

# Navigating the International Legal Terrain for Animal Health and Protection: Specialist Agency or Framework Convention?

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## ABSTRACT

This article identifies and analyses key themes in the history of efforts to make international law, and the political context in which it operates, significant and effective instruments for protecting animals and their health, as well as touching upon the positive spillovers this can have for human and environmental health. The pursuit of fragmented and inconsistent approaches has made animal protection a secondary consideration, at best, in international relations. Non-governmental organisations (NGOs) and international non-government organisations (INGOs) have valiantly and persistently argued that there is a legal ‘gap’ in the protection of animals at an international level, but they have never had a strong institutional basis from which they could engage collectively and effectively with state parties. We argue that the adoption of a binding international instrument focused on animal protection would fill this gap, and evaluate one particular, recent proposal: the draft United Nations Convention for Animal Health and Protection, sponsored by Global Animal Law.

## 1. Introduction

The notion of animal protection is one that can be traced to antiquity, yet it was not until the nineteenth century that it gathered momentum, first nationally and then internationally.<sup>1</sup> At the beginning of the nineteenth century, social movements had influenced national governments to create criminal offences for animal cruelty;<sup>2</sup> and by the later part of that century, non-government organisations (NGOs) as well as international non-government organisations (INGOs) against animal cruelty, had become established in almost every jurisdiction of the globe.<sup>3</sup> International law was slower in taking up the mantle of animal protection, yet this was not for want of trying on the part of NGOs and INGOs. As will be discussed in part 2.3 of this article, in the first three decades of the twentieth century, they saw an opportunity in the newly minted League of Nations to tap into an area of law that was traditionally preserved for States. Notwithstanding their status as part of civil society, rather than government, NGOs and INGOs continuously lobbied the League of Nations to support framework conventions that dealt with broad animal protection.

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<sup>1</sup> Andrew Linzey. “Introduction, Histories and Global Perspectives”, in Andrew Linzey (ed) *The Global Guide to Animal Protection*, 1, 7, University of Illinois Press (2013).

<sup>2</sup> On famous example is - An Act to Prevent the Cruel and Improper Treatment of Cattle 1822, (3 Geo IV c 71) *The Statutes of the United Kingdom of Great Britain and Ireland 3 George IV. 1822*, his Majesty’s statute and law printers London, sold by Butterworths and son, 403, <https://archive.org/details/statutesunitedk10britgoog/page/n436>.

<sup>3</sup> Andrew Linzey. “Introduction, Histories and Global Perspectives”, above 1, 7.

States, themselves, were more interested in protecting animals with instrumental value, including for hunting or those useful or beneficial to agricultural production.<sup>4</sup> Where concern did exist in an international context, it centred on the likelihood of cross-border trade introducing and spreading animal disease, leading to the negotiation of numerous bilateral and regional treaties.<sup>5</sup> In addition, the resurgence of cattle plague (by that time known as *rinderpest*), in Belgium in 1920, acted as the catalyst for the creation of a specialist agency, the 1924 World Organisation for Animal Health (OIE).<sup>6</sup> Over the course of the twentieth century other treaties dealt with differing aspects of animal protection, primarily from an environmental perspective, but there was very little binding law that dealt with individual animal wellbeing.<sup>7</sup>

At the same time, NGOs continued their campaign for an effective international approach to animal protection well into the twentieth, and twenty-first centuries. Their proposals included, the Universal Declaration of Animal Rights (UDAR),<sup>8</sup> the Universal Charter of the Rights of Other Species (2000),<sup>9</sup> and the Declaration of Rights for Cetaceans: Whales and Dolphins, 2010.<sup>10</sup> The latest iteration in this process includes the draft United Nations Convention for Animal Health and Protection.<sup>11</sup>

The purpose of this article is to identify and analyse key themes in the history of efforts to make international law and the political context in which it operates significant and effective instruments for protecting animals and their health, and the positive spillovers this can have for human and environmental health. It is argued that the pursuit of fragmented and inconsistent approaches has made animal protection a secondary consideration, at best, in international relations. Non-governmental organisations (NGOs) as well as International non-government organisations (INGOs) have valiantly and persistently argued that there is a legal “gap” in the protection of animals at the international level, but they have never had a strong institutional

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<sup>4</sup> An example comes from the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa (London Convention 1900), preamble. The convention opened for signature on 19 May 1900 but never entered into force. A copy is available from Great Britain Foreign Office, *Issue 5 of Africa*, Harrison and Sons (1900); 1902 Convention for the Protection of Birds Useful to Agriculture, Paris 19 March, 1902, <https://iea.uoregon.edu/treaty-text/1902-protectionbirdsusefulagricultureentxt>.

<sup>5</sup> Examples of bilateral and regional instruments include the *International Convention for the Campaign Against Contagious Diseases of Animals*, 20 February, 1935, 186 LNTS 173, entered into force March 23rd, 1938, signed by 9 parties and entered into force with 5 ratifications, <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20186/v186.pdf>; *Agreement Concerning Epizootic Diseases Between the Kingdom of Greece and The Federal people's Republic of Yugoslavia* 2 February 1952, reprinted in Bernd Rüster and Bruno Simma (eds) Vol IV *International Protection of the Environment: Treaties and Related Documents*, Dobbs Ferry: Oceana Publications Inc, New York, (1975), 1833.

<sup>6</sup> Kay McVety, *The Rinderpest Campaigns: A Virus, Its Vaccines, and Global Development in the Twentieth Century*, Cambridge University Press (2018), 33; The OIE was created by the *International Agreement for the Creation at Paris of an International Office for Dealing with Contagious Diseases of Animals and Annex*, opened for signature 25 January 1924, [1925] ATIS 15, (entered into force 12 January 1925). The organisation has 182 members. The original name of the OIE was the Office International des Épizooties. However, in May 2003 the name was changed to the World Organisation for Animal Health, while keeping the historical acronym, OIE

<sup>7</sup> Discussion in part 3.1 of this article.

<sup>8</sup> National Council for the Protection of Animals, *Universal Declaration of Animal Rights*, (1978) revised several times, latest version under the auspices of World Animal Protection (formerly WSPA), text available, <https://constitutii.files.wordpress.com/2016/06/file-id-607.pdf>.

<sup>9</sup> Universal Charter of the Rights of Other Species (2000), (2000) 8 (3) *Animals Today* 16, copy available from <http://www.all-creatures.org/articles/ar-universal-charter-rights-species.html>.

<sup>10</sup> Declaration of Rights for Cetaceans: Whales and Dolphins, agreed 22 May, 2010, Conference at the Helsinki Collegium for Advanced Studies, University of Helsinki, Finland, (2011) 14 (1) *Journal of International Wildlife Law and Policy*, 75, 75.

<sup>11</sup> Global Animal Law, Draft UN Convention on Animal Health and Protection., <https://www.globalanimallaw.org/database/universal.html>.

basis from which they could engage collectively and effectively with state parties. The authors argue that the adoption of a binding international instrument focused on animal protection would fill this gap, and appraise a recent proposal: the draft United Nations Convention for Animal Health and Protection, sponsored by Global Animal Law (UNCAHP).

After this introduction, Part 2 commences the discussion with an evaluation of how the political terrain of international law - the fact that States are the appropriate parties, the fragmented nature of international law – frustrated meaningful engagement by NGOs and INGOs on matters related to animal protection during the League of Nations. Part 3 argues that notwithstanding these difficulties, the growing international strength of the animal protection movement puts NGOs and INGOs in a strong position to advocate for meaningful institutional change, closing the gap in international law. Part 4 of the article draws the analysis together, arguing in favour of the adoption of a framework convention, such as UNCAHP, rather than expanding the remit of a specialist agency (such as the OIE).

## 2. POLITICAL TERRAIN OF INTERNATIONAL LAW

The nature of international law, its strengths and weaknesses have been subject to much debate, including whether it even amounts to a system of law.<sup>12</sup> For the purposes of this article, the authors accept that international law is indeed a system of law and concentrate on its “terrain” – those matters that NGOs and INGOs must navigate to participate meaningfully in the field.

