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*Comparative Cruelties:  
Legal Perspective on Traditional Hunting in Canada and the European Union*  
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### Presentation

#### Introduction

This Presentation addresses, perhaps, the lowest point in the relations of the European Union (EU) with Canada.

Exactly tomorrow, July 19, 2014, will be a month since the Appellate Body of the World Trade Organization (WTO) issued a Report which concluded European Union's dispute with Canada over seal products import ban.

The dispute started in 2009 when the EU adopted a legislative scheme to prohibit marketing and imports of seal products from Canada, based on the view that cruelty to animals is an affront to the sense of morality in Europe.

#### Two Distinct Discourses

The dispute caused a heated media response in Canada.

So, two parallel, complementary, yet distinct narratives developed: legal and 'popular'.

Staying within the disciplinary confines of law, reliance on legal analysis exclusively, leads to a standstill of circular logic.

As a legal researcher, I was fascinated by the paradox that a lot – most of the debate on morality of the hunting activities, is happening outside law, in the media.

Morality discussion outside law?! When did they get separated?

In this Presentation, I aim to integrate the two by including the 'popular' into the legal narrative, so as to deepen, and broaden the dialogue.

#### WTO – The Scene of the Legal Drama

A brief overview of the WTO might help to contextualize the problem.

WTO deals with the rules of international trade, it provides the legal framework for international commerce.

It is, in fact, a multilateral treaty negotiated, signed, and ratified by the sovereign governments.

Its primary objective is to help import/export businesses conduct trade, and their governments to meet social policy objectives.

It primarily supports free flow by lowering barriers to trade and promoting open markets.

But, in some cases, its rules aim to accomplish the exact opposite – to prevent spread of disease, for example.

International trade is an interplay of liberalizing rules and selectively used exceptions – such as the import ban, a closing of the EU market to the import of seal products from Canada.

### Dispute Settlement under the WTO

The fundamental principle of international trade law under the WTO is non-discrimination. A country cannot discriminate between its trading partners, and it should not discriminate between its own and foreign products, services, and nationals.

WTO has a dispute settlement mechanism which secures enforcement of its rules.

Countries involved in disputes over their trade relations bring their issues to the dispute settlement body.

The first ruling is made by a Panel of independent experts in international economic law.

Panel examines evidence, and establishes facts.

Appeals are available to both sides in the dispute, but only on the points of law, or its interpretation – not facts.

Appeal can uphold, modify, or reverse Panel's findings.

The 'loser' has to follow the recommendation of the Report, or there are economic consequences.

### EU – Canada Dispute over Seal Products

The dispute started when the EU adopted EU Seal Regime to prohibit import of seal products.

The measure negatively affected Canadian exporters who found themselves excluded from a lucrative market.

The EU framed its legal position under the WTO's *public morals* justification for the ban, to protect animal welfare.

Canada, on the other hand, claimed that the EU violated the most fundamental principle of the international trade law – non-discrimination – because it favored exporters of seal products from Greenland.

*Public morals*, its content, and standard is not clearly determined in the WTO, and this was the first time it was applied to advance animal welfare protection.

EU's import ban on seal products had an important exemption for the subsistence hunting by indigenous communities.

The WTO Panel found that this exception was not “designed and applied in an even-handed manner”, and that it, indeed, favored Greenland, and excluded Canada from trade in a discriminatory fashion.

### Two Themes Emerge from the Legal Story

Two themes which emerged from the legal dispute came to dominate the media debate.

More precisely, the two themes originated from the workings of the WTO Panel, from its fact-finding mandate.

1. Panel distinguished traditional from commercial hunts, and reflected on the importance of preservation of culture and tradition of indigenous communities.
2. Panel determined that generally, seal hunts are virtually certain to have “adverse welfare outcomes.” In other words, seal hunts are inevitably inhumane and cruel.

So there, those are the things we really want to talk about.

### Comparing Two Cruelties

Perception of the media in Canada is often that the EU is highly critical of it, and that it takes a higher moral ground with regard seal hunt.

The EU, on the other hand, genuinely believes it to be cruel, and this view, which has high level of public support in the EU, is expressed in its law forbidding trade in seal products obtained at such a cost.

The above is evidently a closed circle, an analytical dead-end.

I therefore use a comparative case of cruelty to another species – not seals – also traditionally hunted, in order to advance the analysis.

I compare seal hunt with guga hunt.

Guga is a fledgling of a gannet bird.

Both hunting methods used are traditional, both species hunted are used as food sources.

Both traditions are very old: seals have been hunted for at least some 4000 years, and guga have been hunted during the Iron Age.

Both of these traditional hunts are legislated, in their respective jurisdictions, as exceptions to otherwise illegal activities.

Both are poorly understood remnants of an almost extinct lifestyle of hunter-gatherers.

Both are cruel.

Neither is breaking any laws.

### Traditional Seal Hunt

Young seals are killed with a traditional weapon, a heavy wooden club with a hammer head, and a metal hook at the other end.

The hammer is used to crush the seal's skull, and hook to draw the carcass.

