
INTERNATIONAL TRAFFIC IN ANIMALS AND PROTECTION OF DIGNITY

Florisbal de Souza Del'Olmo

Post-doctorate in Law from UFSC (2008), Doctor of Law from UFRGS (2004), Master of Law from UFSC (1999), Specialist in Law from Santo Ângelo Higher Education Institute (1996) and Law Degree from the Faculty of Right of Saint Ângelo (1987). Specialist in Education from the Integrated Regional University of Alto Uruguay and the Missions (1986). Graduated in Dentistry by UFRGS (1966). He is currently Professor of the Stricto Sensu Post-Graduate Program in Law - Master and Doctorate and the Graduate of the Integrated Regional University of the High Uruguay and the Missions (URI), Santo Ângelo campus and guest professor at the Federal University of Rio Grande do Sul (UFRGS). Leader of the CNPq Research Group on Rights and Effectiveness, created in 2002.

Email: florisbaldelolmo@gmail.com

Mário Miguel da Rosa Muraro

Ph.D. in Law in the PPGD of the Integrated Regional University of Alto Uruguay and Missions (URI), Santo Ângelo Master in Law from the University of Santa Cruz do Sul (UNISC). Specialist in Law Federal University of Santa Maria (UFSM). Professor of Law at the University of Caxias do Sul, Campus Universitário de Vácara, RS. Member of the CNPq Research Group on Rights and Effectiveness and participant in the Research Project International Labor Law and the rescue of dignity and citizenship.

E-mail: mario@muraro.adv.br

ABSTRACT

The defense of biodiversity and the attributes concerning Dignity take on new contours with the advent of postmodernity. Using as an approach the hypothetical-deductive method and, as procedural the monographic study, we seek to analyze the criminal protection resulting from the crime of international trafficking in animals. Through the expansive conception of the concept of Dignity and its scope for nonhuman species, the study highlights the aspect in constituting a sensitive change for the protection of fundamental rights. The consideration that the right to a healthy natural environment and protection of all species is a measure of protection of Dignity and that this constitutes a superior legal order applicable to all living species of the planet emerges from the text. The amendment of the law on environmental crimes, suggesting new criminal types to address such a serious situation is the measure indicated. Innovation greatly influences the new way of thinking law, not as a watertight system, but

rather capable of meeting new social demands and, among them, the protection of all living species. The do and think Right embraces the adoption of measures not yet applied to meet unmet circumstances.

Keywords: Animal Trafficking; Biodiversity; Dignity.

*O TRÁFICO INTERNACIONAL DE ANIMAIS
E A PROTEÇÃO DA DIGNIDADE*

RESUMO

A defesa da biodiversidade e os atributos concernentes à Dignidade adquirem novos contornos com o advento da pós-modernidade. Utilizando como abordagem o método hipotético-dedutivo e como procedimental o estudo monográfico, buscamos analisar a proteção penal decorrente do crime de tráfico internacional de animais. Através da concepção expansiva do conceito de Dignidade e sua abrangência para espécies não humanas, o estudo realça o aspecto em constituir alteração sensível para a proteção dos direitos fundamentais. A consideração que o direito ao ambiente natural sadio e proteção de todas as espécies é medida de proteção da Dignidade e que esta se constitui em um metaprincípio aplicável a todos as espécies vivas do planeta emerge do texto. A alteração da lei de crimes ambientais, sugerindo novos tipos penais para atender tão grave situação é a medida indicada. A inovação influi sobremaneira na nova forma de pensar o Direito, não como um sistema estanque, mas sim capaz de atender novas demandas sociais e, entre estas, a proteção de todas as espécies em convivência. O fazer e pensar Direito abriga a adoção de medidas ainda não aplicadas para atender circunstâncias não atendidas.

Palavras-chave: Tráfico Animais; Biodiversidade; Dignidade.

INTRODUCTION

This article seeks to examine the concepts related to biodiversity, Dignity¹ human and nonhuman, as well as the conceptual extension of the dignified life to nonhumans, in the case under analysis, the criminal protection of the Brazilian fauna in the face of the constant occurrence of the international trafficking of animals. The necessary conceptual change on Dignity and its applications to nonhumans is at the point of current discussion since the coexistence and protection of biodiversity punctuate discussions about protecting the planet as a complex and life-bearing entity. The consideration and recognition of the development of environmental awareness and the appreciation of life as a global entity, encompassing all species in search of harmonious coexistence is a measure to face the subject matter.

Dignity, constituting a fundamental principle and basic reference for a democratic constitutional application, cannot be dissociated from the development of the protection of all living species, enabling the effective realization of the constituent aspects of the concepts of humanity and the positioning of man as an active entity in the protection of biodiversity, development of an effective citizenship and in keeping with the new reality of the planet in the protection of species.

To do this today requires a constant rethinking of concepts and definitions that no longer reach their initial goals, arising from the changes in interpersonal relations and the relationships of man with the nature that composes him².

Through a hypothetical-deductive approach and bibliographic study and the confrontation of operative paradigms in the Brazilian jurisdiction, a new analytical form of the traditional conception of citizenship is indicated, based on a new understanding of the extension of the concept of Human Dignity.

The conceptual analysis of biodiversity and the recognition of man as a component of it it becomes necessary for the understanding that

1 As a reference to what we consider the study's relevance, we will express Dignity as a basic principle in prominence with its initial capital, both referring to the human species and nonhuman species, to which we also attribute concepts of Dignity.

