

Time for Global Animal Welfare

Sabine Brels and Antoine F. Goetschel

Abstract

Animal welfare is a global matter. As such, it calls for global measures. In order to provide comprehensive and sufficient answers in international law, the time has come to consider animal welfare on a global scale. There have been various proposals for international declarations on animal protection. Nonetheless no comprehensive protection of nonhuman animals exists in international law to date. In order to fill this gap, a global protection of animals is necessary. Why and how should that happen? This article will examine those questions and provide concrete suggestions, such as the formation of a United Nations (UN) specific institution and the adoption of a UN specific convention for globally protecting animals.

Introduction

Animal welfare is a global concern knocking at the UN's door.

As an example, the UN Report on 'Harmony with Nature', 2020 recognizes that:

'Animals are sentient beings, not mere property, and must be afforded respect and legal recognition. Such recognition is growing around the world'¹.

Until now, there has been a lack of measures to address this issue comprehensively. Previous proposals and actions to improve animal welfare worldwide are not sufficient to improve the lives of all animals who are still suffering every day. To fill this gap and better protect animals everywhere in the world, a global approach is indispensable². As a result, the concern for animal protection must be considered universally, comprehensively, and holistically. All countries, all animal species, and all questions con-

cerning animals should be considered³.

In a broad sense, the protection of animals means that, in addition to the conservation of wildlife, the care and welfare of animals against unnecessary suffering should be protected through the law. All non-human animals are to be considered as animals. A global and multidisciplinary approach takes into account not only animal protection law, but also all aspects of the sciences that concern animals, such as veterinary medicine, ethology, biology, and animal ethics. All categories of animals, that humans are interacting with as companions, using for sports, breeding in farms, testing in laboratories, or hunting in the wild, are all sentient, emotional, and intelligent creatures. Therefore, all should be encouraged to respect them. To date, animal welfare laws has been existing in around two-thirds of the national states and at the European levels. International standards have also been adopted by the World Organization for Animal Health (OIE). The next step would be to raise animal protection at the global level in the frame of the UN⁴.

I. Arguments for global animal welfare

Global protection of animals has been missing largely in international law to date. Moreover, animal welfare is still absent from the UN agenda. In addition to the needs of humans and their interests to live in a healthy environment for current and future generations, the concern for animal suffering, beyond species extinction, is also important from an ethical and humane view-point.

Since animal suffering continues to spread all over the world and does not stop at borders, a universal system to alleviate is necessary. Considerable damage and avoidable suffering is inflicted on farm animals worldwide in connection with the production of food and animal products. According to forecasts,

¹ §42 of the UN Report on 'Harmony with Nature', 28th July 2020, online at : <https://undocs.org/en/A/75/266>.

² Cf. Sabine Brels, "A Global Approach to Animal Protection", *Journal of International Wildlife Law and Policy*, Vol. 20, 105-123, 2017.

³ Sabine Brels, "Globally Protecting Animals at the UN: Why and how", *The UN Observer*, 2019, 193-225.

⁴ See the complete Animal Welfare Legislation Database on the GAL website at : www.globalanimallaw.org.



global meat production will double by 2050.⁵ The danger of increasing species extinction has led the international community to develop more selective conservation instruments. In particular, animal experiments are increasing worldwide. The regulatory frameworks of nations and continents for the protection of laboratory animals vary considerably, thus encouraging the shift from animal experimentation to countries with a lower level of protection. However, there is still neither an institution nor an intergovernmental regulatory framework that is dedicated to the protection of animals in a holistic and global manner. Indeed, the focus of international and UN instruments is more on species conservation than on the well-being of the individuals. Moreover, animal welfare is not directly covered by the 17 Sustainable Development Goals (SDGs). Therefore, a proposal has been made to create a new SDG 18 on animal protection. This innovation must be considered by the UN⁶.

While there is a need to ensure further protections of animal welfare at an international level, some conventions do exist currently on the subject of wildlife

protection. The main instruments are: the International Convention for the Regulation of Whaling (ICRW)⁷, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁸, the Convention on the Conservation of Migratory Species (CMS)⁹, and the Convention on Biological Diversity (CBD)¹⁰. The ICRW states that the conservation of whale stocks and protection from excessive hunting was the initial focus in 1946. Afterwards, some states avoided complying with the moratorium on whaling introduced in 1982. In addition, Japan invoked an exception allowing whaling for scientific purposes. Based on a ruling by the International Court of Justice in 2014, whaling in the Antarctic Ocean camouflaged in this way is no longer permitted¹¹, which has prompted Japan to withdraw from the agreement¹²

5 Meat & Meat Products, FAO at : www.fao.org/ag/againfo/themes/en/meat/home.html (last update 15.03.19).

6 Ingrid J. Visseren-Hamakers, The 18th Sustainable Development Goal, Earth System Governance, 2020.

7 International Convention for the Regulation of Whaling, Washington, 2 December 1946 (ICRW).

8 Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 3 March 1973 (CITES).