### 2.1 Nature of International Law

It has long been accepted that international law is primarily the domain of states or nations, with private actors playing a secondary role. In the nineteenth century, one text described international law as comprising

those rules of conduct which reason deduces, as *consonant to justice*, from the nature of the society existing among *independent nations*; with such definitions and modifications as may be established by *general consent* (emphasis added).<sup>13</sup>

The phrases emphasized, highlight the importance of consensus among nations so that advances in international law should be consistent with principles of justice and the social tenor of nations. The latter of, course, can include a variety of activities and points of view, including those held by private actors as well as NGOs and INGOs who have spearheaded social movements relating to animal protection.

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<sup>12</sup> For example: generally, Daniel Bodansky, Jutta Brunée and Ellen Hay, “International Environmental Law: Mapping the Field” in Daniel Bodansky, Jutta Brunée and Ellen Hay (eds) *The Oxford Handbook of International Environmental Law*, 1, OUP (2008), DOI: 10.1093/oxfordhb/9780199552153.013.0001; John Carter Morgan II, “Fragmentation of International Environmental Law and the Synergy: A Problem and a 21st Century Model Solution” (2016) 18 (1) *Vermont Journal of Environmental Law*, 134, 138, <https://www.jstor.org/stable/24859521>; Anne Peters, “The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization”, (2017) 15 (3) *International Journal of Constitutional Law*, 671, 680, 685, 700-701, <https://doi.org/10.1093/icon/mox056>; Malcolm N Shaw, *International Law*, Eighth Edition, Cambridge University Press (2017), Chapter 1; generally, Ryder McKeown, “International Law and Its Discontents: Exploring the Dark Sides of International Law in International Relations”, (2017) 43 (3) *Review of International Studies*, 430, DOI: <https://doi.org/10.1017/S0260210517000092>.

<sup>13</sup> Henry Wheaton, *Laurence’s Wheaton Elements of International Law*, (second annotated edition by William Beach Lawrence) Little, Brown and Company, Boston (1863), 26, <https://play.google.com/store/books/details?id=To4zAQAAMAAJ&rdid=book-To4zAQAAMAAJ&rdot=1>.

In an analogous way, the preamble to the Covenant of the League of Nations regarded international law “as the actual rule of conduct among Governments... [based on] the maintenance of justice and a scrupulous respect for all treaty obligations...”<sup>14</sup> More recently, international law has been characterized as an “international legal process of rule creation, interpretation and enforcement” which leads to “a series of rules governing state and non-state action”.<sup>15</sup> While the regulation of non-state action is important, the role of states still takes centre stage, as international law primarily regulates how states interact with each other.<sup>16</sup> From this foundation, states shape international law in at least three ways: first, the very fact that states are the primary actors, makes it complex for other stakeholders, such as NGOs and INGOs, to participate meaningfully;<sup>17</sup> second, international law is largely reactive, with states negotiating international instruments as problems occur;<sup>18</sup> and, third, the process of making international law is political, so that states will respond to those matters they regard as important.<sup>19</sup>

The fact that international law is largely reactive and political has led to a system that by and large deals with problems on a case-by-case basis, resulting in a fragmented approach to global problems. In the case of animal law this is evinced by treaties that deal with limited aspects of animal protection, such as disease, trade in endangered species, protection of biodiversity, but very little that deals with animal wellbeing on an individual basis.<sup>20</sup> White has concluded that this fragmentation creates an appreciable gap in global animal protection.<sup>21</sup> These characteristics also intensify governance problems deriving from the fact that international law is designed to manage “questions of governmental conduct”, yet issues of animal wellbeing are invariably problems created by private conduct.<sup>22</sup> Hence, one of managing this difficulty lies in the adoption of an international treaty which imposes obligations on states to manage the behaviour of private actors.<sup>23</sup>

These types of complications were evident during the tenure of the League of Nations, which saw the first formal attempts at introducing multi-lateral treaties dealing to enhance animal protection.

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<sup>14</sup> The Treaty of Peace between the Allied and Associated Powers and Germany, and the Treaty between France and Great Britain signed at Versailles 28 June 28, 1919 (Treaty of Versailles), Part 1, The Covenant of the League of Nations, (1920) *League of Nations Official Journal*, 3, [https://libraryresources.unog.ch/ld.php?content\\_id=32971179](https://libraryresources.unog.ch/ld.php?content_id=32971179).

<sup>15</sup> Ryder McKeown, “International Law and Its Discontents: Exploring the Dark Sides of International Law in International Relations”, above 12, 432.

<sup>16</sup> Daniel Bodansky, Jutta Brunnée, and Ellen Hey, “International Environmental Law: Mapping the Field”, above 12, 1.

<sup>17</sup> Malcolm N Shaw, *International Law*, above 12, 156.

<sup>18</sup> There are exceptions, for example, the global mobilisation against ozone depleting substances, that led to the negotiation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, [1989] *ATS* 18; the Protocol opened for signature on 16 September 1987 and entered into force on 1 January 1989. It has 197 ratifications, ascensions, acceptances and successions. Discussion, Karen N Scott, “Managing Fragmentation Through Governance: International Environmental Law in a Globalized World” in Andrew Byrnes, Mika Hayashi and Christopher Michaelson (ed) *International Law in the New Age of Globalization*, 207, 209, Brill (2013), [https://doi.org/10.1163/9789004228818\\_010](https://doi.org/10.1163/9789004228818_010).

<sup>19</sup> Anne Peters, “The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization”, above 12, 701.

<sup>20</sup> Stuart R Harrop, ‘The Dynamics of Wild Animal Welfare Law’ (1997) 9 *Journal of Environmental Law* 287, 287; Anne Peters, *Animals in International Law*, Brill (2021), 85.

<sup>21</sup> Steven White, “Into the Void: International Law and the Protection of Animal Welfare”, (2013) 4 (4) *Global Policy*, 391, 391.

<sup>22</sup> Daniel Bodansky, Jutta Brunnée, and Ellen Hey, “International Environmental Law: Mapping the Field”, above 12, 5.

<sup>23</sup> *Ibid.*

## 2.2 Animal Protection, States and the League of Nations

From the inception of the League in 1920 to its end in 1946, concern with animal issues ebbed and flowed. The reactive and political nature of international law was evident in attempts by the government of Great Britain, although prompted by NGOs, to introduce a convention to protect seabirds affected by oil pollution.<sup>24</sup> While initially there was some progress, by 1936 the matter had stalled. In reality, for the convention to have succeeded it would have been necessary to persuade the other maritime powers of the day (apart from Great Britain), namely Germany, Japan and Italy, to sign.<sup>25</sup> However, Germany and Japan had already withdrawn from the League of Nations in 1933 and Italy followed suit in 1937. Other attempts by NGOs and INGOs to introduce broad animal protection treaties, discussed in part 2.3 below, also ultimately failed.

This left the work of the League of Nations concentrating on treaties relating to animal diseases in international trade, which resulted in three agreements drafted by the Economic Committee of the League of Nations: the 1935 International Convention for the Campaign Against Contagious Diseases of Animals;<sup>26</sup> the 1935 International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin;<sup>27</sup> and, the 1935 International Convention Concerning the Export and Import of Animals, Meat and Other Products of Animal Origin.<sup>28</sup>

These treaties were consistent with the creation of the OIE, which was an earlier outcome from the International Conference for the Study of Epizootics (Conférence Internationale pour l'Etude des Epizooties) held in May 1921, in Paris.<sup>29</sup> The conference envisaged creating an international office for animal health, which as already noted, was prompted by the reappearance of *rinderpest* in Belgium.<sup>30</sup> The treaty was negotiated outside of the League of Nations, although the League took a keen interest in its progress, contacting the French Minister for Agriculture, on 16 June 1921, for preliminary information on the establishment of the OIE.<sup>31</sup> This request was made notwithstanding the fact that animal health was not specifically mentioned in the Covenant of the League of Nations. Rather, Article 23 stated that

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<sup>24</sup> Anna-Katharina Wöbse, "Oil on Troubled Waters? Environmental Diplomacy in the League of Nations" (2008) 32 (4) *Diplomatic History*, 519, 525, 529, 534, <https://www.jstor.org/stable/24915999>.

