

PUBLIC PARTICIPATION IN INTERNATIONAL ENVIRONMENTAL DECISION MAKING

The panel was convened at 11:00 a.m. by its Chair, Hilary French, Vice President for Research, World Watch Institute, Washington, D.C., who introduced the panelists: Steve Charnovitz, Director, Global Environment and Trade Study, Yale University, New Haven, Conn.; Marc Levy, Center for Environmental Studies, Williams College, Williamstown, Mass.; and David Schorr, Senior Program Officer, World Wildlife Fund, Washington, D.C.

LEARNING FROM EARLY NGO ACTIVITY

by Steve Charnovitz

This panel examines the role of non-state actors in the formation, interpretation and enforcement of international environmental law. Although some analysts perceive the involvement of nongovernmental organizations (NGOs) as a relatively new phenomenon, I suggest that NGOs have always been involved in international environmental policy making.¹ Looking back at this history is important both for gaining an understanding of the potential contributions of NGOs and for assessing their relative strengths and weaknesses.

The best way to present my thesis is through a case study. So I would like to look back seventy-five years to the establishment of the first global environmental NGO. I will start by telling the story of this institution and then discuss some implications for contemporary scholarship of non-state actors.

Spearheading Bird Protection

The International Committee for Bird Preservation (ICBP) was founded in 1922.² The impetus for establishing such an NGO came from T. Gilbert Pearson, president of the (U.S.) National Association of Audubon Societies. The object of the ICBP was "to stimulate interest in all countries for a more adequate protection of wild bird-life."³ The Committee consisted of delegates nominated by bird protection societies in various countries. From its inception, the ICBP operated as a transnational actor.

The ICBP met in conference every few years. The first such gathering took place in 1923 alongside the International Congress for the Protection of Nature Sites and Natural Monuments. By 1924, NGOs in eighteen countries were associated with the ICBP. These included the United States and eight countries that are now members of the European Union (EU), as well as Australia, Canada, Czechoslovakia, Hungary, Japan, New Zealand, Norway, South Africa and Switzerland. For example, the WildLife Preservation Society of Australia, the Japan Cage Bird Club, the New Zealand Native Birds Protection Society and the Wild Bird Preservation Society of South Africa were ICBP members. The U.S. members included the American Ornithologists' Union, the American Game Protective Association, the Cooper Ornithological Club, the Camp Fire Club of America, the National Association of Audubon

¹See Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 206-08, 235-36, 239-41, 247-48, 256-57, 260-61 (1997).

²This historical account was synthesized from THOMAS GILBERT PEARSON, ADVENTURES IN BIRD PROTECTION (1937); 1 BULL. INT'L COMMITTEE FOR BIRD PROTECTION (1927); 2 BULL. INT'L COMMITTEE FOR BIRD PRESERVATION (1929); 3 BULL. INT'L COMMITTEE FOR BIRD PRESERVATION (1931); 4 BULL. INT'L COMMITTEE FOR BIRD PRESERVATION (1935); LEAGUE OF NATIONS, HANDBOOK OF INTERNATIONAL ORGANISATIONS 45 (1938). The ICBP is now known as Birdlife International.

³4 BULL. INT'L COMMITTEE FOR BIRD PRESERVATION 4 (1935).

Societies and the National Conference on Outdoor Recreation. Delegates included both men and women.

The dual structure of the ICBP enabled it to operate at different levels of governance. The ICBP conference focused on the need for international cooperation and international law. The national sections pursued better domestic regulations and enforcement. For example, in the early 1920s the Australian societies became concerned about the destruction of domestic birds. In response, the Government of Australia prohibited the export of birds except under permit. After bird societies expressed concern that too many permits might be issued, the government agreed to participation by these NGOs on an advisory committee.

