

# Animal Welfare Protection: A Universal Concern to Properly Address in International Law

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**A**nimal welfare protection is an emerging universal concern (1) that needs to be addressed properly in international law (2).

At the beginning of this 21st century, animal welfare protection is a new hot topic on the international scene. As a growing concern in the international society, it is now desirable to reach a universally agreed basis to regulate international relations on this subject and address international issues not yet resolved, particularly in the frame of the World Trade Organization (WTO)<sup>2</sup>. In order to remedy to this unsustainable insecurity in international law, a global instrument would be essential to provide proper guidance for animal welfare protection on a uniform and harmonized basis. The absence of such a framework instrument on animal welfare protection appears to be a gap in international law<sup>3</sup>.

Therefore, the international community should globally address this subject while taking into account its inherent disparity. Instead of continued disagreement, common points could be agreed and converging elements put forward in order to bring all member states together towards a universal conception of animal welfare protection in international law.

## 1. Animal Welfare Protection as an Emerging Universal Concern in the International Community

The next United Nations (UN) Conference on Sustainable Development (Rio, 20-22 June 2012) will address animal welfare protection through "sustainable consumption and production" goals<sup>4</sup>.

A Declaration adopted by the UN General Assembly on this topic stressed the need to "safeguard animal welfare and conserve biodiversity for future generations" and set more precisely the objective of "respecting animal welfare" amongst the "millennium consumption goals for the period 2012-2020"<sup>5</sup>. In particular, intensive farming is no longer sustainable, either environmentally as a major contributor to climate change<sup>6</sup>, or ethically for animals by generating a

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<sup>2</sup> See generally on these issues THIERMANN, A.B. and S. BABCOCK, "Animal welfare and international trade", in BAYVEL, A. C. D. (dir.), *Animal Welfare, global issues, trends and challenges*, Office international des épizooties, 2005, pp. 747-754; VAN CASTLER, G., "Animal welfare, the EU and the World Trade Organization: Member state's sovereignty between a rock and a hard place?", in VEDDER, A. (dir.), *The WTO and concerns regarding animals and*

*nature*, Wolf Legal Publishers, 2003, pp. 61-85; and for a recent study concerning the European ban on seal products: FITZGERALD, P.L., "Morality" may not be enough to justify the EU Seal Products Ban: Animal Welfare Meets International Trade Law", *Journal of International Wildlife Law and Policy*, vol. 14, n°2, 2011, pp.85-136.

<sup>3</sup> Such a gap has been raised by AUSTEN, M. and T. RICHARDS, *Basic legal documents on international animal welfare and wildlife conservation*, Kluwer Law International, 2000, p.1; CURNUTT, J., *Animals and the law: a sourcebook*, ABC-CLIO, 2001, p.15; and NIELSEN, L., *The WTO, animals and PPM*, Martinus Nijhoff Publishers, 2007, p.325.

<sup>4</sup> See the Millennium Consumption Goals Initiative (MCGI) of the Rio+20 Conference, online at: <http://www.uncsd2012.org/rio20/index.php?page=view&type=510&nr=312&menu=20>.

<sup>5</sup> See the Declaration A/66/750 of the United Nations General Assembly, 20 March 2012 (at 8 & 15).

<sup>6</sup> According to the United Nations Environment Programme: "Agriculture is an important contributor to climate change, with the sector's greenhouse gas emissions (GHG) comparable in volume to those of the transport sector". See online UNEP/AGRI-FOOD: <http://www.unep.org/climateneutral/Topics/Agrifood/tabid/139/Default.aspx>.

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huge amount of suffering due to productivity conditions<sup>7</sup>. Even though it was absent from the sustainable development concept when it was first drafted in 1987 and proclaimed in the 1992 Rio Declaration<sup>8</sup>, animal welfare protection now has a place under its goals. At the least, this protection would be a way of taking into account the "need and aspirations" of "present and future generations" towards a more sustainable world for animals from an ethical point of view<sup>9</sup>.

A *Universal Declaration on Animal Welfare* is also proposed by governments and NGOs for adoption by the UN General Assembly "as a means of improving the welfare of animals"<sup>10</sup>. If adopted, this short declaration would establish the foundation of a global animal welfare protection<sup>11</sup>. At first, it states as a fundamental precept: "Animals are sentient beings and their welfare should be respected" (Art.1). Then it defines animal welfare as a "positive state of wellbeing" (both "physical and psychological") when the "individual is fit, healthy [and] free from suffering" (Art.2). It also specifies that sentient animals refers to "all vertebrates" and "some invertebrates" having "the capacity to

have feelings, including pain and pleasure" with a "level of conscious awareness" (Art.3). Finally, it provides the general obligation for every Member States to take "All appropriate steps [...] to prevent cruelty to animals and to reduce their suffering" (Art.4). In order to achieve this objective, "Appropriate policies, legislation and standards" should be developed and implemented (Art. 5 & 6) and "all necessary measures" should be adopted "to give effect to these agreed principles" (Art.7).

