



**Exposé des Dissertationsvorhabens mit dem Arbeitstitel:**

„Conventions and Continuities: International Heritage in the Postcolonial Landscape“

Verfasserin:  
Jennifer Kelleher LL.B., LL.M.

angestrebter akademischer Grad  
Doktorin der Rechtswissenschaften (Dr. iur.)

Studienkennzahl lt. Studienblatt: A 783 101

Dissertationsgebiet lt. Studienblatt: Rechtswissenschaften (Law of Culture)

Betreuer: ao. Univ.-Prof. Mag. Dr. Wolfgang Wieshaider

I. Introduction	3
II. Elaboration of the research problem: Key claims and research questions	4
III. Methodical Approaches	4
IV. Development of the Dissertation	5
(I) Part One - Research Question 1	5
(II) Part Two - Research Question 2	5
(III) Part Three - Research Question 3	6
V. Proposed Dissertation Layout and Table of Contents	6
VI. Doctoral Studies Timeline	7
VII. Selected Bibliography	8

## I. Introduction

Protected areas are geographically defined areas designed to protect the environment from the excesses of the Anthropocene<sup>1</sup>. Their use to mitigate and prevent biodiversity loss seems a practical, moral and commendable necessity. Yet, safeguarding biodiversity via the means of protected areas and the ensuing question of how to preserve, conserve, manage or sustainably use its components presents a complex problem. In the African context, protected areas have long been used as a tool to regulate the consumptive use of biodiversity rich areas<sup>2</sup>. Indeed, it was in colonial Africa that conservationist thinking and protected areas first emerged as a legal tool in response to the exploitation of natural resources<sup>3</sup>. Problematically, these early laws reimagined the African landscape as a place where nature and people were dichotomous concepts, drawing lines across landscapes, delineating those inside and out. Early protected areas therefore changed the way land and the natural resources therein were regulated, protected and used; and this contributed to the destruction of indigenous and local systems of land tenure, the displacement and impoverishment of pastoralist and hunter-gatherer communities, a consequential extinguishing of customary laws, cultural practices, traditional ways of life and a loss of vernacular environmental knowledge<sup>4</sup>. The term 'protected area' thus becomes a loaded term, one that is synonymous with occidental conservationist thinking, and, attempts to categorise nature and diminish and limit the power and participation of local communities.

A new conservation governance model has thus emerged that ushers in an approach to nature conservation that is more inclusive and participatory for local communities living in or adjacent to conservation areas. What was once considered the remit of the privileged, an exercise in exclusion and injustice, has given way to new people-centered ethics and initiatives, through various methods of inclusion and benefits for local people. Since many global biodiversity hotspots are located in developing countries<sup>5</sup>, there is a twofold challenge. The conservation imperative collides with an

---

<sup>1</sup> Paul Crutzen, 'Anthropocene Man' (2010) 467 *Nature*, 751

<sup>2</sup> Alexander Gillespie, *Protected Areas and International Environmental Law*, (Martinus Nijhoff 2012) 7

<sup>3</sup> R.H. Grove, „Early Themes in African Conservation; The Cape in the Nineteenth Century,“ in D. Anderson and R.H. Grove, *Conservation in Africa; People, Policies and Practice*, Cambridge, 1987, 21. See also R.H.Grove, “Conserving Eden: The (European) East India Companies and Their Environmental Policies on St. Helena, Mauritius and in Western India, 1660 to 1854, 320: „It was the “colonial enterprise (that) helped to create a context conducive to rigorous analytical thinking about the processes of ecological change and to the formation of a conservation ideology”, also Grove, R., *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600-1800*, Cambridge University Press 1995, 40

<sup>4</sup> “The establishment of protected areas and national parks has impoverished indigenous pastoralist and hunter-gatherer communities, made them vulnerable and unable to cope with environmental uncertainty and, in many cases, even displaced them”. ACHPR and IWGIA, Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, Adopted by the African Commission on Human and Peoples’ Rights at its 28th ordinary session, (Transaction Publishers 2005), 20

<sup>5</sup> <http://www.conservation.org/How/Pages/Hotspots.aspx> accessed September 30 2016

urgent impetus to develop regions in the name of poverty alleviation and socio-economic progress, oftentimes where previous displacement and impoverishment took place. The new conservation paradigm therefore, entails a delicate balancing of goals, to not only conserve biodiversity, but to do so by embracing the inclusion of local often vulnerable communities.

