law are as follows;

1. Owners and keepers of animals are responsible for ensuring the health and safety of the animals.⁵¹³
2. Dealers of animals for sale are responsible for appropriately informing potential buyers of appropriate methods of breeding or keeping the relevant animals.⁵¹⁴

⁵⁰⁸ For instance, the relation between cruelty to animals and convicted murderers has been studied in the US. This point was stressed during the 2000 PWLO Conference in the UK. N. Sweeney, "A Barristers' View of Wildlife Crime Issues" (speech given at the 12th annual Conference of the Police Wildlife Liaison Officers., Portishead, Nr Bristol, 6-8 Octo. 2000).

⁵⁰⁹ The Liberal Democrats first drafted the bill.

⁵¹⁰ The Liberal Party requested that provisions for penalties for irresponsible owners of animals should be provided and the request was accepted. The *Komei-To* Party also requested that fish and amphibians should be included under category of pet animals but this request was rejected. "Peto Hou (The Pet Law)", *Mainichi Shimbun*, 27 Nov. 1999.

⁵¹¹ *The Proceedings of the Meeting of the Lower House*, 146th Diet Meeting, 9 Dec. 1999, and *The Proceedings of the Upper House Meeting*, 146th Diet Meeting, 14 Dec. 1999.

⁵¹² Towards the end of 1999, there were several cruelty cases which attracted widespread media coverage. "Movement Towards the Revision of the Animal Protection Law: a Series of Mal-Treatment and Cruelty", at: <http://www.emz.co.jp/pet/html/hogo.html>, visited on 1 Dec. 1999.

⁵¹³ Art. 5, n 428 above.

⁵¹⁴ Art. 6, *ibid*.

3. Dealers of mammals, birds or reptiles (except for those for agricultural purposes) must register with relevant governors.⁵¹⁵
4. Dealers of animals must follow the standards set by the Ministry of the Environment with regard to facilities and methods of keeping animals.⁵¹⁶
5. Governors are empowered to advise or order dealers of animals to improve facilities and/or treatment of animals, and to send civil servants to enter and inspect the site for such purposes.⁵¹⁷
6. Governors are empowered to advise or order owners of animals a resolution of problems caused by their animals.⁵¹⁸
7. Local authorities are empowered to enter into the premises of owners or dealers of animals.⁵¹⁹
8. Governors are empowered to appoint animal ‘protection’ officers to facilitate animal protection.⁵²⁰
9. Those who *kill or injure* pet animals for no reasonable cause are liable for a term of imprisonment of less than a year or a penalty of less than a million yen (approximately £5800).⁵²¹

5.9.6.3. Limitations of the *Aigo* Law

Although most of the new provisions are still subject to further development and are to be reviewed in 2005, many limitations can already be observed, and they originate from the limitation of the development of the animal welfare concept. Practical limitations include the scope of animals, the level of control imposed on commercial dealers, the penalty and the definition of cruelty. The subsequent paragraphs will first discuss these limitations, followed by a case study of practical implementation of the *Aigo* Law. Then, the limitations that arise from cultural factors will be considered.

⁵¹⁵ Art. 8, *ibid.*

⁵¹⁶ Art. 11, *ibid.*

⁵¹⁷ Art. 13, *ibid.*

⁵¹⁸ Art. 15, *ibid.*

⁵¹⁹ Art. 16, *ibid.*

⁵²⁰ Art. 17, *ibid.*

⁵²¹ Art. 27, *ibid.*

5.9.6.3.1. The Scope of Animals

Firstly, the scope of animals is still to be expanded. The Law was revised to include reptiles into the scope, which makes the protected animals mammals, birds and reptiles under human ownership. The inclusion of reptiles is a step forward, as the number of people who keep such animals as pets has increased. However, wildlife, farm animals and animals used for experiments have not been included again, leaving the revised Law yet again a pet-orientated law.

Considering many of them are culled as pests, wild animals are subject to treatment which may be considered cruel from an animal welfare perspective. For instance, according to a local authority in Kitakyushu-City, wild boars are sometimes trapped in a cage and stabbed by a spear until they bleed to death.⁵²² Alternatively, they may be left in the cage, thereby sometimes starving to death. Although separate legislation does exist to protect wildlife from the conservation perspective, wild animals receive no welfare considerations by law.⁵²³ This makes a contrast with the Wild Mammals Protection Act in the UK.⁵²⁴

As for farm animals and animals used for experiments, there is still no binding regulation under the 1999 Law. They are excluded even from registration requirements for animal dealers.⁵²⁵ The only regulations that exist are standards⁵²⁶ to be complied with by those who conduct experiments on animals. Even those regulations are considered inadequate; Ueno notes that the 1980 Standard Concerning the Raising and Keeping of Experimental Animals and the 1987 Notification of the Ministry of Education as to Animal Experiment in Universities and Other Institutions “lack practicality and are virtually non-binding”.⁵²⁷ There is also no official qualification system for dealers of such animals, either.⁵²⁸

Although many *aigo* organisations in Japan requested the inclusion of experimental animals in the revised Law, this request was not met.⁵²⁹ The lack of regulation

⁵²² Divisional managers, Division of Agriculture and Forestry, Department of Economy, Kitakyushu City Council, interview by author, 4 Jun. 2001, Kitakyushu-City, Japan.

⁵²³ Law Concerning the Protection of Endangered Species of Wild Fauna and Flora, 1992, above n 434. Law Concerning the Hunting and Protection of Wild Birds and Mammals 1934, above n 437.

⁵²⁴ See 2.9. However, it must be noted that wild animals do not receive the same level of protection as domestic animals. See; M. Radford, 'When Will the Laws Protecting Domestic Animals Be Applied to Wildlife?' in J. Boswall and R. Lee (eds), *Economics, Ethics and the Environment* (London: Cavendish Publishing Ltd., 2002) 43-52.

⁵²⁵ The registration requirements for dealers of animals is discussed below.

⁵²⁶ Standard Concerning the Raising and Keeping of Commercial Animals, Notification No. 22, 1987. Standard Concerning the Raising and Keeping of Experimental Animals, Notification No. 6, 1980.

⁵²⁷ Ueno, n 267 above, 176.

⁵²⁸ The Japan Experimental Animal Association has provided for its own qualification system for specialists in animal experiment action since 1984. *Ibid.*, at 177.

⁵²⁹ Ueno considers that it is almost impossible to carry out sufficient regulation with the current budget, environment and human resources. However, researchers are voluntarily following certain animal welfare standards to have their paper accepted at international level. Ueno, n 267 above, 176-177.

concerning experimental animals led to massive criticism, this time by individuals and organisations within Japan.⁵³⁰ According to the figures in 1998, more than 8 million animals were used for research, toxicity tests, education, etc.⁵³¹ Japan has again failed to create legal regulations on experimentation on animals for scientific or pharmaceutical purposes. As a comparison, in the UK, all project proposals involving animal experimentation are subject to control, cost-benefit analysis and an ethical review process⁵³² under law.⁵³³

5.9.6.3.2. Commercial Dealers

The second category of limitation concerns the control placed on commercial dealers of animals. Previously there was no control whatsoever with regard to such dealers, and therefore the creation of the control itself is a positive step.⁵³⁴ One of the limitations is that the dealers regulated are those dealing with pets primarily. Dealers of animals to be used for agricultural, scientific or pharmaceutical purposes are exempted.⁵³⁵ Another limitation is that the control operates using the registration system, as opposed to the licensing system like in the UK.⁵³⁶ Dealers are obligated to register with the local authority regarding certain details,⁵³⁷ such as the facility⁵³⁸ and the maintenance.⁵³⁹

Whether the registration system will be effective depends upon further implementation, however, problems may arise in the future, for two reasons. First of all, the system is less strict than the licensing system. In order for local authorities to exercise full powers under the new inspection system, they first have to wait for dealers to proceed forward to register with them. Had the licensing system been adopted, authorities would have been able to start inspections after a certain period after the notification of the system and enforce the registration scheme more

⁵³⁰ The influence of the Body Shop, a cosmetic brand which is against animal testing, may be contributing to such attentions attracted to animals used for experimentation. As many as 100 chains of the Body Shop Japan already existed in 1997. See; <http://www.the-body-shop.co.jp/about/index.html>, visited on 25 July 2001.

⁵³¹ H. Nihomiya and T. Inomata, 'Current Use of Laboratory Animals in Japan and Alternative Methods in Research, Testing and Education' (Aug. 1998), 59(1-3) *Applied Behaviour Science*, 219-225.

⁵³² I.F.H. Purchase, 'Ethical Review of Regulatory Toxicology Guidelines Involving Experiments on Animals' (Dec. 1999) 52(2) *Toxicological Sciences*, 141-147.

⁵³³ Animals (Scientific Procedures) Act 1986 and SI 1974, Animals (Scientific Procedures) Act 1998.

⁵³⁴ Art. 8, n 428 above. . Dealers regulated now are those who are involved in the sale, keeping, renting, training, and exhibiting of animals, as well as other businesses to be specified by local bylaws.

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

⁵³⁷ *Ibid.* Such details are; name, place of business, kind of the business, kind of animals involved, details of the facility, details of maintenance of the facility, and date of commencement of the business.

⁵³⁸ See the registration form, available at: <http://www.env.go.jp/>, visited on 17 Jun. 2001. The type of building, its floor space and the type of floor are requested as necessary information.

⁵³⁹ *Ibid.* The drainage system, the waste disposal system, the disposal system for animal carcasses, and the disinfection system are requested as necessary information.

thoroughly. The penalty fine is less than 200,000 yen (approximately £1160) for dealers for failing to register or for submitting incorrect information.⁵⁴⁰ Whether the system works well or not is still yet to be examined.