Broadly framed, this draft declaration remains a non-binding instrument. Even so, its adoption would be a first step of crucial importance to build animal welfare protection in international law by providing an agreed basis and allowing further development in this field. Moreover, universal protection would complement the animal welfare protection already existing at national, regional and international levels. Such protection can be found in numerous laws around the world since the 19th century - at national level<sup>12</sup>, in various European

instruments since the 1970s - at regional level<sup>13</sup>, and in the standards of the World Organisation for Animal Health (OIE) since the beginning of the 2000s<sup>14</sup> - at international level. In this continuity, a universal protection would be the last step of the geographical extension of animal welfare consideration by the law world-wide.

## 2. The need to Properly Address Animal Welfare Protection in International Law

Initially, the concept of animal welfare protection should be clarified in order to determine its dimensions in the international legal system, while identifying the common ground for international law-making. For this purpose, domestic laws seem to provide a consistent, solid and operational basis. Common ground can be found in general provisions of these national laws and constitutions where obligations for humane treatment and care, as well as interdictions of cruelty and ill-treatments are stated<sup>15</sup>. No less than 65 countries in the 5 continents have stringent provisions aiming to protect animal welfare<sup>16</sup>. Even if the content of these provisions can differ from one country to another<sup>17</sup>, animal welfare protection is a

<sup>7</sup> Cf. D. FRASER, *Animal welfare and the intensification of animal production: An alternative interpretation*, Food and Agriculture Organization of the United Nations (FAO), Rome, 2005.

<sup>8</sup> *Rio Declaration on Environment and Development*, UN Document A/CONF.151/26 (Vol. I), 12 August 1992.

<sup>9</sup> See the Report of the Brundtland Commission, Chapter 2, Section I: "The Concept of Sustainable Development" where it is defined as a "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"; World Commission on Environment and Development, *Our common future*, Oxford University Press, 1987 p. 43.

<sup>10</sup> Over 330 animal welfare groups and many supportive governments – including Cambodia, Fiji, New Zealand, Palau, the Seychelles, Switzerland and the 27 European Union member states are supporting the *Universal Declaration on Animal Welfare*. See online: <http://www.wspa-international.org/wspaswork/udaw/Default.aspx>.

<sup>11</sup> See the *Universal Declaration on Animal Welfare* draft agreement of 2011, online at: [http://s3.amazonaws.com/media.animalsmatter.org/files/resource\\_files/original/Latest%20draft%20UDAW%20Text%20-%20202011.pdf?1314177486](http://s3.amazonaws.com/media.animalsmatter.org/files/resource_files/original/Latest%20draft%20UDAW%20Text%20-%20202011.pdf?1314177486).

<sup>12</sup> First animal welfare laws were adopted in England (*Act to Prevent the Cruel and Improper Treatment of Cattle*, 1822) and in the United States (New York anti-cruelty law of 1829). Early laws were also adopted in foreign countries like "*The Prevention of Cruelty to Animals Act*" of 1890 in Pakistan. See national protection laws online at: [http://www.animallaw.info/nonus/articles/art\\_pdf/arbrellsabine2012.pdf](http://www.animallaw.info/nonus/articles/art_pdf/arbrellsabine2012.pdf).

<sup>13</sup> Numerous conventions were adopted by the Council of Europe, followed by the instruments of the European Union. See online index at: [http://www.animallaw.info/nonus/articles/art\\_pdf/aranimalwelfareeuropean.pdf](http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareeuropean.pdf).

<sup>14</sup> OIE International Standards on Animal Welfare: [http://www.animallaw.info/nonus/articles/art\\_pdf/aranimalwelfareinternational.pdf](http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareinternational.pdf).

<sup>15</sup> These provisions can be reflected from the very title of the laws as for examples: acts on "animal welfare", "protection", "care", "humane treatment"; or "anti-cruelty (and "ill-treatment") laws. Constitutional provisions can be found in Germany (animal protection), Luxembourg (animal welfare and protection), India (compassion), Switzerland (animal dignity) and Brazil (cruelty interdiction).

<sup>16</sup> Animal welfare protection laws concern 12 countries in the American continent, 10 in Africa, 9 in Asia, 24 in Europe. See the index resulting of my personal research, online at: [http://www.animallaw.info/nonus/articles/art\\_pdf/arbrellsabine2012.pdf](http://www.animallaw.info/nonus/articles/art_pdf/arbrellsabine2012.pdf).