<sup>25</sup> *Ibid.*

<sup>26</sup> *International Convention for the Campaign Against Contagious Diseases of Animals*, above 5.

<sup>27</sup> *International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin*, 20 February, 1935, 193 *LNTS* 37, entered into force 6 Dec 1938, signed by 9 parties and entered into force with 5 ratifications, <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20193/v193.pdf>.

<sup>28</sup> *International Convention Concerning the Export and Import of Animals, Meat and Other Products of Animal Origin*, 20 February 1935, 193 *LNTS* 59, entered into force 6 Dec 1938, signed by 9 parties and entered into force with 5 ratifications, <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20193/v193.pdf>.

<sup>29</sup> Cornelia Knab, "Infectious Rats and Dangerous Cows: Transnational Perspectives on Animal Diseases in the First Half of the Twentieth Century" (2011) 20 (3) *Contemporary European History*, 281, 293, doi:10.1017/S0960777311000324; *Conférence Internationale pour l'Etude des Epizooties*, Paris, 25-28 Mai 1921. Hachette Livre, 1 – reprint on file with authors.

<sup>30</sup> Amanda Kay McVety, *The Rinderpest Campaigns: A Virus, Its Vaccines, and Global Development in the Twentieth Century*, above 6, 33.

<sup>31</sup> United Nations Archives Geneva, League of Nations Archives, International Office of Epizootics - Mr. Jean Gout, French Service of the League of Nations - In answer to a Request from the International Bureaux Section, forwards Information on the Establishment of such an Office in Paris, correspondence dated 16 June, 1921, between between the League of Nations and the French Minister for Agriculture, Registry No R1013/13/24527/24527.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:...(f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Article 25 provided that

Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world.

Although references to disease and health could have been interpreted narrowly as only being relevant to human health, the League engaged with the work of the OIE and what eventually came to be termed “veterinary questions”, with the latter addressed through the League’s Economic Committee.<sup>32</sup> This committee formed part of the Economic and Financial Organization of the League and part of its remit included discussion of agricultural matters, hence the League’s willingness to sponsor the negotiation and entry into force in 1935 of the three conventions referred to above.<sup>33</sup>

The so-called veterinary questions kept the League busy from at least 1928 when the Economic Committee appointed a “Sub-Committee of Experts on Veterinary Questions”.<sup>34</sup> The main impetus of the subcommittee was to settle the relationship of veterinary questions and issues in the context of nationally implemented trade restraints. At a meeting held on 21 September 1928 the subcommittee noted that it was vital to determine what amounted to appropriate veterinary measures, so that national regulations could “be cleared from all suspicion of veiled protectionism, and promote the greater freedom of trade”.<sup>35</sup> In reality the issue of trade, rather than veterinary requirements, dominated these discussions, as evinced by commentary from: Czechoslovakia, who regarded many import and export restrictions to be clear disguised restraints on trade; Australia, who spoke on the commercial importance of the livestock trade to the Australian economy;<sup>36</sup> and, Yugoslavia who saw the work of the sub-committee in terms of facilitating a “collective convention” that would enable trade in cattle and animal products, while also protecting importing countries from the “dissemination of disease.”<sup>37</sup> The focus, therefore, clearly lay on commercial objectives where individual animal wellbeing remained a secondary issue.

Notwithstanding these matters, the 1935 International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin engaged with some facets of animal wellbeing, such as proscribing the overloading of cattle cars and stipulating that animals had

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<sup>32</sup> Cornelia Knab, “Infectious Rats and Dangerous Cows: Transnational Perspectives on Animal Diseases in the First Half of the Twentieth Century” above 29, 299.

<sup>33</sup> General discussion on the operation of the Economic and Financial Organisation - Patricia Clavin and Jens-Wilhelm Wessel, “Transnationalism and the League of Nations: Understanding the Work of its Economic and Financial Organisation” (2005) 14 (4) *Contemporary European History*, 465.

<sup>34</sup> League of Nations, “Work of the Sub-Committee of Experts on Veterinary Questions Appointed by the Economic Committee of the League”, (1928) 9 *League of Nations Official Journal*, 1963.

<sup>35</sup> League of Nations (1928) 64 *League of Nations Official Journal*, Special Supplement 118, 129.

<sup>36</sup> Sir Granville Ryrie, League of Nations, (1928) 66 *League of Nations Official Journal*, Special Supplement 40, 45.

<sup>37</sup> M Veverka Czechoslovakia [1928] 64 *League of Nations Official Journal*, Special Supplement 118, 121; Sir Granville Ryrie, League of Nations, (1928) 66 *League of Nations Official Journal*, Special Supplement 40, 45; Yugoslav delegation (1929) 77 *League of Nations Official Journal*, Special Supplement 22, 23.

to be loaded and fed properly to “avoid unnecessary suffering”.<sup>38</sup> Correspondence between the League of Nations, and NGOs, such as the RSPCA, indicates that NGOs perceived the negotiation of the three 1935 conventions as an opportunity to influence outcomes; however, unless proposals were sponsored by a member State, there was little the League could do.<sup>39</sup>

### 2.3 Animal Protection, NGOs, INGOs and the League of Nations

NGOs and INGOs had been active long before 1919, but they thought the League of Nations would provide them with an opportunity to tap into diplomatic and institutional structures that, as non-state participants, were not otherwise available to them.<sup>40</sup> Moreover, the international platform provided by the League of Nations would see their work would gain greater international attention.

In the United Kingdom (UK) the animal protection movement included the establishment of the Society for the Prevention of Cruelty to Animals in 1824 (later the RSPCA), and the British and Foreign Society for the Promotion of Humanity and Abstinence from Animal Food, created in 1843.<sup>41</sup> INGOs commenced activities some five decades later and included: the World League for the Protection of Animals (WPA, originally known as the the World League Against Vivisection and for the Protection of Animals) created in Germany in 1898; the International Vegetarian Union (IVU), also created in Germany, in 1908; and the International Bureau of Societies for the Protection of Animals and Plants and Anti-Vivisection Societies (the Bureau), established in France, in 1925.<sup>42</sup>

INGOs such as the WPA had branches in western jurisdictions<sup>43</sup> while others such as the IVU, brought together national vegetarian societies, including those from the United Kingdom (formed 1843), the United States of America (formed 1850), Australia (formed 1886), India (formed 1899), Chile (formed 1891) and Greece (formed 1906).<sup>44</sup> INGOs also typically held conferences (congresses) to further their objectives, which included raising awareness of the plight of animals and, in a more political vein, to push for improved regulation on a global scale.<sup>45</sup>

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<sup>38</sup>1935 International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin, articles 3 and 5; discussion Michael J Bowman, “The Protection of Animals under International Law”, (1989) 4 *Connecticut Journal of International Law*, 487, 489.

<sup>39</sup> United Nations Archives Geneva, League of Nations Archives, Veterinary questions - Import, export and transit of animals - Correspondence with the Royal Society for the prevention of cruelty to animals, London (Captain Fergus MacGunn) and the League of Nations, dated 22 May 1935, Registry No R4373/10A/13056/673.

<sup>40</sup> Anna-Katharina Wöbse, “Oil on Troubled Waters? Environmental Diplomacy in the League of Nations”, above 24, 521.

<sup>41</sup>Christopher Otter, “Cleansing and Clarifying: Technology and Perception in Nineteenth-Century London”, (2004) 43 (1) *Journal of British Studies*, 40, 45; British and Foreign Society for the Promotion of Humanity and Abstinence from Animal Food, <https://ivu.org/history2societies/britfor.html>.

<sup>42</sup> World League for the Protection of Animals, “The Origin of the World League for the Protection of Animals”, [https://www.wlpa.org/about\\_wlpa.htm](https://www.wlpa.org/about_wlpa.htm); International Vegetarian Union, “History of the International Vegetarian Union”, <https://ivu.org/history-legacy-pages.html>; International Bureau of Societies for the Protection of Animals and Plants and Anti-Vivisection Societies, record, <http://www.lonse.de/pub/org/801>.

<sup>43</sup> World League for the Protection of Animals, “The Origin of the World League for the Protection of Animals”, above, 42.

<sup>44</sup> IVU, “History of the International Vegetarian Union”, above 42.