The second possible reason for its failure is that no unified set of standards by the Government is provided as to the proper facilities received for different types of animals, which may cause difficulties concerning how to measure individual cases. The registration form does not ask for specific details as to facilities, conditions and treatment for animals requiring different needs. Having no national standards, it is left to local authorities to evaluate whether each case is satisfactory from the *aigo* perspective. This means that authorities will be required to have enough staff with sufficient specialist knowledge about animals, in order for them to be able to evaluate conditions provided by individual dealers. However, as Ms. Yamaguchi of the Japan Animal Welfare Society expressed her concerns, relevant authorities “do not know how to inspect”.⁵⁴¹

Furthermore, if the *Aigo* Law is aimed at promoting *animal welfare*, the relevant staff must be educated about the importance of the non-physiological aspects of animals, that is, acknowledging that animals can suffer mentally as well as physically.⁵⁴² For instance, they will need to take into consideration that some animals may require more contact with and attention from humans, which will in turn require dealers of certain types of animal to provide appropriate environments for the animals.

5.9.6.3.3. Penalties

Penalties have been strengthened. Compared to the previous maximum fine of 30,000 yen (approximately £160),⁵⁴³ the maximum penalty is revised to be a fine of 1 million yen or imprisonment of less than a year. Article 27 of the revised Law lays down penalties according to offences as follows;

1. Those who kill or injure *aigo* animals (protected animals) without reasonable cause will be liable to a maximum fine of 1 million yen or imprisonment of less than a year.
2. Those who stop feeding or providing water to *aigo* animals without reasonable cause will be liable for a maximum fine of 300,000 yen.
3. Those who abandon *aigo* animals will be liable for a maximum fine of 300,000 yen.

⁵⁴⁰ Art. 29, n 427 above.

⁵⁴¹ Ibid. A former RSPCA inspector visited Japan to introduce how inspections are carried out in the UK after the enactment of the *Aigo* Law.

⁵⁴² See the UK Animal Protection Law 1911. See 5.3.3.

⁵⁴³ Art. 13, n 427 above. See 5.9.4.3.

Also, dealers of animals are liable for a maximum fine of 300,000 yen if;

1. they do not follow a governor's advice with regard to their facilities or methods of keeping animals by a set time;

They are liable for a maximum fine of 200,000 yen if;

2. they fail to register with a relevant governor or submit incorrect registration;
3. they fail to submit a report, or submit a false report, at the request of a relevant governor with regard to their facilities or methods of keeping animals, or they refuse, prevent or avoid an on-site inspection of their facilities.⁵⁴⁴

In addition, if those who keep a large number of animals that may be detrimental to the surrounding environment do not comply with the relevant Governor's order with regard to the improvement of the situation, they will be liable for a maximum fine of 200,000 yen.⁵⁴⁵

Although it is to be appreciated that the penalty provisions have been strengthened, they are still subject to at least two limitations. First, the imposition of a penalty is reactive, for two reasons. First, preventative measures such as a ban on keeping animals for repeat offenders is not provided.⁵⁴⁶ Preventative provisions would be effective especially for commercial dealers, as whether the maximum fine of 300,000 yen is sufficient would depend upon the size of their businesses. A pedigree dog alone could fetch an average of 50,000 to 100,000 yen, for instance. Secondly, penalties are provided only *after* animals are *killed, injured or weakened*.⁵⁴⁷

Secondly limitations relating to the penalty provisions are that with regard to the provisions relating to non-commercial dealers, namely, pet owners and other ordinary people, the offence is not sufficiently specified as to be applied easily to individual cases. Although a maximum fine of 1,000,000 yen or imprisonment of a year may act as a deterrent, in order for the *Aigo* Law to be applied much more frequently than the 1973 Law, various degrees of act need to be specified with respective penalties. This point, as well as the previous point, concern the next limitations to be discussed in the following subsection.

5.9.6.3.4. The Definition of Cruelty

A lack of the definition of cruelty in the revised Law is again likely to be the main cause of many limitations. It is not defined anywhere in the Law what acts will be

⁵⁴⁴ Art. 28, *ibid*.

⁵⁴⁵ Art. 29 (3), *ibid*.

⁵⁴⁶ In the UK, a ban is provided in the Protection of Animals Act 1911. The Protection of Animals Act 1911.

⁵⁴⁷ For further discussions of this point, see 5.9.6.3.4.

considered as being cruel to animals. As a result, for non-commercial cases, penalties can only be imposed when one or more of the following incidents take place; (1) an animal is *killed* or *injured*, (2) an animal is *weakened* because of the lack of food and/or water, (3) an animal is abandoned. Penalty provisions can only be applied in response to certain *physical conditions of animals*, rather than to cruel acts of humans towards them. Having not specified as to the appropriate treatment of animals either, the Law fails to take into consideration non-physical conditions of animals, especially considering that in Japan animals have traditionally been regarded not only as capable of feeling pain, but also having emotions.⁵⁴⁸

When compared to the definition of cruelty described in the Protection of Animals Act 1911 in the UK, the lack of a definition and specification of cruel acts in the Japanese *Aigo* Law is apparent. The Protection of Animals Act 1911 of the UK puts cruel acts into six categories. Each category specifies certain conduct that is considered cruel under the Act, such as to “cruelly⁵⁴⁹ beat, kick, ill-treat, over-ride, over-load, torture, infuriate, or terrify”⁵⁵⁰ any domestic or captive animals. Under the 1911 Act, the definition is comparatively stricter. The application of the Law is more likely to happen compared to the *Aigo* Law, because not only acts are sufficiently specified, but also *an intention of cruelty does not have to be established*. Although the 1911 Act includes the word “cruelly”, the intention of imposing cruelty on animals does not have to be shown for it to be an offence.⁵⁵¹

When the *Aigo* Law is compared to the UK Protection of Animals Law, at least two points need to be stressed amongst others. First, the lack of the cruelty definition is seriously detrimental to the effectiveness of the enforcement of the Law. As already seen in the case of the 1973 Law,⁵⁵² it is likely that prosecution is going to be difficult, as (1) it has to be established that an animal is dead, injured or weakened, and (2) a connection has to be established between the condition of the animal and acts by the offender. Secondly, the lack of the cruelty definition can also be undermining to the objective of the Law. The earlier consideration of traditional Japanese views of nature and Japan's pride in such views suggests that the *aigo* concept accepts that animals can suffer and feel pain.⁵⁵³

⁵⁴⁸ See 5.6 and 5.7.4.1.

⁵⁴⁹ For definition of “cruelly”, see for example: *Barnard v Evans* [1925] 2KB 794, [1925] *All England Law Report* 231.

⁵⁵⁰ s. 1 (1) (a), n 542 above.

⁵⁵¹ See *Duncan v Pope* (1899) 80 LT 120, 63 JP 217.

⁵⁵² See 5.9.4.2.

⁵⁵³ To compare this with the UK Protection of Animals Act, see: s. 1 (1) (a), n 542 above.

5.9.7. Conclusion

This section has attempted to examine the background of the 1999 revision and some of the limitations of the *Aigo* Law. To recapitulate, the revision was felt necessary as people became increasingly aware of the relation between animals and humans and the position held by animals within human society. The revision was also felt necessary as people became increasingly aware of the link between cruelty to animals and cruelty to humans.

Although it is still too early to speculate about the effectiveness of the Law in terms of its implementation and enforcement, the following four categories were noted as limitations of the Law. (1) The scope of animals to be controlled and protected is too narrow, making the *Aigo* Law yet again a pet-orientated law. (2) The regulations on commercial animal dealers are dependent upon the dealers' voluntary will and local authorities' abilities. (3) The penalty provisions are reactive and not easily applied. (4) A definition of cruelty is lacking, undermining the effectiveness of the Law and the welfare of animals.

The limitations mentioned above are by no means the only ones. However, the implementation and enforcement of the Law are still in their early stages. The definition of cruelty, as well as numerous other issues, is subject to review after five years.⁵⁵⁴ The review will be based upon future cases and prosecutions, which may lead to an expansion of the definition of cruelty in the future based on previous case law. The involvement of the Police is urgently required, in order to for the Law to be taken seriously.

5.10. The Case Study of Implementation and Enforcement of the Aigo Law and Policies

Currently local authorities are the main actors, in practice, in dealing with animals covered by the *Aigo* Law. They are expected, by the central Government, to be the driving force in promoting *aigo* concepts and policies,⁵⁵⁵ as well as controlling animals to ensure human health and safety. Ensuring the latter means that local authorities are responsible for disposing of unwanted animals. In this section, by

⁵⁵⁴ There are many issues subject to review in five years, as specified in the Supplementary Resolution: protection of wildlife under the *Aigo* Law: the re-homing of unwanted animals, whether to keep animals at schools or not (Art. 4), prevention of disruption on local ecosystems by exotic species, effectiveness of the registration system for animal dealers, inclusion of fish in the category of protected animals, and treatment of animals and access to information concerning relevant issues. *Supplementary Resolution Relating to the Bill Partially Revising the Law Concerning the Protection and Control of Animals*, 14 Dec. 1999.

⁵⁵⁵ For instance, the Tokyo Metropolitan Area already has a more advanced bylaw concerning animal welfare and control.

studying the case of Kitakyushu City Council, implementation of the *Aigo* Law will be examined.⁵⁵⁶

5.10.1. Background of Kitakyushu City Council

Kitakyushu City of the Fukuoka Prefecture is a designated city which is able to create its own bylaws. It is located at the north of Kyushu Island, the southern island of Japan. It has a population of approximately 1.2 million. Presently, Kitakyushu City is predominantly a manufacturing city which was the centre of the steel industry, although rich in environment as it is surrounded by the ocean and mountains.