9 Convention on the Conservation of Migratory Species of Wild Animals (CMS), Bonn, 23 June 1979.

10 Convention on Biological Diversity (CBD), Rio, 5 June 1992.

11 International Court of Justice (ICJ), Antarctic whaling (Australia vs. Japan: New Zealand intervenes), 31 March 2014.

12 'The end of the hide-and-seek game', Guest contri-

recently. In addition, CITES and CMS show that the scope of regulation is limited to certain species, as the conservation of endangered animals must be ensured. Again, the focus is on species conservation rather than the protection of individual animal welfare.

As reflected in an increasing number of countries legislation, the protection of individual animals and their welfare appears to be increasingly important. Inter-governmental organizations such as the World Organization for Animal Health (OIE) or the World Trade Organization (WTO) have also mentioned that animal welfare is important. The OIE was initially focused on the control of zoonoses and has developed into an organization dedicated to animal health and animal welfare since the beginning of the 21st century. Although several animal welfare regulations have been established to alleviate animal suffering during transport, within certain farming practices, and at the point of killing the animal, the regulations do not take a holistic perspective. The WTO first attributed an important value to animal welfare in the Seal case in 2013¹³.

In view of the comprehensive perspective that is being sought, the existing intentions and regulations have not appeared yet to be sufficient to achieve a holistic and global breakthrough for animal welfare and animal health through current international legislation. The importance of improving the law cannot be understated: it is the key to ensuring enforcement of animal welfare measures worldwide.

Discussions in animal protection law often focus on ethics, which – in contrast to the law – is not enforceable. Especially in animal protection, where the interests of animal users are mostly global and prepotent, binding law must be created. Ethical principles, such as those provided for in the Earth Charter Initiative¹⁴, are therefore to be welcomed, but they are not enforceable. With such declarations, it is problematic that animal protection cannot be ensured by law.

II. Pathways towards global animal welfare

In order to give global emphasis to animal protection, an umbrella instrument in international law is necessary. As we could emphasize, the existing international regulations focus on the conservation of endangered species, but not on the welfare protection of individual animals. In the course of time, in-

bution by Valentin Schatz, 2.01.2019, Legal Tribune Online at <https://www.lto.de/recht/hintergruende/h/japan-austritt-wal-fangkonvention-voelkerrecht-moratorium-politik/>.

13 WTO, European Communities - Measures banning the import and marketing of seal products, Panel Reports, WT/DS400/R-WT/DS401/R, 25 November 2013.

14 Earth Charter Initiative of 2000, Principle 1: All beings are interdependent, and each life form has its own needs.

struments have been proposed, such as a Universal Declaration of Animal Rights (UDAR)¹⁵ but this has only been presented at UNESCO in 1978 and has not been adopted by the UN. Ten years later, the World Charter for Nature was adopted by the UN in 1982 with references to animal protection¹⁶. A few years after, Professor David Favre proposed an international convention on animal protection in 1988, but sadly, this initiative did not receive sufficient support from governments¹⁷.

The Universal Declaration on Animal Welfare (UDAW) should be seen in a broader context, from which a first draft text was prepared in 2000 and later proposed for adoption by the UN General Assembly¹⁸. The basic principle is that animals are sentient beings and their welfare must be respected. Care must be taken for their physical and mental well-being. This approach was constituted as a non-binding declaration of principles and thus qualified as soft law. Such an approach is fundamentally suitable to initiate a further development of international law. It will assist in generating increased attention for animal protection, which is elementary to demonstrate its importance. Despite the efforts made, it should be pointed out that it has no legally binding character. In the future, the focus should be on a binding and comprehensive convention that aims to improve not only animal protection but also animal health globally.

Institutionally, various organizations can be identified that pay attention to animal protection – at least at first glance. In addition to important UN institutions, such as the FAO and the World Health Organization (WHO), it would be possible to extend the mandate of the United Nations Environment Program (UNEP) to focus more on animal welfare and protection in the future. In principle, a deeper integration of animal welfare into sustainable development would be appropriate, for example, through a resolution proposed by the influential UN Economic and Social Council (ECOSOC). Such a resolution might bring animal protection into the UN agenda, as a privileged way to gain greater acceptance and consideration for animal welfare issues.

In addition, the establishment of a new UN institution for animal protection should be considered. The complexity and urgency of global animal welfare justifies the establishment of an agency or program by the UN. This institution could, in analogy to UNEP, be

15 Universal Declaration of Animal Rights (UDAR), Paris, 1978.

16 World Charter for Nature, 28 October 1982.

17 International Convention for the Protection of Animals, 4 April 1988; David Favre, 'Movement toward an international convention for the protection of animals', in: D.E. Blackman et al. (ed.), *Animal welfare and the law*, 1989.