2 In this sense, we believe that the man is a complex composed of all natural characteristics and in which the elements represent their live appearances. Human complexity gives it an interactivity of senses and sensations resulting from its interaction with the biome that surrounds it.

human dignity does not materialize by distancing itself from the other living species of the planet, but rather composes the complexity of social life and must be conscious in all actions.

The mechanisms of protection of the fauna, in historical evolution, are sources of protection to animals and men, enabling the interaction of all species and respect for human life itself. The current stage of protection, especially through international treaties and the environmental crimes law (BRAZIL, 1998) marks a great advance, but it still has gaps to be observed for greater protection effectiveness.

International crime can no longer be considered in the face of national territorial spaces, so it is no longer the case. The media and people trafficking between countries change the conceptions of crime, especially when we address issues pertaining to international crimes. The analysis of the international trafficking of animals, its distinction for the irregular export offense and the absence of typical behavior are referential objects of the study.

Before we go to the final considerations, we will try to identify the atypical conduct classified as animal exports provided for in the Environmental Crimes Law, with consequent inexistence of effective criminal imputation, identifying the need to change the corresponding criminal type.

Analyzing the current understanding of biodiversity, the concepts and applications of the principle of Dignity and the international trafficking of animals, in a reflection that seeks to identify the circularity of life on the planet, is the object of this study. The necessary change of the paradigm regarding the respect and protection of Dignity of all living beings and the dimensional application of criminal law as a mechanism for the protection of transindividual rights in a complex social system from which the law cannot escape examination. This is not a final study but, according to the procedure, an examination of the current legal provisions and indications for changing pre-conceptual standards often not technically clarified.

1 BIODIVERSITY AS A COMPONENT OF THE DIGNITY OF LIVING BEINGS

The changes arising from postmodernity³ require stern observation regarding the new forms of recognition and relationship between man and other living beings on the planet. Earth no longer constitutes a planet dissociated from its biodiversity and human survival is increasingly codependent of the survival of the other species. Analyzing this aspect of life is relevant to the understanding of the central theme, especially the construction of new paradigms in relation to nonhuman species.

1.1 Biodiversity: conceptual aspects of modernity

The changes arising from conceptualization and neo-understanding⁴ on the diversity of planetary life generate what Morin and Kern (1993, p. 78) identify as a “multiform process of degradation of the psychosphere, ie, of our mental, affective and moral lives” constituting such a situation as a producer of circular consequences in a chain, an irreflexive circularity and capable of dulling the understanding of psychosocial relevance.

There is a consistent manifestation of Cervi and Cervi (2016, p. 75) about the necessary paradigmatic change is imposed in the current social stage. “[...] In these directions, the proposal of transition from the mechanistic or Cartesian paradigm to the ecological paradigm emerged, constituting itself in a process that is occurring in different forms and speeds in the various scientific areas “.

For the transition to take place, the spectre⁵ of education emerges as a mechanism to provide conditions for understanding and semantic evolution. In this aspect, postmodernity brings with it the new understanding of man as a component of a living system, that is, no longer centered on the anthropocentric characteristic, but rather on a

3 In this regard, the theoretical discussion of the effective presence of postmodernity in Brazil or the presence of a late modernity, revisiting the identification on the consideration that the concept of modernity and significant not materialized *in totum* in our country.

4 We refer as *neo-understanding* due to the significant social changes in relation to the recognition of the other species and the sustainability essential for the survival of the species on the planet.

5 We refer to *spectrum* for the purpose of identifying the ever present, but not understood in the integrality, need of education for equality.

systemic characteristic where man inserts himself into a network of life and interaction or, in the words of Cervi and Cervi (2016, p. 75) “[...] The substitution of values has been recognized by an ecological or holistic way of perceiving reality”, meaning the existential paradigm change by the emergence of the ecological paradigm as a differentiating reference point.

To conceptualize biodiversity is to resort to the classic concepts of the environment and its necessary re-adaptation to the modern perceptions about the theme ‘living existence’ on the planet. The denomination is due to the evolution of the segmented concepts discussed hitherto, often segregated, related to ecology, biology, and biogeography.

In this respect, the concept derived from the Convention on Biological Diversity adopted by Milaré (2007, p. 113) considers that “biological diversity means the variability of living organisms from all origins and ecological complexes of which they are part, diversity within species, between species and ecosystems”.

The protection of biodiversity and its consequences is echoed in discussions in the most varied areas of science and, in its broader conception, imposes a duty on the State to protect it. In this regard, Canotilho’s manifestation (2008, p. 181) states that “the idea of protection specifically referred to the environment means, first of all, that the State has the duty. “The understanding of the power-duty power is what we indirectly address in the following section.

1. 2 The protection of biodiversity and the survival of the planet

The conceptual and operational understanding of biodiversity makes it relevant to observe that the various species that make up the biosphere correlate, generating substantial interdependence for the purpose of planetary stability. In this regard, Milaré specifies the relevance of terminology in declaring that ‘biodiversity suggests a deeper, direct and essential linkage of individuals and species to the web of life in which they are inserted, better translating unity into plurality and plurality into unity’ (MILARÉ, 2007, p. 548).

It is sought in the adoption of new denominations not only to innovate in names but to qualify the approach and highlight the aspect

pertaining to the systemic understanding of the living set of the biosphere, that is, life is the complex of relations between all living beings, interdependent and coparticipants in global protection and development, as referred to by the United Nations (UN, 2015) Millennium Development Goals (MDGs).