<sup>17</sup> Some elements can vary from the nature of the obligations towards animals (positive or negative), to the protected animals (only domestics or even wild, only vertebrates or even some invertebrates) and the degree of protection through sanctions (fines or prison etc.).

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common principle shared by the main law systems in the world<sup>18</sup>. Therefore, nothing prevents the international community from considering its integration into international law; not only as a non-binding principle, but as a more reliable one from a legal perspective. Since the concept to respect living beings is present in every culture and religion in the world<sup>19</sup>, this could be recognized as a universal ethical principle (like in the bioethics field<sup>20</sup>). However, animal welfare protection is already evident in much domestic laws (at national and European levels) and this constitutes a decisive argument for its incorporation as a new general principle in international law<sup>21</sup>.

Although the "animal welfare" concept has recently appeared in international instruments through the

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OIE standards, this cannot be considered as a principle of international law because of the absence of either established customs or international treaties directly related to it<sup>22</sup>. Nonetheless, some international environmental law instruments are indirectly referring to some aspects of animal welfare (particularly provisions of the *World Charter for Nature*, the *International Convention for the Regulation of Whaling*, and the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES)<sup>23</sup>). Moreover, OIE standards do not fully address animal welfare since they only focus on health issues (recalling the first mandate of this organization to prevent and eradicate epizooties)<sup>24</sup>. Therefore, other common issues regarding animal welfare protection are not yet considered and can occasionally cause problems in the international community. This is particularly evident in the field of international trade at the WTO where the question of the legality or illegality of bans aiming to protect animal welfare is still not resolved to date<sup>25</sup>.

Consequently, a framework convention on animal welfare protection should be promoted in order to globally and seriously address this concern in international law. Regarding the content of such a treaty, a consensus could be reached upon already agreed principles on animal welfare by the international community (like the "5 freedoms" and the "3 Rs"<sup>26</sup>), as well as universal ethical precepts (e.g.: respect of living beings) and existing provisions in domestic laws around the world (general obligations to well-treat and not to ill-treat animals). In such an instrument, individual "animals" would become new subjects of international law (in the same way as "environment" did few decades ago), but general guidance and existing means could be used for its concrete implementation. For example, the "necessity" test through "proportionality" between means and ends would be of particular relevance for conflicts resolution<sup>27</sup>. In particular, it could be used concerning the general guidance of avoiding animal "unnecessary suffering"<sup>28</sup> (not yet addressed by international courts). Besides, animal welfare can certainly find a place in international law. Its success would make the currently emerging universal concern for its protection

<sup>18</sup>Generally, the main law systems are the Romano-Germanic, Common-law, Socialist and Traditional law ones. Cf. DAVID, R. and J. E. C. BRIERLEY, *Major Legal Systems in the World Today*, Free Press, 1978.

<sup>19</sup>This principle can be found in various wordings in the main religious movements in the world as Catholicism, Protestantism, Orthodoxy, Islam, Judaism, Buddhism and Hinduism. See the "Religious viewpoints" in BROOM, D.M. and al., *Animal Welfare*, Council of Europe editions, 2006, pp. 137-169.

<sup>20</sup>See the *Universal Declaration on Bioethics and Human Rights*, adopted by UNESCO's General Conference on 19 October 2005.

<sup>21</sup>Cf. BROWNIE, I., *Principles of Public International Law*, Oxford University Press, 4th ed., 1990.

<sup>22</sup>Whereas *general principles of law* come from municipal laws and can be transposed in international law (as one of its main sources under the Article 38(1) c) of the ICJ Statute), *principles of international law* come from existing customs and treaties.

<sup>23</sup>For example, the paragraph 2 a) of the Annex to the *World Charter for Nature* states: "Every form of life is

unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action"; the Article V (1) of the *International Convention for the Regulation of Whaling* regulates hunting "methods" of whaling and the CITES (Articles III.2(c), 4(b); IV.2(c), 5(b), 6(b); V.2(b) and VIII.3) requires to take "care" of "living" animals and avoid "cruel treatment".

<sup>24</sup>The original name of the World Organisation for Animal Health (OIE) is the "Office International des Epizooties". OIE standards on animal welfare refer to the transport of animals by land, sea and air; the slaughter of animals for human consumption and disease control purposes; the control of stray dog populations; the use of animals in research and education; and the transport of farmed fish, as well as their stunning and killing for human consumption. See online: <http://www.oie.int/en/animal-welfare/animal-welfare-key-themes/>.