Canadian legislation that regulates this activity is an extremely difficult read – I'll spare you that. I'll just say, that World Wildlife Fund's Independent Veterinarians Working Group, in their 2005 report stated: "Perception of the seal hunt seems to be based largely on emotion, and on visual images that are often difficult even for experienced observers to interpret with certainty."

### Traditional Guga Hunt

Guga birds are nesting on the steep and sharp rocks, on a small, uninhabited island in the Outer Hebrides, Scotland.

Every year local men sail to Sula Sgeir Island to hunt.

Working in pairs, the men use poles to take the young birds from their nests, catching them with a rope noose around the neck, then killing them with blows to the head.

Back in 1939, a distinguished biologist, and a founder of the World Wildlife Fund, Sir Julian Huxley, expressed his hope that "public opinion and the county council will soon put a stop to this practice."

### Cruelty to Animals or Cultural Survival?

What a difficult choice!

Both activities I described here in a few carefully chosen words are perfectly legal.

Why is something legal then so unsettling?

Why are we disturbed at the look into our collective human past?

A look at what it took, over thousands of years, and hundreds of generations to be here, now?

Why is the view of a lifestyle which we all shared thousands of years ago so disturbing?

### Dominant Agrarian v. Extinct Hunter-Gatherer Culture

Hunter-gatherer lifestyle is so disquieting to us because we belong to a different culture. We feel, and speak, from a dominant culture based on agrarian societal values, while these traditional hunts belong to the now almost extinct hunter-gatherer culture.

The best definition of culture remains the one by Edward Tylor: “Culture or civilization, taken in its broad, ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.”

Anthropologist and specialist on hunter-gatherers, Professor Tim Ingold, explains how hunter’s understanding of an animal is different from ours.

Hunter has an intimate knowledge of animal, its habits, moods, patterns of behavior.

Seal and guga hunts take place in extreme conditions which greatly affect behavior of animals. Given the amount of time and the effort, the skill necessary to obtain food in the harsh conditions, hunter-gatherer communities, developed unique sets of beliefs, ways of relating to each other, and to nature.

Hunters have to be observant, sensitive, and adaptable in order to hunt successfully.

This type of interaction is completely foreign to us.

Close contact between the hunter and the animal creates a strong bond.

Violent death, that we cannot even bring ourselves to watch, is but a small part of that relationship.

### Agrarian, Westphalian Culture

Indigenous seal hunters of Canada and the guga hunters from Scotland share similar cultural and historical experience: both are poorly understood by the modern society.

Both are, also, poorly served by the legal system which is based on the values of an agrarian culture embodied in the Westphalian system of international relations.

Although we live in the era of globalization, Westphalian system of international relations is still relevant.

Under that system, defining idea of state relations is national sovereignty based on the principle of territorial integrity.

The idea now appears universal, yet it arose in a very particular context.

Rather than give a historical overview of it, I used historical data to create a composite sketch of this domineering character, this Westphalian sovereign.

Born in 1648, in Munster, Germany, he is of western European origin (Holy Roman Empire, Spain, France, Sweden, and Holland), Caucasian, male, and a land-owner.

So, it is the values of this land-owner, his need to clearly delimit his property from that of the neighboring landowner, which we all live under.

### Westphalian Worldview in Law

Agrarian cultural matrix, that particular lifestyle which relies on ‘good fences’, is what has shaped our current system of international relations.

From that worldview evolved also a particular style of international legal system.

Under current international legal system, certain cultural groups, such as hunter-gatherers, or migratory, and nomadic people, are at a great disadvantage, because their lifestyle is foreign to the agrarian based legal paradigm.

Westphalian sovereigns are unkind to all trans-boundary peoples: European Roma, or ‘travelers’, are a good example.

WTO is a typical byproduct of the Westphalian system of international relations.

WTO’s activities revolve around national borders and sovereignty as the organizing principles of global commerce, and law of trade.

The moral outrage, the concern for seals therefore only came to be known when seal products were halted at a sovereign border.

And that is why hardly anyone outside Scotland has even heard of guga hunt – the hunters of guga never tried to export their catch.

It is not that guga do not suffer, or that they suffer any less than seals.

Both suffer equally; cruelty is cruelty, it does not bare comparison.

Yet, there is no real forum to protect animals from cruelty internationally.

Just as there is no right to cultural survival, under the international law, for hunter-gatherers.

Both the hunters, and the hunted are unprotected.

### Conclusion

There is much less, a forum to consider both with equal compassion, and to find a balance between the two.

WTO Panel, consisting of economic law experts, is certainly not the forum to reconcile these complex issues.

I conclude with a prophetic word of warning: WTO is an organization which has of lately being greatly undermined by failures to secure certain important multilateral agreements, as well as by the proliferation of the bilateral trade treaties.

It ought not to be allowed to expand its mandate, in order to reaffirm its importance, beyond international trade.

By meddling in affairs beyond its mandate and expertise, the WTO creates a false sense that a legal vacuum in animal cruelty prevention, and in securing cultural survival of the last of the hunter-gatherers has been addressed.

The decision in the trade dispute between the EU and Canada over the seal products has set some commentators’ conscience at peace.

This is where I strongly disagree with them.

That decision is not the end, but it could be the beginning of some serious discussions.