5.10.2. Legislation

In terms of legislation, Kitakyushu City operates under national legislation, the bylaws of the Fukuoka Prefecture, and its own bylaws. This means that in dealing with animals, Kitakyushu City has to adhere to the *Aigo* Law and the Fukuoka Prefecture Bylaw Concerning the Protection and Control of Animals 1978,⁵⁵⁷ which specifies the local authority's duties and responsibilities under the *Aigo* Law. Furthermore, Kitakyushu City has its own bylaw concerning domestic and stray dogs, called the Kitakyushu City Bylaw Concerning the Control of Domestic Dogs and Capture of Stray Dogs 1963, which exempts the City from the relevant provisions of the Prefectural Bylaw.⁵⁵⁸ Some of the responsibilities of local authorities are also based upon the previously mentioned Rabies Law.

5.10.3. Structure

The department of Kitakyushu City Council (and the majority of other councils in Japan) responsible for animal protection and control is the Health and Welfare Department. The Department has three types of centres with different responsibilities, which vary from hygiene issues to issues concerning elderly people. With regard animals, practical operations are carried out by the Kitakyushu Animal Control Centre.

⁵⁵⁶ Kitakyushu City Council was chosen for this case study as the author had personal connections and accommodation could be provided during the research. The section is based upon interviews with the following people as well as materials provided thereby; Yamamoto Yasuyuki, researcher, Kitakyushu Environmental Centre, Kitakyushu City Council, interview by author, 9 May 2001, Kitakyushu-City, Japan; Yamamoto Kiyoshi, manager, Kitakyushu Animal Control Centre, Kitakyushu City Council, interview by author, 10 May 2001, Kitakyushu-City, Japan; Kawachi Kiyomi, member of animal shelter group, interview by author, 7 Jun. 2001, Kitakyushu-City, Japan.

⁵⁵⁷ Fukuoka Prefecture Bylaw Concerning the Protection and Control of Animals, Fukuoka Prefecture Bylaw 1978 No. 39.

⁵⁵⁸ Kitakyushu City Bylaw 1963 No. 100.

The Kitakyushu City Animal Control Centre consists of a manager, an assistant manager, and three rabies prevention officers, all of whom are required to have a veterinary qualification. There are also several other rabies protection and control officers, as well as several sub-contractors, who are responsible for more hands-on work such as cleaning, cremation of carcasses, capture of stray dogs, etc.⁵⁵⁹ The responsibilities of the Animal Control Centre can be divided into promotion of the *aigo* concept and protection of human health and safety by controlling animals.

5.10.4. Implementation and Enforcement

5.10.4.1. The Aigo Aspect

Responsibilities concerning the *aigo* aspect are various events organised in order to promote the *aigo* concept by the Centre as listed in the following; (1) half-day educational tours to the Centre for small children; (2) re-homing day for unwanted puppies; (3) open classes of dog training; (4) reception and treatment of injured animals found on the streets; (5) various committees to discuss issues concerning both domestic and wild animals.

However, the majority of the Centre's efforts as well as budget goes to the control side of its work. Out of the annual budget of 1.6 billion yen for the Centre's activities and events, only just over one per cent is used for such activities actively promoting the *aigo* concept.⁵⁶⁰

5.10.4.2. The Control Aspect

Of all the responsibilities of the Centre concerning the control aspect, the largest and the most well known to the public are (1) reception of dogs and cats, (2) capture of stray dogs and (3) subsequent disposition of the dogs and cats received or captured. 'Disposition' includes destruction, re-homing, and passing on to institutions for experimentation. The responsibilities mentioned above are based upon Kitakyushu City's Bylaw Concerning the Control of Domestic Dogs and Capture of Stray Dogs 1963.⁵⁶¹

As for the reception of animals, some local authorities charge owners for receiving unwanted animals, whilst others do so with no charge. Kitakyushu City receives animals with no charge. The opinion exists that the City should charge owners, however, there also exist fears as to whether that would increase the number of abandoned animals on streets. As for dog capture, it is commissioned to professional

⁵⁵⁹ See 5.10.7.

⁵⁶⁰ Internal material provided by Mr. K. Yamamoto. The total budget is 165,724,000 yen, out of which 1973,000 yen is used for commissioned works, which predominantly involves the capture of dogs and cleaning of kennels.

⁵⁶¹ N 555 above.

dog catchers.⁵⁶² (The cleaning of kennels and destruction of animals are also commissioned to these professionals. However, these professionals are not required to have any qualifications. Those who are engaged in this occupation have traditionally been *burakumin* people, as discussed later).

Upon receipt of animals the Centre must publicise details of the animals, during which time animals are kept in the kennels of the Centre.⁵⁶³ Article 9 of the 1963 Bylaw states that after four days from reception, the animals are to be disposed of if no one claims for or adopts them.⁵⁶⁴ As mentioned earlier, disposition includes destruction, re-homing or transfer to experimental institutions, if requested. The re-homing option is only for puppies in reality⁵⁶⁵ and most animals are put down within four days of arriving at the Centre. The number of animals given away to experimental institutions⁵⁶⁶ dropped to only a few in 2000. For the destruction of animals, carbon dioxide is used in a confined kennel.⁵⁶⁷

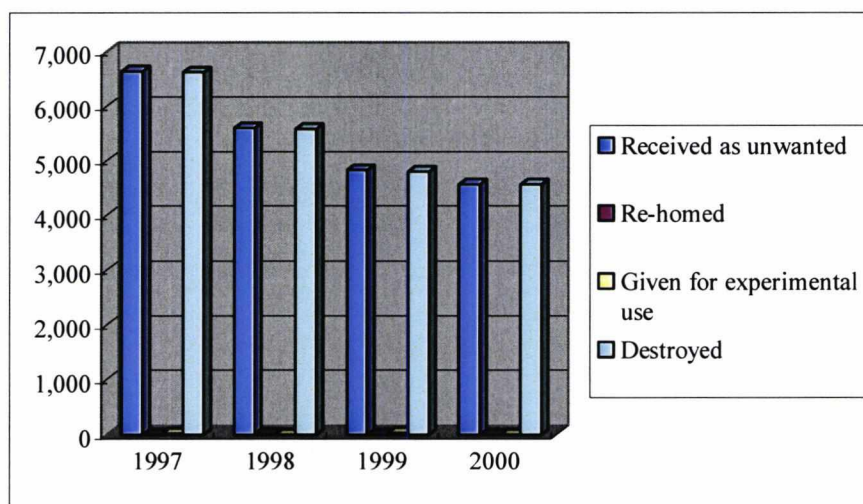


Figure 1: Unwanted and stray dogs at Kitakyushu Animal Control Centre
Source: Kitakyushu Animal Control Centre

Figure 1 indicates that the majority of dogs and cats brought to the Centre are put down. Although the number of animals brought to the Centre is decreasing, still over 4,500 healthy animals were put down in 2000 in Kitakyushu City. The fact that the

⁵⁶² The method of capture varies depending upon the case, however, steel wire is most frequently used.

⁵⁶³ Dogs received or collected on the same day are put in the same kennel, and cats are put in separate individual kennels. Many of the dogs still have collars on.

⁵⁶⁴ Art. 9 (7), n 558 above.

⁵⁶⁵ Adult dogs and cats can be re-homed if requested, however, in reality, few adopt them.

⁵⁶⁶ Such institutions are: Kyushu Dental University, University of Industrial Medicines, Yoshitomi Pharmacy, Yamaguchi University, etc. Mr. K. Yamamoto, n 556 above.

⁵⁶⁷ With carbon dioxide animals are tranquilised in one to two minutes and die in a few minutes later. Occasional suffering or vomiting can be seen before death is reached. The Prime Minister's Secretariat Management Office, *Explanation of Policies Concerning the Method of Destruction of Animals*, n. d., material provided by Mr. K. Yamamoto.

majority of animals are put down has attributed negative images to the employees of the Centre.

5.10.5. Problems Relating to *Aigo* Policies

The most serious problem faced by the Council is the number of unwanted animals. Every year, local authorities in Japan receive requests for the capture of stray dogs, as well as for the reception of unwanted pets (See Figure 2).

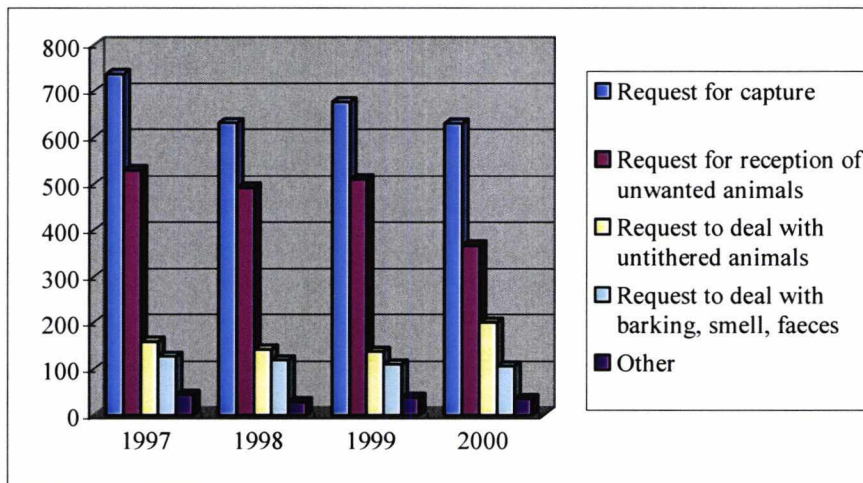


Figure 2: Public complaints to Kitakyushu City Council⁵⁶⁸

The problem is prevalent in many societies, and the only practical way to tackle this problem is to get animals neutered. In Japan, like in many other countries, many people are still unaware of the importance of neutering. According to a survey by the Government, 72.5 per cent of the surveyed owners would not get their dogs and cats neutered “because it is cruel to do so” (29.1 per cent for dogs and 26.3 per cent for cats), or “the veterinary cost is too high” (11.6 per cent for dogs and 23.8 per cent for cats).⁵⁶⁹ It should, however, be noted that the importance of neutering is increasingly recognised.⁵⁷⁰

The consequence of not neutering pets is that a large number of animals are brought to facilities like the Animal Control Centre. Not all of these facilities, however, provide neutering. Although some local authorities charge for the reception of unwanted pets, the proceeds of which are supposed to be spent on neutering, they are often simply destroyed. In Kitakyushu City, nearly 1.1 billion is spent on capturing

⁵⁶⁸ Material provided by Mr. K. Yamamoto.