<sup>45</sup> Andrew Linzey. “Introduction, Histories and Global Perspectives”, above 1, 7.

Starting from the 1920s groups such as the RSPCA, the Federation of Belgian Societies for the Protection of Animals, the Iberian Federation of Animal and Plant Protection Societies and the International Bureau for the Protection of Animals regularly petitioned the League of Nations to create an “Animal Charter”, or international laws for the protection of animals.<sup>46</sup>

The resolve of NGOs and INGOs was perhaps never more apparent than in 1932, when the International Bureau for the Protection of Animals (Geneva),<sup>47</sup> sent a formal deputation to the League of Nations on 21 April, that was supported by 1,400 societies for the protection of animals from across the globe.<sup>48</sup> Members of the delegation presented short statements, underscored by a consistent theme, which emphasised that society needed to redress the wrongs inflicted on animals, not only for the sake of animals but for humanity’s moral health.<sup>49</sup> The International Bureau for the Protection of Animals (Geneva) was established in 1928 in Geneva with a mandate to “promote international unity between societies all over the world and to deal with practical questions, including the transport of animals, slaughter reform, protection of birds and methods of trapping”.<sup>50</sup> It saw the League of Nations as the appropriate institution to effect its objectives, but beyond presenting the delegation to the League, it did not address how these objectives would be achieved. This was a challenge that had already been tackled prior to 1932 by the International Bureau of Societies for the Protection of Animals and Anti-Vivisection Societies (International Bureau of Animal Societies).

The International Bureau of Animal Societies was formed in Paris in 1925, and in common with other INGOS, aimed at harmonizing national legislation to international standards.<sup>51</sup> In accordance with its mandate, one of its objectives was to ensure that animals were treated with kindness and humanity, which in 1929 led it to devise a proposal to create an Office for the Protection of Animals (Office for Animals (1931)), to be established as a branch of the League

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<sup>46</sup> United Nations Archives Geneva, League of Nations Archives, *International Charter for the Prevention of Cruelty to Animals - Royal Society for the Prevention of Cruelty to Animals* – correspondence dated 27 October, 1920 and 12 November, 1920, between the Royal Society for the Prevention of Cruelty to Animals and the League of Nations, Ref Code R1577/40/7695/3478 and Ref Code AP: R1577/40/3478/7695; United Nations Archives Geneva, League of Nations Archives, *International Regulation for the protection of Animals*, – correspondence dated 5 August, 1926, between the Federation of Belgian Societies for the Protection of Animals and the League of Nations, Ref Code R1577/40/53038/3478 and Ref Code AP: R1577/40/3478/5308; United Nations Archives Geneva, League of Nations Archives, *Employment of Animals in Mines* – correspondence dated 27 December 1932, between the Iberian Federation of Animal and Plant Protection Societies and the League of Nations, Ref Code R5688/50/1464/1464 and Ref Code AP: R5688/50/1464/1464; United Nations Archives Geneva, League of Nations Archives, *Employment of Animals in Mines* – correspondence dated 31 January 1935, between the International Bureau for the Protection of Animals and the League of Nations, Ref Code R5688/50/1464/1464 and Ref Code AP: R5688/50/1464/1464.

<sup>47</sup> The International Bureau for the Protection of Animals was named as such, in correspondence with the League of Nations. Its French name was the Bureau International Humanitaire Zoophile, but it was also known as the International Humanitarian Bureau. LONSEA, International Humanitarian Bureau, <http://www.lonsea.de/pub/org/780>. LONSEA is the League of Nations Search Engine, a database on international organisations created at the University of Heidelberg.

<sup>48</sup> Note of deputation by the Geneva Branch of the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies sent to Arthur Henderson, President of the Conference for the Reduction and the Limitation of Armaments dated 21 April, 1932 and correspondence by Arthur Henderson to the Secretary of the League of Nations, dated 25 April, 1932, The League of Nations, Archives 1928-1932, Classification: General and Miscellaneous, Registry No 50, 9063, 1615.

<sup>49</sup> Ibid, The National Council for Animals’ Welfare, London, The Humane Education Society of Manchester.

<sup>50</sup> LONSEA, International Humanitarian Bureau, <http://www.lonsea.de/pub/org/780>. LONSEA is the League of Nations Search Engine, a database on international organisations created at the University of Heidelberg.

<sup>51</sup> LONSEA, International Bureau of Societies for the Protection of Animals and Anti-Vivisection Societies, <http://www.lonsea.de/pub/org/801>.



of Nations.<sup>52</sup> The proposal was based on a declaration derived from a congress arranged by the International Bureau of Animal Societies, held in Vienna in 1929, characterised by collaboration and international solidarity. The proposal was formally presented to the League of Nations in March 1931, by way of a carefully worded brochure.<sup>53</sup>

The proposed Office for Animals (1931) was designed to act as a clearing house for national laws and advise of new developments in animal protection, which would also be disseminated by way of a regular bulletin.<sup>54</sup> In addition, the proposal envisaged institutional support, comprising at least four sections – one for the general protection of animals, a legal section, a technical section to deal with matters such as reform of slaughter and a media relations section.<sup>55</sup> It was also anticipated that the Office for Animals (1931) would have a secretariat within the League of Nations and an Advisory Commission consisting of representatives of Member states of the League, with each state represented by one delegate.<sup>56</sup> These were very concrete, detailed and ambitious proposals, which unfortunately did not succeed. They did, however, highlight the importance of a unified and global response to animal wellbeing as well as the need for strong institutional support.

Requests for the League of Nations to be involved in animal protection, which would have made the issue one of global concern, were made throughout the 1920s and up to the mid-1930s.<sup>57</sup> These calls contributed to an atmosphere of enthusiasm and cooperation within the League, which initially saw it being receptive to overtures from INGOs.<sup>58</sup> However, after 1932 formal INGO participation, by way of consultative rights and roles as assessors on League committees, petered off.<sup>59</sup> This is partly explainable by the growing number of NGOs and INGOs and their impact on workloads of the League, but it is also likely a reflection of increasing hostilities in Europe, which saw the League steering clear of issues it regarded as politically fraught.<sup>60</sup> Furthermore, the operation of international law meant that even when the League was sympathetic to objectives of INGOs, it was limited in what it could do, because proposals had to be put forward, officially, by member states.<sup>61</sup> Consequently, animal protection organisations, found the strictures of international law intractable and difficult to navigate.

These problems, however, did not dissuade such organisations who throughout the twentieth, and into the twenty first century, valiantly and persistently argued in favour of an international treaty to close the gap in animal protection.

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<sup>52</sup> Proposal for the creation of an Office for the Protection of Animals within the League of Nations, annexure to correspondence by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies to Eric Drummond, Secretary-General of the League of Nations, 11 March, 1931, The League of Nations, Archives 1928-1932, Classification: General and Miscellaneous, Registry No 50, 26882, 1615.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid, 5, 6.

<sup>55</sup> Ibid, 6.

<sup>56</sup> Ibid, 6, 7.

<sup>57</sup> Thomas Davies, *NGOs, A New History of Transnational Civil Society*, Hurst and Company, London (2013), 81-82.

<sup>58</sup> Steve Charnovitz, “Two Centuries of Participation: NGOs and International Governance” (1997) 18 *Michigan Journal of International Law*, 183, 246-247, <https://repository.law.umich.edu/mjil/vol18/iss2/1>.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, 247.

<sup>61</sup> United Nations Archives Geneva, League of Nations Archives, *General and Miscellaneous*, – correspondence dated 25 April 1932, between between the League of Nations and the International Bureau for the Protection of Animals, Registry No 50, 9063, 1615.

### 3. ANIMAL PROTECTION: INTERNATIONAL LAW, NGOs AND INGOs

Outside of the League of Nations, international law that protects animals largely comprises instruments negotiated to address specific issues, such as regulating hunting to preserve game animals as a resource, or implementing measures to protect threatened species, or biodiversity at large. Domestic animals, enjoy limited protection, which includes non-binding standards adopted under the umbrella of the OIE, or are otherwise not protected in international law. Indeed, as will be argued, the piecemeal nature of the regime has created a gap, which NGOs and INGOs are well placed to fill.