The importance of respect for and protection of biodiversity is due to a basic need for survival of the human species, which, in the course of time, detaches itself from an egotistical anthropocentrism and begins to understand life as connected to other beings on Earth. In this essay, Leite and Bello Filho (2004, p. 206-208) identify the paradigm change by stating that “modernity is the inauguration of a great project for man, responsible for his life, for the destiny of humanity. “In the sequence of construction, the same authors identify the need arising from such a project, by punctuating “and that brings an ecological citizenship, which is characterized, fundamentally, in the harmonious relationship between men, animals, and plants.”

The complexity arising from postmodernity brings with it a network of questions about the meaning of human existence and the necessary overcoming of man’s vision as a center, passing to a relational and systemic view of the living components of the planet. An awareness of the dangers of an extractive and destructive culture of the planet, identified by Morin in expressing about the global problems that affect the planet and the great catastrophes generated by human exploitation, “since then, ecological consciousness has become an awareness of the global problem and the danger that threatens the planet. As Pelt quoted by Morin and Kern (1993, p. 80), ‘Man destroys, one by one, the defense systems of the planetary organism’⁶.

Studying biodiversity presupposes, in an indirect way for some, but essentially for all, to observe the intrinsic needs of all living beings, including the human species, in preserving conditions worthy of coexistence and development, under penalty of perishing of the most earthly species weak, and in our view, save for any exceptions, the human species is not among the most capable of surviving a planetary collapse.

⁶ Free translation by the authors of “desde entonces, la consciencia ecológica se ha convertido en la toma de conciencia del problema global y del peligro global que amenazan al planeta “As Jean-Marie Pelt states, ‘El hombre destruye, uno a uno, los sistemas de defensa del organismo planetario’

2 THE PRINCIPLE OF DIGNITY AND NON-HUMAN DIGNITY

The concept of dignity and its definition have been built throughout history and come to the 21st century full of meaning in itself, as a supreme value, built by legal reason (NUNES, 2002, p. 46).

The specific conception of Dignity is a complex situation, expressing writings on the “quality of the human being”, an open manifestation and varied interpretation. In this sense emerges the understanding that Dignity is not an appropriable concept, but a set of qualities and demonstration of respect for humanity, re-reading the Latin terminology “dignitate”, which means honesty, virtue, and consideration, transmuting it to broad application of all the “consideration” it deserves and which cannot be dissociated from the human being and their social and environmental relations⁷.

2.1 Dignity of human beings and their extension

In this broad sense, to guarantee Dignity is to guarantee one’s own human existence, “the” principle to be respected and imposed before majorities or state actions, possibility that the relational changes can receive due protection and constant adaptations of the evolving relationship framework of the man as a social and mutual being dependent on their environments, be they natural or artificial.

In another referential sense, when we approach Dignity as an attribute equally attributable to non-human species, we begin to consider the relevant alteration of social behavior in relation to the treatment of other living beings on the planet. In this study, in particular, the animals and their protection observed in the national territory, more specifically by the law of environmental crimes (BRASIL, 1998). The animal protection is the subject of numerous legislative manifestations received and sourced internally, with the recognition necessary to be the same objects of state protection.

Animal dignity does not manifest itself in express terms, daring to manifest a concept differentiated for it, but the act of the nonhuman being “dignified” of rights and, analogically, can be attributed to it, in

⁷ In this regard, we recommend reading SARLET, Ingo Wolfgang (org.). MAURER, Béatrice et al. *Dimensões da Dignidade – Ensaio de Filosofia do direito e Direito Constitucional*. 2. ed. 2. tir. Porto Alegre: Livraria do Advogado Editora, 2013.

recognition and social consideration, as well as mechanisms of protection, referring not only to domestic animals but also non-domesticated animals, wild and exotic.

Non-human beings began to enjoy appreciation and protection in the face of the necessary and indispensable protection for the balance and sustainable development of man and the natural environments of the planet⁸. Awareness of biodiversity and its necessary stability to safeguard earthly existence makes ecological consciousness an imposition of survival.

The Universal Declaration of the Rights of Animals (UN, UNESCO, 1997) emphasizes that “the recognition by the human species of the right to the existence of other animal species constitutes the basis for the coexistence of other species in the world” and also the consideration that “respect of men by animals is connected to the respect of men for their fellow men.”

Such devices, in our understanding, are not merely an expositive manifestation, but, considering the circumstances of applicability, the emanations of international law are binding on the Dignity of the human species itself. The indeterminacy of the legitimacy of protection of non-human beings has a different connotation, recognizing the same rights that have not been discussed before and imposing limits on their inadequate enjoyment by men⁹.

By specifying limitations and protective actions, the Declaration indirectly or even intrinsically constitutes the concept of Dignity to animals, imposing on man not only the respect of beings of his species but also the treatment and responsibility for nonhuman beings. As a result of this situation, we understand the existence of a higher attribute of Dignity - a master Dignity, supralegal, derived from values of life pertaining to planetary species and not only to men - embracing collective values to all living beings, later, it is apprehended by subspecies of life on earth, resulting from this aspect the manifestation on purpose that Dignity is also

⁸ In a similar sense, we published a peculiar study on the *habeas corpus* granted to the chimpanzee Cecilia, on the title *A proteção da dignidade da pessoa não humana: o habeas corpus do caso Cecilia*. Available at: <<http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2009>>. Accessed on 13. 10. 2017.

⁹ ARTICLE 2: (a) Each animal shall have the right to respect. (b) Man, as an animal species, shall not be entitled to exterminate or exploit other animals in violation of that right. He has a duty to put his conscience at the service of other animals. c) Each animal has the right to the consideration, healing and protection of man.

an attribute of nonhuman beings.