⁵⁶⁹ *Doubutsu Aigo ni Kansuru Ishiki Chousa (Survey Concerning Doubutsu-Aigo)*, June 2000, the Prime Minister's Office. Available at: <http://www8.cao.go.jp/survey/aigo/index.html>, visited on 20 Jun. 2001. The number of people surveyed was 515 dog owners and 226 cat owners.

⁵⁷⁰ Owners who had their pets neutered increased according to the above survey. Ibid.

stray dogs and yet the City is unwilling to subsidise neutering.⁵⁷¹ In contrast, the RSPCA, for example, charges £70 to owners bringing in unwanted animals for the cost of neutering before re-homing, although neutering costs are less expensive in the UK.⁵⁷²

Comparisons with the UK situation are often made by campaign groups in Japan, who have a view of the UK as a model country for animal welfare. However, it should be noted that such comparisons should be made bearing in mind historical background, social structure and cultural influences, particularly in animal welfare issues as the concept is relatively new to the majority of the Japanese. Without such consideration, mere comparison could undermine the positive attitudes of local authorities. “Following the example of the UK is impossible, as the difference is too large,” says Mr. Y. Yamamoto.⁵⁷³ Mr. K. Yamamoto regrets; “To be honest it is frustrating when we are compared with the UK charities, as people do not seem to take into consideration background issues which support the UK.”⁵⁷⁴

The difference in background incorporates at least three interconnected factors: the long history of welfare legislation, powers and scale of NGOs, and awareness about animal welfare issues.⁵⁷⁵ Such practical differences, according to both Mr. Yasuyuki Yamamoto and Mr. Kiyoshi Yamamoto, may arise from “cultural differences”, such as “religion” or “dietary habits”.⁵⁷⁶ The following paragraphs will further explore cultural factors affecting attitudes of modern Japanese people toward animals; *doubutsu kuyo*, or memorial service for dead animals, and *burakumin* people whose occupations predominantly involve dealing with dead animals.

5.10.6. *Doubutsu Kuyou*: Memorial Services for Animals

Although *kuyo* is a Buddhist ritual practice to comfort the dead, whether they are humans, animals or objects, the tradition has not faded in Japan. In fact it is “pervasive” in Japan, according to Asquith.⁵⁷⁷ For instance, *doubutsu kuyo*, *kuyo* for animals, is conducted at the Kitakyushu Animal Centre once a month, and is probably carried out at any place at which animals' deaths occur. Therefore,

⁵⁷¹ Repeated requests by Ms. Kawachi for neutering to be subsidised have been turned down. Ms. Kawachi, n 556 above.

⁵⁷² For instance, the average fee of neutering in Japan is about 20,000 yen, approximately £116.

⁵⁷³ Mr. Y. Yamamoto went to Europe in 1994 in order to study systems of animal welfare and control in Europe. Amongst the many institutions he visited were the RSPCA Head Office and several shelters thereof. Mr. Y. Yamamoto, n 556 above.

⁵⁷⁴ Mr. Yamamoto, n 556 above.

⁵⁷⁵ See Chapter 4.

⁵⁷⁶ Interviews with Mr. K. Yamamoto and Mr. Y. Yamamoto, n 556 above.

⁵⁷⁷ P.J. Asquith, ‘The Japanese Idea of Soul in Animals and Objects as Evidenced by *Kuyo* Services’ in D.J. Daly and T.T. Sekine (eds), *Discovering Japan: Issues for Canadians* (Ontario: Captus University Publications, 1990) 181-188. For discussions on *kuyo*, also see; A.P. Brooks, ‘*Mizuko Kuyo* and Japanese Buddhism’ 8 *Japanese Journal of Religious Studies* 3-4, 119-147.

abattoirs, zoos, laboratories and other relevant places all conduct *doubutsu kuyo*, whether they are public institutions or private corporations.⁵⁷⁸

Officially, *doubutsu kuyo* is considered to be based upon the compassionate aspect of Buddhism.⁵⁷⁹ The justification that compassion for animals' lives is shown by *doubutsu kuyo*, however, has prevented 'rational' discussions regarding how they should be treated whilst they are alive. Nakamura compares the situations in the West and Japan regarding experimentation on animals;

. . . it is well known that especially in Western society animal experimentation has been a target of radical opposition movements, from the perspective of "animal rights". There, in order to put a final conclusion to whether animal experiments should be ethically allowed or not, two opposing positions are in direct conflict. The medical field, the pharmaceutical field, and furthermore even the whole of society tends to split into two around the issue.

However, whether fortunately or unfortunately in Japan, the issue [of animal welfare] has not been radicalised in the same way. . . . [The] following *Nihonteki* (*Japanese*) characteristics is frequently pointed out with regard to [the issue of animal welfare] in Japan; "In our country memorial services are carried out for animals which died for research at a considerable number of animal or educational institutions. The memorial services for experimental animals are regarded by foreigners as a strange feature significantly influenced by Buddhist thought. In Buddhism, it is taught that we must have a respect for all living beings, offering prayers for animals as for humans is not regarded doubtful".⁵⁸⁰

Nakamura points out that *doubutsu kuyo* is seen as a strange phenomenon by Western society not only because it is a prayer for animals, but also because of its religious connotations in a scientific field; "Those who carry out [the] heavily religious events are at the frontier of science, who are supposed to be free from religious ideas such as souls or the afterlife".⁵⁸¹ This means that Japanese society still operates on a religious level to a certain degree.

⁵⁷⁸ I. Nakamura, *Saishi to Kugi: Nihonjin no Shizenkan, Doubutsukan* (Rituals and Sacrifice: Japanese Perspectives of Nature and Animals) (Tokyo: Houzoukan, 2000) 229.

⁵⁷⁹ For the Japanese Buddhist view of life and death, see 5.3.3.

⁵⁸⁰ Nakamura, n 578 above, 232-233.

⁵⁸¹ *Ibid.*, 233.

However, *doubutsu kuyo* is not entirely a past tradition that has been continued, on closer examination. In fact, it “is now a boom”,⁵⁸² as a modern phenomenon, with the increasing scale of the destruction of nature. Although officially, it is considered as a Buddhist tradition of compassion toward living things, *doubutsu kuyo* is conducted largely out of the fear of *tatari*.⁵⁸³ At the bottom of such fear, there is a sense of guilt. Further, it is also to facilitate the “happiness” of those who “benefit from the blessings” of the dead, according to Asquith.⁵⁸⁴

Nakamura points out that those who carry out *doubutsu kuyo* most enthusiastically are those involved in the industries which have economic interests in the consumptive use of animals. In other words, its role in society could be equated with “a psychological and cultural tool” to justify the consumptive use of nature by individuals or corporations.⁵⁸⁵ Therefore, *doubutsu kuyo*, may well help facilitate the consumption of nature, precisely because it allows people to quickly justify their conduct, without examining the issue ‘rationally’ or ‘scientifically’. Nakamura considers it “unrealistic” to interpret the practice of *doubutsu kuyo* as a religious phenomenon.⁵⁸⁶

Although the *doubutsu kuyo* tradition is a complimentary aspect of Japanese attitudes toward animals, it has been used to redirect the focus of ecological and animal welfare discussions, and has even been equated with ecocentrism;

It is to be noted that we should avoid holding this culture of *kuyo* as a pretext of its being good, and should not misunderstand that it is capable of being an ideological and emotional counterpart to Western anthropocentric ideology. For instance, praising the Japanese whale *kuyo* practice as a counterargument against Western anti-whaling ideology, . . . will only bring adverse effects. Also, bringing up the *kuyo* tradition relating to plants so as to be proud of the “ecocentrism” of Japanese environmental conservation is by no means wise.

It is because it can hardly be said that the whale *kuyo* and plant *kuyo* originally never had practical and selfish elements such as fear for *tatari* and efforts to avoid trouble. In other words, it is meaningless to discuss which is a better system as a cultural and ideological means to justify exploitation and utilisation of natural resources for human existence; the anthropocentric ideology of

⁵⁸² Ibid, 228-229.

⁵⁸³ Asquith and Nakamura also acknowledge this point. Ibid, 239. Asquith, n 577 above, 185.

⁵⁸⁴ Asquith, *ibid*, 185.

⁵⁸⁵ Nakamura, n 578 above, 242.

⁵⁸⁶ Ibid, 243.

the modern West, or the reconstruction of Japanese culture of *kuyo*.⁵⁸⁷

From a national point of view, the *kuyo* tradition, therefore, may prevent people from facing the reality of issues surrounding animals. From an international point of view, it also allows the avoidance of 'rational' or 'scientific' discussion.