<sup>25</sup>Those bans could be adopted by some States (like the US to protect dolphins and turtles from fishing methods of tunas and shrimps (see the WTO Tunas-Dolphins & Shrimps-Turtles cases) and the European

Union (like the bans on fur from leghold traps, dog and cat fur from China and recently on seal products, see online index at: [http://www.animallaw.info/nonus/articles/art\\_pdf/aranimalwelfareeuropean.pdf](http://www.animallaw.info/nonus/articles/art_pdf/aranimalwelfareeuropean.pdf)).

<sup>26</sup>The "5 freedoms" (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behavior) and the "3 Rs" (reduction in numbers of animals, refinement of experimental methods and replacement of animals with non-animal techniques) are "guiding principles for animal welfare" that are "internationally recognized". See the OIE *Terrestrial Animal Health Code* (Art 7.1.2).

<sup>27</sup>NUEMANN, J. and E. TÜRK, "Necessity revisited: proportionality in World Trade Organization Law after Korea - Beef, EC- Asbestos and EC - Sardines", *Journal of World Trade*, vol.37, p. 199 s., 2003.

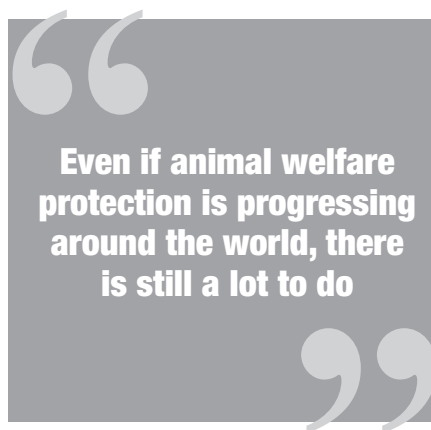
<sup>28</sup>For a summary regarding the "unnecessary suffering" principle in national laws, see BEKOFF, M., *Encyclopedia of Animal Rights and Animal Welfare*, Greenwood, 1998, p.231.

become a new common objective for the community of States.

Environmental protection became a new branch of international law at the end of the last century, and animal welfare protection is now an emerging concern at the beginning of this third millennium. On the global stage, sustainable development is a well-established objective and animal welfare a brand-new one. Meanwhile, the UN General Assembly already recognized animal welfare as deserving its consideration under the sustainable development goals, if not as a full-fledged priority worthy of consideration in itself for the coming summit.

Even if animal welfare protection is progressing all around the world<sup>29</sup>, there is still a lot to do. First of all, it is necessary to establish "clear theoretical foundations"<sup>30</sup> in order to develop a reliable protection basis in international law. Next imperative would be to adopt positive international instrument(s) to securely improve and globally protect animal welfare world-wide. In this sense, the adoption of the proposed Universal Declaration on Animal Welfare by the UN General Assembly would constitute a preliminary step of fundamental importance to open the way towards a potential international convention on animal welfare. Moreover, it would establish its fundamental basis under the "respect of sentient beings" universal principle.

Obviously, international law is not the panacea to solve every problem in the world - as environmental protection shows, even though strong instruments exist. However, it can



bring to light a shared concern to consider as a common objective to pursue by the whole international community. Being part of the animal community and sentient animals ourselves, all humans can understand animal suffering and there is evidence that almost everybody disapproves it<sup>31</sup>. That is why international law should reflect this universal feeling and discourage unnecessary suffering to better protect animal welfare world-wide.

After having considered animal protection through species conservation (protection against their extinction), it is time for international law to now consider protection of individual animal welfare (protection against their suffering). Finally, this assertion would be compatible with the concept of evolutionary international law as an adaptive system, able to respond adequately to the new preoccupations of the international society.

<sup>29</sup>For example, new countries as China, Egypt, Honduras, Mexico and Russia are preparing animal protection laws. See TRENT, N., EDWARDS, S., FELT, J. and K. O'MEARA, "International Animal Law, with a Concentration on Latin America, Asia, and Africa", in SALEM, D.J. and A.N. ROWAN, *The State of the Animals III*, chap.6, pp. 65-77, 2005, p.66.

<sup>30</sup>See "Animal welfare - the way ahead" in BOWMAN M., DAVIES, P., REDGWELL, C. and S. LYSTER,

*Lyster's international wildlife law*, Cambridge University Press, 2010, p.698.

<sup>31</sup>See FAVRE, D.S., "Movement toward and international convention for the protection of animals", in BLACKMAN, D. E., *Animal welfare and the law*, Cambridge University Press, 1989, p.251: "Almost no one is in favor of the cruelty and suffering of animals".