#### 3.1 The Gap

As already indicated, White has concluded that the fragmented nature of international law creates an appreciable gap in global animal protection.<sup>62</sup> This primarily arises from international law's configuration, evident in both its coverage and treatment of animals. Peters concludes that while some law does exist in the context of wild animals, it is inadequate and what little law exists with respect to domestic animals, is not binding.<sup>63</sup> Moreover, it is arguable that even where treaty systems take animal wellbeing into account, this frequently occurs as an incidental matter to other treaty objectives.<sup>64</sup>

Such was the case with the 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa<sup>65</sup> an early instrument that dealt with the protection of animals. The convention limited the use of nets and pitfalls to capture land animals, as well as banning the use of explosives and poisons in the case of marine and aquatic animals.<sup>66</sup> While these provisions broadly related to animal wellbeing, the convention itself (which did not come into force because Great Britain did not sign it) primarily aimed at regulating unsustainable hunting methods, to preserve animals as a game resource. These lines of thought were consistent with analogous national laws, which in Australia for example, prohibited the use of destructive and indiscriminate methods of hunting animals, such as poisons and punt guns.<sup>67</sup> The need to regulate hunting methods also featured in later treaties, including the 1950 Protection of Birds Convention, which amongst other things, prohibited mass capture or killing, the use of nets, poison, blinded decoy-birds, automatic guns and the use of firearms other than shoulder arms.<sup>68</sup> Arguably, restrictions in the 1950 Bird Convention extended beyond protecting birds as a hunting resource and aimed at proscribing cruel hunting methods. This objective is consistent

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<sup>62</sup> Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 391.

<sup>63</sup> Anne Peters, *Animals in International Law*, above 20, 85.

<sup>64</sup> Francesca Nyilas, "CITES And Animal Welfare: The Legal Void For Individual Animal Protection" (2021) 9 [S.1] *Global Journal of Animal Law*, 1, 6, <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1720>.

<sup>65</sup> 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa, above 4.

<sup>66</sup> 1900 London Convention, Articles 8 and 9.

<sup>67</sup> *Birds and Animals Protection Act 1918* (NSW), section 24.

<sup>68</sup> *Animals Protection Act 1879* (NSW), section 3; *Birds Protection Act 1881* (NSW), section 9; *Birds Protection Act 1893* (NSW), section 9; *Birds Protection Act 1901* (NSW), section 8; *Birds and Animals Protection Act 1918* (NSW), section 2; Mark Cioc, *The Game of Conservation: International Treaties to Protect the World's Migratory Animals*, Athens: Ohio University Press (2009), 61; Edward Golding, *A History of Technology and Environment: From Stone Tools to Ecological Crisis*, Routledge (2017), 10; F. I. Norman & A D Young, "Short-sighted and Doubly Short-sighted are they: A brief Examination of the Game Laws of Victoria, 1858-1958", (1980) 4 (7), *Journal of Australian Studies*, 2, 11.

<sup>68</sup> 1950 Protection of Birds Convention, (1968) UNTS 1 86, Article 5. The Convention opened for signature on 18 October 1950 and entered into force 17 January, 1963, it had 16 members.

with later treaties, such as the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats.<sup>69</sup> At the same time, notwithstanding positive features of these instruments, they still had a narrow focus, dealing with animal wellbeing in the context of capture and hunting.

One international convention that considers animal welfare more broadly is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>70</sup> Although CITES' objectives are narrowly drafted to underscore the preservation of threatened species in international trade, the convention nevertheless addresses wider aspects of wildlife wellbeing.<sup>71</sup> Accordingly, CITES stipulates that animals should "pass through any formalities...with a minimum of delay" and otherwise be cared for properly to reduce injury, or cruel treatment.<sup>72</sup> Where specimens have been confiscated, the parties should establish rescue centres to look after animals.<sup>73</sup> While these aim at improving animal wellbeing and are in one sense, more comprehensive than those found in other treaty systems, the degree of compliance is uncertain because it is not monitored.<sup>74</sup>

A further treaty system that has specifically embraced animal welfare is the OIE which adopted the Global Animal Welfare Strategy in 2017.<sup>75</sup> The strategy has an ambitious remit, including: "a world where the welfare of animals is respected, promoted and advanced, in ways that complement the pursuit of animal health, human well-being, socioeconomic development and environmental sustainability".<sup>76</sup> In this way, the strategy acknowledges the links between animal welfare standards, animal health and human health.<sup>77</sup> This is an important point because it speaks to the big picture, underscoring dependencies between humans and animals. Finally, the strategy acknowledges that society needs to develop animal welfare standards, as well as implement capacity building, collaboration and communication with stakeholders, including civil society, paving the way for effective realisation of standards and policies.<sup>78</sup>

However, the OIE is a specialist agency with a remit limited to animals in international trade. It does not broach the ethics or practices of wildlife management, the wellbeing of domestic animals, whether they are companion animals or animals used in experimentation; moreover, the OIE also does not touch upon the use of exhibited animals or animals in tourism and entertainment. Consequently, while its notion of animal welfare is broad in the sense that it envisages its standards and regulation will have a global reach, its vision is nevertheless narrowed by the constrained coverage of the regime.

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<sup>69</sup> 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats, (1979) *ETS* 104, Appendix IV. The convention opened for signature the 19 September, 1979 and entered into force on 1<sup>st</sup> June 1982, it has 50 contracting parties.

<sup>70</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (1976) 993 *UNTS*, 243. The Convention opened for signature 3 March 1973 and entered into force on 1 July, 1975, the convention has 183 parties.

<sup>71</sup> CITES, Articles III(2)(a), IV(2)(a).

<sup>72</sup> CITES, Articles III(2)(c), IV(2)(c), V(2)(b), VIII(3).

<sup>73</sup> CITES, Article VIII(5); also CITES, Conference of the Parties, Disposal of Illegally Traded and Confiscated Specimens of CITES-Listed Species, Conf. 17.8, Johannesburg (South Africa), 24 September-04 October 2016.

<sup>74</sup> Michael Bowman, "Conflict or Compatibility? The Trade, Conservation and Animal Welfare Dimension of CITES", (1998) 1 (1) *Journal of International Wildlife Law and Policy*, 9, 9.

<sup>75</sup> OIE, Global Animal Welfare Strategy, May 2017, adopted at the 85th OIE General Session and meeting of the OIE Regional Commission for Africa, Paris, France, 21-26 May 2017, <https://www.oie.int/app/uploads/2021/03/en-oie-aw-strategy.pdf>.

<sup>76</sup> *Ibid*, 2.

<sup>77</sup> *Ibid*, 3.

<sup>78</sup> *Ibid*, 4.

In the context of wildlife law, perhaps one of the most telling gaps stems from the lack of detailed attention to animal wellbeing in the Convention on Biological Diversity (CBD).<sup>79</sup> This is not to say that the CBD is blind to this issue, but it does not approach the topic with any degree of detail or accessibility. The preamble to the convention refers to the intrinsic nature of biodiversity. While this indicates that biodiversity has more than instrumental value, elsewhere throughout the treaty, the CBD links the value of biodiversity to human uses, attributing perhaps something less than intrinsic value to biodiversity.<sup>80</sup> In addition, not all species are treated equally, a point most evident in the case of invasive alien species. Article 8(h) of the CBD requires parties to prevent, control and eradicate the threats to biodiversity from these species, but is silent on questions relating to animal wellbeing deriving from the choice of control and eradication methods.

Instruments within the CBD adopted in the years after 1992, have on occasion referred to animal welfare, providing a glimpse of how international regulation may evolve. Principle 12 of the Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, specifies that mitigation measures should be “ethically acceptable to stakeholders”.<sup>81</sup> This is a very a broad phrase, susceptible to almost any interpretation, calling into question what “ethically acceptable” will mean in practice. In Australia, model codes of practice that focus on killing invasive alien species have been critiqued, although in some cases, when dealing with unwanted native species, such as flying foxes, regulators are becoming more creative by engaging with stakeholders to find alternative approaches to killing.<sup>82</sup> In an analogous way, the Conference of the Parties to the CBD, adopted the Addis Ababa Principles and Guidelines for the Sustainable use of Biodiversity, indicating that environmental law and policy should “promote more efficient, ethical and humane use of components of biodiversity”.<sup>83</sup> Again this is a broad statement which would benefit from guidance as to its practical application.