2. 2 The recognition of Dignity to non-human beings

Animal Dignity thus emerges from the evolutionary consideration of human attributes and the recognition that certain values must be shifted to an evaluative level superior to the ordinary ones, that is, the development of the study on the dimensions of fundamental rights. Taking advantage of the manifestation of Peter Singer, when he expresses that “[...] if a being suffers, there is no moral justification to resort to taking this suffering into account. No matter the nature of being, the principle of equality requires that its suffering receive the same attention as similar sufferings of any other being [...]” (SINGER, 1975). We observe the imposition of environmental protection and the impossibility of individual appropriation of the common heritage of humanity, emphasizing that they are transindividual, collective rights, destined to the protection of the human species through the protection of all species of coexistence, fauna, and flora.

In Singer’s interrogative reading (2017, p. 62-100), questioning ethical manifestations and their complexity, when analyzing the chapter on the ethical relation to animals, this author exemplifies a series of situations where the recognition of Dignity becomes for deeds. In this aspect, the author begins the argument’s construction by specifying the case of eggs from hens in tiny cages where the commotion generated by the terrible conditions in which hens in extremely tight cages and without conditions led to the European Commission decision banning the practice. Followingly, we will address ethical situations in dealing with other animal species, such as whales and their hunting, consumption of beef and pork and scientific possibilities in development with the creation of meat *in vitro* and also, in consonance with our article purposely referenced, on the situation of *habeas corpus* to a chimpanzee in the United States of America.

Specifically about this latter situation, when discussing whether a chimpanzee is a ‘person’, states that ‘declaring a chimpanzee to be a person does not mean giving him or her voting rights, going to school or bringing someone to court for defamation. It simply means giving it the

most basic and fundamental right to have legal status rather than being considered an object” (SINGER, 2017, p. 91-93).

When dealing with the ethical aspect of the treatment of animals, the recognition of Dignity derives from it and the innumerable situations faced, the feeling of consideration and respect, the developed affection and a series of other interrelationships between man and others living beings bring with them the new meaning of Ethics and Dignity, a necessary evolution for our understanding as beings endowed with intelligence, emotion and full consciousness of our cosmic existence.

Obviously, the theme is still in genesis, to be developed and matured through the analysis of human relationships with other beings on the planet. However, this brief reflection cannot fail to be considered, because, in approaching Dignity as a mechanism of respect and protection, breaking the established paradigm makes it necessary to think of the new as the right to discuss the law, as Lefort (1991) when discussing the democratic regime. There can be no undisputed or unchanged matters within the scope of judicial application, otherwise, we may transmute our incipient democracy into authoritarian regimes under the yoke of established majorities.

The ability to (re)think what has been thought is the goal of legal science; the emergence of new recognitions in relation to the fundamental rights of man and his relationships with other species. The pertinent consideration to characteristics of Dignity to non-human persons seeks the realization that, although many characterized as servile and utilitarian to man's own survival, cannot be treated merely as object/property, they are endowed with intelligence, sensations of pain, and of appreciation, and also composing the very fundamental Dignity resulting from the recognition and necessity of the correlational affection of man, being increasingly solitary within the multitude and his companions 'animals' in the path of earthly life.

The recognition that nonhuman species enjoy protection for their Dignity, imposing legal restrictions on their eventual owners, - we reiterate the inappropriateness of the understanding of property -, coercing them to the dignified treatment as a result of the very restriction of freedom to which are subject to human performance is one of the characteristics of postmodernity.

Human Dignity covers and is covered by the protection of biodiversity, referring to the inter-relational development among the species inhabitants of Gaia. The protection of other species is not only a measure of goodwill but derives from a real need in the face of the complexity of the planet's equilibrium and the full development of the human species itself. The Dignity of all species, among which the human, composes part of the whole, is the genesis reference for such an understanding, and although we discuss the conceptualization and amplitude of the term *Dignity*, we dare to understand it within metahuman values that transmute the collective unconscious, reflecting in the subjective values the consideration and respect necessary to all species in life, protecting biodiversity as a component of a living whole, planet Earth, and its inhabitants.

3 THE PROTECTION OF WILDLIFE THROUGH CRIMINAL LEGISLATION: THE CRIME OF ANIMAL TRAFFICKING

When analyzing the pertinent question of the animal trafficking, we come to refer to the real dimension of such object. The folly and human greed, in enslaving and making all other species objects, make animal trafficking the 3rd largest illicit activity in the world, turning between 10 and 20 billion US dollars. From these, Brazil competes with a variable percentage between 5% and 15%, that is, extreme values that result from constant crimes against the national fauna (RENCTAS, 2004).

Regarding the relevance of matter to society, it should be considered that the species did not evolve independently, but that they have their intra and interspecific relations as is with the physical-chemical environment. These relationships, often not understood or unknown, contribute to the complexity, functioning and dynamic balance of ecosystems - biodiversity and biosphere. When species are eliminated, many of these interactions are lost, and it is difficult to predict the reactions and consequences in ecosystems (RENCTAS, 2004).

Corroborating with such a valuable identification of animal trafficking in Brazil, the Report of the Parliamentary Commission of Inquiry (CPI) to "investigate the illegal trafficking of wild animals and plants of Brazilian flora and fauna" - CPITRAFI (BRAZIL, CÂMARA DOS DEPUTADOS, 2004) also refers to the trafficking of animals as the

third¹⁰ largest illicit activity in the world, being overcome only by arms and drug trafficking.

The issue is extremely significant, not only because of the importance of the values involved but also because of the protection of biomes and the country’s living diversity. According to the reports referenced, the traffic is distinguished in three major segments: traffics for collectors and zoos; trafficking of animals for scientific purposes, classified as biopiracy; and trafficking of animals to *pet shops*. We will look at this item to examine the mechanisms of confrontation in the criminal sphere and what we consider as insignificant protection against the dimension of the crime addressed.