5.10.7. *Burakumin* People: Occupations Dealing with Dead Animals

During the course of the interviews with people engaged in the *aigo* administration, the author came across a comment that some local authority staff and commissioned professionals had been subjected to discriminatory remarks during the course of their duties. Apart from the more obvious negative aspects of their duty to destroy animals, certain cultural factors are also involved. Occupations that deal with death of animals have traditionally been inherited by *burakumin* people.⁵⁸⁸

It was during the medieval period when negative images towards killing, handling of corpses, and illnesses were all defined as impure, under the Shinto influence,⁵⁸⁹ and as sins, under the Buddhist influence.⁵⁹⁰ As a consequence, the occupations which came to be considered 'defiling' included; "butchers, falconers, tanners, makers of leather goods, cormorant fishermen", as well as others.⁵⁹¹ *Burakumin* people, who traditionally inherited these occupations, have been subject to discriminations, which is still present in today's Japan. Many are employed in small factories "connected with their traditional occupations, such as *butchering* and *leather and fur processing*",⁵⁹² due to discrimination in the job market.

The presence of negative images attributed to *burakumin* people can be undermining from the perspective of *aigo* policy. Evidence suggests that involvement with the death of animals is to be avoided. Facilities like the Animal Control Centre are often placed in remote areas⁵⁹³; For a long time, the control part (where kennels and incineration machines are) of such facilities were often not open to the public. The capture, destruction, and cremation of animals are things not to be seen, and have

⁵⁸⁷ Ibid., 244-245.

⁵⁸⁸ For a detailed history of *burakumin* people, see; E. Ohnuki-Tierney, *The Monkey As Mirror: Symbolic Transformations In Japanese History And Ritual* (Princeton: Princeton University Press. 1990).

⁵⁸⁹ See discussions on the *Kojiki* in this chapter. Izanagi washed himself after returning from the underworld, as he considered he had touched the impure.

⁵⁹⁰ Ohnuki-Tierney, n 588 above, 90. See 5.3.3.

⁵⁹¹ Others include "undertakers, caretakers of tombs, executioners, tatami floor mat (straw mat) makers, and sweepers". Ibid.

⁵⁹² Ibid, 98. Italicised by the author.

⁵⁹³ See for instance; K. Fukuoka, '*Petto no Yukue* (The Future of Pets)', Part I, No. 5', *Mainichi Newspaper*, 20 Oct. 2000.

been largely carried out within a closed circle, by a group of people who have a limited interaction with the rest of Japanese society.

5.10.8. Animal Welfare in Japan

The Japanese approach to *aigo* legislation and policies is, as examined above, ambiguous. Neither the concept of animal welfare nor *aigo* has been discussed in any depth. The relevant laws and policies were created as a result of international pressure, as CITES-related legislation.⁵⁹⁴ A lack of understanding of the animal welfare concept has led to lack of enforcement of the law. Protection of animals in Japan is still in its early stages, and has yet to gain political significance.

The lack of understanding of the animal welfare concept does owe a lot to cultural tradition. *Doubutsu kuyo* is an example which allows people to seek a cultural or psychological solution, not a legal or political one, in facing practical problems. Mr. K. Yamamoto regretted; “People are not willing to face the reality and are satisfied with merely grasping the surface alone”.⁵⁹⁵ The existence of *doubutsu kuyo* may allow people to consider that the spirit of *doubutsu aigo* is “embedded in [Japanese] national emotions”.⁵⁹⁶ This further prevents the relevant problems, as discussed earlier in the Japanese *aigo* situation, from coming to the “surface”.

5.11. Chapter Conclusion

The chapter concludes that Japanese cultural factors have influenced Japan's conservation attitudes, but not in a way that nourishes 'ecological' attitudes, despite the possibly 'ecological' factors contained in Japanese religions. Japanese religious factors, both Shinto and Buddhism, are capable of providing a philosophical base for 'ecological' attitudes, or even the basis for ecocentrism, given their respect for nature. However, in Shinto respect for nature inherently does not oppose the consumptive use of wildlife. The Buddhist worldview does not encourage active intervention in nature, and gives the impression that life is somehow 'recyclable'.

Nevertheless, only the 'ecological' elements of Shinto and Buddhism have been highlighted in general, which leads to a misleading image of Japan as being 'nature-loving' and therefore fundamentally 'ecological'. However, whereas Western ecology is based on science and rationalism, the examination of 'Japanese' ecology has revealed that Japan is frustrated by the fact that its traditional view of nature is not entirely compatible with established science, which is Western. The propagation of

⁵⁹⁴ See 3.2.3.

⁵⁹⁵ Mr K. Yamamoto, n 556 above.

⁵⁹⁶ See n 454 above.

the 'ecological' image of Japanese tradition is largely a reaction against criticism from the West, which is a matter of national pride. Such pride can also be observed in issues involving animal welfare, the lack of which has a significant influence on Japanese wildlife conservation.

Chapter 6 Conclusion

International wildlife law began from an anthropocentric, strictly utilitarian approach but has evolved to take increasingly greater account of ecocentric considerations. However, its interpretation and implementation has proven problematic, and one of the greatest problems is conceptual. At present, competing objectives are contained in international legal instruments; incorporating both anthropocentric and ecocentric concepts. There is also considerable difference of emphasis within the ecocentric concepts, and the value attributed to nature is difficult to specify objectively. Despite the progression towards an ecocentric approach, it is the anthropocentric, utility value of nature that is considered most important by many. Therefore, currently, the most widely accepted conservation approach is 'wise management', which connotes sustainable use. Such management must also be based upon scientific evidence, for it to be 'rational'. The object of conservation has been stretched from covering only 'useful' species to protection of biodiversity more generally, though this may be seen as largely due to the utility value of biodiversity to humans, whether for present or future generations. In this sense, international wildlife law is still predominantly anthropocentric.

However, it is agreed by the international community that where there is a lack of conclusive 'scientific evidence' of environmental or ecological harm, the precautionary principle should prevail. Despite the acceptance of this principle, due to scientific uncertainty, arguments as to how humans should treat nature often originate in differing ideologies, rather than due to scientific evidence. The precautionary principle provides a basis for 'rational' argument for those who prefer a non-anthropocentric, protective approach toward conservation. Although utilitarian 'sustainable users' prefer to promote utilisation rather than protection, 'protectionists', including ecocentrics and animal welfarists, argue that a more protective approach should be taken toward conservation. Neither group has convinced the other of the superiority of their respective arguments, because the two are mutually opposed, as shown by the examination of the Western roots of 'exploitative' and 'ecological' attitudes.

Another problem relating to the implementation of wildlife treaties is that conservation concepts have tended to originate in the West and therefore are not fully understood or implemented, for instance, in Japan. Ecocentrism is generally considered to fall outside the realm of Western rationalism, however, it developed by providing counterarguments against rationalism, and therefore is still fundamentally Western, and 'rational'. However, the importance and credit given to 'rational and scientific arguments' in the West is fully appreciated in Japan, which in turn argues for sustainable use, advocating that it is the most 'rational and scientific' solution, and that ecocentrism, and animal welfare concern in particular, is 'irrational'.

Consideration of CITES implementation in the UK and Japan revealed that UK implementation reflects efforts to make decisions based upon science, but at the same time takes a less utilitarian, more protective approach, as endorsed by its romantic and animal welfare traditions. UK implementation also reflects its long history of ecological and animal welfare concern, which formed the basis for a comparatively effective enforcement mechanism. On the other hand, Japanese implementation merely reflects the minimum obligations required to be enacted under CITES, in order to ensure the policy of utilisation and to protect national industry. The precautionary approach and animal welfare provisions are virtually ignored. Japanese implementation also reflects its unfamiliarity with enforcing wildlife and animal welfare-related provisions.

The discussion in Chapters 4 and 5 reveals that although Japan advocates 'rational and scientific' solutions involving the sustainable use of wildlife, internally it also considers that the Western perspective toward nature is a limited one, and that Japanese religions provide for a more holistic, harmonious view of nature. Many therefore consider that cultural tradition in Japan is on a par with Western ecocentrism or animal welfare, as holism and harmony with nature are characteristics of ecocentrism and animal welfare. However, although Japanese religions *can* be interpreted and developed to provide for a more holistic, harmonious approach, they are fundamentally different from the ecocentric movement, because ecocentrism is founded upon 'rational' arguments against rationalism. Furthermore, Japanese religions do not automatically provide an alternative conservation philosophy as they are not necessarily inherently 'ecological', often connoting ambivalent attitudes toward nature. However, the view of Japanese religions as being environmentally sound has maintained Japanese pride in its own culture, despite a background of international criticism levelled against Japanese conservation attitudes. Therefore, many Japanese have turned to 'non-rational' and 'non-scientific' justifications for their conservation attitudes which do not really solve underlying environmental or ecological problems.

Criticisms levelled against Japan, particularly by radical environmental or animal welfare organisations, therefore, led Japan to adopt the Western tactics of rationalism and to advocate sustainable use in its defence, despite not fully understanding Western conservation concepts. In order to provide a more constructive arena for debate, Japan must stop merely pretending to advocate the sustainable use concept, when it simply promotes the utilisation of wildlife in reality. Japanese cultural tradition must also not be confused with ecocentrism or animal welfare, if Japan wishes to build a philosophical basis for conservation based upon its own traditions. Also, Western environmental organisations must accept that cultural differences exist between the East and West, the influence of which are more significant than is currently recognised, and should reconstruct their critical approach based upon an understanding of such cultural differences. The way 'protectionists' in the West currently criticise Japanese attitudes causes an emotional and sometimes adverse

reaction in the Japanese people which is unhelpful, often producing counterproductive results by making the Japanese defensive and uncooperative. These Western critics must realise that wildlife conservation in Japan has yet to gain widespread emotional support.