The second conference of the ICBP was held in 1925 alongside the International Congress for the Study and Protection of Birds. The ICBP proposed a resolution to the Congress urging all nations that had not already done so “to prohibit the killing, export, import, and sale of the feathers of wild birds.” This resolution was adopted. It noted that killing birds for millinery purposes was “not only inhumane” but had already resulted in the extermination of certain species over parts of their range.⁴

In May 1928, the ICBP held its third conference, this time in Geneva. Sixteen papers were read about bird protection efforts in particular countries. There were observers present from two international organizations—the League of Nations and the International Institute of Agriculture. The conference approved several recommendations for both “unofficial” and “official” action.

The recommendations for unofficial action are what one might expect. One recommendation was that bird sanctuaries be created in every country. Another was that birds not be hunted during the mating season. A third was that schools increase their efforts to educate the public about the names, appearance and usefulness of birds.

The recommendations for official action are surprising, at least to analysts unaware of the activism of environmental NGOs in the interwar period. The ICBP prefaced its recommendations by noting that because the vast majority of birds are migratory, “international action is necessary if protection is to be really effective.”⁵ The two major recommendations were:

1. Either the League of Nations or the International Institute of Agriculture should convene a conference of governments to negotiate a new bird protection convention that would prohibit most shooting and trapping during the spring and summer.
2. An intergovernmental conference should be summoned for the purpose of drawing up an international convention on oil pollution in navigable waters that would take into consideration the great losses in bird populations resulting from this problem.⁶

The conference laid out a strategy for promoting the two recommendations. The chair of the ICBP would ask the Secretary-General of the League to bring the recommendations to the attention of the League Council. Concurrently, the ICBP’s national sections would communicate the recommendations to their national governments and seek action. This strategy was followed, but without results. It is interesting to note that Professor Manley O. Hudson assisted Mr. Pearson in establishing contact with the League Secretariat.

The fourth conference of the ICBP was held in 1930 alongside the International Ornithological Congress. The ICBP adopted several resolutions that were also approved by the Congress. One of the resolutions called for governments to stop subsidizing the killing

⁴1 BULL. INT’L COMMITTEE FOR BIRD PROTECTION 19 (1927).

⁵2 BULL. INT’L COMMITTEE FOR BIRD PRESERVATION 4 (1929).

⁶*Id.* at 6.

of birds of prey. For example, Alaska's territorial government had been paying a one dollar bounty per dead bald eagle. Another resolution called on governments to require oil separators on ships in order to safeguard seabirds from harmful oil discharges. Yet another resolution urged governments in Europe and North Africa to prohibit international trade in quail for at least three years. In addition, the ICBP appointed a subcommittee to prepare recommendations for new measures to protect birds in Europe.

In 1931, the subcommittee was invited to consult with the Government of France regarding the drafting of international measures to address oil discharges and to protect migratory birds along coastlines. The French Government took the lead because it had spearheaded the existing multilateral treaty on birds—the International Convention for the Protection of Birds Useful to Agriculture (of 1902).⁷ Besides attendees from the French Government and the subcommittee, there were also representatives from the Swiss Government, the International Office for the Protection of Nature and the Federation of French Groups for the Protection of Birds. The consultations yielded specific recommendations regarding oil discharges, the hunting of migratory birds and the dangers of lighthouses to birds. The French Government transmitted these recommendations to other European governments.

The fifth conference of the ICBP occurred in 1934 alongside the International Ornithological Congress. NGOs from sixteen countries took part. The national reports noted progress in establishing bird sanctuaries and prohibiting spring shooting.

The sixth conference of the ICBP was held in 1935. In addition to the NGO members, participants included representatives from seven governments and the International Hunting Council. Several resolutions were approved. One proposed that governments prohibit “the importation of certain birds from countries where they have no adequate protection.” Another resolution suggested that national sections employ “modern means of propaganda, particularly the radio and the cinema, in their efforts to awaken interest in the protection of birds.”⁸ It is interesting to note that Pearson, the founder and perennial chair of the ICBP, wore a second hat at the meeting as the representative of the U.S. Government.

By 1938, the ICBP was drawing members from NGOs in twenty-seven countries, including Argentina, Ecuador and Mexico. For example, the Mexican Forestry Society was a member organization.