The gap, therefore, refers to the fact that that not all animals are protected in international law and those who are, are invariably not protected to a high degree. This lacuna is reflected in domestic regulation, where law and policy varies across the jurisdictions, particularly if not based on a binding international agreement or standard.

Such a situation exists with animal experimentation and the adoption of the three Rs – reduction of animal use, refinement of how animals are used and replacement of animals with alternative

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<sup>79</sup> Convention on Biological Diversity 1992 (CBD) [1993] ATS no 32. The Convention opened for signature on 5 June 1992, and entered into force 29 December 1993, the convention has 196 parties

<sup>80</sup> Sophie Riley, “Sustainable Development and the United Nations Dialogues: Living in Harmony with Nature”, (2019) 9 (1) Victoria University Law and Justice Journal, 31, 32-33, DOI: <https://doi.org/10.15209/vulj.v9i1.1152>.

<sup>81</sup> Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, Guiding Principles 2, 7 and 10. Adopted April 2002 as part of Decision VI/23 of the Conference of the Parties. Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/6/20 (23 September 2002).

<sup>82</sup> Generally, Sophie Riley, “Model Codes for the Humane Treatment of Animals: Australian Law and Policy on Lethal Control of Pests”, (2015) 18(4) *JIWLP* 276; **NOTE – F/N ARTICLE ON BATS GJAL WHEN IT IS PUBLISHED.**

<sup>83</sup> Conference of the Parties to the Convention on Biological Diversity, 13 April 2004, Decision VII/12 on Sustainable Use, under the heading of Practical principle 11: “Users of biodiversity components should seek to minimize waste and adverse environmental impact and optimize benefits from uses”. Discussion in Alexander Gillespie, “An Introduction to Ethical Considerations in International Environmental Law”, in *Research Handbook on International Environmental Law*, Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (Eds), chapter 6, 117, 128, Edward Elgar (2010).

methods. The three Rs derive from a declaration adopted by the 3rd World Congress on Alternatives and Animal Use in the Life Sciences, Bologna, Italy, on 31 August 1999 (Bologna Declaration).<sup>84</sup> As a declaration, it is not formally binding, even though it has become very influential, finding its way into domestic law and policy documents. In Australia, for example, the National Health and Medical Research Council has produced various iterations of the *Australian Code for the Care and Use of Animals for Scientific Purposes*.<sup>85</sup> Paragraph 2.4, which deals with the responsibilities of investigators, highlights the importance of implementing the three Rs. Although the Code is a policy document, animal ethics committees must review applications in accordance with the Code, including application of the three Rs. The difficulty, however, not only for Australian researchers and animal ethics committees, but also researchers and committees in other jurisdictions lies in interpreting the Code in real world situations.<sup>86</sup> Clearer standards at the international level would assist in attaining transparency and consistency in decision-making.

Another point to bear in mind is the role of NGOs in how the Bologna Declaration came into being. Although it was adopted in 1999, it had its genesis in the work of the Universities Federation for Animal Welfare (UFAW),<sup>87</sup> a British organisation established under the patronage of Major Charles Westley Hume, an animal activist.<sup>88</sup> UFAW commenced campaigning for the three Rs in the 1950s, after which national regulation was gradually introduced in jurisdictions such as the United States of America and the European Union, eventually leading to wide acceptance of the three Rs and the adoption of the Bologna Declaration.<sup>89</sup>

The campaign by UFAW lasted four decades, demonstrating the tenacity and perseverance of this NGO, which engaged in a process that gave animal wellbeing in scientific research a higher international profile than had been previously enjoyed. Even though the three Rs are based on a non-binding declaration, the Bologna Declaration provided a starting point for discussion and understanding.<sup>90</sup> Beyond the field of scientific extermination, NGOs and INGOs have actively pursued proposals to improve animal wellbeing, with a combination of non-binding declarations and proposals for treaties.

## Question

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<sup>84</sup> Text of declaration available from European Commission, “Life Scientists Adopt Declaration of Bologna” news release 27 September 1999, record number 13695, <https://cordis.europa.eu/article/id/13695-life-scientists-adopt-declaration-of-bologna>; General discussion - Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, as Adopted by the 3rd World Congress on Alternatives and Animal Use in the Life Sciences, Bologna, Italy, on 31 August 1999: Prepared by the Executive Committee of the Congress”, (2009) 37 (3) *Alternatives to Laboratory Animals*, 285, <https://doi.org/10.1177/026119290903700310>.

<sup>85</sup> NHMRC, *Australian Code for the Care and Use of Animals for Scientific Purposes*. Commonwealth of Australia (2013) <https://www.nhmrc.gov.au/about-us/publications/australian-code-care-and-use-animals-scientific-purposes>.

<sup>86</sup> Catherine A Schuppli, “Decisions about the Use of Animals in Research: Ethical Reflection by Animal Ethics Committee Members”, (2011) 24 (4) *Anthrozoös*, 409, 409-411, 413-419, <https://doi.org/10.2752/175303711X13159027359980>.

<sup>87</sup> Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, above 84, 286-287.

<sup>88</sup> The original name of the organisation was the University of London Animal Welfare Society, it was changed to UFAW in 1926; S M Wickens, (compiler and editor) *Science in the Service of Animal Welfare, A Chronicle of Eighty Years of UFAW*, UFAW, Wheathampstead, (2007), 6, 7.

<sup>89</sup> Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, above 84, 286-287.

<sup>90</sup> George Cameron, Coggins and Parthenia Blessing Evans, “Predators’ Rights and American Wildlife Law”, (1982) 24 *Arizona Law Review*, 821, 830-831.

### 3.2 NGO and INGO Proposals

In 1988 David Favre argued in favour of a draft International Convention for the Protection of Animals (ICPA).<sup>91</sup> Although the convention did not enter into international law, the proposal formed part of a renewed movement, which aimed at legitimising and establishing a global animal protection treaty. Over the following three-four decades, the campaign gained increasing momentum, including important stepping stones such as the Universal Declaration of Animal Rights (UDAR), the Universal Charter of the Rights of Other Species (2000), the Declaration of Rights for Cetaceans: Whales and Dolphins, 2010, and the Draft UN Convention on Animal Health and Protection. There are also further proposals in the pipeline, namely the Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP), which is discussed in another article of this special edition of the Global Journal of Animal Law.<sup>92</sup> **comment by Sophie – can we cite?**

Table 1 below summarises a selection of international instruments that have been proposed to improve animal wellbeing: the Office for Animals (1931), presented to the League of Nations; the use of the OIE and its systems, as a specialist agency; the UDAR declaration; and the UNCAHP proposal. These instruments have been selected for discussion as they provide points of reference for analysis and comparison. The Office for Animals (1931) for example, presents a point of reference, allowing parallels to be drawn with twentieth and twenty first century instruments. The OIE was selected because its existing mechanisms permit comparisons between the OIE as a specialist agency and other institutional mechanisms in standalone treaties. The UDAR also provides a point of comparison, more specifically between animal rights, which UDAR promotes, and animal welfare, the basis of the other three instruments set out in Table 1.

**Table 1**  
**Comparison of Instruments**

	Office for the Protection of Animals	OIE	Universal Declaration of Animal Rights	UNCAHP
Form of the instrument	Presented to the League of Nations and would have led to a treaty	Existing Specialist Agency of OIE	Conference Declaration	Draft convention - the Goal is to present the draft to the United Nations, leading to a framework treaty
Basis	Not specified but terms consistent with animal welfare	Animal Welfare	Animal Rights	Enhanced welfare based on animal dignity and intrinsic value of animals. Elements of rights.
Scope	All animals	Animals in international trade	All animals	All animals
Binding or not	Treaty would have been binding	Standards not binding, but accept as such in the WTO	Not binding	Framework Convention

<sup>91</sup> Francesca Nyilas, “CITES And Animal Welfare: The Legal Void For Individual Animal Protection” above 64, 2.