## II. Elaboration of the research problem

Although, international biodiversity law is subject to ongoing revision and integration of new ideologies, conservationist norms are practices, I argue, that are deeply embedded in the colonial state. It was in colonial Africa that the world's first international conservation instrument was drafted, and here that when the colonies tumbled out of empire, that the new sovereign states signaled their commitment to international standards of conservation. This critical perspective is intended to garner a better understanding of how the protection of biodiversity through conservation became internationalised and thereafter the gold standard for international respectability. In their article on the concept of plunder, Mattei and Nader articulate their desire to not argue against the rule of law but rather to obtain a better understanding of it by analysing it as a powerful, political weapon and as a Western cultural artefact that cements its status and dominance.<sup>6</sup> This study intends to accomplish the same with conservation law.

Of the five major international biodiversity conventions of interest, one of them shall remain the focus and provide the fabric for analysis for this study, namely the World Heritage Convention (WHC)<sup>7</sup> 1972. The **research questions**, which divide the dissertation into its three separate parts, are:

1. To what extent does the WHC reflect colonial and disharmonious international values? What legal tensions and challenges arise on implementation into the national arena?
2. How can these instruments be safely and effectively *decolonised*? How does this 'new' conservation governance model provide a framework for decolonisation?
3. Can these colonial and decolonising frameworks be practically illustrated?

## III. Methodical Approaches

The dissertation is a mix of three methodical approaches. Firstly, it is based on a classic legal approach, a desk-study that contemplates the collection of laws and regulations, not only of international natural and cultural heritage law internationally but their implementation on the national level. Secondly, this will be supplemented by historical research of international natural

---

<sup>6</sup> See: "We are not moved by the desire to argue against the rule of law. We only wish to gain a better understanding of this powerful political weapon, to question its almost sacred status, by analyzing it as a Western cultural artefact, closely connected with the diffusion of Western political dominance", in Mattei/Nader, *Plunder: When the Rule of Law is illegal*, (Blackwell 2008) p. 11.

<sup>7</sup> U.N. Convention Concerning the Protection of World Cultural and Natural Heritage, Nov. 23, 1972, 1037 U.N.T.S. 151 (entered into force December 17, 1975)

and cultural heritage law from 1900 to date. Thirdly, these two narratives will be complemented by a compendium of knowledge and fieldwork, compiled in a world heritage site, which represents voices from the local community positioned adjacent and inside the park. These three narratives will intertwine throughout the paper with the purpose of revealing the inherent tensions between the three perspectives of law, history and local voices.

## **IV. Development of the Dissertation**

The three research questions, as aforementioned, divide the thesis into three separate parts. Each part consists of two chapters each, and, attempts to contribute as a whole to finding a way forward for biodiversity/heritage law to engage more meaningfully in the local space. The lead-in chapter, the **Introduction**, will include the research questions, objectives of the study, the methodology and the theoretical framework.

### **(I) Part One - Research Question 1**

**To what extent does the WHC reflect colonial and disharmonious international values? What legal tensions and challenges arise on implementation into the national arena?**

**Chapter One** will be comprised of historical research looking at the colonial preservation and conservation instruments namely, the 1900 Convention and the 1933 Convention, the formation of the notion of common heritage and the ‘products’ of protecting it (laws, institutions, codes, scholarly writings). **Chapter Two** will seek to discuss how the concept of global heritage grew out from these early instruments and what continuities of governance occur. A further aspect to this is to examine how the normative legal frameworks became part of the international normative discourse, what Pahuja calls the “operationalization of universality”.<sup>8</sup> It will also attempt to comment on how the WHC behaves once it transforms into national law, and the legal tensions that arise.