It may be argued that non-anthropocentric concepts such as ecocentrism and animal welfare are 'irrational' sentiments and provide no real solution to environmental problems. However, examination of the development of Western 'ecological' attitudes shows that it is these sentiments that have eventually motivated people to protect nature. They have worked as a counterforce to 'exploitative' attitudes, and their arguments have been constructed 'rationally', which has led to a certain degree of success. In this sense, as a modern industrialised country, Japan should be able to draw such sentiments from its own cultural tradition, by re-constructing arguments which would fit into modern society in Japan, instead of simply falling back on the fact that it has a different cultural tradition to the West.

There are already signs of a distinctively 'Japanese' conservation approach, which incorporates elements of national tradition. In a series of lawsuits advocating the 'rights of nature' and the *satoyama* movement, cultural values of nature in Japan are recognised by advocates of these movements. These movements can be equated with the 19th century Romantic movement in the West, but they are rooted in 'Japanese' tradition. It is expected that these movements will provide emotional support for conservation in general and assist in the fundamental task of reconciling traditional national perspectives of conservation with the contrasting approaches underlying international treaties.

Appendix 1 List of Interviews

UK

Christian Ashwell, Customs Officer, CITES Team, HM Customs and Excise, interview by author, Heathrow, 22 Jun. 1999.

Chris Beeson, Concept Imaging Limited, interview by author, Heathrow, 22 Jun. 1999.

Tristin Bradfield, Animal Reception Centre, Corporation of London, interview by author, Heathrow, 22 Jun. 1999.

Julian Claxton, Head of the CITES Policy Unit (now the CITES and Zoos Policy Branch), Global Wildlife Division, DETR, interview by author, recorded on tape, Bristol, 7 May 1999.

Allan Fisher, Inspector, the Special Operation Unit, the Royal Society for the Prevention of Cruelty to Animals, interview by author, Horsham, 20 Apr. 1999.

Bob Ford, Head of the Resource and Licence Unit (now the Wildlife Licensing, Enforcement and Information Systems Branch), Global Wildlife Division, DETR, interview by author, recorded on tape, Bristol, 7 May 1999.

Robert Hepworth, Head of Global Wildlife Division, DEFRA, and Former Chairman of CITES Standing Committee, interview by author, Bristol, 7 May 1999.

Roger Pritchard, Head of European Wildlife Division, DEFRA, interview by author, recorded on tape, Bristol, 7 May 1999.

Nick Williams, Chief Wildlife Inspector, Wildlife Inspectorate Unit (now the Wildlife Crime and Inspectorate Unit), Global Wildlife Division, DETR (now DEFRA), interview by author, recorded on tape, Bristol, 7 May 1999.

Japan

Nakajima Eizo, Divisional Manager, Control Division, Customs Clearance Department, Moji Customhouse, interview by author, Kitakyushu-City, 21 May 2001.

Konagamitsu Masayuki, Divisional Manager, Accounting Division of the Coordination Department, Moji Customhouse, interview by author, Kitakyushu-City, 21 May 2001.

Customs Officer, Fukuoka Airport Customhouse, interview by author, Fukuoka, 4 Jun. 2001. The name of the interviewee is not stated due to the request of the interviewee.

Divisional Managers, Division of Agriculture and Forestry, Department of Economy, Kitakyushu City Council, interview by author, Kitakyushu-City, 4 Jun. 2001.

The names of the interviewee are not stated due to the request of the interviewees.

Takei Hidemi, Division of Environment and Planning, Department of the Environment, Kitakyushu City Council, interview by author, Kitakyushu-City, 4 Jun. 2001.

Kawachi Kiyomi, Member of Animal Shelter Group, interview by author, Kitakyushu-City, 7 Jun. 2001.

Kurasawa Nanami, Representative of Whale and Dolphin Action Network, interview by author, Tokyo, 11 Mar. 2002.

Sakamoto Masayuki, Vice-Representative, Japan Wildlife Conservation Society, interview by author, Tokyo, 11 Mar. 2002.

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Appendix 2 List of Major Cases in the UK

| Year | Reported Case | Species | Private Prosecution | Result | Significant Points |
|------|------------------------|----------------------------------|----------------------|---|---|
| 1968 | Partridge v Crittenden | bramble finch | RSPCA | Not guilty | Definition of "advertisement" under the Wildlife and Countryside Act |
| 1978 | | hawksbill shell | FoE | Not guilty | Definition of "worked" specimens under the Endangered Species Act 1976 |
| 1979 | | leopard skin | FoE | £550 | The first successful prosecution under the Endangered Species Act 1976. |
| 1980 | R. v Cooke | rare bird | | 6 months and £200 | The custodial sentence was upheld by the High Court as a deterrent factor |
| 1985 | Kirkland v Robinson | goshawk | RSPB | £625 | Offence of strict liability under the Wildlife and Countryside Act 1981 |
| 1989 | R. v Azadehdel | orchid | | £2700 | Offence involving plants |
| 1991 | R. v Sperr | falcon | | 9mths | Customs and Excise Management Act 1979 and the Endangered Species Act 1976 |
| 1994 | Seiga v Walkingshaw | peregrine falcon | | £2000 | Penalty was considered in relation to the offender's financial capacity |
| 1994 | | rhino, tiger, bear | | £3000 | First prosecution in relation to traditional Asia medicine |
| 1995 | | falcon | | 4 months and a ban on keeping birds for 5 years | DNA testing applied. |
| 1995 | R. v Canning | peregrine falcon | | 18 months | The first wildlife crime sentenced maximum term of imprisonment. |
| 1995 | | traditional East Asian medicines | | £3,000 and £2,000 | The first conviction involving traditional East Asian medicines in the world |
| 1996 | | bird eggs | | £5000 | Result of the joint raid by the Police and the RSPB. Offence of strict liability. |
| 1996 | | various endangered species | | 2 years | The first maximum imprisonment sentence for wildlife crime |
| 1997 | | badger | RSPCA | 4 months | DNA testing applied. |
| 1997 | | rhino horn | RSPCA and the Police | 15 months | The largest seizure of rhino horns |
| 2001 | R. v Sissen | parrots | | 2 1/2 years | The point of entry into the EU not the UK, but the UK Customs and Excise Management Act applied. |
| 2002 | | goshawk and eggs | | 4 months | The first imprisonment sentence since the enactment of CRow. |
| 2002 | | eggs of various wild birds | | 6 months | The maximum imprisonment sentence under the Wildlife and Countryside Act 1981 that can be applied by magistrates. |
| 2002 | | exotic birds | | 6 1/2 years | The longest imprisonment sentence for the smuggling of endangered species under the Customs and Excise Management Act |

Appendix 3 List of Newspaper Articles

UK (*The Times*)

| Date | Contents |
|--------------|---|
| 16 Oct. 1976 | Endangered Species Act |
| 16 Oct. 1976 | CITES |
| 4 Oct. 1977 | DoE's report on trade in CITES species |
| 18 Jan. 1977 | Two fined for killing swan |
| 1 Jan. 1977 | Two fined for killing sea birds |
| 11 May. 1977 | Theft of eggs |
| 18 Oct. 1977 | Theft of eggs |
| 4 Nov. 1977 | Five fined for selling birds |
| 13 Aug. 1977 | Prosecution against the sale of falcon |
| 6 Oct. 1977 | Two fined for stealing chicks |
| 26 Oct. 1978 | Trade restriction concerning endangered species |
| 19 Apr. 1978 | Review of the Endangered Species Act |
| 30 Apr. 1978 | FoE's discovery of hawksbill shells on sale |
| 29 Oct. 1978 | FoE's prosecution and failure to secure a conviction against the sale of hawksbill shells |
| 1 Mar. 1978 | Concern expressed over the sale of British hawks |
| 4 Jun. 1978 | Concern expressed over birds of prey |
| 16 May. 1978 | Theft of eggs |
| 28 Jul. 1978 | Three fined for stealing eggs |
| 6 Jun. 1980 | FoE's protest against high fashion products |
| 13 Sep. 1980 | FoE's list of endangered species products |
| 18 Aug. 1980 | Japan's signatory to CITES |
| 14 Jan. 1980 | Wildlife and Countryside Bill |
| 29 Jan. 1980 | Sentence for smuggling rare species |
| 23 Aug. 1980 | RSPB criticises the delay of the Wildlife and Countryside Bill |
| 13 Mar. 1981 | FoE's campaign to ban endangered species products |
| 28 Aug. 1981 | Rings put on stolen birds |
| 14 Nov. 1982 | Report on CITES |
| 16 Aug. 1983 | RSPB criticises the Wildlife and Countryside Act |
| 25 Nov. 1983 | Number of living specimens seized by Customs between 1982 and 83. |
| 2 Dec. 1983 | Man fined for keeping buzzards |
| 14 Aug. 1984 | Import regulations tightened under the Berne Convention |
| 27 Jun. 1984 | NCC calls for a change in attitudes |
| 5 Sep. 1985 | Sotheby's may ban auctions for natural history specimens |
| 21 Feb. 1985 | Number of prosecutions for theft and cruelty against wild birds |
| 11 Apr. 1985 | High court rules on the illegal possession of goshawks |
| 24 Apr. 1985 | Investigation into the death of red kite |
| 2 May. 1985 | Poisoning of two golden eagles |
| 23 May. 1985 | Collectors of red kite eggs threaten the species |
| 31 Oct. 1985 | Gamekeeper fined for shooting falcon |
| 1 Nov. 1986 | Two fined for illegal import of frogs |
| 4 Dec. 1986 | Possession of wild birds |
| 3 Jun. 1986 | Combating wildlife smugglers |
| 1 Mar. 1987 | UK dealer in reptiles arrested for smuggling endangered species |
| 30 Aug. 1987 | Sotheby's and Phillips restrict dealings with wildlife products |
| 12 Apr. 1987 | Trapping of wild birds and the market for them |
| 22 Mar. 1987 | Theft of 4,000 eggs |
| 25 Jul. 1987 | Possession of avocet eggs |
| 2 Sep. 1987 | Illegal sale of golden eagle |
| 26 Jun. 1987 | Uprooting primroses |
| 7 Dec. 1988 | Smuggling of 500 Ibiza wall lizards |
| 4 Mar. 1988 | Display of endangered birds |
| 20 May. 1988 | RSPB wins appeal for golden eagle case in 1987 |
| 11 Aug. 1988 | Shooting of herons |
| 16 Aug. 1988 | Court case involving possession of over 7,000 eggs |