<sup>92</sup> Rajesh K Reddy and Joan Schaffner, “The Convention on Animal Protection: Animal Well-being as the Missing Link to a One Health Global Strategy for Pandemic Prevention”, (2022) GJAL, XXXX. **Is it OK to cite this?**

Institutional Frameworks	An Office within the League of Nations	Taps into existing OIE systems	None	Treaty Secretariat, Conference of the Parties, Protocols
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Turning to the Office for Animals (1931), details of this proposal have already been discussed in part 2.3 above. However, it is worth keeping in mind that the plan was based on the entry into force of a treaty that would have applied to all animals, and that institutional support would have been provided through the League of Nations. The instrument did not differentiate between welfare and rights, although its wording is consistent with what today is considered animal welfare.<sup>93</sup> The OIE has also already been discussed, in part 3.1 above. The three main points to bear in mind, are that OIE mechanisms are based on animal welfare and do not apply to all animals, but to animals in international trade; in addition, OIE standards are not binding. By way of contrast to the welfare approach of the OIE and the Office for Animals (1931), UDAR uses rights language, which applies to all animals. UDAR also attempts to set parameters to animal rights, although it commences from the standpoint that animals have a right to life, freedom from harm and the protection of the law.<sup>94</sup> Yet, these rights are not absolute and can transmute into welfare-like considerations, as evinced by Article 3.2 that specifies if an “animal has to be killed, this must be instantaneous and without distress”.

UNCAHP draws on existing material at the international level, acknowledging the work of the OIE, the fact the UN World Charter for Nature states that “(e)very life form is unique, warranting respect regardless of its worth to man” and furthermore, that the One Health and One Welfare concepts are interdependent, linking the health and welfare of animals with human wellbeing.<sup>95</sup> In similarity with the Office for Animals (1931) and UDAR, UNCAHP applies to all animals, including wild animals, those in experimentation and entertainment, as well as domesticated animals.<sup>96</sup> UNCAHP also envisages the creation of international institutional mechanisms, together with a conference of the parties and transparent reporting to the secretariat.<sup>97</sup> Significantly, Article 5(d) stipulates that “non-human animals have an interest to be [legally]represented... [therefore] civil procedures should be clearly established at a national level, entitling state authorities and precisely described elements of civil society to plead for the fundamental interests of animals”. Although this Article does not amount to the application of full-scale animal rights, it touches on the important issue of standing, and the ability of animal interests to be heard in legal fora. A telling illustration of these difficulties comes from Steven Wise’s battles to expand personhood beyond its enjoyment by humans.<sup>98</sup> In furnishing a concrete basis for standing, UNCAHP presents a significant step forward in protecting animal interests by providing access to legal processes. Another important consideration is that UNCAHP envisages the adoption of protocols by the Conference of the Parties and also authorizes the Secretariat to perform any function assigned to it by a protocol.<sup>99</sup>

When comparing a conference declaration to a framework convention, the latter has clear advantages over the former. To start with, a treaty will have binding provisions, allowing a

<sup>93</sup> For a discussion on the evolution of the term, “animal welfare”, Sophie Riley, *The Commodification of Farm Animals*, Springer (2022) 158-165.

<sup>94</sup> UDAR, Articles 2 (generally), 2.1, 12.1 and 14.2.

<sup>95</sup> UNCAHP, Preamble.

<sup>96</sup> UNCAHP, Articles 1, 2, 3, 4, 5, 6.

<sup>97</sup> UNCAHP, Articles 7, 11, 12, 13.

<sup>98</sup> Generally, Steven M Wise, “The Struggle for the Legal Rights of Nonhuman Animals Begins - the Experience of the Nonhuman Rights Project in New York and Connecticut” (2018-19) 25 *Animal Law*, 367, <https://animallawconference.org/wp-content/uploads/2019/10/Steven-Wise-The-Struggle-for-the-Legal-Rights-of-Nonhuman-Animals-Begins-Animal-Law-Vol.-25.3.pdf>.

<sup>99</sup> UNCAHP, Articles 12.3(b), 12.3(d) and 11.1(b).

platform from which national and international jurisdictions can evolve.<sup>100</sup> Furthermore, the ability to adopt protocols with specific commitments and institutional arrangements allows for fine-tuning and development as needed, including obligations regarding animal transportation, animals in experimentation, wild animals, domesticated animals and companion animals.<sup>101</sup>

A further matter that warrants some discussion is the fact that apart from UDAR, the instruments set out in Table 1 adopt a pragmatic animal welfare orientation. This is the case with UNCAHP, notwithstanding the fact that Article 3 refers to animal dignity as a fundamental principle. Elsewhere, the draft convention contains 20 references to animal welfare, including the preamble and the convention's objectives. The preamble acknowledges world-wide concern for animal welfare and protection, recommending "the creation of a UN institution on animal health, welfare and protection". The objectives similarly emphasise the protection of animals and their welfare.

On the one hand this approach has advantages in that UNCAHP, and the OIE for that matter, use terminology familiar to regulators. This would clearly make any proposed instrument more politically palatable than one based on animal rights. Yet on the other hand, this approach also presents a challenge in that the welfare paradigm has been critiqued for its entrenched anthropocentric constructs that legitimise "treating animals instrumentally...as long as certain 'safeguards' are employed."<sup>102</sup> As such, the welfare paradigm lacks what has been described as "conceptual responsibility", which would otherwise require humanity to examine and challenge the anthropocentric constructs that shape law and policy.<sup>103</sup> These issues are important for the next part of this article, which examines whether a specialist agency such as the OIE or a framework convention is a more appropriate global response for protecting animal wellbeing.

#### 4. SPECIALIST AGENCY or FRAMEWORK CONVENTION?

The role of international law is critical to achieving effective governance for animal health and protection, particularly in establishing international standards and regulations. In 1931, this point was cogently made by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies (International Bureau) in correspondence with the League of Nations.<sup>104</sup> The International Bureau noted that moving animals across international jurisdictions subjects them to differing levels of protection, depending on diverse laws and regulations, emphasising the need for strong national regulation.<sup>105</sup>

Given that at the international level much of the impetus for reform of animal protection has come from NGOs and INGOs, the practical problem was, and remains, how these myriad of organisations can leverage their networks to initiate solutions that require the support of multiple state actors. During the League of Nations, INGOs in particular, had ambitious plans,

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<sup>100</sup> Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 396; Francesca Nyilas, "CITES And Animal Welfare: The Legal Void For Individual Animal Protection" above 64, 21.

<sup>101</sup> Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 396.

<sup>102</sup> Gary Francione, "Animal Rights and Animal Welfare", (1995-1996) 48 (2) *Rutgers Law Review*, 397, 397-8.

<sup>103</sup> Johan Hattingh, "Human Dimensions of Invasive Alien Species in Philosophical Perspective: Towards an Ethic of Conceptual Responsibility", in Jeffrey A McNeely (ed) *The Great Reshuffling, Human Dimensions of Invasive Alien Species*, IUCN Publications Services Unit (2001), 183, 192.

<sup>104</sup> Proposal for the creation of an Office for the Protection of Animals within the League of Nations, annexure to correspondence by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies to Eric Drummond, Secretary-General of the League of Nations, above 52, 2.

<sup>105</sup> *Ibid.*



aimed at achieving high standards for animal protection on a global scale. These groups took a wide-ranging view of their mandate, which included restricting or abolishing vivisection, regulating the international trade in animals and animal products, and controlling the use of animals such as dogs, oxen, horses and mules, in agricultural, industrial and mining production.<sup>106</sup> Yet, they faced an uphill battle because in areas where international standards may have been useful, such as cross-border trade of farm animals and their products, governments were largely concerned with the economic impacts of trade, such as disease introduction.<sup>107</sup> This meant that well into the twentieth century, animal protection in the sector was treated as a trade issue that centred on the commercial viability of shipments, rather than an issue that also considered individual animal wellbeing.<sup>108</sup> It also meant that if multilateral agreement was difficult to achieve in an obvious cross-border situation, it would be even more difficult to achieve as an objective which aimed at using international law to lift national law and policy to higher global standards.