3. 1 Numbers and social relevance: biodiversity calls for relief and effective protection

As we have pointed out, the size attributed to the trafficking of animals is only surpassed by the trafficking of arms and drugs, that is, by two internationally recognized flagella, discussed and commented on in all social spheres, but always the *most* present, the 3rd largest criminality of the planet, animal trafficking, does not receive the same consideration and care, constituting a veil of interests and justifications that do not directly address or attack the crime involved.

According to an article produced by the International Animal Alliance (AILA)¹¹, which aims at the protection of domestic and wild animals, the Brazilian participation in the international black market of animals assumes extreme proportions; in the report, “In national terms, we can say that BRAZIL participates in such a criminal activity with about 15% in international trade, promoting an approximate movement of US \$ 1. 5 billion with international animal trade “ (AILA, 2017).

On the same document, in demonstrating the relevance of the international numbers of illegal animal trafficking, it specifies issues related to internal trafficking, stating that “. . . International activity is

¹⁰ In this sense, most current data put the pet trade as the 4th largest illicit activity in the world, listing in the list trafficking in weapons, drugs, people and animals. Matéria da Agência Brasil – Últimas notícias do Brasil e do mundo: Tráfico de animais selvagens é o quarto negócio ilegal mais lucrativo do mundo, published on • 23/11/2016 06h00. Available at: <<http://agenciabrasil.ebc.com.br/internacional/noticia/2016-11/trafico-de-animais-selvagens-co-quarto-negocio-ilegal-mais-lucrativo>>. Accessed on: 13. 10. 2017

¹¹ Non Governmental Organization

not enough. Animal disrespect develops internally in the country, with 30% of wild animals being exported, while the remaining 70% are traded internally.”

Protective historical aspects can be considered more effective since the Convention on International Trade in Endangered Species of Wild Flora and Fauna (BRASIL, 1975), in which Brazil was a signatory. The International Convention under consideration sought to regulate the international trade in animals, providing for the relevant legalities and, by exclusion, indicating the activities typical of illicit activities, especially the issue of international trafficking¹².

The main objective of the Convention is the regulation of trade and the control of threats to commercial species, including imposing procedures on the parties involved in order to elucidate matters pertaining to eventual perishability or disagreement with the established rules, that is, establishing the transnational dialogue as a form of control of the regular commercial activities and, *in excluendo*, of the illicit trade.

The Convention also establishes the classification of species into three categories or levels according to the Annexes: Annex I - identifying all species threatened with extinction that are or may be affected by trade; Annex II - all species which, although not necessarily in danger of extinction, may come to this situation, and other species that need to be regulated in order to allow effective control of trade; in Annex III - shall include all species which either party declares subject, within the limits of its competence, to prevent or restrict its exploitation and which require the cooperation of the other parties to control trade.

With the purpose of supporting and supporting compliance with the Convention and relevant treaties, the United Nations (UN) established in 1972 the support office within the United Nations Environment Program (UNEP), which has an educational and facilitating program¹³ for international relations.

Returning to the numbers covered, when addressing issues relevant to ‘sustainable development’ in Agenda 21, Leonardo Boff reports that the internal logic of the market implies an exhaustion of natural

12 CITES; op. cit. : ARTICLE II - *Fundamental Principles*. 1. Annex I shall include all species endangered species that are or may be affected by trade. Trade in specimens of such species should be subject to particularly strict regulations so that their survival is not further threatened and will be authorized only in exceptional circumstances.

13 For more information, consult: < <https://nacoesunidas.org/agencia/onumeioambiente> >. Accessed on 30. 09. 2017.

resources and the extinction of about 3000 species a year when the normal would be 300. In explaining this situation, he re-establishes a concept to define the relevance of sustainability, stating that “Sustainability means that in the evolutionary process and the dynamics of nature are interdependent networks of inclusive relations, mutualities, and logics of cooperation that allow all beings to coexist, coevolve and help each other to stay alive and ensure biodiversity” (BOFF, 2006).

In this simple analysis, several considerations regarding the protection of the national biodiversity, especially the fauna in the present study, can be observed, representing one of the greatest illicit activities of the planet and with criminal repercussions not imaginable by the absolute majority of the population. It is very important to adoption more effective measures for the protection or intimidation of criminal agents, seeking to achieve a reduction in the incidence of this type of offense and not only in this aspect, to protect the Dignity and other attributes pertinent to the quality of living beings of the species of the national fauna.

3. 2 Of the crime of animal trafficking and its criminal typing

The approach in this item will be divided in two different moments. In a first aspect the analysis of the current criminal penal provisions of the fauna, its conceptualization and characteristics and penalties. In a second moment, from the previous observation, our understanding of the typifying fragility and the need to create new and more specific criminal types, seeking the application of a *lex specialis* to the detriment of the generic provision of article 29 of the Law of Environmental Crimes.

The criminal law, throughout its history, synthetically portrayed in this, has objects of protection that are compounding the needs generated by the social system, even if not organized and stratified as such for scientific purposes.

The “sizing” we manifest in other studies reflects the circularity and evolution of social demands. It is not a hermetic and generational classification, that is, that it will arise by determined conditions in certain historical moments. The dimensional comprehension resulting from application waves that expand or retract as behavioral instabilities manifest themselves in the social context. They are interdependent and interrelated

constructions, where there is no supremacy of one in detriment of others, but permanent and self-referential communications. Dimensions do not show, for purposes of the study, only objective and subjective aspects, but we use them as amplitudes of application for criminal matters.