| Date | Contents |
|--------------|--|
| 17 Aug. 1988 | Court case involving possession of over 7,000 eggs |
| 19 Aug. 1988 | Court case involving possession of over 7,000 eggs |
| 21 Aug. 1988 | Court case involving possession of over 7,000 eggs |
| 19 Aug. 1988 | Illegal export of golden eagles |
| 26 Mar. 1990 | Poisoning of birds and animals |
| 12 May. 1990 | Wildlife crime involving UK rare birds |
| 4 Aug. 1990 | Fine for cruel capture of birds |
| 9 Aug. 1990 | Killing of protected bird |
| 6 Oct. 1990 | Wildlife officers |
| 20 Oct. 1990 | RSPB warns egg collectors |
| 11 Mar. 1990 | Rare monkeys seized |
| 27 Apr. 1990 | Offence involving peregrine falcons |
| 28 Apr. 1990 | Offence involving peregrine falcons |
| 28 Jun. 1990 | Illegal use of pesticides |
| 30 Jun. 1990 | Illegal use of pesticides |
| 14 Jul. 1990 | Illegal use of pesticides |
| 8 Feb. 1991 | Fine for offences involving stuffed birds |
| 16 Mar. 1991 | Government campaign for illegal poisoning |
| 3 Mar. 1991 | Eggs stolen from more than 100 rare birds' nests in 1990 |
| 10 Apr. 1991 | Case involving the disturbance of birds of prey dismissed |
| 18 Sep. 1991 | Fine for stealing eggs |
| 12 Nov. 1991 | Fine for possessing over 500 eggs |
| 22 Nov. 1991 | Fine for illegal import of eggs |
| 4 Jan. 1992 | Call for EC ban on bird imports |
| 16 Jul. 1992 | Egg thieves and breeding of peregrine falcons |
| 21 Oct. 1992 | RSPCA uses DNA testing for birds of prey in captivity |
| 5 Jun. 1992 | Fine and imprisonment term for the illegal export of parrots |
| 23 Jun. 1992 | Mortality rates of monkeys in captivity |
| 23 Apr. 1993 | 15 arrested for offences involving 900 rare birds |
| 23 Jun. 1993 | Taxidermist fined for illegal possession of dead animals |
| 21 Aug. 1993 | Failure in protection of birds of prey |
| 5 Nov. 1993 | Two taxidermists fined for illegal possession of dead birds |
| 28 Jan. 1993 | Gamekeeper convicted of illegal possession of dead badger |
| 12 May. 1993 | RSPCA prosecution against offences involving badger sets |
| 11 Dec. 1993 | Gamekeeper convicted of killing badgers |
| 27 Jun. 1993 | Illegal trade in bear organs under investigation |
| 16 Jul. 1993 | Vigil to protect peregrines in Cheshire village |
| 2 May. 1993 | Evidence of illegal import of tiger products |
| 6 May. 1993 | Dover Customs questions about van load of birds |
| 30 May. 1993 | Orang-utan in commercials removed from Indonesia |
| 22 Mar. 1994 | Man fined for disturbing rare sea birds |
| 20 May. 1994 | Prosecution against releasing imported birds into wild |
| 8 Jun. 1994 | 16,000 pound fine for stealing eggs |
| 22 Jun. 1994 | Taxidermist on trial for illegal possession of 300 stuffed animals |
| 29 Jun. 1994 | Northumberland taxidermist found guilty |
| 13 Aug. 1994 | Egg thief's fine reduced from 16,000 to 2,000 pounds |
| 19 Jan. 1994 | Three jailed for killing two badgers |
| 21 Sep. 1994 | Seizure of golden eagles |
| 5 Oct. 1994 | Seizure of elephant tusks |
| 28 Feb. 1994 | Seizure and DNA testing of peregrine falcons |
| 10 May. 1994 | Stealing of peregrine falcon eggs |
| 4 Aug. 1994 | Customs raid |
| 16 Aug. 1995 | Seizure of dead specimens of endangered species (14) |
| 17 Aug. 1995 | Seizure of dead specimens of endangered species (14) |
| 7 Sep. 1995 | Fine for illegal sale of traditional East Asian medicines (12) |
| 8 Feb. 1995 | Confiscation of medicines containing tiger parts |
| 22 Nov. 1995 | Court case involving smuggling of endangered species |
| 28 Nov. 1995 | Court case involving smuggling of endangered species |
| 5 Jun. 1995 | Joint investigation by the Police and the RSPB into the killing of golden eagles |
| 30 Sep. 1995 | Illegal sale of peregrine falcons (10) |
| 3 Jan. 1996 | Rare and exotic species in danger of extinction |
| 29 Jul. 1996 | Need for zoos to conserve endangered species |
| 10 Nov. 1996 | Birds of prey seen as pests |

| Date | Contents |
|--------------|--|
| 8 Aug. 1996 | Zoos and captive breeding |
| 20 Sep. 1996 | Scottish deer threatened by Japanese sika deer |
| 20 Aug. 1996 | Seizure of rhino horn (16) |
| 4 Sep. 1996 | Seizure of rhino horn (16) |
| 3 Sep. 1996 | Leatherback turtle in danger of extinction |
| 11 Oct. 1996 | Zoological society calls for listing trade ban on endangered species |
| 14 Aug. 1996 | Three fined for stealing eggs |
| 28 Sep. 1996 | Joint raid and seizure of birds of prey |
| 12 Jan. 1996 | Government abandons plans to cull ruddy duck |
| 9 Jan. 1996 | Smuggling of parrots |
| 10 May. 1996 | Two years imprisonment for smuggling of endangered species (14) |
| 25 Jan. 1997 | Disturbance of nests of rare birds |
| 19 Mar. 1997 | Illegal import of exotic pets |
| 11 Mar. 1997 | RSPCA concerned with birds of prey |
| 14 Apr. 1997 | WWF concerned with commercial hunting of apes |
| 16 Apr. 1997 | Conviction for bird poaching |
| 28 May. 1997 | Fine for stealing eggs |
| 20 Jun. 1997 | Rare falcons hatched from stolen eggs |
| 20 Jul. 1997 | Poaching of sturgeon |
| 19 Sep. 1997 | Killing of badgers and DNA testing (15) |
| 7 Oct. 1997 | Imprisonment sentence for transporting a badger which was to be baited |
| 22 Oct. 1997 | Ivory forfeiture |
| 19 Oct. 1997 | DNA testing on stolen birds |

Japan (*Asahi Shimbun*)

| Date | Contents |
|--------------|---|
| 3 Jul. 1975 | WWF asks Japan to ratify CITES |
| 4 May. 1978 | Japan Wildlife Research Centre to be established |
| 17 May. 1978 | Japan urged to ratify CITES |
| 5 Mar. 1979 | Ministry of International Trade and Industry (MITI) reluctant to ratify CITES |
| 28 Mar. 1979 | Japan criticised at CITES for not ratifying |
| 17 Apr. 1979 | MPs encourages MITI to ratify CITES |
| 24 Mar. 1979 | Okinawa asks for CITES reservation for shamisen industry |
| 30 Oct. 1979 | Tokyo bylaw to protect pets |
| 30 Mar. 1980 | Preparation for CITES ratification |
| 5 Apr. 1980 | Hawksbill in danger of extinction, and large import of wildlife before CITES ratification |
| 25 Apr. 1980 | Ratification of CITES |
| 29 Jul. 1980 | Government discusses CITES implementation |
| 28 Oct. 1980 | Restrictions by CITES |
| 2 May. 1980 | Japan enters reservations CITES species |
| 24 Sep. 1984 | Illegal sale of protected butterflies |
| 12 Oct. 1984 | CITES Resolution criticising Japan as a smuggler |
| 22 May. 1985 | Committee to be established to review CITES implementation |
| 23 Jun. 1985 | Illegal display of species restricted by CITES |
| 19 May. 1986 | CITES Secretary General asks Japan to co-operate in reducing ivory import |
| 17 Jan. 1987 | CITES internal control legislation |
| 13 Mar. 1987 | CITES internal control legislation |
| 2 May. 1987 | Large import of wildlife before the enactment of internal control legislation |
| 9 May. 1987 | CITES import to be confirmed in advance by MITI |
| 22 May. 1987 | Man arrested for illegal import of exotic fish |
| 5 Jul. 1987 | Reservation on three species withdrawn |
| 22 Jul. 1987 | Japan urged to regulate import at CITES COP |
| 23 Jul. 1987 | CITES proposal to criticise Japan |
| 24 Jul. 1987 | Japan criticised at CITES COP |
| 25 Jul. 1987 | Japanese industry offers 100,000 dollars at CITES COP |
| 25 Jul. 1987 | Resolution adopted urging Japan to ban import of crocodile from Indonesia |
| 18 Aug. 1987 | Illegal import of rare bird discovered |
| 7 Oct. 1987 | Import of 730,000 reptile skins regarded legal by MITI |
| 28 Oct. 1987 | Ban on sale of 500 animal species and 130 plant species |
| 28 Oct. 1987 | No regulation of fur skins and traditional East Asian medicines |