18 Proposal for a Universal Declaration on Animal Welfare (UDAW).

called the United Nations Animal Protection Program (UNAPP). This would make it possible to ensure both the protection of biodiversity and animal welfare. Should the implementation of an authority appear to be too extensive, an alternative would be to extend UNEP through a corresponding department. Nonetheless, priority should be given to a separate UN institution, which can also be the secretariat in charge of a UN convention on animal health and protection. An important innovation would be the integration of animal health as an important part of animal welfare, which is in line with the One Health/One Welfare approach, including humans, environment, and the animals alike.

It is questionable whether other institutions outside the UN are suitable to close the gap in global animal welfare law. A broader scope of tasks for the OIE would be conceivable, including in the area of animal welfare. This approach would be appropriate as the OIE is considered the leading organization for animal welfare. However, from a legal viewpoint, its animal welfare standards are minimal recommendations with non-legally binding value, knowing that many aspects of animal suffering have not been taken under consideration so far¹⁹. Therefore, if not evolving into a broader and stronger legal mandate, the UN appears to be the appropriate institution in view of the desirable global and legally binding approach for animal protection. Furthermore, multilateral conventions are undoubtedly the most important source in international law nowadays and it is therefore suitable for providing an adequate framework.

The common ground for this global agreement can be found at various levels of legislation. At the national level, many laws to protect animal welfare and against cruelty already exist²⁰. At the regional level, the European instruments of the Council of Europe and the European Union are particularly relevant²¹. In addition, at the international level, international instruments do not take a holistic approach and are not sufficient to globally protect animals²². A common legal basis covering all areas relating to animals treatment is therefore essential. A universal convention has to be considered, as it is binding for the member states and requires implementation in national legislation. In contrast, declarations are more symbolic. This instrument should also take into account the emergency to better protect animals globally, as well as every individual's health, welfare, and environment.

¹⁹ OIE Standards on Animal Welfare.

²⁰ For the national level see www.globalanimallaw.org/database/national/index.html.

²¹ For the European level see www.globalanimallaw.org/database/europe.html.

²² For the international level see www.globalanimallaw.org/database/international.html.

III. A framework convention (UNCAHP) as a priority

In order to fill the gap of global animal protection, a framework convention is needed. Indeed, as an emerging concern on the international scene, global animal protection requires a framework convention to set the stage and frame for the basis of the main measures to be implemented in theory and practice.

This instrument is currently proposed through the United Nations Convention on Animal Health and Protection (UNCAHP), aiming to provide a global protection to all animals worldwide. This initiative is proposed by the Global Animal Law (GAL) organization, resulting from the expertise and participation of prominent international animal lawyers all over the world.

In this convention, all relevant aspects of animal (ab) uses are regulated. As a starting point, animals are universally recognized as sentient beings, whose fundamental interests matter. Therefore, both wild and domestic animals are concerned²³.

The UNCAHP is clearly written and aims to be a practical instrument divided in four parts: Preamble, Objective, Principles and Implementation.

The UNCAHP proposal presents several advantages that are rather unique in such an initiative.

. As a *global instrument*, it is:

- *Universal*: It concerns all countries members of the UN²⁴;

- *All-encompassing*: It concerns all categories of animals (as companion, farm, lab, sports and wild animals);

- *Holistic*: It includes animal protection in the global picture of environmental and human protection through the One Health/One Welfare approach.

. As a *framework-convention*, it is:

- *Legally-binding* to member states: Contrarily to declarations of principles.

- *Consensual*: It contains internationally agreed principles, for instance, in the frame of the OIE (such as the five freedoms and 3Rs²⁵) and general principles

²³ See the general definition of 'animals' as non-human animal beings in the UN Convention on Animal Health and Protection (UNCAHP), 1st Draft of the Global Animal Law GAL Association, 23 August 2018 (online at www.globalanimallaw.org and www.uncahp.org).

²⁴ The UN is the universal organization gathering all sovereign states together (to date the UN has 193 member States). See online: <https://www.un.org/en/member-states/>.

²⁵ UNCAHP 1st Draft Art. 2.

of animal law (non-cruelty and good-treatment²⁶) that can be formally adapted to all countries as they reflect the common-ground of animal welfare law²⁷.

- *Evolutive*: It contains far-reaching principles, which are adapted to long-term goals, such as the protection of animals' fundamental interests²⁸ and the research of alternatives to animal products and exploitation²⁹.