In this aspect, what we call the Fourth Dimension¹⁴ in a situation arising from the economic and extractive explosion, the need to conserve goods common to the people, especially environmental and expropriative, a criminal protection setting limits and acting proactively in the defense of natural environments - species and natural spaces - in serious danger of extinction by unbridled human action. New punitive forms for the purpose of establishing limits to human action in the enjoyment and destruction of natural goods and the preservation of one's own human species as part of a natural system.

The criminal type used today refers to the act of exporting wild animals, be them native or migratory. The penalty attributed to such conduct is from 6 (six) months to 01 (one) year and a fine, meaning a distress of lesser relevance and subject to the primary application of alternative measures to a custodial sentence. The core of the conduct is covered in the verb to export and emanates from the nuclear conduct our first questioning about the criminal type¹⁵.

Export, identification of commercial practice in grammatical interpretation indicates the “action of shipping or mailing to another nation; sell abroad, out of the country”¹⁶. In this perspective, considering the peculiarities of the subject matter, we have the possibility of two forms of conduct towards the export core. In one form the act of simply sending the protected species without the purpose of profit, and another of them, the

14 On the “Dimensions of Criminal Law”, a term coined by the authors to identify the evolution of criminal protection throughout history, read in DEL'OLMO, Florisbal de Souza and MURARO, Mário Miguel da Rosa: A proteção da dignidade da pessoa não humana: o habeas corpus do caso Cecilia, disponível em: Revista Jurídica UniCuritiba, vol. 01, n°46, Curitiba, 2017. p. 281-299, DOI: 10.6084 / m9. figshare. 5172403. Available at: <<http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2009/1290>> . Access 13 10 2017

15 BRAZIL. Law 9, 605 / 98. Law of Environmental Crimes. Art. 29. Killing, pursuing, hunting, catching, using wildlife specimens, natives or on a migratory route, without permission, license or authorization from the competent authority, or in disagreement with that obtained: Penalty - detention from six months to one year; traffic ticket. Paragraph 1 - The same penalties apply: I - . . . II - penalty. . . III - who sells, exhibits for sale, exports or acquires, holds, holds or deposits, uses or transports eggs, larvae or specimens of wildlife, native or migratory route, as well as products and objects thereof from breeding grounds unauthorized or without the proper permission, license or authorization of the competent authority.

16 LEXICO. Online Portuguese dictionary . Available at: <<https://www.lexico.pt/exporta>>. Accessed on 20. 09. 2017.

purpose of commerce, that is, the enrichment through the sale of animals of the Brazilian fauna to the outside.

In the face of these possibilities of conduct, we emerge our irresignation towards the current referential typification of the crime of international animal trafficking. It is also observed, in the analysis of the cited protective legislation, that the shopping of skin and leather to the outside has triple legal value, as of the provisions of Article 29¹⁷.

The purpose of creating a special or incriminating criminal type is, within a characteristic of criminal dogmatics, to impose the conduct of a social ‘duty’, through general preventive mechanisms imposing ‘fear’ of punishment in the face of the commission of the crimes typified.

The punishment attributable to the crime of international trafficking of animals through the ‘export’ nucleus has an extreme punitive insignificance, punishing with less intensity than the crime of simple theft, for example, not being able to cause any kind of embarrassment or consideration at the time of criminal practice, since, of well-known public knowledge, such conducts will generate to the infractor responsibilities of less offensive potential and incapable of instilling a diverse behavior.

In seeking to make punitive mechanisms more effective, in order to meet the needs of prevention, both general and special, we dare to indicate changes in the writing of criminal offenses for the trafficking of animals. By adopting by reference the types relevant to international commercial practices, the drafting of smuggling and misconduct crimes is a more appropriate indicator of typical conduct, as well as making it possible to quantify sentences more appropriately to this form of practice, usually through organized crime and extremely difficult to control and repress by the state.

In this sense, aware that there will always be a criticism of boldness, we would have new penal types in Law 9. 605 / 98 in the following compositions:

Article 29-A Animals Off – Road

Art. 334. To deceive, in whole or in part, the payment of the

17 BRAZIL. Law 9605/98 Art. 30. Export raw hides and skins of amphibians and reptiles without the permission of the competent environmental authority: Penalty - imprisonment, from one to three years, and fine.

right or tax due to the entry into the country or the exit abroad, of species of wildlife, native or en route migratory or without compliance with the legal provisions. Penalty - imprisonment, from 1 (one) to 4 (four) years. § 1 The same penalty who: I - acquires, sells, offers for sale, keeps on deposit or in any way use for yourself or others, in the exercise of commercial or industrial activity, species described in the *caption* animals, of foreign origin that has been smuggled into the country or imported fraudulently or known to be a product of clandestine introduction into the national territory or of fraudulent importation by another person; II - acquires, receives or hides animals for the purpose described in the *heading* of the article, from foreign origin, unaccompanied by legal documentation or accompanied by documents known to be false. § 2 equates up to commercial activities for the purposes of this article, any form of irregular or illegal trade of the species mentioned for input purposes or departure abroad, including exercised in homes. § 3 The penalty applies double if the embezzlement crime is practiced in air, sea or inland waterway transport.