For these reasons, an existing specialized agency, with proven mechanisms, such as the OIE, potentially has much to offer. As discussed in part 3.1 of this article, the twenty first century saw the OIE take a keen interest in animal welfare. Due to its high profile and the fact that it is a “politically powerful” organisation, the OIE has shifted concern for animal welfare from the national to the international arena.<sup>109</sup> This makes the OIE a possible platform for international change.<sup>110</sup>

At the same time, OIE standards are not mandatory, and in a practical sense, amount to “non-enforceable guideline(s)”.<sup>111</sup> Favre points out that the OIE standard on live animal transport standards has

no prohibitions, no required inspections, and no limitations on operations... [reading] like a checklist of issues that should be considered if you are going to engage in live animal transport...it is not an actual standard that limits or prohibits practices that are harmful to animal welfare, nor can it be expected to do so as [the OIE does not have oversight of this]...important responsibility.<sup>112</sup>

Although this critique was made some ten years ago, and since that time the OIE has become increasingly concerned with animal welfare, Favre’s criticisms regarding the non-binding nature of the standards and the fact that the OIE’s remit does not extend to wider animal welfare, still remain. At its core the OIE continues to be an agency which concentrates on facilitating trade in animals and their products, predominantly ensuring that shipments are

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<sup>106</sup> J K Major, “The Horse Engine in the 19<sup>th</sup> Century”, 31, (1988) 60 (1) *Transactions of the Newcomen Society*, 31, 39-40, <https://doi.org/10.1179/tns.1988.003>; Moira Ferguson, *Animal Advocacy and English Women 1780-1900*, 4<sup>th</sup> edition, University of Michigan Press (2001), 110-121; Jason Hribal, “Animals are Part of the Working Class: A Challenge to Labor History”, (2010) 44 (4) *Labor History*, 433, 443-448, <https://doi.org/10.1080/0023656032000170069>.

<sup>107</sup> Sophie Riley, *The Commodification of Farm Animals*, above 93, 144-148.

<sup>108</sup> Examples include: 1887 *Convention Designed to Remove the Danger of Epizootic Diseases in the Territories of the Two Countries*, 7 December, 1887, reprinted in Bernd Rüster and Bruno Simma (eds) Vol IV *International Protection of the Environment: Treaties and Related Documents*, Dobbs Ferry: Oceana Publications Inc, New York, (1975) 1586; 1924, *International Agreement for the Creation at Paris of an International Office for Dealing with Contagious Diseases of Animals and Annex*, above 6; 1952, *Agreement Concerning Epizootic Diseases Between the Kingdom of Greece and The Federal people’s Republic of Yugoslavia* 2 February 1952, above 5, 1833; discussion, Sophie Riley, *The Commodification of Farm Animals*, above 93, 144-148.

<sup>109</sup> Steven White, “Into the Void: International Law and the Protection of Animal Welfare”, above 21, 394.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> David Favre, “An International Treaty for Animal Welfare”, (2012) 18 *Animal Law*, 237, 252.

disease-free.<sup>113</sup> Although this approach does lead to improved animal wellbeing in a limited way, it is still many steps removed from tackling the gap in international law, so that the concept of animal is extended to all animals and encompasses considerations beyond “killing them softly”.<sup>114</sup> For these reasons, Favre draws a fitting conclusion that the existence of the OIE does not weaken the need for a broad-based treaty.<sup>115</sup>

Elsewhere commentators argue that in the same way the preamble to the CBD states that the conservation of biodiversity is the common concern of humankind, so too is concern for animal health, safety and comfort.<sup>116</sup> Sykes points to a “sustained international discourse” on the importance of animal wellbeing, including international case law, national law and policy and the contribution of NGOs and INGOs.<sup>117</sup> This critical mass of interest demonstrates a common understanding that animals deserve better treatment than they currently receive. Accordingly, notwithstanding the absence of a binding multi-lateral treaty, legal, political and social norms on this point already occupy an important position in the “system of global law”.<sup>118</sup> A framework convention could also assist with practical implementation of national measures, not only by requiring the parties to implement domestic law and policy but also by making provision for monitoring and enforcement of treaty commitments.<sup>119</sup> In line with this expectation, UNCAHP requires the contracting parties to adopt national strategies and plans for animal health, welfare and protection, as well as take appropriate measures to end cruelty to animals and “promote compassionate and humane treatment,” although it adopts soft enforcement procedures based cooperation and reporting.<sup>120</sup>

As a significant point in its favour, UNCAHP’s language and procedures use mechanisms that governments are already familiar with, such as Conferences of the Parties, and reporting to the Secretariat. In addition, by emphasizing consistency with the One Health initiative and existing regulation on animal health and sentience it arguably provides a politically palatable pathway for change. At the same time, UNCAHP is not unnecessarily cautious. Its language about sentience, intrinsic worth, fundamental interests and dignity provide scope for significant future developments in animal protection law. Critically, and as mentioned several times in this article, the UNCAHP proposal anticipates the creation of a Secretariat and a regular Conference of the Parties, providing an ongoing institutional platform for meaningful and focused engagement with animal protection issues by NGOs and others at an international level.

## 5. CONCLUSION

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<sup>113</sup> Steven White, “Into the Void: International Law and the Protection of Animal Welfare”, above 21, 395.

<sup>114</sup> Anne Peters, *Animals in International Law*, above 20, 85; Werner Scholtz, “Killing Them Softly? Animal Welfare and the Inhumanity of Whale Killing”, (2017) 20 (1) *Journal of International Wildlife Law and Policy*, 18, 18, 21-23.

<sup>115</sup> David Favre, “An International Treaty for Animal Welfare”, above, 112, 252.

<sup>116</sup> Francesca Nyilas, “CITES And Animal Welfare: The Legal Void For Individual Animal Protection”, above 64, 12; Katie Sykes, “Nations Like Unto Yourselves: An Inquiry into the Status of a General Principle of International Law on Animal Welfare”, (2011) 49 *Canadian Yearbook of International Law*, 3, 10, 22, <https://doi.org/10.1017/S0069005800010316>.

<sup>117</sup> Katie Sykes, “Nations Like Unto Yourselves: An Inquiry into the Status of a General Principle of International Law on Animal Welfare”, above 116, 22, 26-27.

<sup>118</sup> Saba Pipia, “Emergence of Global Animal Law as a Separate Branch of International Law” (2020) XVI *Animal and Natural Resource Law Review*, 171, 171.

<sup>119</sup> Steven White, “Into the Void: International Law and the Protection of Animal Welfare”, above 21, 396.

<sup>120</sup> UNCAHP, articles 4.1, 7(a), 9, 13.

The progressive activities of NGOs and INGOs over the last century has placed their work in a strong position to advocate for meaningful institutional change, potentially closing the gap in animal protection in international law. This gap, characterized by deficiencies in the coverage of international law, has evolved in tandem with the fragmentation of global regimes and the focus on animals used in international trade, primarily under the auspices of the OIE and CITES. In doing so, international law has sidestepped other global issues that connect to animal wellbeing such as the problems generated by human-induced climate change, and the COVID-19 pandemic. As these difficulties continue to wreak havoc across the globe and as humans continue to use animals in more intense ways, these difficulties will inevitably become more pronounced and more challenging to deal with.

Indeed, the COVID-19 pandemic in all likelihood originated from society's close contact with wild animals in the wet market trade of China.<sup>121</sup> As Reddy and Schaffner state, the links between the pandemic and humanity's mistreatment of animals makes the calls for a global treaty on animal wellbeing even more compelling.<sup>122</sup> This current article has argued in favour of a framework convention in preference to attempting a retrofitting of existing agencies to make them more amenable to managing a wider range of animal issues than they have thus far dealt with. In short, the time is right for the adoption of a framework convention to protect animals and their wellbeing.

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<sup>121</sup> Ashok Kumar, Rita Sing, Jaskaran Kakur *et al*, "Wuhan to the World: The COVID-19 Pandemic" (2021) 11 *Frontiers in Cellular and Infection Microbiology*, 1, 2, 16, <https://doi.org/10.3389/fcimb.2021.596201>.

<sup>122</sup> Rajesh K Reddy and Joan Schaffner, "The Convention on Animal Protection: Animal Well-being as the Missing Link to a One Health Global Strategy for Pandemic Prevention", (2022) GJAL, XXXX. Is it OK to cite this?