### **(II) Part Two - Research Question 2**

**How can biodiversity conventions be safely and effectively decolonised? Does the ‘new’ conservation governance model provide a framework for decolonisation?**

Decolonising conservation law therefore speaks to the issues of participation, power and understanding conflicting values. It should address power and authority, laws, land rights and use, knowledge systems and local values. **Chapter Three** will examine the general recognition in

---

<sup>8</sup> Pahuja, S., *Decolonising International law Development, Economic Growth and the Politics of Universality*, Cambridge University Press 2011, p.16

international law of indigenous peoples and local communities' rights in the context of nature conservation. It will examine and analyse the innovative approaches to land tenure, use and management that have arisen, particularly in postcolonial settings. In **Chapter Four** an innovative governance model is suggested.

### **(III) Part Three - Research Question 3**

#### **Can these colonial and decolonising frameworks be practically illustrated?**

By conducting fieldwork in world heritage site, I will attempt to illustrate how the new conservation governance model embraces and includes local communities in a protected area. **Chapter Five** will apply the suggested governance model to this world heritage site. **Chapter Six** will contain an analysis of the implementation of same, and discuss and analyse the findings of the fieldwork. The **Conclusion** will comprise of a lead-out chapter of conclusions, wrap-up and possible recommendations.

## **V. Proposed Dissertation Layout and Table of Contents**

Introduction: Outline and Structure

PART A: The Coloniality of Biodiversity Law

- I.** The Historical Narrative
- II.** Global Heritage Sites in the Local Landscape

PART B: Decolonising Conservation Law

- III.** Anatomy of an Approach
- IV.** Designing a Governance Model: Equity and the Rights Based Approach

PART C: iSimangaliso Wetland Park (iSWP): Case in Point

- V.** Introduction and Background
- VI.** Applying the model

Conclusions/Lead-out chapter

## VI. Doctoral Studies Timeline

Time	Activity
2012 WS	Österreichisches Sprach Diplom B2 KU Methodenlehre SE Judikaturanalyse
2013 SS	KU International Environmental Law Austrian Constitutional Law Austrian Civil Law
July 2013	Presentation of the research topic at the International Conference Society of Legal Scholars, Edinburgh, UK
2013 WS	Development of research idea and methodology Independent research on the history of international conservation law and the development of environmental ethics in law Independent research on African history (1880 – 1968)
2014 SS	SE Human Rights Independent research on international Human Rights regimes with a special focus on traditional communities
2014 WS	Research and teaching visit to Ocean University China, Qingdao, China
2015 SS	Independent research on Rights Based Approaches (RBA)
2015 WS	Independent research on the application of RBA in Africa
2016 SS	Field trip to a UNESCO world heritage site: iSWP
2016 WS	Data analysis and draft submission
2017 SS / WS	Final draft submission and public defensio

## **VII. Selected Bibliography**

### **Table of Instruments**

#### **International**

Convention for the Preservation of Wild Animals, Birds and Fish in Africa, 19th May 1900

Convention Relative to the Preservation of Fauna and Flora in their Natural State, London, 8th November 1933

Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Washington), 12th October 1940

Charter of the United Nations, San Francisco, 1945

African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968

Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972

U.N. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243 (entered into force July 1, 1975).

African Charter on Human Rights and People's Rights, Banjul, 20 June 1981

Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar (Iran), 2 February 1971. UN Treaty Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987.

ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989

Convention on Biological Diversity, Rio de Janeiro, 5 June 1992

#### **National (South Africa) (in chronological order)**

St. Lucia Game Reserve Provincial Notice 16 of 1897, 74 of 1916, 59 of 1917, 108 of 1935, 140 of 1939 and 35 of 1939

Mkuzi Game Reserve Provincial Notice 23 of 1912, 28 of 1912, 74 of 1916, 57 of 1917, 266 of 1918, 14039 and 131 of 1941 of 19

St. Lucia Bird Sanctuary Provincial Gazette proclamation 7 of 1927

Government Notice 1479 of 1930 (establishing the Dukuduku State forest)

Natal Provincial Notice 108 of 1938 (proclaiming the St. Lucia Game Reserve)

Natal Ordinance of 1939 establishing the Natal Parks Board

Natal Ordinance 35 of 1947 establishing the Natal Parks Game and Fish Preservation Board