Article 29b - Smuggling of Animals

Art. 334-A. Import or export of species of wild fauna, native or migratory route prohibited and commercialization: Penalty - imprisonment, from 2 (two) to 5 (five) years Paragraph 1 ^{The} same penalty applies to those who: I - import or export clandestinely animals of the species cited in the *caput*, which depends on the registration, analysis or authorization of a competent public body; II - sells, exhibits for sale, keeps on deposit or, in any way, uses forbidden by Brazilian law in the exercise of commercial or industrial activity for their own or otherwise. III - acquires, receives or hides animals forbidden under Brazilian law, for their own or others' benefit, in the exercise of commercial or industrial activity. Paragraph 2 - For the purposes of this article, any form of irregular or clandestine trade in animals of the said species shall be included in the commercial activities for the purposes of entry or exit abroad, including that performed in residences. § 3 - The penalty applies double if the smuggling crime is committed in air, sea or inland waterway transport.

Notwithstanding the boldness aspect, we understand that new incriminating figures will provide greater effectiveness in protecting national biodiversity. The search for more effective typical figures brings with it the possibility of enhancing the preventive action of criminal

matters, not constituting, in the present case, mere legislative inflation, but the creation of specific and modern criminal types for a crime that reaches transnational borders.

CONCLUSION

Reflecting on the theme so disregarded by social mass permeates discussions about ethical principles of human behavior and our understanding as beings components of a planetary biodiversity, as we know the existence of life only on planet Earth.

Although it is a subject that generates endless discussions, Singer expresses, referring to what he calls the tyranny of human animals over nonhumans, stating “ [...] This tyranny has provoked and still causes pain and suffering today comparable only to those resulting from centuries of white human tyranny over black humans “ (SINGER, 1975). In the continuity still manifests the difficulty to discuss the freedom and the oppression of the humans over the nonhumans and of how such situation acquires relevant outline: “The fight against this tyranny is a fight as important as any other of the moral and social causes that were defended in recent years. “

The recognition of fundamental rights to all living species is a developing object for the human species, the feeling of belonging to a larger living being, “Gaia”, loosely emerges in the relationships of earthly biodiversity. The ‘objectification’¹⁸ of the other species has always been a constant mark in human history. In this way, the manifestation of Silva (2003, p. 68) identifies “Traditionally the right to life is not a right granted to all living beings, neither to all animals, but only to humans” and highlighting the “This is because, while human life is linked to the idea of dignity, nonhuman life is attributed to the idea of price. “

In the first moment, we seek to understand the concepts of biodiversity and its necessary protection for the survival of life on the planet, while still considering the human species, although the most aggressive to the other components of the biosphere, one of the most fragile for decimation purposes. The understanding that biodiversity is the guarantee of the survival of men is the mechanism for convincing every

18 Thus we mean in order to specify appropriate ‘possessions’ and attributes of property that have prevailed throughout human history in relation to other living beings.

one of the purposes of protection. Life on Earth is not only human's; respect, freedom, and dignity must be mechanisms of preservation of life and not only of man.

In a second moment, when we refer to Dignity as a component of a fundamental, meta-human right, since we understand it to be a fundamental right of all living beings and not only of men, we seek practical reflection rather than purely conceptual aspects. The paradigm shift in science and social consciousness constantly demands thinking. The transformation of information into knowledge and the resulting praxis is not instantaneously possible, but it demands reflexive stimulation for its realization.

In a third moment, we sought to analyze the protection of fauna through criminal law, initially identifying numerical data on the crime of international animal trafficking and its position on international crimes, occupying a variable position between the 3rd and 4th highest international criminal incidence, being consistently outnumbered only by the crimes of arms and drug trafficking, alternating in the position with the crime of human trafficking. Within the same objective, we analyze the criminal type of punishment for the crime of trafficking and why we consider it 'meager', that is, insufficient for protection, suggesting two typical figures resulting, based on the crimes of contraband and misconduct that, in our view, better absorb the protection objectives.

The objectives of the present study, identified in its preamble, will be fully attained through its understanding and reflective discussion, even subjectively, on the assumptions enumerated, especially regarding the consideration that all living beings enjoy fundamental rights and that these rights, by our condition of 'intelligent beings' should receive the proper protection. We do not advocate extreme change in relationships with other planetary species, aware of the life cycles and food chains that constitute the balance of the biosphere, but we do argue that all living species on the planet, even those destined for slaughter, have Dignity even in those moments.

The relationship with other living species has undergone substantial changes. The attachment to domesticated animals and the recognition of the relevance of species as components of a natural extract inseparable from the planet creates the genesis of a distinct understanding of the object. Nonhumans have unparalleled recognition and affection in

history, and the evolution of protection must recognize and respect such an aspect.

The reflection does not end with this work; on the contrary, we seek to launch a small element for the purposes of 'modern thinking' and make possible with the opening of the subject that more scholars also expose their understandings for the better development of Law science.

REFERENCES

AILA - Associação Internacional de Animais: *Tráfico de Animais Silvestres – A Magnitude do Problema*. Disponível em: <<http://www.aila.org.br/maus-tratos/trafico-de-animais>>. Acesso em: 30 set. 2017.

BOFF, Leonardo. Ética e Sustentabilidade. *Caderno de Debates*. Agenda 21. Ministério do Meio Ambiente. 2006. Disponível em: <<http://www.mma.gov.br/agenda21>>. Acesso em: 13 out. 2017.

BRASIL. *Constituição da República Federativa do Brasil*. Senado Federal. 1988. Disponível em: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>. Acesso em: 13 out. 2017.

BRASIL. *Decreto nº 76.623*, de 17.11.1975, aprova o Decreto Legislativo nº 54, de 1975, aprovou o texto da Convenção sobre o Comércio Internacional das Espécies da Flora e Fauna Selvagens em Perigo de Extinção (CITES), firmada em Washington, a 3 de março de 1973. Disponível em: <http://www.planalto.gov.br/ccivil_03/decreto/antigos/d76623.htm>. Acesso em: 13 out. 2017.