Lessons from the ICBP

By 1922, it had long been recognized that an international problem—such as the loss of migratory birds—required an international solution. But the ICBP grew out of a deeper recognition. Pearson and the others saw that private nature societies from around the world could work together to catalyze international lawmaking. Since labor NGOs and business NGOs had been doing this for many years, Pearson copied their two-level organizations. The international NGO would lobby intergovernmental organizations and governments collectively. The national sections would work at home to push their governments in the right direction. In other words, it was the classic squeeze play.

Looking back, one cannot fail to be impressed with the ICBP's policy initiatives and its organizational techniques. The ICBP pushed for treaties to regulate oil discharges from ships and to regulate bird hunting. In the short period covered here, these ICBP goals were not fulfilled. It was not until 1950 that governments negotiated the International Convention for the Protection of Birds,⁹ which accomplished most of what the ICBP wanted. It was not until

⁷Mar. 19, 1902, 191 Consol. T. S. 91.

⁸4 BULL. INT'L COMMITTEE FOR BIRD PRESERVATION 13–14 (1935).

⁹Oct. 18, 1950, arts. 2–5, 638 U.N.T.S. 185.

1954 that governments negotiated the International Convention for the Prevention of Pollution of the Sea by Oil.¹⁰ Yet it seems likely that ICBP efforts helped to build the coalition that eventually got these treaties approved.

The ICBP also recognized that its target audience was not just governments but individuals too. Although the ICBP held its 1928 conference in Geneva in an effort to draw the attention of the League of Nations, the conference also addressed some recommendations to the general public.

Another striking feature of the ICBP program was its advocacy of using trade measures to protect birds. Nowadays, many exponents of international trade law would claim that governments may not prohibit "the importation of certain birds from countries where they have no adequate protection."¹¹ The ICBP's attention to efforts to eliminate environmentally harmful subsidies is also notable because this issue is now on the agenda of the World Trade Organisation's Committee on Trade and Environment.

The organizational techniques pioneered by the ICBP remain valid today. Indeed, it is not too much to say that the Committee wrote the playbook that guides numerous contemporary international environmental NGOs. Consider these four points. First, the ICBP served as a clearinghouse for information supplied by its national sections. Second, the ICBP did not allow itself to be merely a transatlantic NGO. Taking into account that much of Africa was represented by colonial governments, the ICBP's membership appears broad based. Third, although it was an advocacy organization, the ICBP maintained its links to scientists, often by holding its conferences at the same time and place as an international scientific meeting. Fourth, the ICBP recognized the importance of shaping public opinion as an instrument of coalition building. At the 1928 Geneva meeting, Chairman Pearson asked: "[S]hould we not inaugurate and carry forward more intensive campaigns of education, calling upon the newspapers and magazines to aid us? . . . Will we not accomplish more just at this time by taking our cause directly to the people than relying wholly on the ability of our limited numbers to storm legislative citadels?"¹²

Many analyses of environmental NGOs begin with the United Nations' Stockholm Conference on the Human Environment, held in 1972 (or even more myopically, the UN Conference on Environment and Development, held in Rio de Janeiro in 1992). Yet, in working from such a limited perspective, scholars miss many key episodes that underlie the construction of international environmental institutions and the formulation of international environmental law. If we pose the question as "What role should NGOs be given in international environmental decision making?" we assume that such decision making could occur *without* NGOs, and we presuppose that there was a time (maybe a golden era) when governments addressed environmental problems without NGOs. My research suggests that international environmental decision making has always occurred *with* the involvement of NGOs. This insight does not make NGOs wiser or more constructive. But it does suggest that we can learn more about what NGOs might do by looking at what they have already done.

¹⁰May 12, 1954, art. III, 12 U.S.T. 2989, TIAS 4900.

¹¹*Id.* at 14.

¹²2 BULL. INT'L COMMITTEE BIRD PRESERVATION 10, 14 (1929).