In its preamble, animal welfare is presented as a complex issue. The primary objective can be defined as the welfare and protection of animal health. The concept of animals is broadly defined in that all 'non-human animals' should be covered. In addition to the responsibility, care and support of animals, there must be guaranteed freedoms. These are freedom from fear and distress, freedom from heat stress or physical discomfort, freedom to express normal patterns of behavior, freedom from pain, injury and disease and freedom from hunger, thirst and malnutrition. Scientific research must also apply the 3R and ensure that the number of animals used in experiments is reduced (*Reduce*), that experimental methods are refined (*Refine*) and that animal replacement is sought through alternative non-animal techniques (*Replace*). Respect for the intrinsic value of animals, their care and protection and animal dignity, are key principles.

Appropriate measures must be taken to prevent avoidable harm to animals and to refrain from all forms of cruelty. As sentient beings, animals must be treated well and have an interest worth protecting in not being killed unnecessarily or restricted in their freedom of movement and natural behavior. For the enforcement of animal protection law around the world, it is important that animals are given the opportunity to be represented in court and thus have a legal voice in the proceedings. Transparency in the enforcement of animal protection must also be increased. This will ensure that enforcement of law can be compared between states, resulting in creased protection levels. Furthermore, the outsourcing of animal suffering to other states with a lower level of protection must be stopped (for instance, in the fields of animal slaughter or experiments).

The implementation of such a convention requires that the contracting states develop or adapt existing strategies, plans and programs for animal health and protection in accordance with their national requirements. Fruitful cooperation between the states

should be sought directly, or through their specialized agencies, such as veterinary offices. A secretariat has to be set up as the competent body to perform administrative and organizational tasks. In addition, it has to ensure and support the best enforcement possible in all member states.

It should be provided that the member states create meaningful incentive systems for the effective enforcement of protective measures, which are economically and socially meaningful. In addition, the public must be informed in about the importance of animal protection and animal health.

It is now clear that overexploitation of both wild and farmed animals increases the occurrence of zoonoses, that being animal diseases that can be transmitted to humans, with sometimes severe consequences as can be seen from the recent Covid-19 pandemic. If we do not change anything, the situation will not improve. On the contrary, if we continue at this pace, the risk of new deadly pandemics will not diminish.

Today, the OIE alerts us to the fact that 75% of emerging infectious diseases are of animal origin³⁰. It is now commonly accepted that in order to face a global problem, we need a global solution. In order to help create a better world for present and future generations, a world where humans and animals can live together in harmony in a healthy environment, we need to go to the governments to convince them to adopt this convention and make animal protection and global health a new 'UNiversal' mission.

The interdependence between living beings cannot be ignored anymore. Therefore, the 'One Health/One Welfare' approach embodied by UNCAHP should be endorsed on a global scale.

Conclusion

In the 21st century, ensuring animal health and protection should become a common objective of all states. Indeed, a growing part of the world population knows that animal suffering matters. In addition to the legal decrees at national, regional and international level, there is an increasing number of court decisions that give animal protection a growing importance. It can be assumed that the necessary progress in the complex area of animal welfare law can be achieved through a legally binding instrument of international law. UNCAHP should be adopted and implemented. In contrast to ethics, law is enforceable and that is the decisive key to enforce animal welfare with a cool head and warm heart. A binding instrument would lead to animal justice, in

26 UNCAHP 1st Draft Art. 4.

27 Sabine Brels, *Animal Welfare Law in the World: Evoution and Globalization*, Harmattan, 2017 (in french). Astract in GJAL, n°1/2016, at. 36-37, online at : <https://ojs.abo.fi/index.php/gjal/article/view/1463/1758>.

28 UNCAHP 1st Draft Art. 5.

29 UNCAHP 1st Draft Art. 6.

30 OIE, *Biological Threat Reduction Strategy* : https://www.oie.int/fileadmin/Home/eng/Our_scientific_expertise/docs/pdf/StrategyBiothreat2015-FINAL.pdf

recognition that animals are individuals and sentient beings. Global animal welfare can only be improved and purposefully promoted through the involvement of all parties. In this sense, it is necessary to work towards ensuring that all circles recognize the present context and work together to find adequate solutions.

According to the first article of its Charter, the UN is mandated to maintain peace in the world. It appears to be the appropriate institution for maintaining peace between all kind of living beings. A contribution to global animal protection would result in a more peaceful life for all individuals on earth, which is in line with the purpose of the UN. Nonetheless, the strong connections existing between all living beings must be acknowledged in order to better protect human beings, the environment and our animal fellows alike.

About the Authors

Sabine Brels - Dr. iur. Co-founder of the Global Animal Law GAL Association and Director of the UN project. The main focus of her work is on comparative and global animal welfare law.

Antoine F. Goetschel - Dr. iur., Attorney, Co-founder, President and Managing director of the Global Animal Law GAL Association. Former lawyer for animal protection in criminal matters in the Canton of Zurich (2007-2010). The focus of his work is on national and global animal welfare law.

Find out more on the GAL website: www.globalanimallaw.org and UNCAHP website: www.uncahp.org.