| Date | Contents |
|--------------|--|
| 28 Oct. 1987 | Hunting, import and export of ears for medicinal purposes |
| 30 Jun. 1988 | Ban on import of gall bladders from bear species in India |
| 5 Oct. 1989 | Plans to host CITES COP in Japan |
| 8 Oct. 1989 | Ivory issues at CITES COP |
| 17 Oct. 1989 | Ban on trade in ivory |
| 18 Oct. 1989 | Ban applies to ivory in stock |
| 29 Feb. 1992 | Delay in the Species Conservation Bill |
| 22 Apr. 1992 | Illegal sale of CITES-listed crocodiles |
| 3 Jul. 1992 | Fear for CITES restriction |
| 18 Feb. 1992 | CITES and tuna fish |
| 19 Feb. 1992 | CITES and reptile species |
| 20 Feb. 1992 | CITES and ivory |
| 21 Feb. 1992 | CITES and bear gall bladder |
| 22 Feb. 1992 | CITES and timber products |
| 22 Feb. 1992 | Prevention of troubles caused by Japanese macaques |
| 11 Aug. 1993 | Rapid increase in control by Customs involving traditional East Asian medicines |
| 26 Oct. 1993 | Illegal sale of parrots |
| 13 May. 1996 | Development plan in the habitat for rare rabbit species |
| 10 May. 1996 | Illegal capture of wild bird |
| 1 Aug. 1996 | Improvement of zoos |
| 27 Aug. 1996 | Law suit against the development plan in the habitat of rare rabbit species |
| 4 Oct. 1996 | Red Data Book |
| 17 Oct. 1996 | WWF calls for ban on the sale of medicines containing tiger parts |
| 23 Oct. 1996 | Release of dolphins from drive-hunt |
| 6 Nov. 1996 | Development plan in the habitat of northern goshawk |
| 26 Nov. 1996 | Law suit against the development plan in the habitat of rare bird in Okinawa |
| 30 Nov. 1996 | Destruction of dogs and cats by local authorities |
| 18 Apr. 1997 | Illegally captured wild birds released |
| 30 Apr. 1997 | Two caught for capturing cats to sell to shamisen industry |
| 16 Jun. 1997 | CITES COP |
| 17 Jun. 1997 | CITES COP and whale species |
| 20 Jun. 1997 | One-off transshipment of ivory to Japan |
| 28 Jun. 1997 | Asahi Shimbun survey regarding the relation between people and pets |
| 8 Aug. 1997 | Review of Red List |
| 13 Aug. 1997 | Illegal uprooting of rare plants in Fuji |
| 13 Aug. 1997 | Illegal import of rare tortoises started tortoise |
| 8 Oct. 1997 | Revised Red Data Book |
| 21 Oct. 1997 | Environmenta Impact Assessment for Naruse Dam ignores rare species |
| 23 Oct. 1997 | Naruse Dam construction in the protected area |
| 3 Dec. 1997 | Decrease in the number of northern gashawk nests |
| 18 Dec. 1997 | Change in a development plan to protect birds of prey |
| 13 Feb. 1998 | Landfill in Fujisaki Marshland |
| 18 Feb. 1998 | Live tortoises in game machines in Tokyo |
| 14 Apr. 1998 | Damages caused by Japanese macaques in Tokyo |
| 11Apr. 1998 | Environment Agency visits Fujisaki Marshland |
| 10 May. 1998 | False registration of wild birds |
| 11 May. 1998 | Manual produced for identification of rare bird Japanese white-eye |
| 27 May. 1998 | Japan Monkey Centre plans to sell Japanese macaques for experimental use |
| 4 Jun. 1998 | Town bylaw to protect rare butterfly in Yamagata |
| 9 Jun. 1998 | Development plan suspended for rare birds of prey in Hachioji |
| 13 Jun. 1998 | Review of Red List |
| 25 Jul. 1998 | JR development plan suspended for rare birds of prey |
| 27 Jul. 1998 | Stealing of beatles |
| 28 Jul. 1998 | Prefectural Environmental Impact Assessment of the landfill plan in Fujisaki Marshland |
| 6 Aug. 1998 | Three charged for illegal capture of rare bird Japanese white-eye |
| 8 Aug. 1998 | Encounters with wild bears |
| 12 Aug. 1998 | Five youngsters questioned for killing rare bats |
| 19 Aug. 1998 | Illegally captured wild birds released |
| 21 Aug. 1998 | Municipal Environmental Impact Assessment of the landfill plan in Fujisaki Marshland |
| 14 Jan. 1998 | Development plan altered for rare birds of prey in Hachioji |
| 25 Apr. 1998 | Amendment to the Hunting Law |
| 27 Apr. 1998 | Animals killed on motorways |
| 24 Nov. 1998 | Efforts to prevent encounters between humans and bears |

| Date | Contents |
|--------------|---|
| 24 Nov. 1998 | Efforts to provide more natural environment in zoos |
| 27 Oct. 1998 | Dog breeder charged under the Animal Protection and Control Law |
| 10 Dec. 1998 | Development plan postponed in Okinawa for rare and protected species |
| 12 Dec. 1998 | Municipal Environmental Impact Assessment of the landfill plan in Fujisaki Marshland |
| 14 Dec. 1998 | The Hunting Law amended |
| 18 Dec. 1998 | Environment Agency requests the abandonment of the landfill plan in Fujisaki Marshland |
| 20 Dec. 1998 | Mercury poisoning of rare bird of prey Steller's sea eagle |
| 10 Nov. 1998 | Two sea otters die from stress in aquarium |
| 25 Nov. 1998 | Report on rare species in Okinawa |
| 2 Oct. 1998 | Rare owl found in the development area |
| 3 Oct. 1998 | Problems relating to Introduced species |
| 18 Sep. 1998 | Aigo group requests to stop keeping animals at school |
| 3 Aug. 1998 | Over 200 rare bats found dead |
| 26 Jan. 1999 | Fujisaki Marshland landfill plan abandoned |
| 25 Jan. 1999 | Environmental Impact Assessment for Tokyo Bay landfill plan reveals serious threats to wildlife |
| 13 Jan. 1999 | "Rights of Nature" lawsuit for dam construction plan in Hokkaido |
| 19 Feb. 1999 | Revision of Red Data Book |
| 17 Mar. 1999 | Development plan abandoned in Hokkaido |
| 2 Feb. 1999 | Illegal import of endangered species |
| 7 Apr. 1999 | Access restriction to protect rare plants in Hokkaido mountain |
| 11 Apr. 1999 | Increase in illegal import of eels |
| 24 Apr. 1999 | Illegal capture of rare species in Kagoshima for display |
| 1 May. 1999 | Development plan and rare bird |
| 24 May. 1999 | Dam construction suspended for rare species of bird |
| 2 Jun. 1999 | Pet shop owner arrested for the illegal sale of tortoises |
| 28 Jun. 1999 | Rare birds of prey and development plans |
| 1 Jul. 1999 | Illegal import of orang-utans |
| 4 Jul. 1999 | Expo plan and birds of prey |
| 5 Jul. 1999 | Smuggling orang-utan |
| 6 Jul. 1999 | Smuggling orang-utan |
| 7 Jul. 1999 | Smuggling orang-utan |
| 15 Jul. 1999 | Smuggling orang-utan |
| 21 Nov. 1999 | <i>Aigo</i> Law |
| 21 Nov. 1999 | Damage to the protected tree in Yakushima |
| 1 Nov. 1999 | Import restriction on monkeys for disease controls |
| 2 Dec. 1999 | Troubles caused by black bears in Western Japan |
| 24 Aug. 2000 | US considers trade sanction in response to the expansion of scientific whaling by Japan |
| 19 Sep. 2000 | IUCN recommends the conservation of dugong in Okinawa |
| 17 Sep. 2000 | Whaling |
| 25 Nov. 2000 | Problems relating to introduced species |
| 24 Dec. 2000 | Research institutes bought Japanese macaques kept illegally |
| 25 Dec. 2000 | Illegal capture of Japanese macaques |
| 3 Mar. 2001 | Environment Impact Assessment |
| 3 Mar. 2001 | Landfill in Isayaha Marshland |
| 5 Feb. 2001 | Man arrested for killing of over 10 cats |
| 4 Feb. 2001 | Concern over primates |
| 17 Feb. 2001 | Bull fighting |
| 3 Mar. 2001 | Okinawan town introduces the registration of domestic cats to protect rare cat species |
| 19 Apr. 2001 | Illegal sale of two rare species of reptile on the internet |

Appendix 4 Glossary of Japanese Terms

| | |
|----------------------|---|
| <i>Burakumin</i> | The people who had been traditionally discriminated against during feudal times |
| <i>Doubutsu kuyo</i> | A memorial service for dead animals |
| <i>Doubutsu-aigo</i> | Animal loving and protection |
| <i>Goshinboku</i> | Sacred trees |
| <i>Inari shrine</i> | Fox shrine |
| <i>Kami</i> | Deity or spirit in Shinto |
| <i>Kojiki</i> | Records of Ancient Matters |
| <i>Kokoro</i> | Heart or mind |
| <i>Kuyo</i> | A memorial service |
| <i>Mujo</i> | Impermanence |
| <i>Nihongi</i> | Chronicles of Japan |
| <i>Nihonjin-ron</i> | Commentary on the Japanese |
| <i>Nihonteki</i> | Japanese |
| <i>Satoyama</i> | Mountain in which nature is 'secondary' and human-influenced |
| <i>Sessho</i> | Killing |
| <i>Shamisen</i> | A three-stringed Japanese banjo |
| <i>Shizengaku</i> | Study of Nature |
| <i>Tatari</i> | Curse |

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