Marine Living Resources Act (18 of 1998);

National Forests Act (84 of 1998);

National Environmental Management Act (107 of 1998);

World Heritage Convention Act (49 of 1999);

National Heritage Resources Act (25 of 1999);

National Environmental Management: Protected Areas Act (57 of 2003)

National Environmental Management: Biodiversity Act (10 of 2004)

### **Monographs:**

Adam, Rachelle, *Elephant Treaties: The Colonial legacy of the Biodiversity Crisis* (University Press of New England Hanover and London 2014)

Adams, Jonathan, *The Myth of Wild Africa: Conservation Without Illusion* (University of California Press 1992)

Ax, C., Brimnes, N., Jensen, N., Oslund, K. (eds), *Cultivating the Colonies: Colonial States and Their Environmental Legacies* (Ohio University Press 2011)

Beinart, W. and Coates, P., *Environment and History, The Taming of Nature in the USA and South Africa* (Routledge 1995)

Beinart, W and Hughes L, *Environment and Empire, Oxford History of the British Empire Companion* (Oxford University Press 2009)

Büscher, B., *Transforming the Frontier: Peace Parks and the Politics of Neoliberal Conservation in Southern Africa* (Durham: Duke University Press 2013)

Campese, J, Sunderland TCH, Greiber, T, Oviedo, G (eds) *Rights-based approaches Exploring issues and opportunities for conservation* (Center for International Forestry Research (CIFOR) and and The International Union for Conservation of Nature (IUCN), Bogor, Indonesia 2009)

Desmet, Ellen, *Indigenous Rights Entwined with Nature Conservation* (Intersentia 2011)

Dudley, N. (ed.), *Guidelines for Applying Protected Areas Management Categories* (IUCN Switzerland 2008)

Greiber, T., Janki, M., Orellana, M., Savaresi, A., Shelton, D., *Conservation with Justice: a Rights Based Approach, IUCN Environmental Law and Policy Paper No. 71* (IUCN 2008)

Grove, R., *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600-1800* (Cambridge University Press 1995)

Kale, Steinar & Brinkmann, Svend, *Interviews Learning the Craft of Qualitative Research Interviewing* (Sage Publications Inc. 2009)

Lausche, B., *Guidelines for Protected Areas Legislation IUCN Environmental Policy and Law Paper No. 81*, (IUCN 2011)

MacKenzie, J.M. (ed), *Imperialism and the Natural World*, (Manchester University Press 1990)

Mattei/Nader, *Plunder: When the Rule of Law is Illegal*, (Blackwell 2008)

Nustad, K. G. *Creating Africas Struggles over Nature, Conservation and Land*, (C. Hurst & Co. Publishers Ltd. 2015)

Perissinotto, Renzo, Stretch Derek D., Taylor Ricky H. (eds) *Ecology and Conservation of Estuarine Ecosystems Lake St. Lucia as a Global Model*, (Cambridge University Press 2013)

### **Book Chapters:**

Chatty, D. and Colchester, M., Conservation and Mobile Indigenous Peoples in Chatty, D. and Colchester M. (eds.) *Displacement, forced settlement, and Sustainable Development*, Berghahn Books, New York, Oxford 2002, p.1-20.

Hodge J 'Colonial Experts, Developmental and Environmental Doctrines, and the Legacies of Late British Colonialism' in Ax C., Brimnes N., Jensen N., Oslund K, (eds) *Cultivating the Colonies: Colonial States and Their Environmental Legacies*, Ohio University Press 2011, p.300.

### **Journal Articles:**

Couzens, E., 'The influence of English poaching laws on South African poaching laws' *Fundamina: A Journal of Legal History*, vol.9, 2003, p.62.

Wöbse, Anna-Katharine, 'The world after all was one': The International Environmental Network of UNESCO and IUPN, 1945-1950, *Contemporary European History*, 20 2011, pp 331-348.

Wynberg, R., 'A Decade of Biodiversity Conservation and Use in South Africa: Tracking progress from the Rio Earth Summit to the Johannesburg World Summit on Sustainable Development' *South African Journal of Science*, vol. 98 2002, p.1.