BRASIL. Câmara de Deputados. *Relatório CPITRAFI*. Disponível em: <http://www.renctas.org.br/wp-content/uploads/2014/11/Rel_Fin_CPI_Trafico_1.pdf>. Acesso em: 13 out. 2017.

BRASIL. *Lei de Crimes Ambientais, Lei nº 9.605/98*. Congresso Nacional. 1998. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/L9605.htm>. Acesso em: 12 out. 2017.

BRASIL: RENCTAS - Rede Nacional de Combate ao Tráfico de Animais Silvestres: *1º Relatório Nacional sobre o Comércio Ilegal de Fauna Silvestre*. 2014. Disponível em: <<http://www.renctas.org.br/wp-content/>

[uploads/2004/02/REL_RENCTAS_pt_final.pdf](#)>. Acesso em: 12 out. 2017.

CANOTILHO, José Joaquim Gomes. *Direito Constitucional e Teoria da Constituição*. 3. ed. Coimbra. Portugal: Livraria Almedina, 2002.

CANOTILHO, José Joaquim Gomes. *Estudo sobre direitos fundamentais*. São Paulo: Editora Revista dos Tribunais. Coimbra. Portugal: Coimbra Editora, 2008.

CERVI, Jacson R.; CERVI, Taciana M Damo. O paradigma ecológico e a contribuição do direito para a superação da dicotomia meio ambiente e desenvolvimento. In: GIMENEZ, Charlise Paula Colet; LYRA, José Francisco da Costa (Org.). *Diálogo e Entendimento – Direito e Multiculturalismo e políticas de cidadania e resoluções de conflitos*. Tomo 7. Campinas: Millennium Editora, 2016. p. 71-90.

DEL'OLMO, Florisbal de Souza; MURARO, Mário Miguel da Rosa. A proteção da dignidade da pessoa não humana: o habeas corpus do caso Cecília. In: *Revista Jurídica UniCuritiba*, vol. 01, n°. 46, Curitiba, 2017. p. 281–299, DOI: 10.6084/m9.figshare.5172403 Disponível em: <<http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2009/1290>>. Acesso em: 13 out. 2017.

LEFORT, Claude. *Pensando o político: ensaios sobre democracia, revolução e liberdade*. Tradução Eliana M. Souza. Rio de Janeiro: Paz e Terra, 1991.

LEITE, José Rubens Morato; BELLO FILHO, Ney de Barros. *Direito ambiental contemporâneo*. Barueri: Editoras Manole, 2004.

LÉXICO. *Dicionário de português on line*. Disponível em: <<https://www.lexico.pt/exportar>>. Acesso em: 30 set. 2017.

MAURER, Béatrice. Notas sobre o respeito da dignidade da pessoa humana...ou pequena fuga incompleta em torno de um tema central. In: SARLET, Ingo Wolfgang (org.). *Dimensões da Dignidade – Ensaio de Filosofia do Direito e Direito Constitucional*. 2. ed. 2.tir. Porto Alegre: Livraria do Advogado Editora, 2013. p. 119-144.

MILARÉ, Édis: *Direito do Ambiente*. A gestão ambiental em foco. 5. ed. São Paulo: Revista dos Tribunais, 2007.

MILARÉ, Édis. *Direito do ambiente: doutrina, jurisprudência, glossário*. 5. ed. São Paulo: Revista dos Tribunais, 2007.

MORIN, Edgard; KERN, Anne Brigitte. *Tierra Patria*. Barcelona, Espanha: Kairós, 1993.

NUNES. Rizzatto. *O princípio constitucional da dignidade da pessoa humana: doutrina e jurisprudência*. São Paulo: Saraiva, 2002.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS (ONU) – UNESCO. *Declaração Universal dos Direitos dos Animais*. Bruxelas – Bélgica, 27 de janeiro de 1978. Disponível em: <<http://portal.cfmv.gov.br/portal/uploads/direitos.pdf>>. Acesso em: 28 set. 2017.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS (ONU): *Objetivos do Desenvolvimento Sustentável (ODS)*. Disponível em: <<https://nacoesunidas.org/pos2015/>>. Acesso em: 28 set. 2017.

SILVA, Reinaldo Pereira e. *Biodireito: a nova fronteira dos direitos humanos*. São Paulo: LTr Editora, 2003.

SINGER, Peter: *Ética no mundo real: 82 breves ensaios sobre coisas realmente importantes*. Capítulo “Animais”. Lisboa. Portugal: Edições 70 – Edições Almedina, 2017. p. 62-100.

SINGER, Peter. *Libertação animal*. Título original. Animal Liberation. 1975. Disponível em: <<https://olhequeno.files.wordpress.com/2011/12/peter-singer-libertac3a7c3a3o-animal.pdf>>. Acesso em: 13 out. 2017.

Recebido em: 16/10/2017.

Artigo aceito em: 09/05/2018.

Como citar este artigo (ABNT):

DEL'OMO, Florisbal de Souza; MURARO, Mário Miguel da Rosa. O TRÁFICO INTERNACIONAL DE ANIMAIS E A PROTEÇÃO DA DIGNIDADE. *Veredas do Direito*, Belo Horizonte, v. 15, n. 31, p. 155-177, jan./abr. 2018. Disponível em: <<http://www.domhelder.edu.br/revista/index.php/veredas/article/view/1189>>. Acesso em: dia mês. ano.